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JUN 30 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

App. Case No. 2015-002297

John Doe,

Appellant,

v.

Board of Zoning Appeals (BZA) and
Town of Sullivans Island (S.I.),
S. I. Zoning Administrator, and
S. I. Building Dept., Individually
and In Official Capacity,

Respondents.

**Motion For Leave to File
and Other Relief**

C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant

For substantial justice affecting substantial rights, appellant respectfully submits this motion for the reasons set forth below.

Facts

The underlying matter involves an Ohio LLC's violation of the local government's order for compliance with the zoning ordinances regarding impervious surface limitations resulting in damage to neighboring properties. Damages include pooling of wrongful stormwater run-off with contaminants and wastewater collecting and standing under homes and in rear areas where children and pets play and live. The record reflects a BZA hearing was held at the request of property owners. Notice of appeal with request for mediation was timely served and filed within thirty days. Respondents' counsel acknowledged appellant's hearing in the attached correspondence but relied on a tortured, even frivolous, interpretation of the statute and pursued dismissal in an untenable manner. In particular, respondent denied basic notice to the other side and failed to provide the required notice at the address listed on the Charleston County Circuit Court website and Cover Sheet. The record reflects respondents knew, should have known, and/or calculated that the other side would not receive actual notice. The record reflects respondents made misrepresentations and/or material omissions to the lower court upon which the lower court relied. The court and the appellant were prejudiced thereby. This appeal followed.

- I. Respondent's untimely motion regarding so-called supplemental material, and respondents' premature printing and binding of the improper material deprive the other side of due process by denying any meaningful opportunity to respond, thereby, affecting final determination. Appellant respectfully requests opportunity to file amended brief and/or supplemental response to respondent's so-called supplemental material.

The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code § 14-8-200(a) is as follows:

[T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. The focus is on the propriety of rulings made by the circuit court. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal *et al.*, *Appellate Practice in South Carolina*, (2002), p. 4. Appellate jurisdiction requires that respondent's material be presented to and ruled upon by the lower court. Rule 210(c), SCACR. See Affidavit entered May 9, 2016, herein. Because respondent's so-called supplemental material wrongfully seeks to include pending matters not ruled upon by the lower court, the jurisdictional prerequisite has not been met. Jurisdiction can be raised at any time and respondent's so-called supplemental material should be stricken for lack of jurisdiction. *Carter v. State*, 329 S.C. 355, 495 S.E.2d 773 (1998).

In the alternative, the record reflects respondent's pattern and practice of lack of

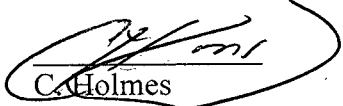
diligence with respondents' out-of-time motion for extension to file brief, out-of-time brief, and untimely motion regarding so-called supplemental material. Respondent's premature printing and binding of the improper material in fact did deprive the other side of due process by denying any meaningful opportunity to respond, thereby affecting final determination. Appellant respectfully requests opportunity to file amended brief and/or supplemental response to respondent's so-called supplemental material. See *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

CONCLUSION

For the foregoing reasons and for substantial justice affecting substantial rights, appellant respectfully requests that this Court grant this motion with abeyance. Appellate jurisdiction requires that matter be presented to and ruled upon by the lower court. Because respondent's so-called supplemental material wrongfully seeks to include pending matters not ruled upon by the lower court, the jurisdictional prerequisite has not been met and that material should be stricken. In the alternative and in furtherance of even-handedness and fundamental fairness, appellant respectfully requests opportunity to

file amended brief and/or response to respondent's so-called supplemental material.

Respectfully submitted,


C. Holmes
P.O. Box 187
Sullivans Isd.,
SC 29482-0187
(843)883-3010
For Appellant



PRATT-THOMAS | WALKER

ATTORNEYS AT LAW
PROFESSIONAL ASSOCIATION

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CHARLESTON, SC 29403
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CHARLESTON, SC 29413-2247

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JOHN P. LINTON, JR.
Email: jpl@p-tw.com
Direct: (843) 727-2252

June 25, 2015

Dr. Cynthia Holmes
Post Office Box 187
2061 Middle Street
Sullivan's Island, SC 29482-0187

Dear Dr. Holmes:

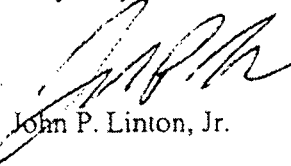
I am in receipt of your two letters to Larry Dodds, Town Attorney for the Town of Sullivan's Island, indicating that you are requesting mediation with respect to the BZA appeal involving permit # 2014-2899. Our firm is currently handling an appeal to the Charleston County Circuit Court which is related to permit # 2014-2899. That appeal was filed by J. Doe and is Civil Action Number 2015-CP-10-0775. That being the case, Mr. Dodds asked that we respond to your letter concerning the same BZA decision.

The BZA held a hearing on the appeal of permit # 2014-2899 on April 10, 2014 and issued a Final Order on May 8, 2014 (mailed May 9, 2014). In response to your request, the BZA held a rehearing on September 11, 2014 and issued a Final Order on the rehearing on January 8, 2015 (mailed January 12, 2015).

Your request for mediation of this matter does not meet the requirements of the applicable South Carolina statute. Under South Carolina Code Section 6-29-820(B), the property owner whose land is the subject of a decision of the board of appeals may appeal a decision of the board of zoning appeal by filing, within thirty days of the mailing of the board of zoning appeals decision, a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with South Carolina code section 6-29-825.

Your letter requests do not comply with the above statute in several ways. For example, it is not timely, it is not filed with court as a notice of appeal accompanied by a request for mediation, and it does not appear to be requested by the owner of the property that was the subject of the BZA. According to the Charleston County records, James P. Walsh, not Dr. Cynthia Holmes, is the owner of the property that was the subject of the permit and BZA (1607 Poe Ave, Sullivan's Island, South Carolina). Therefore, because your requests are not proper under the applicable statute, the Town will not be providing tentative dates and mediators as you request in your letters to Mr. Dodds.

Very truly yours,



John P. Linton, Jr.

JPL/cam

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S. I. Building Dept., Individually
and In Official Capacity,

Respondents.

PROOF OF SERVICE

I certify that I have timely served the foregoing on the Respondents on this date by deposit in the United States Mail, postage prepaid, addressed to Respondents' attorney of record at 16 Charlotte St., Charleston, SC 29403.

Dated June 23, 2016


C. Holmes

POB 187

S.I., SC 29482-0187

843.883.3010

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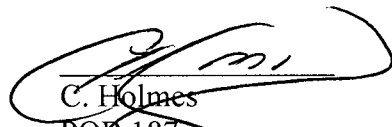
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I certify that I have timely served the foregoing on the Respondents on this date by deposit in the United States Mail, postage prepaid, addressed to Respondents' attorney of record at 16 Charlotte St., Charleston, SC 29403.

Dated June 23, 2016


C. Holmes
POB 187
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JUN 30 2016

SC Court of Appeals

Fax: 803.734.1839

Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, SC 29201/29211

Re: Doe v BZA et al
App. Case No. 2015-002297

Dear Jenny:

Enclosed for filing is the original with abeyance request in the above case. Also, enclosed are the following:

- 1) The filing fee,
- 2) Seven copies,
- 3) Proof of Service and a copy, and
- 4) SASE for return.

Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,

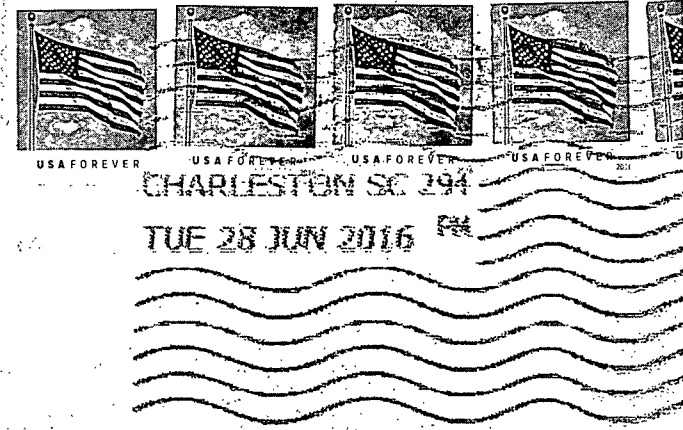
cc: Respondent's Counsel

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Clerk
SCCOA
1220 Senate St.
Columbia, SC

29201