

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Eugene C. Griffith, Circuit Court Judge

Appellate Case No. 2014-000194

RECEIVED

OCT 09 2015

SC Court of Appeals

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 the

Respondent.

**APPELLANT'S REPLY TO RESPONDENT'S RESPONSE IN OPPOSITION TO
MOTION TO ARGUE AGAINST PRECEDENT**

On October 7, 2015, Respondent filed a Return in Opposition to Appellant's September 26, 2015, Motion for Leave to Argue Against Precedent; Appellant makes this Reply at the request of the Court:

Respondent argues that Appellant has "in effect" asked this Court to overturn the decision in *Huggins v. Metts*, 371 S.C. 621, 640 S.E.2d 465 (Ct. App. 2006). In fact, Appellant has not asked this Court to overturn the *Huggins* decision; she has asked this Court only to find that the trial judge in her case erred in granting summary judgment for Respondent upon applying an

unwarranted interpretation and expansion of the Tort Claims Act exception in reliance upon the *Huggins* decision.

Rule 217, SCACR requires a formal motion seeking leave to argue against precedent during oral argument before the appellate courts. However, Respondent's Argument in Opposition suggests that Rule 217, SCACR does not apply in the Court of Appeals. Respondent argues that, because statutory authority does not address whether one panel of the Court has the authority to overrule another, it was therefore unnecessary or even improper for Appellant to comply with Rule 217, SCACR by requesting leave of this particular appellate Court to present oral argument against precedent. However, *Huggins* was found controlling precedent by the trial judge. Given Appellant's argument on brief regarding the *Huggins*' decision's departure from the original construction of § 15-78-60(6) in *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App 1998), Counsel for Appellant believed it incumbent upon her to comply with Rule 217, SCACR prior to oral argument. Respondent has provided none and Counsel for Appellant is unaware of any authority for the notion that the requirement of Rule 217, SCACR is inapplicable in the Court of Appeals.

Respondent next argues that the Court should deny Appellant's request in deference to the "settled precedent" of the *Huggins* decision. As indicated, the issue of immunity under the Tort Claims Act was actually not decided by the trial court in *Huggins* but was found to be an additional sustaining ground pursuant to Rule 220(c), SCACR. Respondent argues that the Supreme Court reviewed the *Huggins* decision and denied Huggins' Petition for Certiorari. Of course, the one-sentence Order denying Certiorari gives no indication of the substance of the Petition before the Court or of the Court's basis for denying the Petition for Certiorari. Respondent next points out that *Huggins* has "been the law for nine years." As indicated on brief, Appellant agrees that the

Higgins decision has been largely ignored for the past nine years; that the decision has never been discussed by the Supreme Court; and that the decision has apparently never been examined in comparison with the decision in *Wells*.

By her Motion, Counsel for Appellant intended only to comply with the Rules of Court before presenting oral argument. Counsel for Appellant appreciates the opportunity to present oral argument and she respectfully awaits the ruling and instruction of the Court.

October 9, 2015, 2015
Columbia, South Carolina



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COUNSEL FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Eugene C. Griffith, Jr., Circuit Court Judge

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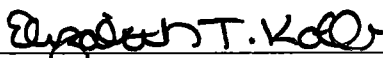
Of whom Leon Lott in his official capacity
as Sheriff of Richland County is the

Respondent.

PROOF OF SERVICE

I, the undersigned, an employee of the MULLIS LAW FIRM do hereby certify that I have served Appellant's Reply to Respondent's Response in Opposition to Motion to Argue Against Precedent this 9th day of October, 2015, by email and by mailing one copy of same, by regular U.S. mail, with proper postage affixed, addressed to the following:

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PAMELA R. MULLIS
ATTORNEY AT LAW

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SC Court of Appeals
J. MARVIN MULLIS, JR.
1940 - 2012

October 9, 2015

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

VIA HAND DELIVERY

RE: Evalena Catoe, individually and as personal representative of the estate of Richard L. Catoe, Jr., Appellate Case No. 2014-000194

Dear Ms. Kitchings:

Please find enclosed the original and six (6) copies of Appellant's Reply to Respondent's Response in Opposition to Motion to Argue Against Precedent and Proof of Service in the above-matter.

Please do not hesitate to contact me should there be any questions or concerns.

Sincerely,

Pamela R. Mullis

Pamela R. Mullis

PRM/GR

Enclosures

cc: Robert D. Garfield, Esquire
Andrew F. Lindemann, Esquire