

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable W. Jeffery Young, Circuit Court Judge

Appellate Case No.: 2016-002221

R.R., by and through his Guardian ad Litem, Roketha Reid .....Appellant(s),

v.

Williamsburg County School District and Williamsburg County School  
District Board of Trustees..... Respondent(s).

RESPONDENT'S RETURN TO  
MOTION TO RECONSIDER APPEAL

Respondent respectfully submits this Return in opposition to Appellant's motion for reconsideration. Appellant's motion for reconsideration asserts her disagreement with the decision of the Court to dismiss her appeal of the circuit court's decision to quash Appellant's subpoena to Respondent for the confidential educational records of a non-party former student.

**I. STATEMENT OF THE CASE**

The underlying lawsuit in this matter was filed November 5, 2012, by Plaintiff, Roketha Reid on behalf of her son, identified in the pleadings as R.R., against the Williamsburg County School District alleging, essentially, that the Defendants, Williamsburg County School District, *et. al.*, improperly changed, altered, or recorded student grades resulting in the Plaintiff having a lower class ranking than he believed he should have had. On March 16, 2016, Plaintiff served the Defendant, Williamsburg County School District, with a Subpoena *duces tecum* requesting

the production of various school records of former fellow student Cambridge Alexander Gamble. The subpoena and related documents, including the circuit court's order are attached as exhibits to Appellant's motion for reconsideration. Pursuant to the Family Educational Rights and Privacy Act 20 U.S.C. §1232(g) (FERPA), the District provided a copy of the subpoena to the parents of Mr. Gamble, who objected to the disclosure of the student's records. Thereafter, Mr. Gamble filed a Motion to Quash the Subpoena.

Mr. Gamble argued that his school records and, in particular, records containing his individual education and Section 504 plans, are protected by federal law, including, the FERPA and the Individuals with Disability Education Act (IDEA) 20 U.S.C. §1401. Mr. Gamble acknowledged that FERPA and IDEA permit the disclosure of such documents by a school upon order of the court, but he argued that the circuit court should not order the disclosure of his protected student records under the circumstances involved in this case. The circuit court agreed with Mr. Gamble's position and quashed Appellant's subpoena following the hearing on the matter.

## **II. STANDARD OF REVIEW**

This appeal arises from the lower court's decision to quash Appellant's subpoena during the discovery process. "The trial court's rulings on discovery matters will not be disturbed on appeal absent a clear abuse of discretion." *Belk of Spartanburg, S.C., v. Thompson*, 337 S.C. 109, 126-127, 522 S.E. 2d 357, 366 (Court of Appeals 1999). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C. 369, 389, 528 S.E.2d 528, 539 (2000).

## **III. ARGUMENT**

### **A. The Circuit Court Did Not Abuse Its Discretion In Quashing Appellant's Subpoena.**

The circuit court's ruling on discovery matters will not be disturbed on appeal absent a

clear abuse of discretion. The burden is on the party appealing the Order to demonstrate the Court abused its discretion. Abuse of discretion may only be found if the Appellant demonstrates that the conclusion reached by the circuit court was without reasonable, factual support, and resulted in prejudice to the rights of the Appellant. In this matter, Appellant has not met that burden.

As indicated above, Appellant disagrees with the quashing of the subpoena for the records of a non-party, former student. Rule 45(c) of the South Carolina Rules of Civil Procedure provides protection for persons subject to subpoena and charges that persons responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena and provides that a court shall quash or modify a subpoena if it requires the disclosure of privileged or otherwise protected matter, or subjects a person to undue burden. In this case, the records being sought by Appellant are unquestionably confidential student education records protected by FERPA. The FERPA provides that records subject to its protections may only be disclosed via a lawfully issued subpoena or court order. Upon receipt of a subpoena, school districts are obligated to notify the parents or eligible student prior to the disclosure of the records, as was done in this matter. The circuit court could have reasonably concluded that as a non-party to this action, it was unreasonable and unnecessarily intrusive or burdensome to require Mr. Gamble's confidential education records, including those that relate to a disabling condition, to be produced to the parent of another former student. Accordingly, Appellant has not established that the circuit court abused its discretion in this matter.

**B. The Circuit Court's Decision In This Discovery Matter Is Not Immediately Appealable.**

As noted above, this appeal arises out of an Order of the lower court quashing the Appellant's subpoena for the disclosure of the confidential documents of a non-party. By analogy, an Order refusing to compel the taking of a deposition is not immediately appealable.

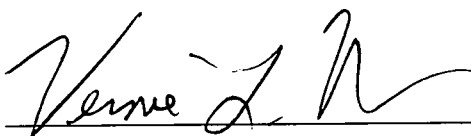
*Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 205 S.C.2d 184 (1979). “Absent a specialized statute, an Order must fall into one of several categories set forth in Section 14-3-330 in order to be immediately appealable.” *Ex parte U-Drive-It Inc., v. Beaver*, 369 S.C. 1, 630 S.E.2d 464, 467 (2006). “An appeal may ordinarily be pursued only after a party has obtained a final judgment.” *Id.* The discovery decision in this case in question does not meet the requirements for immediate appealability. Appellant’s causes of action are not so intimately associated with the production of the requested information that the Order itself determines the subject matter of the action. Appellant may proceed to further stages of litigation without the production of the requested documents. For example, Appellant’s have the ability to take the depositions of employees of the Respondent and inquire regarding the information sought through the subpoena. Therefore, the discovery order should be considered interlocutory and unappealable.

**IV. CONCLUSION**

Based on the legal analysis and legal authorities contained in the Court’s decision, the Court should deny Petitioner’s motion for reconsideration.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By:  \_\_\_\_\_

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Attorney for Respondent

February 2, 2017  
Columbia, South Carolina

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**PROOF OF SERVICE**

I certify that, I the undersigned employee of Childs & Halligan, P.A., caused to have served Respondent's Return to Motion to Reconsider Appeal by depositing a copy of it in the United States Mail, postage prepaid on February 2, 2017, addressed to Irma R. Brooks, Esq., The Brooks Law Firm, LLC, P.O. Box 3512, Sumter, SC 29151.

CHILDS & HALLIGAN, P.A.



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February 2, 2017

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The Honorable Jenny Abbott Kitchings  
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Columbia, SC 29211

Re: R.R., by and through his Guardian ad Litem, Roketha Reid v.  
Williamsburg County School District and Williamsburg County School  
District Board of Trustees  
Appellate Case No.: 2016-002221

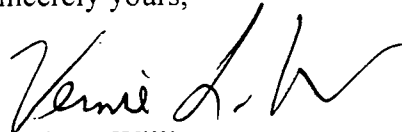
Dear Ms. Kitchings:

Our firm represents the Respondent in the above-referenced matter. Enclosed, please find for filing Respondent's Return to Motion to Reconsider Appeal along with seven copies. Please return the extra file-stamped copy with our courier. By copy of this letter, we are today serving a copy of the above-referenced documents on counsel for Appellant. Thank you for your assistance.

If you need any additional information, please do not hesitate to contact me.

With kind regards, I am

Sincerely yours,



Vernie L. Williams

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/rml

c: Irma R. Brooks, Esq.