

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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OCT 07 2015

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2013-CP-40-1047R

Evalena Catoe, individually and as Personal Representative
of the Estate of Richard L. Catoe, Jr., deceased, Appellant,

v.

The City of Columbia and Leon Lott, in his
official capacity as Sheriff of Richland County, Defendants,

Of Whom, Leon Lott, in his official capacity
as Sheriff of Richland County, is Respondent.

**RETURN IN OPPOSITION TO APPELLANT'S
MOTION TO ARGUE AGAINST PRECEDENT**

The Appellant Evalena Catoe has filed a motion pursuant to Rule 217,
SCACR, requesting leave of this Court to argue against the precedent established
by this Court's published decision in *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d

465 (Ct. App. 2006). The Respondent Leon Lott opposes that motion for two principal reasons.

First, the Appellant has failed to address the threshold question of whether a panel even has the authority to overrule the precedent established by another panel. The South Carolina Constitution provides that the Court of Appeals "shall sit in panels" but further provides that the "General Assembly may by statute provide for the court to sit en banc." *See*, S.C. Const. art. V, § 7. The General Assembly subsequently enacted S.C. Code Ann. §§ 14-8-80 and 14-8-90 which provide for this Court to sit *en banc*. The statutory authority, however, does not address whether a panel has the authority to overrule a decision of a prior panel. In effect, that is what the Appellant is seeking by arguing that *Huggins* was wrongly decided and by asking this Court to allow her to argue against that precedent.

While there is no authority in South Carolina addressing whether one panel of this Court may overrule a prior panel, that is an issue that the Fourth Circuit Court of Appeals has addressed and applied on multiple occasions. The Fourth Circuit describes as a "basic principle" the rule that "one panel cannot overrule a decision issued by another panel." *McMellon v. United States*, 387 F.3d 329, 332 (4th Cir. 2004). The Fourth Circuit further explained that "[t]he question of the binding effect of a panel opinion on subsequent panels is of utmost importance to the operation of this court and the development of law in this circuit." *Id.* In

effect, the Fourth Circuit has held that one panel cannot overrule a decision issued by another panel "unless the prior opinion has been overruled by an intervening opinion from this court sitting *en banc* or the Supreme Court." 387 F.3d at 333.

The same prudential rule should apply in the South Carolina Court of Appeals. One panel should not have the authority to overrule a decision by a prior panel unless there is an intervening decision from this Court sitting *en banc* or from the South Carolina Supreme Court.

That is particularly true given the procedural histories of *Huggins* and of this case. A petition for writ of certiorari was filed in *Huggins*. The Supreme Court thus had the opportunity to review the *Huggins* decision and ultimately denied the petition. *See*, Order Denying Writ of Certiorari filed October 18, 2007 (copy attached). No member of the Supreme Court at that time even voted for a writ of certiorari to be granted. Likewise, in the present case, the Appellant sought immediate certification of this case to the Supreme Court in order to argue against the precedent established by *Huggins*, and the Supreme Court denied that motion by Order filed June 11, 2014 (copy attached).

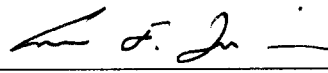
In addition to the fact that one panel of this Court should decline to overrule a prior panel decision, the Appellant's motion should also be denied in furtherance of the important doctrine of *stare decisis*. The Supreme Court has explained that "[s]tare decisis exists to insure a quality of justice which results from certainty and

stability." *State v. One Coin-Operated Video Game Machine*, 321 S.C. 176, 467 S.E.2d 443, 446 (1996). The doctrine "enjoys particular efficacy in the context of challenges concerning the construction of statutes and determination of legislative intent." *Wehle v. South Carolina Retirement System*, 363 S.C. 394, 611 S.E.2d 240, 244 (2005). The Supreme Court has further explained: "It is manifestly in the public interest that the law remain permanently settled. Especially is this so in the construction of statutes, for if any change in the statutory law is desired, the General Assembly may readily accomplish it." *Id.*, citing *Powers v. Powers*, 239 S.C. 423, 123 S.E.2d 646, 647 (1962). *Huggins* is settled law – the Supreme Court denied a writ of certiorari, and it has been the law for nine years. It is entitled to *stare decisis*. If the General Assembly intended a different result, it could have amended Section 15-78-60(6) to "correct" or "clarify" the *Huggins* decision. It has not done so and for good reason: *Huggins* correctly reflects the legislative intent.

For these reasons, the Court is respectfully requested to deny the Appellant's motion to argue against the precedent established by the *Huggins* decision.

Respectfully submitted,

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BY:  _____

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October 7, 2015

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CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent Leon Lott, does hereby certify that service of the **Return in Opposition to Appellant's Motion to Argue Against Precedent** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 7th day of October 2015:

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