

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

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Appellate Case No. 2016-000211

RECEIVED

Kim Murphy,

JUL 13 2016 Appellant.

v.

SC Court of Appeals

Richland Lexington School District 5, by and through its Board of Trustees,  
By and through Counsel to the Board of Trustees,

Respondents.

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

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Appellate Case No. 2016-0001198

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Kim Murphy,

Appellant.

v.

Richland Lexington School District 5 Board of Trustees,  
Bobby Merle Bowers, and Robert Gantt,

Respondents.

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**BOBBY MERLE BOWERS' RETURN AND MEMORANDUM OPPOSING  
APPELLANT KIM MURPHY'S MOTION TO CONSOLIDATE APPEALS**

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Bobby Merle Bowers, a Respondent in Appellate Case Number 2016-0001198, having received a Motion to Consolidate Appeals and Memorandum in Support of Motion in Appellate

Case Number 2016-000211, served by U.S. Mail by the Appellant Kim Murphy on or about June 30, 2016, files his Return and Memorandum opposing the Motion and any form of consolidation of the two appeals pursuant to SCACR Rule 240(e) on the grounds that such consolidation is beyond the scope of SCACR Rule 214 in that the two appeals are not from the same order, judgment, decision or decree, do not involve the same questions on appeal, and would cause confusion of the disparate issues in the two separate appeals.

**APPELLATE CASE NO. 2016-001198.**

Kim Murphy is the Appellant in both appeals subject of her Motion to Consolidate, with the more recent of the two appeals being from an April 8, 2016 Order of the Honorable Doyet A. Early, III granting Motions for Summary Judgment by Bobby Merle Bowers and other Defendants in that Richland County Court of Common Pleas law suit and dismissing Ms. Murphy's Complaint. After filing and arguing a Motion to Reconsider under SCRCR Rule 59, which Motion was denied by Judge Early by Form 4 Order dated May 24, 2016, Ms. Murphy filed her Notice of Appeal June 6, 2016, and the matter was assigned Appellate Case Number 2016-001198. The Defendants named in that lawsuit were the Richland-Lexington School District Board of Trustees, Robert Gantt, and Bobby Merle Bowers. The causes of action alleged in that Complaint were Defamation *Per Se* against the Board and Gantt, and Civil Conspiracy against Gantt and Bowers.

With regard to Bowers, the Order appealed from by Ms. Murphy found that there was no genuine issue of material fact but that Bowers had no prior relationship or alliance with the Defendant Robert Gantt for purposes of conspiring against Ms. Murphy, and that there was no evidence of prior conflicts or animus between Bowers and Ms. Murphy that could reasonably be interpreted as leading to an intent to harm Murphy. *See*, Order Granting Defendants' Motions for Summary Judgment (April 8, 2016), p. 7. The Order further found that there was no evidence that Ms. Murphy had suffered special damages which she could attribute to civil conspiracy, a requisite

element of the cause of action. *Id.* Finally, the Order found that Bowers was the Director of Mapping Services for the South Carolina Revenue and Financial Affairs Office, that the uncontradicted deposition testimony of two employees of Bowers' agency actually did the work resulting in the finding that Ms. Murphy was a resident of Lexington County, which finding was only published by Bowers as Director of the agency, and that no one instructed them to do anything in the process improperly or with a particular result in mind. *Id.* at pp. 6-7.

In seeking to appeal the Orders granting summary judgment for Bowers, those will be the issues on appeal for Ms. Murphy. With regard to her claims against Robert Gantt, she will have similar issues from a different perspective as to the civil conspiracy claim, and will have defamation issues; but all will involve her attempt to overcome the grant of summary judgment.

**APPELLATE CASE NO. 2016-000211.**

The earlier of the two appeals does not involve Bobby Bowers as a party, but names Richland-Lexington School District No. 5 through its Board of Trustees and through Counsel to the Board of Trustees. Nor does the earlier appeal involve issues relating to summary judgment, as it stems from a hearing before the Honorable G. Thomas Cooper, Jr., serving as special referee, in which hearing Ms. Murphy was permitted to present any and all evidence she had supporting her contention that she resided in Richland County, and therefore properly held her School Board Member seat—for which she was opposed by the Board. Ms. Murphy declined to present any evidence nor participate at that hearing, and Bobby Bowers was called as a witness by the Board to testify under oath as Director of Mapping Services for the South Carolina Revenue and Financial Affairs Office to the work done by his agency in determining where Ms. Murphy resided. At the conclusion of the proceedings, Judge Cooper issued a report and recommendation finding that Ms. Murphy resided in Lexington County. Ms. Murphy appealed that ruling to the Honorable DeAndrea Gist Benjamin; and Judge Benjamin affirmed the finding. Ms. Murphy then filed a Rule

59 motion, which was denied, and her first appeal ensued.

Although Bobby Bowers was a witness in the hearing before Judge Cooper, he has not been a party to that matter, and will yield to others more closely involved with the matter with regard to facts incident to the case and appeal. However, Bowers is informed and believes that Ms. Murphy's first appeal involves a fully blown testimonial hearing before a special referee resulting in a finding of her residency, an appeal from that hearing to circuit court, an affirmation of the result, and an appeal to this Court from that affirmation; it does not involve defamation, civil conspiracy, and summary judgment issues.

**CONSOLIDATION IS BEYOND THE SCOPE OF SCACR RULE 214.**

Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated. SCACR Rule 214. Beyond the language of the rule itself, there is little case law providing guidance on the application of this rule or how the Courts' discretion has been exercised in the past. Nevertheless, Ms. Murphy fails to meet either criterion required by the rule.

The Report and Recommendation from Judge Cooper and the Order affirming that result from Judge Benjamin in the first appeal number 2016-000211 are vastly different from the Order of Judge Early granting summary judgment to Bobby Bowers for causes of action entirely different in the second appeal number 2016-001198, as are the questions involved in the two appeals. The only authority cited by Ms. Murphy on the matter is inapposite, as it is factually distinguishable in that the issues presented in those two consolidated cases were identical. *Cf., Limehouse v. Hulsey*, 404 S.C. 93, 95-96 744 S.E.2d 566, 567-568 (2013)( father and son separately sued the same attorney Defendant for defamation, each separately received a damages award from separate juries, resulting in separate appeals, and the South Carolina Supreme Court consolidated the matters for oral

argument and for purposes of the Court's opinion because the Court concluded that the dispositive issue in each case was identical). Unlike in *Limehouse*, the dispositive issues in the two appeals that Murphy seeks to consolidate are broadly disparate. These two appeals simply do not meet the requirements of Rule 214 for consolidation, and the Motion should be denied.

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ATTORNEYS FOR RESPONDENT BOWERS

Lexington, South Carolina  
July 11, 2016

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

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Case No. 2016-000211

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Appellant.

Kim Murphy,

v.

Richland Lexington School District 5, by and through its Board of Trustees,  
By and through Counsel to the Board of Trustees,

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**PROOF OF SERVICE**

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I certify that I have served **Bobby Merle Bowers' Return and Memorandum Opposing Appellant's Motion to Consolidate by Appellant** on Appellant and Respondents of both Appeals by depositing a copy of the Return in the United States Mail, postage prepaid on July 11, 2016, addressed to their attorneys of record, J. Lewis Cromer, Esquire, and Chelsea R. Rikard, Esquire, of J. LEWIS CROMER & ASSOCIATES, LLC, PO Box 11675, Columbia SC 29211, David L. Morrison, Esquire, MORRISON LAW FIRM, LLC, 7435 Irmo Drive, Suite B, Columbia SC 29212, Michael H. Montgomery, Esquire, MONTGOMERY WILLARD, LLC, PO Box 1186, Columbia SC 29211-1886, and John M. Reagle, Esquire, CHILDS AND HALLIGAN, PA, PO Box 11367, Columbia, SC 29211.

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July 11, 2016

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SC Court of Appeals

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
1220 Senate Street  
Columbia SC 29201

RE: *Kim Murphy, Appellant, v. Richland-Lexington School District 5 Board of Trustees, Bobby Merle Bowers and Robert Gantt, Respondents*  
Appellate Case No. 2016-001198  
AND  
*Kim Murphy, Appellant, v. Richland-Lexington School District 5, by and through its Board of Trustees, by and through Counsel to the Board of Trustees, Respondent.*  
Appellate Case No. 2016-000211

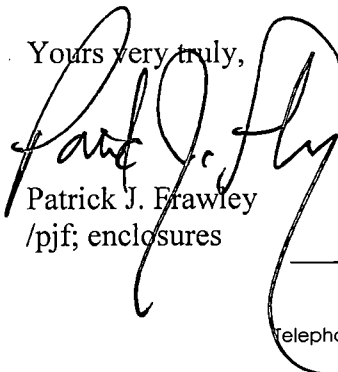
Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Bobby Merle Bowers' Return to the Appellant's Motion to Consolidate. Please file the six copies required by the Court and return the extra clocked-in copy to me in the enclosed self-addressed, stamped envelope. I have also enclosed the original and two copies of Proof of Service, and would appreciate you filing the original and returning the clocked-in copies to me as well.

By copy of this letter, I am serving the Return on counsel for all parties in the two appeals.

Thank you in advance.

Yours very truly,

  
Patrick J. Frawley  
/pjf; enclosures

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The Honorable Jenny Abbott Kitchings  
Clerk of Court, S.C. Court of Appeals

RE: *Kim Murphy, Appellant, v. Richland-Lexington School District 5 Board of Trustees,  
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Page 2

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