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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

AMENDED NOTICE OF APPEAL

Nancy C. Perez appeals the Judgment of the Honorable R. Scott Sprouse dated August 10th, 2015¹. Appellant received notice of entry of this Order on August 14th, 2015.

I

RELATED APPELLATE CASE 2015-001784

- 1- On August 20th, 2015 Ms. Perez filed the original 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. There is no appellate fee for the 2nd Notice of Appeal².
- 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.³ But see Attachment 1, it shows that the trial court has failed or refused to do so⁴.

¹ Attachment 1, A true and correct copy of the Judgment being challenged on Appeal is attached hereto as required by Rule 203(a)(B)(ii)

² A second filing fee will not be collected from a party who previously appealed, *Holmes v. East Cooper Community Hospital, Inc.*, 758 S.E.2d 483, 408 S.C. 138 (S.C. 03/26/2014) citing *Hudson v. Hudson*, 290 SC 215, 215, 349 SE 2d 341, (1986)

³ *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)

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

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 issue⁵. The issue is preserved for appellate review even if the trial court does not rule on it⁶.

II

THE DENIAL OF TRIAL BY JURY IS IMMEDIATELY APPEALABLE

5- Furthermore, during the trial court proceedings Ms. Perez requested a Jury Trial⁷. The denial of the Constitutional Right to a jury trial is immediately appealable⁸. Ms Perez' Appellate Brief will show that she submitted a pleading demonstrating that she was entitled to relief within the meaning of

⁵ *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)

⁶ *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).


⁷ First Amended Petition For A Writ Of Mandamus And Declaratory Judgment or, in the alternative, Inverse Condemnation Proceedings, filed September 4th, 2014.

⁸ *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)

SCRCP, 8(a) (2)⁹. 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 rights¹⁰. She 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 Constitution¹¹.

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) Motion¹².

Respectfully Submitted,


Nancy C. Perez
713 E. Greenville St - D220
Anderson, SC 29621
864-209-1509

⁹ 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);

¹⁰ 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)

¹¹ Bateman v. Rouse, 358 S.C. 667, 596 S.E.2d 386 (S.C.App. 05/03/2004)

¹² 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)

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Amended Notice Of Appeal" was delivered by mailing a copy thereof on October 26th, 2015 court to :

Donnell G. Jennings , Esq
South Carolina Department of Labor , Licensing
And Regulation
PO Box 11329
Columbia, SC 29211-1329


Nancy C Perez

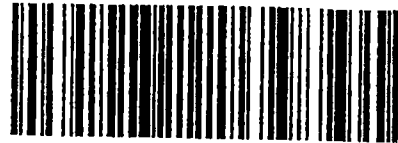
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SC Court of Appeals

Nancy C Perez
713 E. Greenville St - D220
Anderson, SC 29621

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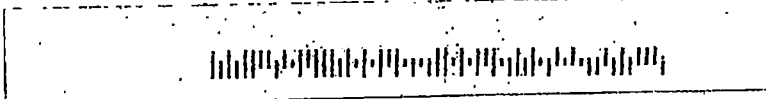


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