

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2016-002168
Case No. 2014-CP-10-5663

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SC Court of Appeals

Rene Hale Shelley, Individually and as
Personal Representative of the
Estate of Michael Mann Lindler, Appellant-Respondent,

v.

South Carolina Highway Patrol, Respondent-Appellant.

**RETURN TO APPELLANT-RESPONDENT'S
MOTION TO DISMISS CROSS-APPEAL**

The Appellant-Respondent Rene Hale Shelley has filed a Motion to Dismiss Cross-Appeal wherein she argues that the Respondent-Appellant South Carolina Highway Patrol ("SCHP") is not an "aggrieved party" as contemplated by Rule 201(b), SCACR, and S.C. Code Ann. § 18-1-30. Shelley argues that Circuit Court

Judge Allison R. Lee granted a directed verdict to SCHP based upon two exceptions to the waiver of sovereign immunity contained in S.C. Code Ann. § 15-78-60, and as a result, there is no judgment or adverse ruling on which SCHP was "aggrieved." In essence, Shelley claims SCHP cannot possibly be "aggrieved" because it actually won in the lower court.

However, Judge Lee also denied a directed verdict on SCHP's discretionary immunity defense under the Tort Claims Act. Therefore, SCHP contends that it is "aggrieved" by the adverse ruling on its discretionary immunity defense and has accordingly filed a cross-appeal in order to preserve that issue and to obtain judicial review in the event this Court does not affirm on the grounds on which the directed verdict was granted.

Rule 201(b), SCACR, provides that "[o]nly a party aggrieved by an order, judgment, or sentence may appeal." *See*, Rule 201(b), SCACR. This Court has explained that "[a] party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest." *Shaw v. City of Charleston*, 351 S.C. 32, 567 S.E.2d 530, 532 (Ct. App. 2002). "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." *Id.* Moreover, "[a] party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be to some other person's rights and

interests." *Id.* See also, *Powell ex rel. Kelley v. Bank of America*, 379 S.C. 437, 665 S.E.2d 237, 242 (Ct. App. 2008); *Beaufort Realty Co. v. Beaufort County*, 346 S.C. 298, 551 S.E.2d 588 (Ct. App. 2001).

SCHP is an aggrieved party because it was not granted the complete relief that it sought. Specifically, SCHP is entitled to discretionary immunity for the actions of former Trooper Travis Blackwelder as discussed at length in SCHP's Appellant's Brief. Without this relief, the SCHP could be held liable in the event this Court reverses Judge Lee's grant of directed verdict on other grounds. As indicated, a party is aggrieved if a judgment affects his or her rights or interests. As a moving party, SCHP sought a directed verdict on several grounds and an integral ground for dismissal was denied – which SCHP maintains was in error.

In effect, Shelley readily agrees that SCHP may raise the error of Judge Lee's ruling on discretionary immunity, but it may do so *only* as an additional sustaining ground rather than by cross-appeal. That is not necessarily correct. In the context of a motion for summary judgment or a motion to dismiss, it is true that an adverse ruling may be asserted on appeal by an additional sustaining ground. That is because the denial of a motion for summary judgment or a motion to dismiss does not establish the law of the case and the issue raised by that motion can be raised again at a later stage of the proceedings. *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d

379, 380 (1994); *McLendon v. South Carolina Department of Highways and Public Transportation*, 313 S.C. 525, 443 S.E.2d 539, 540, n.2 (1994).

In fact, as this Court recognized in *Sims v. Amisub of South Carolina, Inc.*, 408 S.C. 202, 758 S.E.2d 187 (Ct. App. 2014), *aff'd* 414 S.C. 109, 777 S.E.2d 379 (2015), an appellate court may in its discretion consider as additional sustaining grounds even those grounds raised below on which the lower court ruled adversely to the ultimate prevailing party (i.e., normally the respondent on appeal). The Court in *Sims* explained that "[a]lthough the circuit court denied the statute of limitations defense, the Respondents are not precluded from raising this defense as an additional sustaining ground." 758 S.E.2d at 194. However, in addition to mentioning its authority under Rule 220(c),¹ this Court pointed out that the denial of summary judgment does not decide the merits of the defense and "the defense may be raised again later in the proceedings." *Id.*, citing *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379, 380 (1994).

The present case, however, involves the denial of a directed verdict motion at trial and not a pre-trial ruling which does not establish the law of the case. That denial by Judge Lee represents a final ruling on the legal claim or defense as

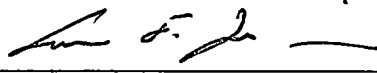
¹ See, Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record"); Rule 207(b)(2), SCACR ("[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)").

presented. A *final* adverse ruling may only be challenged by an appeal.² That is exactly what SCHK has done in this case. SCHK has raised an adverse ruling by cross-appeal. SCHK was aggrieved by that ruling because it was in error. SCHK should be permitted to obtain appellate review in the event this Court finds error in the two grounds on which the directed verdict was granted. For these reasons, the Motion to Dismiss Cross-Appeal should be denied.

² There is also another important distinction between an issue raised as an additional sustaining ground and one raised by a direct appeal. The consideration of an additional sustaining ground is discretionary with the appellate court while a ground raised by a direct appeal is not discretionary. The Supreme Court has stated that "[i]t is within the appellate court's discretion whether to address any additional sustaining grounds." *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 723 (2000). The Supreme Court has further explained that "[t]he appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id.* Thus, if an adverse ruling is only presented as an additional sustained ground, as Shelley suggests is the only proper approach, there is no requirement for the appellate court to even consider it. However, when raised as a ground for appeal, the issue must be addressed unless the appellate court finds the issue to be "manifestly without merit," Rule 220(b)(2), SCACR, or the appellate court determines the it does not need to reach remaining issues on appeal when disposition of prior issues are dispositive. *See, Futch v. McAlister Towing of Georgetown, Inc.*, 335 S.C. 598, 518 S.E.2d 591, 598 (1999).

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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Columbia, South Carolina

April 27, 2017

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CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent-Appellant, South Carolina Highway Patrol, does hereby certify that service of the **Return to Appellant-Respondent's Motion to Dismiss Cross-Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 27th day of April 2017:

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The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
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RE: Rene Hale Shelley, Individually and as Personal Representative of the Estate of Michael Mann Lindler v. South Carolina Highway Patrol
Court of Appeals Case Number: 2016-002168
Civil Action Number: 2014-CP-40-5663
Claim Number: 61007
Our File Number: 103.9492

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Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Return to Appellant-Respondent's Motion to Dismiss Cross-Appeal** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record. Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

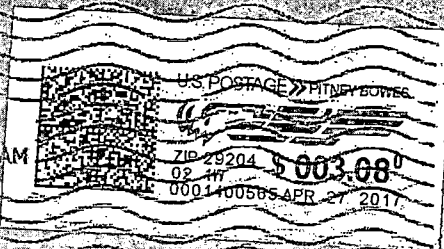
The Honorable Jenny Abbott Kitchings
April 27, 2017
Page Two

cc: (w/ Enclosure)

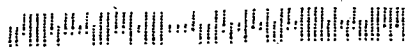
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