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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Lee C. Palms and Nelle S. Palms, as Guardians ad Litem for
L.P., a minor Respondents,

v.

The School District of Greenville County Appellant.

Appellate Case No. 2013-002232

Appeal from Greenville County
Court of Common Pleas
Edward W. Miller, Circuit Court Judge
Case No. 2013-CP-23-03447

RECEIVED

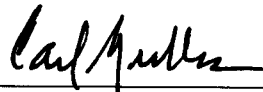
OCT 20 2014

SC Court of Appeals

MOTION TO RECALL REMITTITUR

Lee C. Palms and Nelle S. Palms, as Guardians ad Litem for L.P., a minor, Respondents, through their undersigned counsel, hereby move the Court of Appeals to recall the Remittitur for the reason that it was sent down by mistake, error or inadvertence of the Court. The facts and law in support of the Motion are stated in an accompanying Memorandum.

CARL F. MULLER, ATTORNEY AT LAW,
P.A.



Carl F. Muller, Esq., SC Bar No. 4131
Carl F. Muller, Attorney at Law, P.A.
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Greenville, SC

October 17, 2014

Attorney for Respondents

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MEMORANDUM IN SUPPORT OF
MOTION TO RECALL REMITTITUR

CARL F. MULLER, ATTORNEY AT LAW,
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Attorney for Respondents

A remittitur should be recalled when it has been “sent down by mistake, error or inadvertence of the Court.” Wise v. S.C. Dept. of Corrections, 372 S.C. 173, 642 S.E.2d 551 (2007). That is what occurred here. The remittitur was sent down before counsel for the Respondents was notified of the Court of Appeals’ decision on their Petition for Rehearing. This has deprived them of their right to petition the South Carolina Supreme Court for a Writ of Certiorari.

Counsel for the Respondents was not notified that a decision had been rendered on their Petition for Rehearing until receipt of a letter from the Clerk of the Court of Appeals transmitting the remittitur to the Greenville County Clerk of Court. The letter bore a hand-corrected date of August 19, 2014. (Exhibit 1) The face of the Court of Appeals’ Order denying the Petition for Rehearing was stamped “FILED July 10, 2014”; however, Counsel for the Respondents did not receive notice of the Court of Appeals’ Order until arrival of the letter transmitting the remittitur. (Exhibit 1)

The Petition for Rehearing was filed following reversal by the Court of Appeals of the trial court’s decision in favor of the Respondents. Its filing was required in order for the Respondents to petition the Supreme Court for a Writ of Certiorari. Rule 242(c), SCACR

Because the Petition for Rehearing included a request for a stay, Counsel for the Respondents was especially watchful for a decision. The Respondents’ law firm checked the mail daily for an Order, and checked the Court of Appeals’ web page for advance sheets every Wednesday, which is the day of the week when updates and changes are posted. The Court of Appeals’ advance sheet web page showed the Petition for Rehearing as “Pending” through the week of August 13, 2014. (Exhibit 2) Then, for the first time, during the week of August 20, 2014, the advance sheet web page showed the Petition for Rehearing as having

been denied, with a date of “July 10, 2014.” (Exhibit 3) The Respondents themselves also routinely monitored the Court of Appeals’ website and saw the same thing.

Because Counsel for the Respondents was not provided timely notice that their Petition for Rehearing was denied, the remittitur was prematurely sent to the Greenville County Clerk of Court.

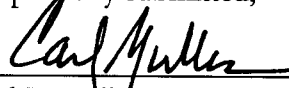
The Respondents filed a Petition for Writ of Certiorari and Rescission of Premature Remittitur with the South Carolina Supreme Court, seeking further appeal and rescission of the remittitur due to the lack of notice. The Supreme Court issued an Order directing the Respondents to file this Motion with the Court of Appeals and dismissing the Petition for Writ of Certiorari *without prejudice*, thereby allowing the Respondents to re-file after the remittitur is recalled. (Exhibit 4).

The Respondents seek to recall the remittitur because otherwise they will have been denied their right to appeal, which would be unjust. “The core of due process is the right to notice and a meaningful opportunity to be heard.” Lachance v. Erickson, 522 U.S. 262, 266; 118 S.Ct. 753, 756; 139 L.Ed. 2d 695 (1998)

Accordingly, the Respondents respectfully seek a recall of the remittitur so that the case can proceed to the South Carolina Supreme Court.

October 17, 2014

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Lee C. Palms and Nelle S. Palms, as Guardians ad Litem for
L.P., a minor Respondents,

v.

The School District of Greenville County Appellant.

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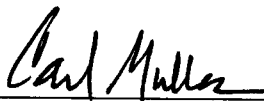
RECEIVED
OCT 20 2014
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served Respondents' Motion to Recall Remittitur and Memorandum in Support of Motion to Recall Remittitur by depositing a copy of them in the U.S. Mail, postage prepaid, on October 17, 2014, addressed to:

Kenneth L. Childs, Esq.
Thomas K. Barlow, Esq.
Childs & Halligan, P.A.
PO Box 11367
Columbia, South Carolina, 29211
Counsel for School District of Greenville County

J. Theodore Gentry, Esq.
Wade S. Kolb, Esq.
Wyche, P.A.
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Counsel for Amici Curiae



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Attorney for Respondents

EXHIBIT 1



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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August 19, 2014

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: Lee C. Palms v. The School District of Greenville County
Lower Court Case No. 2013CP2303447
Appellate Case No. 2013-002232

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

Enclosure

cc: Kenneth L. Childs, Esquire
Thomas Kennedy Barlow, Esquire
Carl F. Muller, Esquire
Rodney Douglas Webb, Esquire
James Theodore Gentry, Esquire
Wade Stackhouse Kolb, III, Esquire

The South Carolina Court of Appeals

Lee C. Palms and Nelle S. Palms, as Guardians ad Litem
for L.P., a minor, Respondents,

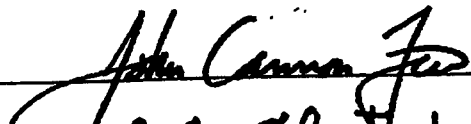
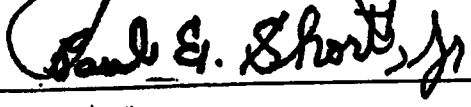

v.

The School District of Greenville County, Appellant.

Appellate Case No. 2013-002232

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc: Kenneth L. Childs, Esquire
Thomas Kennedy Barlow, Esquire
Carl F. Muller, Esquire
Rodney Douglas Webb, Esquire
James Theodore Gentry, Esquire

FILED

July 10, 2014

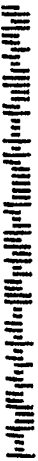
Wade Stackhouse Kolb III, Esquire
The Honorable Edward W. Miller



South Carolina Court of Appeals
 JENNY ABBOTT KITCHINGS, CLERK
 POST OFFICE BOX 11629
 COLUMBIA, SOUTH CAROLINA 29211

CARL F. MULLER
 607 PENDL ETON ST., STE. 201
 SUITE 201
 GREENVILLE SC 29601

29601335751

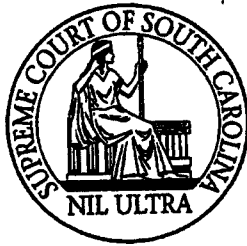


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EXHIBIT 2



OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA

ADVANCE SHEET NO. 32
August 13, 2014
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

The South Carolina Court of Appeals

PUBLISHED OPINIONS

None

UNPUBLISHED OPINIONS

2014-UP-320-Ralph Thomas and Nancy Thomas v. Gulf Stream Coach, Inc., et al.

2014-UP-321-In the matter of the care and treatment of Richard Dean Capps

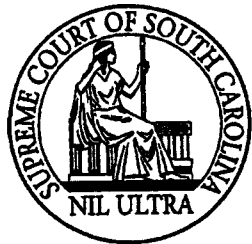
2014-UP-322-Christopher Lee v. Wendy Lee

2014-UP-323-SCDSS v. Rubi Bertaud-Cabrera

PETITIONS FOR REHEARING

5219-Moorhead Construction Inc. et al. v. Pendleton Station et al.	Pending
5229-Coleen Mick-Skaggs v. William Skaggs	Pending
5232-State v. Clarence Jenkins	Pending
5237-Palms v. School District of Greenville County	Pending
5242-Patricia Fore v. Griffco of Wampee, Inc.	Pending
5243-Kerry Levi v. Northern Anderson County EMS	Pending
5244-Clifford Thompson v. State	Pending
5245-Allegro, Inc. v. Emmett J. Scully et al.	Pending
5246-State v. Jason Alan Johnson	Pending
5247-State v. Henry Haygood	Pending
5248-Demetrius Mack v. Leon Lott	Pending
5250-Precision Walls v. Liberty Mutual Fire Ins.	Pending
2014-UP-200-Branch Banking and Trust v. Luquire	Pending

EXHIBIT 3



**OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA**

**ADVANCE SHEET NO. 33
August 20, 2014
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org**

The South Carolina Court of Appeals

PUBLISHED OPINIONS

5261-The State v. Roderick Pope	88
5262-Bloody Point Property Owners Assoc. Inc. v. William A. Ashton, Jr.	99
5263-The Milton P. Demetre Family Limited Partnership v. Harry Beckmann, III	107
5264-Prakash and Urmila Solanki v. Wal-Mart Store #2806	123
5265-The State v. Wayne McCombs	134
5266-The State v. Anthony K. Blakney	142

UNPUBLISHED OPINIONS

2014-UP-324-State v. Randy Jarrod Crosby	
2014-UP-325-Madeleine R. Arata and Kenneth C. Arata v. Village West Owners' Association, Inc. d/b/a Village West Horizontal Property Regime	

PETITIONS FOR REHEARING

5219-Moorhead Construction Inc. et al. v. Pendleton Station et al.	Pending
5229-Coleen Mick-Skaggs v. William Skaggs	Denied 08/01/14
5232-State v. Clarence W. Jenkins	Pending
5237-Palms v. School District of Greenville County	Denied 07/10/14
5241-Richard A. Fisher v. Shipyard Village Council	Pending
5242-Patricia Fore v. Griffco of Wampee, Inc.	Pending
5243-Kerry Levi v. Northern Anderson County EMS	Pending
5244-Clifford Thompson v. State	Pending

EXHIBIT 4

The Supreme Court of South Carolina

Lee C. Palms and Nelle S. Palms, as Guardians ad Litem
for L.P., a minor, Petitioners,

v.

The School District of Greenville County, Respondent.

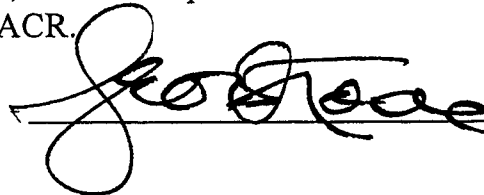
Appellate Case No. 2014-001955

Lower Court Case No. 2013-CP-23-03447


ORDER


On May 30, 2014, the Court of Appeals issued an opinion in this matter. *Palms v. School Dist. of Greenville Cty.*, 408 S.C. 576, 758 S.E.2d 919 (Ct. App. 2014). Petitioners' petition for rehearing was denied on July 10, 2014. On August 18, 2014, no petition for a writ of certiorari having been filed in this Court within the thirty day period following the issuance of the order denying the petition for rehearing, the remittitur was sent to the lower court. Rule 221(b), SCACR; Rule 242(c), SCACR.

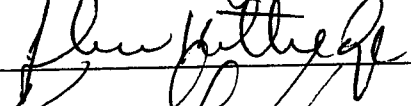
On September 16, 2014, petitioners filed a Petition for Writ of Certiorari and Rescission of Premature Remittitur in this Court. We dismiss the petition without prejudice to petitioners' ability to file a motion to recall the remittitur in the Court of Appeals, which is in the best position to determine if the remittitur was sent down by mistake, error or inadvertence on the part of the appellate court,¹ and following a ruling on the motion, to re-file a petition for a writ of certiorari in this Court pursuant to Rule 242, SCACR.

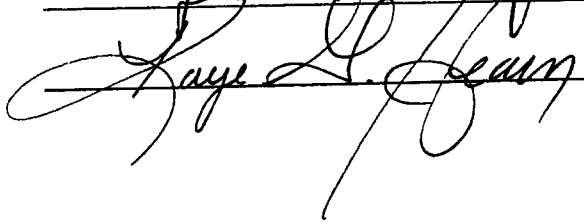

C.J.

¹ See *Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007) (when the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter; the only exception is when the remittitur is sent down by mistake, error or inadvertence of the Court).



J.


J.


J.


J.

Columbia, South Carolina

October 8, 2014

cc:

James Theodore Gentry, Esquire

Wade Stackhouse Kolb, III, Esquire

Carl F. Muller, Esquire

Kenneth L. Childs, Esquire

Thomas Kennedy Barlow, Esquire

Rodney Douglas Webb, Esquire

Paul B. Wickensimer

The Honorable Jenny Kitchings

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CARL@CARLMULLERLAW.COM

October 16, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1014 Sumter Street
Columbia, SC 29201


Re: The School District of Greenville County vs. Lee C. Palms and
Nelle S. Palms, as Guardians ad Litem for L. Cannon Palms, a minor
CA No.: 2013-CP-23-03447
Appellate Case No.: 2014-001955

Dear Ms. Kitchings:

Pursuant to the Order of The Supreme Court of South Carolina dated October 8, 2014, enclosed for filing please find the original and six copies of our Motion to Recall Remittitur and Memorandum In Support of Motion to Recall Remittitur. Our check in the amount of \$25.00 is enclosed representing payment of the filing fee associated therewith. Please return a file-stamped copy of this document to us in the envelope provided for your convenience. By copy of this letter we are serving copies of these filings on all counsel of record.

Thank you for your assistance. If you need anything further, please do not hesitate to contact us.

Very truly yours,


Carl F. Muller

CFM:dph

c: J. Theodore Gentry Esq.
Wade S. Kolb, III, Esq.
Thomas K. Barlow, Esq.
Kenneth L. Childs, Esq.

Enclosures

RECEIVED

OCT 20 2014

SC Court of Appeals