

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable H. W. Funderburk, Jr., Administrative Law Judge

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Case No. 2015-002535

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Melissa Spalt ..... Respondent,

v.

South Carolina Department of Motor Vehicles and  
South Carolina Department of Public Safety ..... Appellants.

Of Whom the South Carolina Department of Motor Vehicles is Appellant.

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**PETITION FOR REHEARING**

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Pursuant to Rules 240 and 242(c), SCACR, the Appellant South Carolina Department of Motor Vehicles (SCDMV) petitions for rehearing of this matter. The grounds for this petition are:

- 1) THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATIVE LAW COURT IS IMMEDIATELY APPEALABLE TO THIS COURT.

S.C. Code §14-8-200 sets forth those cases that may be considered by the appellate courts of South Carolina. S.C. Code §14-8-200 states:

...[T]he court has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of... a final decision of an administrative law judge... This jurisdiction is appellate only, and the court shall apply the same scope of review that the Supreme Court would apply in a similar case...

(Emphasis added). In this case, the order issued by the Administrative Law Court (hereinafter, "ALC") on December 1, 2015 was explicitly titled "Final Order and Order of Remand." Therefore, there can be no doubt that the December 1, 2015 ALC Order is a "final decision of an administrative law judge" as the title itself proclaims it to be a "Final Order..." For this reason alone, this case is immediately appealable to this Court.

The Final Order and Order of Remand issued by the ALC on December 1, 2015 explicitly remands this case back to the OMVH "for a hearing on the merits." This case was already scheduled for a hearing once before Respondent, nor her Counsel appeared at the hearing. Therefore, the ALC's Order of Remand has, essentially, granted Respondent a new "trial" via the new hearing. Instructive in this regard is the recently decided case *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146. The *Morrow* case was dismissed by the Court of Appeals as interlocutory. This dismissal by the Court of Appeals was then appealed to the South Carolina Supreme Court, which decided the appeal was not interlocutory and decided the underlying issue that was originally appealed to the Court of Appeals, specifically, whether several defendants in the lawsuit could be severed under the label "bifurcation." In the *Morrow* case the Supreme Court held the order of "bifurcation" went far beyond the Court's understanding of bifurcation, thereby affecting a substantial right of the petitioners. Thus, the Supreme Court reversed the order of Dismissal issued by the Court of Appeals and the order of "bifurcation" issued by the trial court. Similarly, in this case, because the Order issued by the ALC on December 1, 2015 explicitly remands this case back to the OMVH "for a hearing on the merits" and because this case was already scheduled for a hearing once before (Respondent, nor her Counsel appeared at the

hearing), the ALC's Order of Remand has, essentially, granted Respondent a new "trial" via the new hearing. As discussed in the *Morrow* case, to prevent Appellant DMV "from appealing the order immediately would encourage piecemeal litigation and limit [DMV's] appellate remedies." See also, *Knight v. Johnson*, 244 S.C. 70, 135 S.E.2d 372 (1964) (An order of the trial court granting or refusing a new trial, when based solely on an error of law, is subject to review by the Supreme Court); and *Daugherty v. Northwestern R. Co. of South Carolina*, 92 S.C. 361, 75 S.E. 553 (1912) (This statute does not undertake to make an order granting a new trial appealable, when it is based upon questions of fact; but it can review orders granting new trials when based upon error of law.).

In denying this appeal, on the basis of the appeal being interlocutory, the Court of Appeals relied on the case *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 266, 692 S.E.2d 894, 894 (2010). In relying on this case, the Court of Appeal cited sections that stated "A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined" and "If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory." These citations, however, ignore the similar fundamental issue in this case and in the *Morrow* case, i.e. if the only "further act which must be done by the court" is to have a full blown trial or hearing, then the Order is not interlocutory. So, while the factual issue in the *Morrow* case was whether to have a consolidated or bifurcated trial and the issue in this case whether a new hearing should be held at all, the cases are still very similar. Since the only "further act which must be done

by the court” is to have a new hearing, as ordered by the ALC, this case is not interlocutory. The legal issue in this case before the ALC was decided by the ALC in full and the facts regarding that legal issue are fully developed in the record. Thus, this case is not interlocutory. To find otherwise, would create a way for any and/or all Office of Motor Vehicle Hearings (hereinafter, “OMVH”) cases from ever being appealed beyond the ALC. All the ALC would have to do to prevent such appeals is to always order some further action be taken by the OMVH: a new hearing, an assessment of costs, a review of some factual finding, etc... This is not the intent of S.C. Code §§14-8-200, 1-23-660, or the applicable case law. In the *Charlotte-Mecklenburg* case, the case needed to be remanded to DHEC “to determine whether any of the applicants were entitled to the certificate of need,” a factual question that had not been addressed by DHEC or the ALC yet, and therefore, one that could not be addressed by the appeals courts until that factual question was addressed. In this case, the only substantive issue on appeal is whether the OMVH had authority to and did properly dismiss this case due to the Respondent’s failure to appear at the OMVH hearing, i.e. due to Respondent’s default. All of the factual issues regarding this legal issue have already been fully developed in the record. So, an Order requiring this case to go back to the OMVH for a hearing on the merits is a final order in that it, essentially, tells the OMVH ‘*you were wrong to dismiss this case due to failure to appear.*’ It is the Appellant’s position that the parties are entitled to have this issue decided on appeal, prior to any new hearing being held at the OMVH, and that requiring a new hearing to be held at the OMVH prior to deciding this issue would ultimately eradicate this legal issue in any future action on this case.<sup>1</sup> Further, if the

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<sup>1</sup> Moreover, requiring a hearing to be held, when it may be found that the Order of Dismissal issued by the OMVH was proper and should remain the ultimate finding in the case, would waste the OMVH and parties

current Court of Appeals ruling in this case is maintained, the indirect message sent to the OMVH and attorneys that handle cases in the OMVH is that the OMVH does not have authority to ever dismiss a case due to a party defaulting and that the OMVH has no authority to deny requests for continuances, no matter how late and/or preposterous the request for continuance is. The undersigned does not believe this is the message the Court of Appeals intends to send to the OMVH and, for this reason, asserts that rehearing is necessary to clarify the Court of Appeals ruling in this case.

For these reasons, Appellant again asserts the ALC's Final Order and Order of Remand issued on December 1, 2015 is immediately appealable and should be addressed by the Court of Appeals.



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November 21, 2016  
Blythewood, South Carolina

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Of Whom the South Carolina Department of Motor Vehicles is Appellant.

**CERTIFICATE OF SERVICE**

PURSUANT TO SCACR, I HEREBY CERTIFY that today, November 21, 2016,  
I served one (1) copy of Appellant's Petition for Rehearing by depositing with the United  
States Postal Service, correct postage prepaid, to Counsel for the Respondent at the  
address indicated below:

Michael Laubshire, Esquire  
455 St. Andrews Road, Suite E-1  
Columbia, South Carolina 29210



Brandy A. Duncan  
Assistant General Counsel

Blythewood, SC

Nikki R. Haley  
Governor



Kevin A. Shwedo  
Director

*State of South Carolina*  
*Department of Motor Vehicles*

November 21, 2016

The Honorable Jenny Abbott Kitchings  
Clerk, The South Carolina Court of Appeals  
Post Office Box 11629  
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**SC Court of Appeals**

**RE: *Melissa Spalt v. South Carolina Department of Motor Vehicles***  
**Appellate Case No: 2015-002535**

Dear Ms. Kitchings:

Enclosed for filing please find an original and six (6) copies of Appellant's Petition for Rehearing in the above-captioned matter.

Please file the original and copies necessary for SCACR compliance and return the extra copy to me with an affixed clerk's date of filing in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

In kind regards,

A handwritten signature in cursive script that reads "Brandy A. Duncan".

Brandy A. Duncan  
Assistant General Counsel

Enclosures

cc: Michael Laubshire, Esquire