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Case # 2015-001784

OCT 07 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY, SOUTH CAROLINA
COURT OF COMMON PLEAS

HON R. SCOTT SPROUSE, CIRCUIT JUDGE

Case # 2014-CP-04-01780

NANCY C. PEREZ

Petitioner

Vs

SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION –
BOARD OF NURSING

Respondent

MOTION TO RENEW APPELLATE PROCEEDINGS

Appellant Nancy C. Perez hereby respectfully requests to renew the Appellate proceedings. As grounds therefore she shows:

- 1- On August 20th, 2015 she filed the notice of appeal. Simultaneously, she also filed a motion to abate the appeal in order to allow the trial court time to rule upon a timely filed post trial motion.
- 2- On August 26th, 2015 The Court of Appeals remanded the case to the trial court in order for the same to rule on Ms. Perez' motion. The Court of Appeals dismissed the Appeal without prejudice.
- 3- After a remittitur is sent down from an appellate court, it is the duty of the trial court to follow the decision of the appellate court.¹ But see Attachment 1, it shows that the trial court has failed or refused to do so².
- 4- At any rate , a litigant is only required to fairly raise an issue to the trial court, thereby giving it an opportunity to rule on the issue³. The issue is preserved for appellate review even if the trial court does not rule on it⁴.

**THE DENIAL OF TRIAL BY
JURY IS IMMEDIATELY APPEALABLE**

¹ Milton P. Demetre Family Limited Partnership v. Beckmann, 773 S.E.2d 596 (S.C.App. - 08/20/2014); Ackerman v McMillan 324 S.C. 440, 477 S.E.2d 267 (S.C.App. 10/14/1996)

² Attachment 1 is a true and correct copy of the trial court docket as of October 4th, 2015.

³ Marathon Fin. Co. V HHC Liquidation Corp. 325 S.C. 325, 483 S.E.2d 757 (S.C.App. 01/27/1997) citing Hubbard v. Rowe, 192 S.C. 12, 19, 5 SE 2d 187, 189 (1939)

⁴ Town of Kingstree v. Chapman, 747 SE 2d 494, 510 (Ct. App. - 2013) citing Pye v. Estate of Fox, 369 S.C. 555, 565-66, 633 SE 2d 505, 510 (2006).

5- Furthermore, during the trial court proceedings Ms. Perez requested a Jury Trial⁵. The denial of the Constitutional Right to a jury trial is immediately appealable⁶. Ms Perez' Appellate Brief will show that she submitted a pleading demonstrating that she was entitled to relief within the meaning of SCRCF, 8(a) (2)⁷. The Appellate Brief will also show that she pled therein, inter alia, that the nursing profession existed at common law and that at common law the right to work as a nurse could only be revoked by a circuit court. She will show that the South Carolina Supreme Court has ruled that statutes are not to be construed in derogation of common law rights⁸. She

⁵ First Amended Petition For A Writ Of Mandamus And Declaratory Judgment or, in the alternative, Inverse Condemnation Proceedings, filed September 4th, 2014.

⁶ Bateman v. Rouse, 358 S.C. 667, 596 S.E.2d 386 (S.C.App. 05/03/2004) (As previously noted, the purpose of requiring an immediate appeal is to preserve a party's constitutional rights that would otherwise be lost. See generally S.C. Const. Art. I, § 14; S.C. Code Ann. §14-3-330(2) (1976). Here, Helen's constitutional right to a jury trial was lost despite her best efforts to secure a jury trial. Once the case was tried non-jury, Helen's right to a jury trial had already been forfeited. Under these circumstances, we do not believe the policy behind requiring an immediate appeal would have been furthered had Helen appealed at the conclusion of the non-jury trial. Moreover, once the case was tried non-jury, Helen arguably was required to wait for a written order prior to appealing. See Rule 203(b)(1), SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.... **When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.**"); Ford v. State Ethics Com'n, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) ("The written order is the trial judge's final order and as such constitutes the final judgment of the court."). Thus, we find Helen preserved her right to a jury trial by timely serving her notice of appeal after the final judgment)

⁷ Clark v. Clark, 293 S.C. 415, 361 S.E.2d 328 (S.C. 05/26/1987) citing Stroud v. Riddle, 260 S.C. 99, 194 S.E.2d 235 (1973);

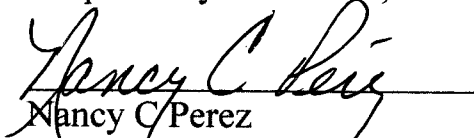
⁸ Barton v. South Carolina Department of Probation Parole and Pardon Services, 404 S.C. 395; 745 S.E.2d 110 (SC S. Ct - July 3, 2013 citing Doe v. Marion , 361 S.C. 463, 473, 605 S.E.2d 556, 561 (Ct. App. 2004) , **aff'd** , 373 S.C. 90, 645 SE 245 (2007)

will also show that the South Carolina Constitution preserves the right of trial by jury in those cases in which parties would have been entitled to it at the time of the adoption of the Constitution⁹.

The trial court did not address the jury trial issue in its Order of Dismissal. So in order to preserve the issue for appeal Ms. Perez was required to submit a Rule 59 (e) Motion¹⁰.

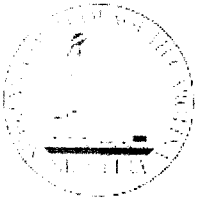
Wherefore, Ms. Perez respectfully requests that the appellate proceedings resume.

Respectfully Submitted,

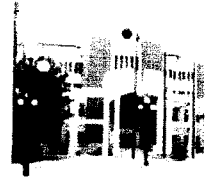

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⁹ Bateman v. Rouse, 358 S.C. 667, 596 S.E.2d 386 (S.C.App. 05/03/2004)

¹⁰ Herron v. Century BMW, 395 SC 461, 465, 719 SE 2d 640, 642 (2012); Elam v. S.C. Dep't of Transp., 361 SC 9, 24, 602 SE 2d 772, 780 (2004)



Anderson County Tenth Judicial Circuit Public Index



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Nancy C Perez VS Labor Licensing and Regulation South Carolina					
Case Number:	2014CP0401780	Court Agency:	Common Pleas	Filed Date:	08/19/2014
Case Type:	Common Pleas	Case Sub Type:	Adm Law/Other 899	File Type:	Jury
Status:	Ended	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials						
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Perez, Nancy C	Remittitur From Court Of Appeals	Filing		09/17/2015-15:54		
Labor Licensing and Regulation South Carolina	Service/Certificate Of Service	Filing		08/17/2015-12:35		
Perez, Nancy C	Motion/Reconsider	Motion		08/17/2015-12:33		
Labor Licensing and Regulation South Carolina	Order of Dismissal	Order		08/10/2015-12:06		
Board Of Nursing	Order of Dismissal	Order		08/10/2015-12:06		
Coleman, Darra James	Roster/Notice of Motions Roster Publication Sent	Action		06/29/2015-09:55		
Coleman, Darra James	Roster/Notice of Motions Roster Publication Sent	Action		06/29/2015-09:55		
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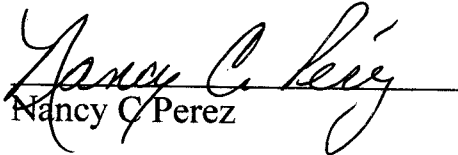
ATTACHMENT 1 (EXCERPT)

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing " Motion to Renew Appellate Proceedings "was delivered by mailing a copy thereof on October 2nd , 2015 to

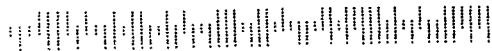
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Donnell G. Jennings , Esq
South Carolina Department of Labor , Licensing
And Regulation
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Columbia, SC 29211-1329


Nancy C Perez

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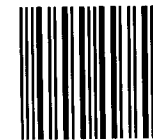
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