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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2014-CP-40-5563
Appellate Case No. 2016-002168

RECEIVED

APR 17 2017

SC Court of Appeals

Renee Hale Shelley, as Personal Representative
of the Estate of Michael Mann Lindler Appellant/Respondent,

v.

South Carolina Highway Patrol Respondent/Appellant.

MOTION TO DISMISS CROSS-APPEAL

This motion is filed pursuant to Rule 240, SCACR. The South Carolina Highway Patrol has cross-appealed an order from the circuit court granting the Highway Patrol a directed verdict. This Court should dismiss the cross-appeal. The Highway Patrol is not aggrieved by an order granting judgment in its favor.

Argument

Only a party aggrieved by an order, judgment, or sentence may appeal. Rule 201(b), SCACR; S.C. Code Ann. § 18-1-30; *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) (The right of review is restricted to aggrieved parties).

The circuit court granted the Highway Patrol a directed verdict based on sovereign immunity under the Tort Claims Act. The Highway Patrol is not aggrieved by that decision in any legally cognizable sense. The circuit court's order is attached to this motion.

The Highway Patrol may claim it is aggrieved by the circuit court's decision to deny immunity on one ground, "discretionary immunity." True, but the circuit court granted immunity on three other grounds under the Act. A party is not aggrieved by winning.

The Supreme Court has explained the word aggrieved refers "to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation." *Bivens*, 254 S.C. at 13, 173 S.E.2d at 152. The Highway Patrol is not aggrieved in the legal sense because there is no verdict or a judgment against it. The Highway Patrol may offer its discretionary immunity argument as an additional sustaining ground or alternative reason to affirm under Rule 220(c), SCACR, and *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 419-421, 526 S.E.2d 716, 723-724 (2000), and it can seek Supreme Court review if this Court orders a new trial. At *that* point, the Highway Patrol would be aggrieved.

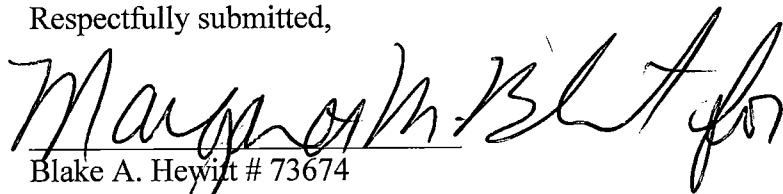
But the Highway Patrol is not aggrieved by the circuit court's order granting it a directed verdict. It may not cross appeal.

Conclusion

The Court should dismiss the cross-appeal.

April 17, 2017

Respectfully submitted,



Blake A. Hewitt # 73674

John S. Nichols #4210

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Attorneys for Appellant/Respondent

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served
counsel for the Respondent/Appellant with a copy of the *Motion to Dismiss Cross-Appeal*
by mailing copies of the same by United States Mail with first class postage prepaid to the
following address:

Andrew F. Lindemann
Joel S. Hughes
Davidson & Lindemann, PA
PO Box 8568
Columbia, SC 29202-8568

April 17, 2017


Erin Bridges



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

April 17, 2017

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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APR 17 2017

SC Court of Appeals

Re: Renee Hale Shelley v. SC Highway Patrol
Case Tracking No.: 2016-002168

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Motion to Dismiss Cross-Appeal* in this case. I have also enclosed a proof of service on counsel of record and our firm check in the amount of \$25.00 for filing this motion. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges
Paralegal to Blake A. Hewitt
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC

/emb

Enclosures

cc: Lauren V. Knight, Esquire
Joel S. Hughes, Esquire
Andrew F. Lindemann, Esquire