

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable L. Casey Manning, Circuit Court Judge

**RECEIVED**

DEC 21 2015

SC Court of Appeals

Appellate Case No. 2015-000887

Anna Dillard Wilson ..... Respondent,

v.

S.C. Department of Motor Vehicles ..... Appellant.

**FINAL REPLY BRIEF OF THE APPELLANT**

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## **STATEMENT OF ISSUES ON APPEAL**

- 1) THE CIRCUIT COURT JUDGE ERRORED IN RULING THAT THE SUSPENSION OF RESPONDENT'S DRIVER'S LICENSE FOUR (4) WORKING DAYS AFTER APPELLANT RECEIVED NOTIFICATION OF RESPONDENT'S DRIVING UNDER THE INFLUENCE CONVICTION VIOLATED THE STANDARDS OF FUNDAMENTAL FAIRNESS REQUIRED BY DUE PROCESS, WILL CAUSE THE RESPONDENT HARDSHIP, AND RESPONDENT HAS NO OTHER REMEDY AT LAW.<sup>1</sup>

## **STATEMENT OF THE CASE**

Appellant retains the statement of the case set forth in its initial brief.

## **ARGUMENT**

- 1) THE CIRCUIT COURT JUDGE ERRORED IN RULING THAT THE SUSPENSION OF RESPONDENT'S DRIVER'S LICENSE FOUR (4) WORKING DAYS AFTER APPELLANT RECEIVED NOTIFICATION OF RESPONDENT'S DRIVING UNDER THE INFLUENCE CONVICTION VIOLATED THE STANDARDS OF FUNDAMENTAL FAIRNESS REQUIRED BY DUE PROCESS, WILL CAUSE THE RESPONDENT HARDSHIP, AND RESPONDENT HAS NO OTHER REMEDY AT LAW.

Appellant retains all arguments under this section set forth in its initial brief and adds the following in reply:

### **A. FORM SR-22**

Regarding footnote 2 in *Brief of Respondent*, an insurance premium increase is not impacted by the filing of Form SR-22 beyond the cost of actually filing the form. To the contrary, insurance companies set their premiums based on their assessment of a driver's risk. Often these assessments are based on the person's driving record. Therefore, the reporting of Respondent's driving under the influence (hereinafter, "DUI") conviction on her driving record is what will impact her insurance premiums. Thus, any implication that the filing of Form SR-22 will cause an increase in Respondent's

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<sup>1</sup> This Court has another case with the same issue before it. See *James Winston Davis v. SCDMV*, Appellate Case No. 2015-001622

insurance premiums, beyond the cost of actually filing the form, is incorrect. For these reasons, discussion of the impact Respondent may face in the way of insurance premiums increasing will not be impacted by the outcome of this case.

## B. DUE PROCESS PROTECTIONS

Respondent argues she has been denied due process in the suspension of her driver's license pursuant to her DUI conviction. All of Respondent's arguments on this point ignore the fact that Respondent was granted all of the due process protections afforded to all criminal defendants in South Carolina. Moreover, the delay in reporting the conviction to the Appellant in no way removes, eliminates, or minimizes the due process protections that were extended to Respondent through the criminal process. The due process protections that are already in place through the criminal process are recognized in state statute and because of those due process protections a DUI conviction is a mandatory driver's license suspension, i.e. there are no additional due process steps that are required to be followed by Appellant, the Office of Motor Vehicle Hearings, the Administrative Law Court, or any other Court. In fact, S.C. Code §56-1-370 specifically states "The licensee may, within ten days after notice of suspension, cancellation, or revocation, **except in cases where the suspension, cancellation, or revocation is made mandatory upon the Department of Motor Vehicles**, request in writing an administrative hearing..." Emphasis added. Thus, Appellant, upon receiving the DUI conviction had no choice but to apply the conviction to Respondent's driving record and begin her mandatory suspension as required by statute. See S.C. Code §§56-5-2970, 56-1-280, 56-1-330, 56-1-350, 56-1-360, 56-1-540, and 56-5-2990.

### C. DELAY IN REPORTING CONVICTION & EMMA'S LAW RETROACTIVITY

Respondent points to *In Re Petition of Donley*, 217 W.VA 449, 618 S.E.2d 458 (2005) to demonstrate that the West Virginia Supreme Court held that three year delay was unreasonable as a matter of law. Respondent fails to fully explain that the West Virginia Supreme Court's analysis did not end at this point. The West Virginia Supreme Court explained:

Although we have found that the delay was unreasonable in this case, Mr. Donley is still not entitled to relief because no prejudice flowed from the delay. The record clearly demonstrates that Mr. Donley pled guilty to second offense DUI. Consequently, the only issue at the administrative hearing was whether Mr. Donley was the person named in the abstract. The evidence established this single issue. Insofar as no other factual matters were litigated, Mr. Donley has failed to show any prejudice stemming from the delay in forwarding the abstract to the Commissioner. Moreover, because the circuit court vacated the Commissioner's effective date of revocation, the delay of nearly three years in forwarding the abstract of judgment is simply inconsequential.

*In re Petition of Donley*, 217 W. Va. 449, 452, 618 S.E.2d 458, 461 (2005). Emphasis added. Thus, it is clear the West Virginia Supreme Court has a two-step analysis: 1) Was the delay unreasonable; and, if the answer to the first question is "yes," 2) Has prejudice stemmed from the delay. The West Virginia Supreme Court made it clear in the *Donley* case that if there is no prejudice that stemmed from the delay, then the suspension should be upheld. In this case, the "hardships" Respondent will suffer if she is required to serve this statutorily mandated suspension are the same and/or less significant "hardships" than those she would have suffered if the conviction had been timely reported to Appellant. Respondent will still have a period of time during which she either:

- 1) cannot drive; OR

2) will be required to obtain an ignition interlock device for her vehicle (hereinafter, “IID”) and an IID license.

See S.C. Code §56-5-2941(T) a.k.a. Emma’s Law retroactivity clause. The IID license option only became available to Respondent via the effective date of Senate Bill 590.<sup>2</sup> Thus, the delay in reporting to Appellant has actually worked in Respondent’s favor by granting her the IID license option that was not available to her at the time of her conviction.

Significantly, the IID license option completely negates Respondent’s concerns about the only important interests put forth by Respondent in this case, i.e. pursuing her livelihood and avoiding financial hardship. Essentially, Respondent has speculated she might lose her current employment if this suspension is upheld. Respondent has then stated that if she loses her job she will not be able to pay all of her bills, in particular, her two (2) mortgage payments. Thus, all of the important interests put forth by Respondent rely on the speculation that she might lose her current employment. Even assuming Respondent’s speculation is correct, the IID license option would fully protect Respondent from those speculated outcomes of the Court upholding this suspension. Specifically, while Respondent with an IID license would be required to have an IID installed in her personal vehicle, there is no requirement that she have an IID installed in her employer’s vehicles. See S.C. Code §56-5-2941(L). Therefore, as with the *Donley* case in West Virginia, there is no evidence of any prejudice to Respondent stemming

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<sup>2</sup> Effective date for S.590 was June 1, 2015, which is after the date the Circuit Court ruled in this matter. As a result, the IID license option was not available to the Circuit Court or Respondent on the date of the Circuit Court’s Order. Because of the explicitness of the retroactivity clause, however, it is clear this is an option available to Respondent and this Court now.

from the delay in reporting this conviction to Appellant, and, in fact, Respondent has gained a significant benefit from this delay.

#### D. PERMANENTLY ENJOINING SUSPENSION

Finally, should this Court make a finding against Appellant, Appellant would request the Court not use language similar to “the government permanently enjoined from suspending” Respondent’s license. *Brief of Respondent*, page 4. Such a holding and/or ruling could be interpreted to preclude all government in the United States and other states, not just the Appellant, from suspending Respondent’s license, even if she incurred other violations/convictions which required a suspension in the future.

#### CONCLUSION

For the reasons set forth above and in Appellant’s initial brief, the order of the Circuit Court should be set aside and Respondent’s DUI suspension reinstated.

Respectfully submitted,



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December 18, 2015  
Blythewood, South Carolina

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Anna Dillard Wilson . . . . . Respondent,

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**CERTIFICATE OF COUNSEL**

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The Undersigned Counsel certifies that the attached Final Reply Brief is in compliance with SCACR 211(b).



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Brandy A. Duncan, SC Bar # 52072  
Assistant General Counsel  
South Carolina Department of Motor Vehicles

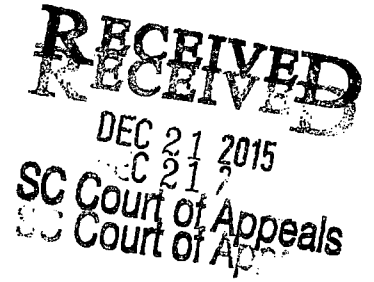
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Anna Dillard Wilson ..... Respondent,

v.

South Carolina Department of Motor Vehicles ..... Appellant.

**CERTIFICATE OF COMPLIANCE**

The undersigned counsel hereby certifies that Appellant's Final Reply Brief complies with South Carolina Supreme Court Order 2007-08-13-02 Amended by Order 2014-04-15-02, filed April 15, 2104.

A handwritten signature in black ink, appearing to read "Brandy A. Duncan".

Brandy A. Duncan, SC Bar # 52072  
Assistant General Counsel  
South Carolina Department of Motor Vehicles

December 18, 2015  
Blythewood, South Carolina

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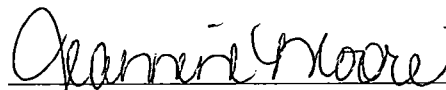
v.

South Carolina Department of Motor Vehicles ..... Appellant.

**CERTIFICATE OF SERVICE**

PURSUANT TO SCACR, I HEREBY CERTIFY that today, December 18, 2015, I served one (1) copy of the Appellant's Final Reply Brief by depositing with the United States Postal Service, correct postage prepaid, to Counsel for the Respondent at the address indicated below:

John D. Elliott, Esquire  
Post Office Box 607  
Columbia, South Carolina 29202

  
Jeanine (Nina) Moore, Paralegal  
Office of General Counsel

December 18, 2015  
Blythewood, South Carolina

*Nikki R. Haley*  
Governor



*Kevin A. Shwedo*  
Director

*State of South Carolina*  
*Department of Motor Vehicles*

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**SC Court of Appeals**

December 18, 2015

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

**RE: *Anna Dillard Wilson v. South Carolina Department of Motor Vehicles***  
**Appellate Case No: 2015-000887**

Dear Ms. Kitchings:

Enclosed for filing please find the following documents:

1. Unbound original along with fifteen (15) bound copies of the Final Brief of Appellant in the above-captioned matter;
2. Unbound original along with fifteen (15) bound copies of the Final Reply Brief of Appellant in the above-captioned matter;
3. Unbound original and fifteen (15) copies the Appellant's Certificate of Compliance;
4. Unbound original and fifteen (15) copies of Appellant's Certificate of Counsel; and
5. Certificate of Service of these documents on counsel for the Respondent.

Please file the originals and copies necessary for SCACR compliance and return the extra copies to me with an affixed clerk's date of filing in the enclosed self-addressed stamped envelope.

Sincerely,

*Jeannine Moore*  
Jeannine (Nina) Moore, Paralegal  
Office of General Counsel

Enclosures

cc: John D. Elliott, Esquire