

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge

Case No. 2007-CP-29-593

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NOV 08 2016

SC Court of Appeals

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,

REPLY TO

APPELLANT'S PETITION FOR WRIT OF SUPERSEDEAS

TO STAY THE TRIAL SCHEDULED FOR NOVEMBER 14, 2016

IMMEDIATE ACTION REQUIRED: 4 BUSINESS DAYS UNTIL TRIAL

As set forth in Appellant's Petition for Writ of Supersedeas, the trial court erred in (1) failing to apply the general rule that the notice of appeal automatically stays the trial and (2) failing to recognize that the absence of the negligent hiring and supervision cause of action would negatively affect a trial on the negligent pursuit cause of action.

Respondents misconstrue both the trial court's order and this Court's inquiry for the purpose of the Supersedeas. First, the trial court's denial of Appellant's 59(e) makes two distinct rulings: (1) it eliminates the negligent hiring and supervision cause of action *as to all Respondents* and (2) prohibits any evidence related to that cause of action. (**Exhibit 15, Order**

denying Motion to Stay).¹ Specifically, the trial court's Order states: "This reconsideration applies not only to Plaintiff's Negligent Hiring, Training, and Supervision, and/or Entrustment cause of action, but also to any evidence to support that cause of action as set forth in this Court's order dated November 2, 2016." *Id.* at 1. That the negligent hiring and supervision cause of action was struck as to all Respondents, is clear when reading the trial court's orders. Thereby, making the issue immediately appealable.

Notably, a considerable portion of Respondents' arguments are based on the merits of Appellant's appeal—arguments which would be more properly addressed in their brief on the appeal—not in a response on Appellant's petition for the stay. Among their arguments are Respondents' contentions that this is an interlocutory appeal, the scope of the directed verdict during the first trial, the appealability of the same, and *res judicata*.

Generally, under Rules 205 and 241, SCACR, the notice of appeal removes jurisdiction from the trial court and stays all remaining matters. *Grosshuesch v. Cramer*, 377 S.C. 12, 31 n. 7, 659 S.E.2d 112, 122 n. 7 (2008) ("We take this opportunity to reiterate that while an appeal is pending, a lower court cannot act on matters affecting the issue on appeal."). This general rule applies in this case. See S.C. Code Ann. §14-3-330. The negligent hiring and supervision cause of action goes to the very heart of this litigation, and its striking severely limits Appellant's ability to seek his requested judgment and relief. Rules 205 and 241, SCACR are in place to allow Appellant to seek judicial review (particularly on such a drastic ruling) without having to proceed on matters that are affected by the ruling. The trial court's denial of the Motion to Stay was unwarranted given the intertwined nature of the causes of action.

¹ The exhibits referenced herein correlate to the exhibits included with Appellant's Petition for Writ of Supersedeas filed November 7, 2016.

Significantly, the facts of this case are distinguishable from times in which our appellate courts have denied a stay. This is not a circumstance in which unrelated claims or counterclaims could proceed separate from the merits of the appeal. See *Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009) (holding “the trial court’s ruling on the constitutional actual malice issue was clearly unrelated to the discovery dispute involving the Newspapers’ financial data”); *Grosshuesch*, 377 S.C. at 31, 659 S.E.2d at 122 (finding remaining issues were unrelated to appeal because appeal concerned initial discovery responses and remaining issue concerned deposition questions). This is also not a situation like that often seen in family court where a child custody matter is on appeal and the issue of alimony may still be resolved by the lower court.

Instead, the trial court’s order eliminates not only the negligent hiring and supervision cause of action, but also any reference to the evidence and facts supporting that cause of action. Respondents assert Appellants can use certain evidence at the second trial, however this is in direct contradiction to a plain reading of the trial court’s order. The November 7, 2016 Order excludes not only the cause of action, “but also . . . *any evidence* to support that cause of action” Despite Respondent’s interpretation, the trial court has spoken on this issue.

This expansive ruling hinders Appellant’s ability to prove the requisite elements of the negligent pursuit cause of action and perhaps even to establish causation and foreseeability. For example, under the trial court’s order Appellant is prohibited from introducing evidence of Wal-Mart’s supervision on the night of the pursuit. Specifically, Appellant would not be allowed to discuss the contents of the Master Agreement between Wal-Mart and U.S. Security, which was entered into evidence in the first trial. See **Exhibit 1**, Master Agreement. Among other things, the Master Agreement provides: “Services must meet the *approval of Wal-Mart* and be subject to

Wal-Mart's general right of inspection and supervision to secure the satisfactory completion thereof. Contractor shall use the best practices acknowledged in the industry and shall adhere to Wal-Mart's policies and specifications regarding the Services." *Id.* at p. 4. This evidence goes to both causes of action, yet under the trial court's ruling it would be prohibited outright. Significantly, this scenario is just one of many ways in which the issues affected by the appeal impacts the remaining cause of action such that the trial should be stayed.

The Supreme Court's opinion further supports the entwined nature of these causes of action, and the complexity of this case. The majority opinion, in *reversing* then Chief Judge Few, explained that it was an error of law for the trial court to grant a directed verdict and for Judge Few to uphold such a ruling given the evidence presented at that time, evidence that included, among other things, the Master Agreement. As a result of that error, the Supreme Court found that the only way to remedy the error was to grant a new trial. Specifically, Acting Justice Toal held:

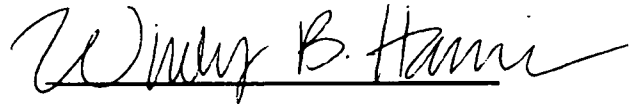
In addition to [Plaintiff's] claim that Jones was Wal-Mart's agent and thus, Walmart is vicariously liable for his conduct, *[Plaintiff] also alleged that Wal-Mart was liable based on its failure to properly supervise Jones and Wal-Mart's improper advice or instruction to Jones to follow Hancock to obtain her license plate tag number. Considering Wal-Mart's potential liability, it is conceivable that a jury could find that the collective fault of the defendants was over fifty percent and that Hancock was less than fifty percent at fault. In light of the reversal of the directed verdict as to Wal-Mart's liability, the only appropriate remedy in this situation is a new trial.*

(Exhibit 5, *Roddey v. Wal-Mart Stores East, LP*, Op. No. 7615 (Shearouse Adv. Sh. No. 13, p. 31). While the scope of the relief granted by the Supreme Court will be addressed by the appeal, the impact of the negligent hiring and supervision cause of action on the negligent pursuit cause of action is undeniable. Simply put, the negligent hiring and supervision claim (and the evidence related to it) directly affects the remaining negligence claim.

CONCLUSION

For the reasons stated herein, Appellant respectfully requests this Court to issue a stay and continue the pending trial until the appeal is resolved.

RESPECTFULLY SUBMITTED,



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November 8, 2016
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Wal-Mart Stores East, L.P., U.S. Security Associates, Inc., and Derrick L. Jones.....
..... Respondents,

PROOF OF SERVICE

The undersigned hereby certifies that on November 8, 2016, she served counsel for
Respondents with the *Reply to Petition for Writ of Supersedeas* in this matter by mailing a copy
of the same by United States Mail with first class postage prepaid to the following addresses:

Stephanie Flynn & Howard Boyd
P.O. Box 10589
Greenville, SC 29603

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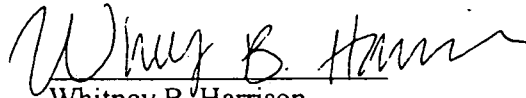
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Signature Page to Follow

Respectfully submitted,

November 8, 2016
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November 7, 2016

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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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 Appellant's Reply to the Petition for Writ of Supersedeas. By copy of this letter, I am serving it upon counsel for Respondents. Please clock in and return to me the enclosed copy in the envelope provided.

With kind regards,

Sincerely,

A handwritten signature in black ink that reads "Whitney B. Harrison". The signature is written in a cursive, flowing style.
Whitney B. Harrison

cc:
Stephanie Flynn, Esquire
Howard Boyd, Esquire

Enclosures

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