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SEP 10 2015
SC Court of Appeals

RECORD NO. 14-1678

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

ESTATE OF DORIS HOLT; RODNEY KEITH LAIL; IRENE SANTACROCE,

Plaintiffs-Appellants,

and

JAMES SPENCER; SOUTHERN HOLDINGS, INCORPORATED;
RICKY STEPHENS; MARGUERITE STEPHENS,

Plaintiffs,

v.

HORRY COUNTY, SOUTH CAROLINA; HORRY COUNTY POLICE
DEPARTMENT; JAMES ALBERT ALLEN, JR.;
SIDNEY RICK THOMPSON; JEFFREY S. CALDWELL;
CHARLES MCCLENDON; JAY BRANTLY; ANDY CHRISTENSEN;
MICHAEL STEVEN HARTNESS; HAROLD STEVEN HARTNESS;
ANCIL B. GARVIN, III,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA



**APPELLEES' RETURN TO APPELLANTS'
EMERGENCY MOTION TO REMAND
AND DISCOVERY BY SPECIAL MASTER
BASED ON NEWLY DISCOVERED EVIDENCE
AND NATIONAL SECURITY**

The Appellants have file a motion entitled "Emergency Motion for Remand and Discovery by Special Master Based on Newly Discovered Evidence and National Security." (Dkt. #110). The Appellees Horry County Sheriff's Department, Allen, Thompson, Caldwell, McClendon, Brantley, and Christensen (hereafter "Governmental Appellees") oppose that motion.

This is not the first such "emergency motion for remand" that has been filed by the Appellants. They have previously filed an "Emergency Motion to Remand, to Gather Previously Concealed Evidence Regarding Fraud on the Court." (Dkt. #35). That was followed by two "supplemental" motions to remand the appeal to the district court. (Dkt. #74, #78). Those motions, including the two supplemental motions, were denied by this Court by Order filed April 6, 2015. (Dkt. #81).

The Appellants have now filed what can only be characterized as a duplicative motion. The same arguments that the Appellants make in the current "emergency motion" were made in the previous three motions. The same relief that the

Appellants seek in the current "emergency motion" was made in the previous three motions. This is nothing but an attempt to avoid the Court's briefing order and to further delay the final and ultimate adjudication of this lawsuit – litigation which screams out for finality.

In particular, the Appellants raise the same arguments that there are "national security" issues at stake. They raise the same claims of "fraud on the court" committed by the FBI and the South Carolina Law Enforcement Division, neither of which are even parties to this litigation. They continue to make the same arguments that Judge Bryan Harwell improperly allowed a FBI forensics expert, Noel Herold, to serve as an expert witness in a civil case.¹ They continue to argue that initials on Herold's report were forged despite the fact that Herold testified under examination at

¹ Ironically, the Appellants' counsel accuses literally everyone of committing fraud and bad acts. He has repeatedly attacked the undersigned counsel for committing "extensive fraud on the court" without making the first showing of such conduct. (Dkt. #110-1, p.2 of 35). Yet, it is Appellants' counsel who has mischaracterized the very district court order that is at the heart of his alleged "conspiracy" and "fraud." The Appellants present Court Order #127 (entered December 10, 2004) as Exhibit "K" to this current motion and insists that Appellees' counsel "drafted" and "orchestrated the misuse" of that order which required the original videotapes from the two Horry County police vehicles to be delivered to the FBI for an analysis. (The undersigned counsel was not even involved in the case in 2004). The Appellants' counsel not only fails to advise this Court that Court Order #127 was a Consent Order that was actually signed and agreed to by the Appellants' own counsel at the time, Michael Goldberg, but counsel also fails to provide this Court with the entire order. Exhibit "K" includes only the first three pages of the Order and conveniently leaves off the signature pages for the attorneys -- including Mr. Goldberg -- which are prefaced with the words "we consent." The Court is urged to review the entirety of Court Order #127, which clearly demonstrates that it is as Judge Harwell described it, a consent order where the very bad acts complained of – the delivery of the videotapes to the FBI for an analysis and a report – were *agreed to by the Appellants' own lawyer*. The Appellants cannot reasonably claim a fraud on the court when the court order and the procedures set forth therein *were agreed to by all the parties*.

deposition by the Appellant's own lawyer that the report was his and contained his findings. They continue to argue of a government cover-up of terrorist activities. All of these claims, conspiracies and theories were raised in the prior "emergency motions." There is simply no basis for the Court to address what is clearly a duplicative or repetitive motion.

The only "new" claim that the Appellants make in the current motion involves some notes that allegedly were obtained from SLED that the Appellants claim show that SLED may have forwarded the original videotapes from the two Horry County police vehicles to the FBI in October 2004 rather than in December 2004. The Appellants claims that this is evidence of "willful and intentional defiance" of a court order which amounts to "criminal contempt of court" by officials with SLED. While such allegations are absurd, they have no real bearing on this case or the issues before this Court on appeal. SLED is not a party to this case. This appeal involves whether the district court was correct in refusing to set aside the settlement reached by the parties on the first day of trial in May 2007. Whether SLED did or did not send the videotapes to the FBI in October 2004 has no bearing on the issue on appeal. Clearly, there is no basis for a remand.

That is particularly true because it would be absolutely unprecedented for this Court to remand a case to the district court before the Court even considers the merits of the appeal. The merits of an appeal are not to be decided on a motion

(even one called an "emergency motion"). That is not how appeals work. In effect, the Appellants seek an immediate remand awarding all of the relief that they are seeking on appeal and were denied by the district court in the orders on appeal. They seek an immediate remand of this case for further proceedings – before the first brief or even the Joint Appendix is filed.

As discussed in response to the earlier "emergency motions," the Appellants have presented no authority that would allow this Court to summarily grant the extraordinary relief sought on appeal or to reverse and remand for further proceedings in the district court before the appeal grounds are fully briefed and a Joint Appendix filed. In filing the latest motion for remand, the Appellants request that this Court remand to the District Court to allow additional discovery to be undertaken and to assign the case to a Senior District Judge from outside the Fourth Circuit and/or a special master. In effect, the Appellants are requesting this Court to order, by means of a motion to remand, the precise relief that they seek in this appeal.

In short, there is no basis for a remand for the purposes sought by the Appellants. The merits of the appeal should not be determined based on a motion to remand. Instead, the Federal Rules of Appellate Procedure require that the Appellants seek their relief, i.e., a reversal and remand, by following the briefing and argument requirements set forth in those rules. For whatever reason, the

Appellant continue to refuse to file a brief – despite numerous extensions. It is simply improper for the Appellant to attempt to circumvent those established procedures by use of a motion to remand to obtain the relief they seek on appeal. It is likewise improper for the Appellants to continue to disregard this Court's briefing orders.

Based on the foregoing discussion, the Governmental Appellees respectfully request that this Court deny the Appellants' latest "Emergency Motion to Remand" for the same reasons that this Court denied the earlier "emergency motions."

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: s/ Andrew F. Lindemann
ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
TEL: (803) 806-8222
FAX: (803) 806-8855
E-MAIL: alindemann@dml-law.com

*Counsel for Appellees Horry County
Sheriff's Department, Allen, Thompson,
Caldwell, McClendon, Brantley, and
Christensen*

Columbia, South Carolina

September 8, 2015

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System which will send such filing to the following registered CM/ECF users:

Michael G. Sribnick, Esquire

s/ Andrew F. Lindemann

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Doyet A. Early III, Circuit Court Judge
Case No. 2008-CP-40-6656
Appellate Case No. 2014-002029

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SEP 10 2015

SC Court of Appeals

John R. Rakowsky, Respondent,

v.

Law Offices of Adrian L. Falgione, LLC,
James Spencer, Estate of Doris Holt, Nick Williamson
On behalf of RSC, Irene Santacroce, Rodney Keith Lail,
Marguerite Stephens, Ricky Stephens, Michael Hartness,
Horry County, SC, Eugene Chewing and Glenn W.
Harrison, Defendants.

Of whom:

Irene Santacroce, Rodney Keith Lail and Estate
Of Doris Holt are, Appellants.

CERTIFICATE OF SERVICE

I, Beth Cogan, an employee with the Ballard & Watson, Attorneys at Law, do hereby certify that on September 9, 2015, I served a copy of **Exhibit E to the Return in Opposition to Joint Motion to Extend Time due to Newly Discovered Evidence** in the above-captioned case on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Andrew F. Lindemann, Esquire
Davidson & Lindemann, P.A.
Post Office Box 8568
Columbia, South Carolina 29202-8568

Benjamin C. Bruner, Esquire
Bruner Powell Wall & Mullins, LLC
Post Office Box 61110
Columbia, South Carolina 29260

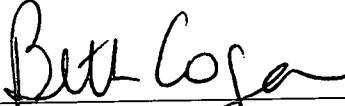
Michael Sribnick, MD, Esquire
3 Kenilworth Avenue
Charleston, South Carolina 29403

James Spencer
7001 Saint Andrews Road
P.O. Box 183
Columbia, South Carolina 29212

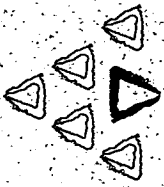
Marguerite Stephens
2455 Moores Mill Road
Aynor, South Carolina 29511

Ricky Stephens
2455 Moores Mill Road
Aynor, South Carolina 29511

Nicholas Williamson
8005 White Ash Court
Oak Ridge, North Carolina 27310


Beth Cogan, Paralegal

September 9, 2015
West Columbia, South Carolina



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

September 9, 2015

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

Re: *John Rakowsky vs. Adrian Falgione, et al.*
Appellate Case No. 2014-002029

Dear Ms. Kitchings:

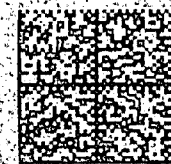
Enclosed for filing with your office, please find the original and seven (7) copies of Exhibit **E to the Return in Opposition to Joint Motion to Extend Time due to Newly Discovered Evidence** which was mailed for filing on September 1, 2015 in the above-referenced matter. This additional exhibit was filed with the Fourth Circuit Court of Appeals yesterday and further addresses the alleged "newly discovered evidence" upon which the latest motion for extension is based. I would appreciate you submitting this additional exhibit to the Court along with the motion and return for the Court's consideration. Please have your office file the original and return the stamped filed copy via our self-addressed, stamped envelope that is provided.

By copy of this letter, I am serving the same upon the *pro se* Defendant and all the parties of record. If you have any questions please do not hesitate to call. With warm personal regards, I am,

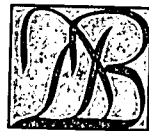
Sincerely yours,


Beth Cogan, Paralegal

cc: (all via U.S. mail)
The Honorable Doyet A. Early, III
Andrew Lindemann, Esquire
Benjamin Bruner, Esquire
Michael Sribnick, Esquire
James Spencer
Marguerite Stephens
Ricky Stephens
Nicholas Williamson
John Rakowsky, Esquire (via Email)



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Law Offices of Desa Ballard

226 State Street
 West Columbia, SC 29169

To:

Honorable Jenny Abbott Kitchings
 South Carolina Court of Appeals
 1220 Senate Street
 Columbia, South Carolina 29201

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