

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-In-Equity

Civil Action No. 2007-CP-07-3212
Appellate Case No.: 2016-001277

RECEIVED

NOV 16 2016

SC Court of Appeals

H. Marshall Hoyler.....Appellant,

v.

The State of South Carolina, Merry Land Properties, LLC,
Sherbert Living Trust, Supan Living Trust, Elizabeth R. Levin,
Edward McCray Wise Revoc. Living Trust,
Carol Ann Devries Wise Revoc. Living Trust,
Amelie Cromer, Philip Cromer, Robert Chiavello, Tocharoen Living Trust,
Helen M. Olesak, Lesley Anne Glick a/k/a Lesley Ann Glick,
Shirley G. Lackey, Patricia Banfield, Bertrand Cooper, Jr.,
NHP SH South Carolina I, LLC n/k/a CCP Bayview 7176 LLC,
Oyster Cove Homeowners Assn., Shirley Ann Moyer,
Barry D. Malphrus, Garry D. Malphrus, Donnie Malphrus,
Rita Brown, Houston Family Partnership, Joan Taylor Trustee,
Michael Bull, Nancy Bull, Marny H. VonHarten, Dianne M. Donaldson,
Brian R. Evans, Stephen Durbin, Valerie Durbin, Phillip Marti,
Jane Marti, Michael Woodworth, Georgiana M. Cooke, Daniel B. Walsh,
Janet E. Walsh.....Respondents.

APPELLANT'S ADDENDUM TO NOTICE OF APPEAL

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Richard L. Whitt,
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ORIGINAL

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INTRODUCTION

Appellant, H. Marshall Hoyler herein, filed his Notice of Appeal with this Court on June 16, 2016, which made reference to the Lower Court's then extant, Orders of May 19, 2016, and May 27, 2016.

- Thereafter, Respondents filed a Motion to Dismiss with this Court on July 25, 2016.
- This Court then denied Respondents' Motion to Dismiss by its Order filed September 28, 2016. Also, by this Court's Order of September 28, 2016, jurisdiction was returned to the Lower Court to rule on Appellant's Motions then pending before the Lower Court.
- On October 26, 2016, the Lower Court issued its decision denying Appellant's pending Motions, (see, Order of October 26, 2016, attached hereto as, *Exhibit "A"*), and Appellant's counsel notified this Court by hand-delivery on October 26, 2016, of the Lower Court's decision.
- This Court then issued correspondence on November 9, 2016, to all counsel of record indicating that this Appeal was no longer held in abeyance.
- Because of the procedural history set forth above, Appellant's original Notice of Appeal of June 16, 2016, **could not, and did not**, make reference to the Lower Court's Order later issued on October 26, 2016.

BASIS FOR APPELLANT'S ADDENDUM TO NOTICE OF APPEAL

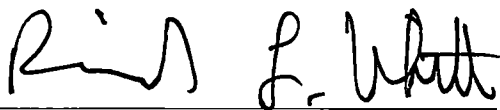
Therefore, consistent with this Court's Orders and the procedural history outlined herein, Appellant hereby files the Lower Court's Order of October 26, 2016, with this Court, as an Addendum to Appellant's original Notice of Appeal, which made reference to the Lower Court's Orders of May 19, 2016, and May 27, 2016, and which now will also include reference to the Lower Court's Order of October 26, 2016.

This filing is made *nunc pro tunc* and it relates back to Appellant's Notice of Appeal as filed on June 16, 2016.

CONCLUSION

Based on the foregoing, the Lower Court's Order of October 26, 2016, (see, Order of October 26, 2016, attached hereto as, *Exhibit "A"*), should be included, along with the Lower Court Orders of May 19, 2016 and May 27, 2016, to be appealed by the Appellant herein, as if referenced in Appellant's original Notice of Appeal filed June 16, 2016.

AUSTIN & ROGERS, P.A.

By: 
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November 16, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

H. Marshall Hoyler,

Plaintiff(s),

vs.

The State of South Carolina, et al.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO: 2007-CP-07-3212

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SC Court of Appeals

ORDER DENYING MOTION
PURSUANT TO RULES 52(b)
AND 59(e), FILED 6/9/2016

RECEIVED

OCT 26 2016

SC Court of Appeals

JERRI AHN ROSENE
BEAUFORT COUNTY, SC
CLERK OF COURT

2016 OCT 26 AM 11:11

This matter came before me on Plaintiff's Motion Pursuant to Rules 52(b) and 59(e), filed on June 9, 2016. This matter was previously ended by Order filed on May 27, 2016. Plaintiff appealed this Order with the South Carolina Court of Appeals to which Defendant's filed a Motion to Dismiss the Appeal. The Court of Appeals denied the Defendant's Motion to Dismiss the Appeal but further ruled to hold the Appeal in abeyance pending my ruling on the Rule 52(b) and 59(e) motion reference above. Counsel has consented to my review of the motion without a hearing.

After review of Plaintiff's motion, and Defendants' Memo in opposition, I hereby deny the Rule 52(b) and 59(e) motions.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

October 16, 2016
Beaufort, South Carolina

EXHIBIT
A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
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Marvin H. Dukes, III, Master-In-Equity

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Brian R. Evans, Stephen Durbin, Valerie Durbin, Phillip Marti,
Jane Marti, Michael Woodworth, Georgiana M. Cooke, Daniel B. Walsh,
Janet E. Walsh.....Respondents.

PROOF OF SERVICE

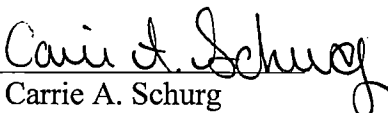
I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have caused Appellant's Addendum to Notice of Appeal and this Proof of Service, to be served via U.S. Mail, on November 16, 2016, as addressed below.

ORIGINAL

Proof of Service
November 16, 2016
Page 2 of 2

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Carrie A. Schurg

November 16, 2016
Columbia, South Carolina

Austin & Rogers, P.A.

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November 16, 2016

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SC Court of Appeals

VIA HAND-DELIVERY

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

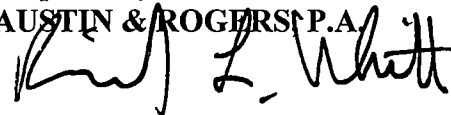
- Re: ● H. Marshall Hoyler v. The State of South Carolina, *et al.*
● Appellate Case No.: 2016-001277
● Appellant's Addendum to Notice of Appeal

Dear Ms. Kitchings:

Enclosed for filing, please find the Appellant's Addendum to Notice of Appeal and Proof of Service. Please accept these documents for filing and acknowledge receipt of the same by file-stamping the copies enclosed and returning them to me, via our courier. If you have any questions or need additional information, please don't hesitate to contact the undersigned.

Respectfully Submitted,

AUSTIN & ROGERS P.A.



Richard L. Whitt,
Jefferson D. Griffith, III,
Counsel for Appellant.

Enclosures

cc: J. Emory Smith, Jr., Esquire
Mary D. Shahid, Esquire