

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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NOV 08 2016

**SC Court of Appeals**

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

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Case No. 2007-CP-23-593

Travis Roddey, individually and as the Personal Representative of the Estate of Alice Monique Beckham Hancock Deceased .....Appellant,

v.

Wal-Mart Stores East I.P., U.S. Security Associates, Inc., and Derrick L. Jones,  
..... Respondents.

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**RESPONDENT'S RESPONSE TO APPELLANT'S  
PETITION FOR WRIT OF SUPERSEDEAS AND  
MOTION TO DISMISS APPEAL**

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In an astonishing filing, Appellant has sought the intervention of this Court under a Writ of Supersedeas to stay the trial of this case -- which has been scheduled for several months to begin next Monday, November 14, 2016, by special order of the Lancaster County Court of Common Pleas -- until a ruling on his appeal from the trial judge's order excluding evidence relating to the negligent hiring, training, supervision and/or entrustment of Derrick Jones by U.S. Security Associates. The appeal from Judge Cooper's ruling is not only plainly interlocutory, and not immediately appealable, but is frivolous and totally devoid of any merit, as the following discussion will reveal, and the Petition for Writ of Supersedeas is equally baseless. The issues

on appeal will have no effect on the trial of the negligent pursuit cause of action. The Petition should therefore be denied, the appeal should be summarily dismissed, and the trial should proceed as scheduled next week.

“[T]he purpose . . . of a supersedeas . . . is to . . . stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal . . . , and to preserve to appellant the fruits of a meritorius appeal where they might otherwise be lost to him.” *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) (quoting *See* 4A C.J.S. Appeal & Error § 662 at 494-95 (1957)).

[T]he power . . . to stay proceedings or to supersede an order of a Circuit Judge, pending an appeal to [an appellate court], . . . is a power which should be exercised with great caution and circumspection, and only to the extent clearly made to appear to be necessary to prevent irreparable injury or a miscarriage of justice.”

*Andrews v. Sumter Commercial & Real Estate Co.*, 87 S.C. 301, 304, 69 S.E. 604, 606 (1910)  
(citations omitted).

Rule 241(a), SCACR, provides as follows:

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. *The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal* including the authority to enforce any matters not stayed by the appeal.

(emphasis added). “Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241.” Rule 205, SCACR. However, “[n]othing in these Rules shall prohibit the lower court, commission or

tribunal from proceeding with *matters not affected by the appeal.*” *Id.* (emphasis added); *see e.g., Metts v. Mims*, 384 S.C. 491, 496, 498, 682 S.E.2d 813, 816-17 (2009) (finding, in a defamation action, that the trial court properly proceeded on the merits of the petitioner’s summary judgment motion regarding constitutional actual malice even though an appeal was already pending as to a contempt order imposed after the defendant newspaper refused “to comply with a discovery order compelling it to provide financial data relevant to petitioner’s punitive damages claim”; that “the summary judgment matter was unaffected by the appeal of the contempt order”; and that the trial court’s ruling on the constitutional actual malice issue was “clearly unrelated” to the discovery dispute involving the newspapers’ financial data); *Grosshuesch v. Cramer*, 377 S.C. 12, 31 n.7, 659 S.E.2d 112, 122 n.7 (2008) (noting that the trial court properly ruled on a second discovery matter involving a deposition after the parties had filed appeals from the trial court’s first order because the first order dealt with the subject of initial discovery responses). Under the facts and procedural history of this case, and applicable law, there is no support for Appellant’s appeal or Petition for Writ of Supersedeas.

This matter was originally tried in 2010. At the directed verdict stage, Wal-Mart moved for a directed verdict on the grounds that (1) there was no negligence on the part of Wal-Mart, (2) no evidence that any negligent acts or omissions on the part of Wal-Mart were a proximate cause of the accident, and (3) even if any negligence on the part of Wal-Mart was a proximate cause of the accident, the only reasonable inference to be drawn from the evidence was that Hancock’s own negligence and recklessness was a greater than 50% cause of the accident. Plaintiff, who *conceded* Derrick Jones was not an employee of Wal-Mart, made no claim at the directed verdict stage that Wal-Mart was subject to any causes of action other than negligence in connection with its actions. After the trial court granted Wal-Mart’s motion for directed verdict,

holding (1) there was no evidence of negligence by Wal-Mart and (2) alternatively, even if Wal-Mart was negligent, there was no evidence such negligence was a proximate cause of the accident, Plaintiff made multiple oral requests for reconsideration and further submitted a 23-page written motion for reconsideration, all of which were restricted to evidence establishing the alleged breach of duty by Wal-Mart and proximate causation of the accident (*i.e.*, negligence). Plaintiff completely abandoned and never even attempted to argue Wal-Mart was still liable for negligent hiring, training, supervision and/or entrustment, which the trial court therefore had no need to address. The trial proceeded as to U.S. Security Associates and Jones, who received favorable verdicts from the jury both on the negligence cause of action and the cause of action for negligent hiring, training, supervision and entrustment, decided separately by the jury. Appellant appealed the grant of directed verdict in favor of Wal-Mart, and was successful in obtaining an order from the South Carolina Supreme Court reversing the trial court's decision on that issue and remanding the case for a new trial set to begin next week.

Importantly, Appellant did not appeal the jury verdict in favor of U.S. Security Associates on the negligent hiring cause of action, and that cause of action is now *res judicata*, as confirmed by Judge Cooper in his November 2, 2016 Order which Appellant has inexplicably appealed. As Judge Cooper correctly ruled, having been fully tried to a jury verdict in favor of U.S. Security Associates, and the jury having determined that the negligent hiring of Jones was not a proximate cause of the accident and death of Hancock<sup>1</sup>, that cause of action is no longer alive, and was not revived by the Supreme Court's decision reversing and remanding for a new trial so that the jury could compare the negligence of Plaintiff with that of all Defendants on the

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<sup>1</sup> See Exhibit A, attached.

negligent pursuit cause of action, which was the only matter before the Supreme Court on appeal.

Appellant now attempts to frame the Order excluding evidence of negligent hiring, training, supervision and/or entrustment against U.S. Security as an Order “striking” a negligent hiring cause of action not only as to U.S. Security, but also as to Wal-Mart. As Judge Cooper’s Order explains, the negligent hiring cause of action against U.S. Security was tried to a jury and is barred by operation of law under principles of *res judicata*. Inexplicably, and despite that Plaintiff abandoned the negligent hiring, training, and supervision claim against Wal-Mart at trial, conceding that Jones was not a Wal-Mart employee, Appellant now claims for the first time ever that, by grant of the directed verdict in favor of Wal-Mart at trial, Wal-Mart was “effectively removed” from the case on both the negligent pursuit action *and* the negligent hiring and supervision cause of action. They therefore reason that the Supreme Court must have therefore intended for the retrial to include a cause of action against Wal-Mart for negligent hiring and supervision. Appellant leaps to this sweeping conclusion despite that Appellant never contested this issue as to Wal-Mart at the directed verdict stage and the trial court never addressed negligent hiring and supervision as to Wal-Mart in granting a directed verdict.

Even if not abandoned, the negligent hiring and supervision claim was not appealed and was not before the Supreme Court as to any party. Plaintiff would nonetheless seek to transform any direction or request for assistance made by Wal-Mart to Jones as evidence of or support for a “negligent supervision” cause of action, which at best evidences a complete misunderstanding of the cause of action in the technical sense or, at worst, is an intentional attempt to mislead the Court. To be clear, a cause of action for negligent supervision, as set forth in Judge Cooper’s Order, is based on an employer/employee relationship. Negligent supervision cases impose a

duty on *an employer*, under certain circumstances, to exercise reasonable care to control an employee *acting outside the scope of his employment* and requires knowledge of the employer and foreseeability of harm to third parties in establishing the employer knows or should know of the necessity and opportunity for exercising control. *See Lemon v. Sheriff of Sumter County*, F.Supp.2d, 2012 U.S. Dist. LEXIS 22196 (D.S.C. Feb. 22, 2012). As with negligent hiring, this is examined by analysis of the nature of prior acts of wrongdoing by the employee and nexus or similarity between the prior acts and ultimate harm. It is hard to understand Appellant's argument that Wal-Mart's employee's instruction to Jones to "get the license tag" as he was engaged in a hot pursuit of Hancock's vehicle and about to exit the parking lot premises is a negligent hiring or supervision claim.

Contrary to Appellant's position, the Order issued by Judge Cooper does nothing to exclude the alleged acts of negligence that Plaintiff intends to assert against Wal-Mart, set forth on pages 11-12 of the Petition, and which Appellant has strained to characterize as acts of "negligent supervision" of Jones on the part of Wal-Mart. Rather, the Order is devoted exclusively to the evidence upon which Appellant unsuccessfully attempted to prove a negligent hiring and supervision cause of action against U.S. Security Associates in the first trial (*i.e.*, that Jones should not have been hired due to lack of a valid license, pending criminal charges, a positive drug screen, misrepresentations on his application for registration as a security officer, and failure to have been removed from the job when not timely licensed as a security officer). That cause of action now having been determined conclusively by the jury, Judge Cooper properly ruled that such evidence must be excluded in the second trial. But his Order does not preclude the Plaintiffs from offering evidence in an effort to establish that Wal-Mart was negligent in causing or contributing to cause the pursuit by Wal-Mart's interactions with Jones

on the night of the incident. Hence, Appellant *can* offer evidence that Wal-Mart asked Jones to get the license tag of a vehicle in an adjacent parking lot on his first day of work and argue that Wal-Mart was negligent in asking Jones to get the tag, watching him leave the property, and failing to try to call off the chase. It is not necessary, however, to have evidence that U.S. Security negligently hired Jones to be able to present that evidence and argument to the Court and jury. Negligent hiring was already separately presented to a jury and was conclusively determined not to have been a proximate cause of the accident. Since the jury has conclusively determined U.S. Security's negligent hiring of Jones – which was admitted – was not a proximate cause of the accident, it automatically follows that Wal-Mart's derivative negligence, if any, in failing to “supervise” U.S. Security's hiring of Jones cannot be a proximate cause of the accident.

In addition, the Defendants have conceded throughout this case that Jones was in violation of his post duties in pursuing Beckham and Hancock, and that he should not have pursued them. Defendants will continue to concede these obvious issues under the undisputed facts of the case, and Appellant will not be prevented from making whatever claim can be made relating to the pursuit in light of these concessions.

For all of these reasons, evidence directed to the negligent hiring of Jones by U.S. Security is not so intertwined with Plaintiff's cause of action for negligence against all Defendants in connection with the pursuit, which was also treated separately by the jury at the verdict stage in the first trial. Plaintiff just wants the benefit of saying Jones should not have been hired by U.S. Security due to lack of a valid license, pending criminal charges, a positive drug screen, misrepresentations on his application for registration as a security officer, and failure to

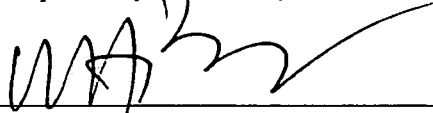
have been removed from the job when not timely licensed as a security officer, all of which the prior jury determined was not a proximate cause of the accident.

The circumstances presented by Appellant do not present the kind of situation here where Appellant is subject to irreparable injury or miscarriage of justice. Allowing appeals from the exclusion of evidence that has no impact on the cause of action to proceed at trial would completely incapacitate the trial court's ability to proceed with trial and dispose of cases. Parties would seek immediate appeal and stay of a trial for any Order that rebukes their intent to introduce certain evidence at trial.

For all of these reasons, the Petition for Writ of Supersedeas should be denied, the appeal dismissed as interlocutory and without merit, and the trial which has been scheduled for several months should be allowed to proceed next Monday on the sole remaining cause of action in this case.

Pursuant to Rule 222 of the South Carolina Appellate Court Rules, Respondents request attorneys' fees and costs in connection with the filing of this Petition for Writ of Supersedeas and Notice of Appeal.

Respectfully submitted,



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55 Beattie Place, Suite 1200

P.O. Box 10589

Greenville, SC 29603

(864) 271-9580

Attorneys for Respondents

**EXHIBIT A**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LANCASTER )  
 )  
 TRAVIS RODDEY, Individually and as )  
 the Personal Representative of the Estate )  
 of Alice Monique Beckham Hancock, )  
 Deceased, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 WAL-MART STORES EAST, L.P., U.S. )  
 SECURITY ASSOCIATES, INC., AND )  
 DERRICK L. JONES, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 CASE NO. 07-CP-29-593

VERDICT FORM

FILED  
 CLERK OF COURT  
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1. As to the Plaintiffs' claim against the Defendants for negligence relating to Derrick Jones's actions, do you find that the Defendants were negligent?

YES: GO TO QUESTION 2  
 NO: STOP AND DELIBERATE NO FURTHER

2. Do you find that the Defendants' negligence proximately caused the Plaintiffs' injury?

YES: GO TO QUESTION 3  
 NO: STOP AND DELIBERATE NO FURTHER

3. Do you find that the Decedent, Alice Monique Beckham Hancock was negligent?

YES: GO TO QUESTION 4  
 NO: GO TO QUESTION 6

4. Do you find that the Decedent, Alice Monique Beckham Hancock's negligence proximately caused the Plaintiffs' injury?

YES: GO TO QUESTION 5  
 NO: GO TO QUESTION 6

5. If your answers to questions 1, 2, 3, and 4 are all YES, then answer this question:

Taking the combined negligence that proximately caused the parties' injuries as one hundred percent (100%), what percentage of that negligence is attributable to the Defendants, and what percentage is attributable to the Decedent, Alice Monique Beckham Hancock?

Defendants: 35 %  
Decedent, Alice Monique Beckham Hancock: 65 %  
Total 100%

If Defendants' percentage of negligence is 0%, STOP AND DELIBERATE NO FURTHER.

If Defendants' percentage of negligence is 1% or greater, CONTINUE TO QUESTION 6.

6. As to the Plaintiffs' claim against the Defendant U.S. Security Associates, Inc. for negligent hiring, negligent training, negligent supervision and negligent retention, do you find that the Defendant was negligent?

YES: GO TO QUESTION 7  
 NO:

7. Do you find that the Defendant U.S. Security Associates, Inc.'s negligent hiring, negligent training, negligent supervision and negligent retention proximately caused the Plaintiffs' injury?

YES:  
 NO:

If the Decedent, Alice Monique Beckham Hancock's percentage of negligence as allocated in Question 5 is greater than 50%, AND the answers to either Questions 6 or 7 are NO, then STOP AND DELIBERATE NO FURTHER.

If the Decedent, Alice Monique Beckham Hancock's percentage of negligence is 50% or less, OR the answers to Questions 6 and 7 are both YES, then GO TO QUESTION 8.

8. Please state the total amount of actual damages, if any, sustained by the Plaintiffs:

\_\_\_\_\_ DOLLARS actual damages  
(\$ \_\_\_\_\_ .00), actual damages.

If you find that the Plaintiff is entitled to actual damages, you may then consider the issue of whether the Plaintiff is entitled to punitive damages. Please state the total amount of punitive damages, if any, awarded to the Plaintiff:

\_\_\_\_\_ DOLLARS punitive damages  
(\$ \_\_\_\_\_ .00). punitive damages.

Matthew M. Johnson  
FOREPERSON

LANCASTER COUNTY, SOUTH CAROLINA  
April 13, 2010

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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NOV 08 2016  
SC Court of Appeals

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

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Case No. 2007-CP-23-593

Travis Roddey, individually and as the Personal Representative of the Estate of Alice Monique Beckham Hancock Deceased .....Appellant,

v.

Wal-Mart Stores East L.P., U.S. Security Associates, Inc., and Derrick L. Jones,  
..... Respondents.

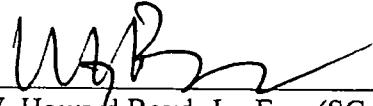
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**PROOF OF SERVICE**

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The undersigned hereby certifies that on the 8<sup>th</sup> day of November, 2016, he served a copy of the Respondents' Response to Appellant's Petition for Writ of Supersedeas and Motion to Dismiss Appeal, upon all counsel of record, by electronic mail and by depositing a copy thereof in the United States Mail, postage prepaid, and addressed as follows:

S. Randall Hood, Esq.  
William A. McKinnon, Esq.  
McGowan, Hood, Felder & Johnson, L.L.C.  
1539 Health Care Drive  
Rock Hill, SC 29732



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November 8, 2016

*Via Hand Delivery*

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NOV 08 2016

SC Court of Appeals

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Travis Roddey, individually and as the Personal Representative of the Estate of Alice Monique Beckham Hancock, deceased v. Wal-Mart Stores East, L.P.; U.S. Security Associates, Inc. and Derrick L. Jones

Dear Ms. Kitchings:

Enclosed please find for filing the original and six copies of Respondents' Response to Appellant's Petition for Writ of Supersedeas and Motion to Dismiss Appeal. By copy of this letter we are filing this response with the Clerk of the Lancaster Court of Common Pleas and serving it on counsel for Appellant.

An extra copy of the Response and Motion is enclosed, which we would appreciate your stamping as filed and returning to us.

With kind regards,

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

W. Howard Boyd, Jr.

WHB,Jr/lrb  
Enclosures

cc: Mr. Jeff Hammond (w/encls.) (Via E-Mail and U.S. Mail)  
S. Randall Hood, Esq. (w/encls.) (Via E-Mail and U.S. Mail)  
Whitney B Harrison, Esq. (w/encls.) (Via E-Mail and U.S. Mail)  
Shawn B. Deery, Esq. (w/encls.) (Via E-Mail and U.S. Mail)