

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2014-CP-23-04140
Appellate Case No. 2016-000919

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JUL 08 2016
SC Court of Appeals

John Roe,.....Respondent,
v.
South Carolina Department of Social Services,.....Appellant.

RESPONDENTS' RESPONSE TO APPELLANT'S AMENDED RETURN

John Roe, the Respondent above named, moved on May 12, 2016 to dismiss the Appeal filed by the South Carolina Department of Social Services and remand the case to the trial court. In response to a letter from the Clerk of the Court of Appeals, the Appellant filed an Amended Return. The Respondent hereby renews his Motion to Dismiss and notes the following:

South Carolina law and civil procedure dictates that an order is not immediately appealable if it "is not final in that it does not 'finally dispose of the whole subject matter in litigation.'" *Bolding v. Bolding*, 283 S.C. 501, at 502, 323 S.E.2d 535, at 536 (Ct. App. 1984) (quoting 4 Am.Jur.2d *Appeal and Error* § 53 at 575 (1962)). S.C. Code Ann. §14-3-330 gives this court jurisdiction to allow interlocutory appeals from orders and judgments that may affect the merits of the case or the substantial rights of a party. Here, the lower court's order compelled cooperation in discovery. The lower court's order does not affect: (1) any of Appellant's claims

or defenses; (2) the merits of the action; or (3) any substantial right of Appellant. Appellant claims to be concerned about the confidentiality of the records of minor children who are not parties to this action, but their identities are protected by the Confidentiality Order already in effect which requires that names and identifying information be redacted.

The recent case of *Wieters v. Bon-Secours-St. Francis Xavier Hospital, Inc. et al.*, 378 S.C. 160, 662 S.E.2d 430 (Ct. App. 2008), 381 S.C. 332, 673 S.E.2d 417 (S.C. 2009) is directly on point although it involved a different confidentiality statute. In that case, the Plaintiff was a physician who sued the Hospital where he was formerly employed for defamation and civil conspiracy relating to his termination. Plaintiff was seeking confidential documents from the Hospital regarding the suspensions of other physicians. The Hospital refused to release this information, citing confidentiality concerns under South Carolina's Peer Review Statute, §40-71-20 of the South Carolina Code. The trial court ordered the Defendant to release the information to the Plaintiff, noting that "the plaintiff has not requested identifying information, only the nature of the circumstances that gave rise to other applications of summary suspension and no privilege prohibits that information being provided." *Id.* at 164, 432. The Hospital filed an interlocutory appeal. The Court of Appeals found that the Hospital's refusal to answer the questions was justified because of the protections of confidentiality provided in the Peer Review Statute. The Supreme Court of South Carolina, in its unanimous opinion, summarily vacated the opinion of the Court of Appeals and held that the trial court's discovery order was not immediately appealable. Similarly here, this Court should find that the order of the trial court is not immediately appealable and should remand this case back to the trial court for further proceedings.

In their return to the Motion to Dismiss, Appellant attempts to distinguish the *Wieters* case, arguing that records regarding sexual abuse of minors are different than doctor's records. This is a distinction without a difference. Both doctor's records and records regarding sexual abuse of minors are protected under state and federal law. Here, the confidentiality of the records has been more than adequately protected by the trial court in compliance with the statute.

July 5, 2016



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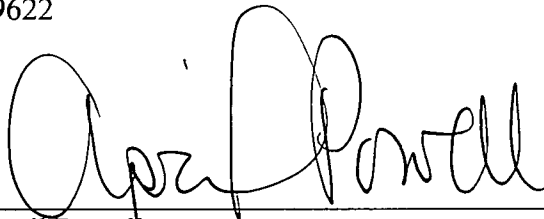
John Roe,.....Respondent,
v.
South Carolina Department of Social Services,.....Appellant.

PROOF OF SERVICE

I, the undersigned attorney with the law offices of Hite and Stone, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Respondent's Response to Appellant's Amended Return

Counsel Served: James W. Logan, Jr., Esquire
Mike Smith, Esquire
Logan, Jolly & Smith
P.O. Box 259
Anderson, SC 29622



April Powell

July 5, 2016



Thomas E. Hite, Jr.* | Heather Hite Stone | Thomas E. Hite, III | Anne Marie Hempy

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The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street, 5th Floor
Columbia, SC 29201

RE: *John Roe vs. South Carolina Department of Social Services*
Appellate Case No. 2014-00946

Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of the Respondent's Respondents' Response to Appellant's Amended Return, along with the Certificate of Mailing.

By copy of this letter to counsel of record, we are serving them with copies of these pleadings. Thank you for your attention to this matter.

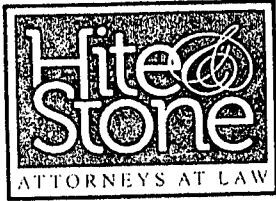
With kind regards, I am,

Very truly yours,

Heather Hite Stone/aap
Attorney for Respondent

Enclosures

cc: Jim Logan, Esquire



P.O. Box 805 | Abbeville, South Carolina 29620

The Honorable Jenny Abbott Kitching
Clerk of Court
The South Carolina Court of Appeals
1015 Sumter Street, 5th Floor
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