STATE OF SOUTH CAROLINA
In the Supreme Court

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SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT

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

Case No. 2017-000545

Melissa Spalt..Respondent,

v.

South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety......................................Petitioner,

Of Whom the South Carolina Department of Motor Vehicles is the Petitioner,

RESPONDENT'S RETURN TO WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON APPEAL

I. THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATIVE LAW COURT IS NOT IMMEDIATELY APPEALABLE TO THIS COURT

II. THE HEARING OFFICER ERRED IN DISMISSING RESPONDENT'S CHALLENGE TO HER IMPLIED CONSENT SUSPENSION

III. THE HEARING OFFICER ERRED BY DISMISSING THE CASE WITHOUT HOLDING A HEARING

STATEMENT OF THE CASE

On June 23, 2015 an Administrative Hearing was scheduled for the Respondent's case, however, due to a conflict between courts, the Respondent requested a continuance on June 18, 2015 (R. pp. 114-115). This request was granted and a new hearing was scheduled for August 11, 2015 at 9 a.m. (R. pp. 110). Again, due to a conflict between courts, the Respondent was scheduled to be in a jury trial during that time and requested a continuance on August 7, 2015 (R. pp. 108-109). Respondent's request for a continuance included a copy of the Richland County Court Summons showing the Respondent's attorney was scheduled to be at a magistrate court jury trial in Richland County. The Hearing Officer, Phil Addington, denied the August 7th request stating that this case had already been continued once (R. pp. 101-107). Thereafter, on August 10, the Respondent requested that the court reconsider the request and resubmitted the Richland County Court Summons and a copy of Rule 601 (R. pp. 83, 98-100), Lieutenant R.D. Grubbs, of the South Carolina Highway Patrol responded by email "no objections" to the Respondent's August 7th request for a continuance (R. pp. 90). Petitioner did not respond to Respondent's request for a continuance. Respondent received no further denials or grants from neither the Hearing Officer nor his scheduling clerk. On

August 12, 2015, Respondent received an Order of Dismissal signed by Hearing Officer, Phil Addington (R. pp. 56-58). The case was dismissed, prejudicing Respondent, without a hearing on August 11, 2015. On August 17, 2015, Respondent filed a Notice of Motion and Motion for Reconsideration (R. pp. 63-66) followed by filing a Notice of Appeal on September 11, 2015 (R. pp. 40-43). On September 16, 2015, Respondent received an Order Dismissing her Motion for Reconsideration for lack of jurisdiction (R. pp. 60-61). On October 2, 2105 the Office of Motor Vehicles filed the Record on Appeal (R. pp. 36). On October 29, 2015, Memorandum on Appeal was filed by the Respondent (R. pp. 30-35). On November 16, 2015, the South Carolina Department of Motor Vehicles filed its brief in the Administrative Law Court (R. pp. 16-29). On November 23, 2015, the Respondent filed a reply brief (R pp. 9-14). On December 1, 2015, the Administrative Law Court issued the Final Order and Order of Remand (R. pp. 2-7). The Administrative Law Court's Order remanded the case back to the Office of Motor Vehicle Hearings for a full hearing on the merits. On December 2, 2015 the Office of Motor Vehicle Hearings scheduled a new hearing for this case. This appeal followed.

ARGUMENTS

I. THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATEIVE LAW COURT IS NOT IMMEDIATELY APPEALABLE TO THIS COURT.

South Carolina Code Ann. §14-8-200 sets forth those cases that may be considered by the Court of Appeals in South Carolina. Petitioners reliance upon S.C. Code Ann §14-3-330 is misplaced as it specifically deals with the appellate jurisdiction of the South Carolina Supreme Court not the South Carolina Court of Appeals. South Carolina Court of Appeals jurisdiction is set and limited by S.C Code §14-8-200.

Although Petitioner alleges there was a hearing, the hearing officer did not make any record of any hearing in this matter other than to issue a form order dismissing the case. The final order of the Administrative Law Court does not order a "new hearing" it orders "a hearing on the merits." Since there has been no hearing on the merits an appeal to the Court of Appeals is interlocutory.

In support of its position that this case is immediately appealable to this court Petitioner cites, Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 539, 773 S.E.2n 144, 146 which has nothing to do with the jurisdiction of this Court, in this case, rather it deals with the exclusive jurisdiction of the South Carolina Supreme Court pursuant to S.C. Code §14-3-330 in an interlocutory appeal of a motion to bifurcate a trial.

Also in support of its position Petitioner cites, Knight v. Johnson, 244 S.C. 70, 135 S.E.2nd 372 (1964) which was a case in the circuit court that was tried to conclusion and was appealed to the Supreme Court of South Carolina. This case is also easily distinguishable because in this matter there has been no hearing, there is no record of a hearing other than a summary order, and this case also deals with an appeal in the exclusive jurisdiction of the Supreme Court of South Carolina, not the Court of Appeals. Similarly , Daughty v. Northwestern R. Co. of South Carolina, 92 S.C. 361, 75 S.E. 553 (1912) is also a case that deals specifically with the jurisdiction of the Supreme Court of South Carolina not the Court of Appeals.

Finally, the Petitioner is in no manner precluded from appealing a subsequent, and truly final, order. Since there has been no actual hearing on the merits there is substantial right or prejudice being affected. S.C. Code §14-3-330(2)(a), specifically deals with interlocutory appeals to the Supreme Court which allows an appeal from an interlocutory order when the order in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues

the action. The order in this case neither discontinues their action nor prevents a judgment from which an appeal may be taken. Petitioner has not filed this appeal in the South Carolina Supreme Court, therefore, the statue and cases cited to support her position that this matter is immediately appealable to the Supreme Court are not relevant since this matter was filed in the South Carolina Court of Appeals.

If this matter is immediately appealable to the Supreme Court under §14-3-330, Petitioner has filed this appeal in the wrong court and has missed the filing deadline. Based upon the forgoing the Respondent requests this matter be dismissed and remanded for a full hearing on the merits.

II. THE HEARING OFFICER ERRED IN DISMISSING RESPONDENT'S CHALLENGE TO HER IMPLIED CONSENT SUSPENSION.

Rule 601 (c) specifically states "An attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent." In this specific case, August 7, 2015 was the soonest the conflict became apparent. It has been Respondent's attorney's experience that cases in Magistrate Court are often continued for many reasons the week of trial. For example, the officers are unavailable; the prosecutor is not ready to try the case, evidentiary issues, just to name a few. Therefore, in the best interest of judicial economy it is reasonable to wait until it is confirmed that the trial is going to take place before requesting continuances in other courts. Upon confirmation that the jury trial which was scheduled in Richland County Central Court would in fact go forward on August 11, 2015, is when the request for a continuance was sent.

The Rule also lists the order of priority between tribunals, which clearly states that Magistrate and Municipal Courts take priority over other Administrative Bodies or Officials. In which case, Respondent's counsel could not be in two places at once, his obligation, under the rule,

was to be at the scheduled jury trial rather than at a hearing in the Office of Motor Vehicles.

Additionally, the request for a continuance was made as soon as the conflict became apparent as the rule requires. Not only was the request made two (2) business days prior to the scheduled hearing but was emailed to all parties who were notified of the original hearing date which was sent by the scheduling assistant. Rule 10, OMVH Rules states that all requests for continuances must be made at least two business days prior to the scheduled hearing, it does not state that it must be forty-eight (48) hours prior, in which case this requirement was also met. The request was sent in letter form, the same format that has been used between Respondent and the Office of Motor Vehicle Hearings in every continuance needed in all previous cases including this specific case without any prior rebukes. The request for continuance was sent immediately as it was confirmed that the scheduled jury trial would in fact go forward and that it would not be rescheduled for any reason. The hearing officer had more than good cause to grant the continuance for the sole purpose that the conflict was due to a jury trial, not an administrative hearing.

Furthermore, the request for a continuance was not marked as an emergency because the situation was not really an emergency. This was a simple request for a continuance, with good cause shown, submitted to the Office of Motor Vehicles on Friday, August 7, for a hearing set to take place the following Tuesday, August 11, it was not filed at the last minute as Petitioner states. There was more than enough time, in corroboration with the Rule, to have the hearing continued. Further, all parties to the case were notified of the request. Trooper Grubbs replied "No objections." The Hearing Officer denied the request for no reason other than stating this case has been continued once.

There is no Rule of Court that states there is a limit on how many continuances or new hearings are scheduled when there are sufficient grounds and good cause shown in order to comply with Rule

601. The request was made in a reasonable time with good cause having been shown and the Hearing Officer erred by denying the request. The Hearing Officer's denial of the request for a continuance was an abuse of discretion and prejudicial to the Respondent since she has been denied her right to a hearing on the merits.

In support of its position the Petitioner states the following cases. Brockman v. South Carolina Dept. of Motor Vehicles and Mauldin Police Dept., 2014 WL 2895374, 13-ALJ-21-0049-AP (SCALC 2014); Chadwick Dale Martin v. S.C. Dept. of Motor Vehicles, 2007 WL 4184375 (2007); Joseph W. Hiller v. S.C. Dept. of Labor, Licensing, and Regulation, 1999 WL 51899 (1999); S.C. Department of Revenue v. Edwin Alewin, 1997 WL 816208 (1997) while each of these cases are easily distinguishable, South Carolina Appellate Court Rule 268(d)(2) specifically states opinions and unpublished orders have no precedential value and should not be citied except in proceedings in which they are directly involved. All of the cases listed above are opinions and unpublished orders and have no precedential value in this appeal.

Respondent requests that any and all cases cited by Petitioner not in compliance with South Carolina Appellate Court Rule 268(d)(2) not be considered by this Court and be stricken from the record.

All parties listed on the e-mail of the Original Notice of Hearing were copied on all communications between the Office of Motor Vehicle Hearings and Respondent, which has been the normal course of business in dealing with the Office of Motor Vehicle Hearings. Based on the forgoing the Respondent requests this matter be dismissed and remanded for a full hearing on the merits.

III. THE HEARING OFFICER ERRED BY DISMISSING THE CASE WITHOUT HOLDING A HEARING.

In accordance with the Rules of Procedure for the Office of Motor Vehicle Hearings, Rule 15, the hearing officer shall give a brief opening statement describing the nature of the proceeding as well as the taking of evidence that is presented. In the Transcript, it was duly noted that the hearing officer did not go on the record. Therefore, the arresting officer failed to meet his burden of proof and the hearing officer erred in dismissing the case and upholding the suspension. If anything since the officer failed to put any evidence on the record this matter should have been dismissed if at all in favor of the Respondent.

In support of its position Petitioner cites, John McGeary v. S.C. Dept. of Motor Vehicles and S.C. Department of Public Safety, 2011 WL 7119316 (2011), McGeary, as cited by the Petitioner, was dismissed by this Court for a preservation issue which has nothing to do with the issues in this matter. S.C. Dept. of Motor Vehicles v. Pitts, 06-ALJ-21-0592 and S.C. Dept. of Motor Vehicles v. Alana Marie Erwin, 06-ALJ-21-059. However, South Carolina Appellate Court Rule 268(d)(2) specifically states opinions and unpublished orders have no precedential value and should not be citied except in proceedings in which they are directly involved. All of the cases listed above are opinions and unpublished orders and have no precedential value in this matter.

Respondent is unable to address the cases other than McGeary, which is available but is an unreported opinion and has no presidential value as is stated on the opinion itself. The other cases cited by the Petitioner are unreported and unavailable to the Respondent.

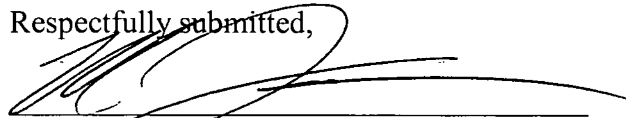
Respondent request that any and all cases cited by Petitioner not in compliance with South Carolina Appellate Court Rule 268(d)(2) not be considered by this Court and be stricken from the record.

There is no waste of resources in requiring the State to meet its burden of proof. The Respondent bore the financial burden in this matter since she has paid filing fee for the cost of having the hearing and she is entitled at a minimum to hold the state to its burden of proof. Although Petitioner takes the position that a failure to appear makes it clear that the motorist is not going to present a defense that is not relevant. There is no requirement, even if present at the hearing the Respondent present a defense, however, the state must put up its evidence to prove its case. Based on the forgoing the Respondent requests this appeal be dismissed and remanded for a full hearing on the merits.

CONCLUSION

Based upon the above-mentioned arguments, the Respondent, Melissa Spalt, requests that the Final Order and Order of Remand Issued by the Administrative Law Court be affirmed and that Respondent be afforded an opportunity to have a full hearing on the merits. Neither party will be prejudiced by Respondent having an opportunity to have a hearing.

Respectfully submitted,



April 18, 2017

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PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Respondent's Return to Writ of Certiorari by depositing a copy of it in the United States Mail, postage prepaid, on the 18th day of April, 2017, addressed to the attorney for the Petitioner as follows:

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