

Case # 2016-000562

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APR 11 2017

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY, SOUTH CAROLINA
COURT OF COMMON PLEAS

HON R. SCOTT SPROUSE, CIRCUIT JUDGE
Case # 2014-CP-04-01780

NANCY C. PEREZ

Petitioner

Vs

SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION –
BOARD OF NURSING

Respondent

**REPLY TO APPELLES' MOTION
OPPOSING MS. PEREZ' MOTION FOR REHEARING**

Nancy C Perez, respectfully replies to Appellees' Motion in opposition to Ms. Perez' Motion For Rehearing . As grounds therefore she shows:

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1- By Order dated March 23rd 2017 the Court of Appeals ruled that Ms. Perez is responsible for ordering the Court Reporter's Transcript. On September

14, 2016 the Court previously ruled that the **referenced transcript was already on file** at the court of appeals. By letter dated April 13th, 2016 the Appellees stated that they had a copy of the transcript. By Motion dated April 3rd, 2017 the Appellees oppose Ms. Perez' Motion.

- 2- The crux of the case on appeal is the fact that the **Defendants/Appellees have prevented Ms. Perez from earning a living** as a nurse, a profession she exercised for 18 years.

ARGUMENT

(a)

THE LAW MEANS WHAT THE LEGISLATURE INTENDED

- 3- The Appellees failed or refused to address Ms. Perez' first issue. They waived or forfeited this issue. The Law means what the legislature intended¹. The South Carolina Legislature has stated that testimony need not be transcribed unless a party has indicated that (1) it needs the transcript and (2) is willing to pay for the same.²

(b)

THE COURT REPORTER'S TRANSCRIPT IS UNNECESSARY WHEN THERE IS A WRITTEN COURT JUDGMENT

¹ The State v King, 772 S.E.2d 189, 192 (S.C.App. 2015) citing *State v. Gaines*, , 667 S.E.2d 728, 733 (2008)

² SC Code Ann § 1-23 600©

The trial court order that Ms. Perez is appealing is written, therefore the Court Reporter's transcript is unnecessary³.

©

**THE APPELLES' FAILED OR
REFUSED TO SHOW THAT THE TRANSCRIPT IS
NECESSARY FOR "MEANINGFUL APPELLATE REVIEW"**

- 4- The Court of Appeals has previously ruled that a transcript is required when a litigant establishes that it is necessary for "meaningful appellate review"⁴
But before a litigant can establish meaningful appellate review he/she must identify a specific appellate claim that the appellate court would be unable to review effectively without the transcript.⁵
- 5- In page 3 FN 1 of the Appellees Initial Brief they state: "the caption page of the transcript correctly reflects the date of the hearing" .
- 6- In page 11 , ¶ 1 the Appellees state: "Because Appellant is required to exhaust her administrative, **dismissal for failure to state a claim was proper** as a matter of law" as Respondent argued at the hearing on the Motion to Dismiss" (transcript p 8, lines 1-5R)" (emphasis added). The

³ Woodson v DLI Properties, LLC, et al, 753 S.E.2d 428 (S.C. 2014) citing Ford v. State Ethics Comm'n, , 545 S.E.2d 821, 823 (2001)

⁴ State v. Ladson, 644 S.E.2d 271, 373 S.C. 320 (S.C.App. 04/09/2007 citing In re D.W., 615 SE 2d 90, 94 (N.C. Ct. App. 2005)

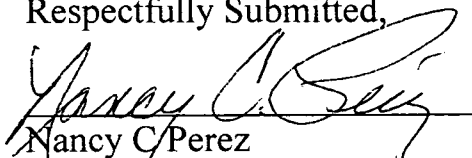
⁵ State v. Asbury, 493 S.E.2d 349 (1997) ; State v. Ladson, 644 S.E.2d 271, 373 S.C. 320 (S.C.App. 04/09/2007) citing *Sweat v. Crawford*, 356 S.E.2d 147, 149 (Ct. App. 1987)

Appellees agree that the Trial Court order of dismissal correctly addresses their position.

CONCLUSION

- 7- Ms. Perez respectfully submits and emphasizes that the general assembly intended that those who need and ordered the court reporter's transcript pay for it. The Appellees failed or refused to show the reason legislative intent is inapplicable in this case;
- 8- The Appellees failed or refused to show that the written trial court Order is, missing a material or relevant issue or somehow prejudices them. Actually, the Appellees position lack candor, because they state that the Order of dismissal correctly adjudicated their position.
- 9- The Appellees have not proven that the transcript is necessary for "meaningful appellate review" nor have they identified a specific appellate claim that the appellate court would be unable to review effectively without the transcript.
- 10- Wherefore Ms. Perez respectfully submits that the Appeal ought to continue without a court's reporter's transcript.

Respectfully Submitted,



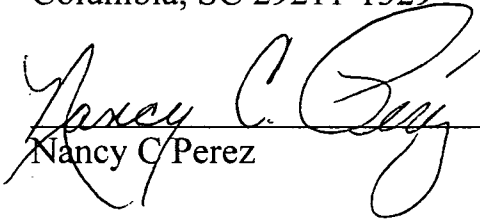
Nancy C. Perez
713 E. Greenville St – D220
Anderson, SC 29621

281-979-8356

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Nancy C Perez' Reply to Appellees' Motion In Opposition to Ms. Perez' Motion For Rehearing " was delivered by mailing a copy thereof on this 7th day of April 2017 to:

Katherine B Barroll, Esq
PO Box 11329
Columbia, SC 29211-1329


Nancy C Perez

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