

STATE OF SOUTH CAROLINA
In the Court of Appeals

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DEC 03 2014

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Administrative Law Judge

SC Court of Appeals

Case No. 2013-ALJ-08-0159-AP

Peter Brown Appellant,

vs.

South Carolina Department of Health and Human Services..... Respondent.

APPELLANT’S MEMORANDUM ADDRESSING MOOTNESS

COMES NOW, Appellant, through his attorney of record, Kirby Mitchell of the South Carolina Legal Services (SCLS) law firm, and pursuant to an order from the South Carolina Court of Appeals, Appellant’s attorney hereby files this memorandum addressing the issue of mootness:

ISSUE: IS APPELLANT’S APPEAL TO THE SOUTH CAROLINA COURT OF APPEALS MOOT?

Appellant’s prior attorney of record, Patricia Harrison, filed Appellant’s Notice of Appeal in this case on March 7, 2014. Patricia Harrison also filed a separate motion on March 6, 2014, indicating the substantive basis for the appeal was that the lower court

failed to provide an evidentiary hearing to which she believed Appellant was entitled (*see* Motion dated March 6, 2014, p. 3). The reason the lower court did not provide the proposed evidentiary hearing, which had been scheduled to take place on March 13, 2013, is that the lower court ruled on March 12, 2013 that the case was moot based on Respondent's written decision a few weeks earlier to concede and no longer contest Appellant's entitlement to services (*see* ALC Order dated February 4, 2014, at pp. 2-3). No Initial Brief of Appellant has been filed in this case, so no other issues on appeal have been identified or properly noticed by or for this Appellant.

Under South Carolina law, a "case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973); *Ex parte Moore*, 346 S.C. 274, 550 S.E.2d 877 (2001).

In the case at hand, Appellant concedes that due to the procedural status of the state court dispute between these parties, there is currently no properly preserved controversy or pending issue for the state's Court of Appeals to now properly address through an appellate opinion. Appellant's attorney's understanding is that Respondent agrees – as the lower court has ordered – that Appellant is entitled "to receive [services] offered by the ID/RD waiver, provided by the qualified provider of his choice, in the same amount, duration, and scope as the [Appellant] received 'one-on-one' services at the time of [Appellant]'s appeal in 2005" (*See* ALC Order dated Feb. 4, 2014, pp. 2-3).

These parties have other disputes that can be properly addressed by other courts, but Appellant's entitlement to the services as specifically outlined in the ALC's Final

Order is not an issue of dispute between these parties, and that issue was the sole issue on Appeal before the South Carolina Court of Appeals.

Thus, Appellant concedes that Appellant's appeal in this state court action is moot.¹



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Attorney for Appellant, Peter Brown

December 1, 2014

¹ By way of update / information for the Court as to the basis for the previously-requested time extension for the filing of this memo: As previously indicated, Appellant's attorney and Respondent's attorney, Kenneth Woodington, have over the past three weeks exchanged detailed written proposed settlement agreements and negotiated in good faith with their clients, and both attorneys feel this dialogue has been productive and helpful to both parties in this complex matter. As of the date of this memo's filing, the parties have not reached a final global written and signed settlement agreement as to all of the issues in dispute between these parties, but the parties are very close and are continuing to work towards a global settlement. Thus, Appellant's attorney respectfully requests (and Respondent's attorney Kenneth Woodington has indicated his consent and approval of the information and request in this footnote) that this Court hold off on an Order in this case until **Wednesday, January 7, 2015**, as that time period will give the parties ample opportunity to fully exhaust on-going settlement efforts which, if successful, could potentially be of greater long-term benefit to both parties respectively.

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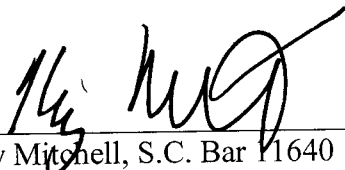
PROOF OF SERVICE

I certify that I have served Appellant's Memorandum Addressing Mootness by regular U.S. mail today, December 1st, 2014, on the following:

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December 1, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211


Re: *Peter Brown v. SC DHHS*
Case No.: 2013-ALJ-08-0159-AP
Appellate Case: 2014-000443

Dear Ms. Kitchings:

I represent Appellant in the above-referenced appeal. Enclosed please find Appellant's Memorandum Addressing Mootness.

Please call me with any questions and/or if you need further information (my direct line: 864-679-3247). With kind regards, I am

Yours very truly,


Kirby Mitchell
Senior Litigation Attorney

Enclosure

cc: Kenneth Woodington, attorney for Respondent
Richard Hepner
Byron Ronald Roberts
Carolyn B. Brown

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Honorable Jenny Abbott Kitchings
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