

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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JAN 26 2017

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2015-000887

Anna Dillard Wilson. . . . . Respondent,

v.

South Carolina Department of Motor Vehicles. . . . . Appellants.

**MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING**

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 JANUARY 11, 2017 OPINION ISSUED BY THIS COURT FOUND THAT RESPONDENT PRESENTED EVIDENCE OF PREJUDICE, BUT THE RECORD REFLECTS THAT RESPONDENT MERELY SPECULATED THAT SHE MIGHT SUFFER PREJUDICE.

This Court found that the record contained evidence of specific injuries and prejudice that might be suffered by Respondent if this suspension were served now, rather than five (5) years ago. Significantly, Respondent merely stated these injuries “could” or “might” occur. R. p. 63, line 7 – p. 64, line 13. Respondent presented no evidence to suggest these injuries “might” or “could” occur beyond her own speculation and belief. Respondent testified that, as part of her job, she is required to travel on behalf

of the company, and a suspension of her driver's license "may" cause her to lose her current job. R. p. 14, lines 14-22. Respondent provided no evidence to support her belief that she might lose her job. Further, Respondent did not state how often she is required to travel for her current company, how far or long this travel is, whether or not she is transporting or traveling with others during this travel, whether such travel occurs only within the State of South Carolina, etc... Based solely on the concern that Respondent "might" lose her job, Respondent asserted and this Court agreed that Respondent losing her job "would cause severe economic hardship because she has two mortgage payments and would not have a steady stream of income to make these payments." The issue is, of course, that there is no evidence to support Respondent's speculation that she might lose her job. Moreover, this Court and the record did not address whether these same issues existed or may have existed at the time this conviction originally occurred. Certainly, if Respondent had two mortgages at the time of her conviction, then there is no additional or no different prejudice than had already existed in this case if the conviction had been timely reported to the SCDMV.

Significantly, although this Court places much emphasis on:

- 1) Respondent's testimony that she approached the SCDMV to find out how to obtain a restricted driver's license in lieu of a suspension and was informed that SCDMV had no record of Respondent's DUI conviction;
- 2) Respondent's testimony that she contacted the Irmo Town Clerk to inquire about the status of her conviction; and
- 3) Respondent's insurance agency contacting the SCDMV to inquire about filing insurance forms relate to her DUI conviction;

Respondent, apparently, never bothered to contact her defense attorney in the DUI case to inquire about what was going on with this DUI conviction. It seems that contacting her defense attorney first makes much more sense than the contacts Respondent did make.<sup>1</sup>

2) THE DEPARTMENT OF MOTOR VEHICLES ARGUMENTS REGARDING RESPONDENT'S OTHER REMEDIES AT LAW WERE PRESERVED FOR REVIEW.

This Court refused to consider whether Respondent had another remedy at law or whether Respondent's hardship was reduced, because she can now install an ignition interlock device on her vehicle pursuant to the retroactivity clause in Emma's Law. S.C. Code 56-5-2941(T). The retroactivity clause of Emma's law was not passed until June 1, 2015, after the circuit court heard this case on January 20, 2015. Therefore, there was no way for SCDMV to raise this issue until after the circuit court had already heard this case. Thus, the first opportunity for SCDMV to raise this alternative remedy and the issue of Respondent's hardship being reduced due to this change in the law was in this appeal. Significantly, SCDMV did raise the possibility of Respondent obtaining a provisional license before the circuit court. R. p. 67, lines 17-19. At the time of this hearing before the circuit court, a provisional license was the only option available to Respondent for this suspension, other than serving a "hard" suspension.<sup>2</sup> For these reasons, this Court should not have found that other remedies at law were not preserved.

3) THE JANUARY 11, 2017 OPINION ISSUED BY THIS COURT FAILED TO ANSWER CERTAIN NECESSARY PRACTICAL QUESTIONS INVOLVED IN THIS APPEAL.

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<sup>1</sup> In fact, it seems to the undersigned, that this is one of the primary reasons people hire defense attorneys, to handle issues like this for them and to utilize the defense attorney's knowledge of the criminal justice system and contacts within the system.

<sup>2</sup> A "hard" suspension is a suspension in which the driver is absolutely suspended from all driving and has no special driving privileges.

Finally, one of the most significant reasons SCDMV must request reconsideration of this decision is because of the numerous practical questions this decision did not answer. For example, assuming this Court holds that everything in its original decision should stand as already published, the published decision did not answer any of the following practical questions:

- 1) While SCDMV understands that Respondent would not undergo the imposition of the suspension period, *should Respondent still be required to complete all the reinstatement requirement that typically go along with this type of suspension?*
  - a. *Completion of the Alcohol, Drug, and Substance Abuse Program (ADSAP)?<sup>3</sup>*
  - b. *Filing form SR-22 for at least three (3) years after this suspension time would have ended if it was posted on the same day as Respondent's conviction?<sup>4</sup>*
  - c. *Payment of a \$100 reinstatement fee?<sup>5</sup>*
  - d. *Successful completion of the vision, knowledge, and skills tests before Respondent may be relicensed?<sup>6</sup>*
- 2) While SCDMV understands that Respondent would not undergo the imposition of the suspension period, *is the underlying DUI conviction still required or allowed to be posted on Respondent's driving record?*

This question becomes particularly important if Respondent is convicted of one or more subsequent offenses of DUI or DUAC within a 10 year period of time. This is because of

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<sup>3</sup> Required by S.C. Code §56-5-2990(B).

<sup>4</sup> Required by S.C. Code §§56-9-500 and 56-9-630.

<sup>5</sup> Required by S.C. Code §56-1-390(1).

<sup>6</sup> Required by S.C. Code §56-1-130.

the graduated administrative penalties that are imposed (i.e. IID requirements under Emma's law) for such subsequent offenses. S.C. Code §56-5-2990. Significantly, in this case, ten (10) years since the violation date of the DUI conviction at issue has not yet passed. November 23, 2018 would mark the passage of ten (10) years since the violation date of the DUI conviction at issue in this case.

- 3) While SCDMV understands that Respondent would not undergo the imposition of the suspension period, *should or must SCDMV simply include the period of suspension on Respondent's driving record as if it began on the date of Respondent's DUI conviction and ended on the statutorily appropriate date?*

An action such as this would make it appear that Respondent was suspended when, in fact, she was still driving.

For these reasons, Appellant requests this Court reconsider its' January 11, 2017 decision.



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Counsel for the Appellant

January 26, 2017

Blythewood, South Carolina

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In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2015-000887

Anna Dillard Wilson ..... Respondent,

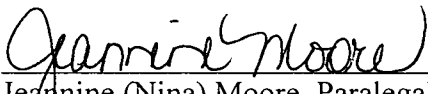
v.

South Carolina Department of Motor Vehicles ..... Appellant.

**CERTIFICATE OF SERVICE**

PURSUANT TO SCACR, I HEREBY CERTIFY that today, January 26, 2017, I served one (1) copy of the Appellant's Petition for Rehearing and Memorandum in Support of Petition for Rehearing by depositing with the United States Postal Service, correct postage prepaid, to Counsel for the Respondent at the address indicated below:

John D. Elliott, Esquire  
Post Office Box 607  
Columbia, South Carolina 29202

  
Jeannine (Nina) Moore, Paralegal  
Office of General Counsel

January 26, 2017  
Blythewood, South Carolina

Henry McMaster  
Governor



Kevin A. Shwedo  
Director

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

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SC Court of Appeals

January 26, 2017

The Honorable Jenny Abbott Kitchings  
Clerk, The South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

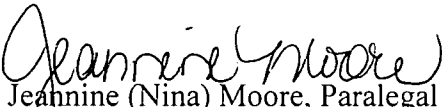
**RE: *Anna Dillard Wilson v. South Carolina Department of Motor Vehicles***  
**Appellate Case No: 2015-000887**

Dear Ms. Kitchings:

Enclosed for filing please find and original and six (6) copies of Appellant's Petition for Rehearing, Memorandum in Support of Petition for Rehearing and Certificate of Service in the above-referenced matter.

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

Sincerely,

  
Jeannine (Nina) Moore, Paralegal  
Office of General Counsel

Enclosures

cc: John D. Elliott, Esquire