

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLETON COUNTY
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

RECEIVED

MAY 09 2017

SC Court of Appeals

Consolidated Case Nos. 2010-CP-10-5520; 2010-CP-10-7233;
2012-CP-10-5559; 2013-CP-10-3733; 2013-CP-10-4175; 2013-CP-10-4176

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,
John Doe 193, Father Doe 194, and John Doe 194.....Respondents,

v.

The Bishop of Charleston, A Corporation Sole, and
Robert Guglielmone, The Bishop of Charleston,
in his official Capacity, Rev. Monsignor Martin Laughlin,
former Administrator of the Diocese of Charleston, in his
Official capacity; Robert J. Baker, former Bishop of Charleston,
in his official capacity; Lawrence E. Richter, Jr., David K. Haller,
and Richter and Haller, LLC.....Defendants,

Of whom,

The Bishop of Charleston, A Corporation Sole, and
Robert Guglielmone, The Bishop of Charleston,
in his official Capacity, Rev. Monsignor Martin Laughlin,
former Administrator of the Diocese of Charleston, in his
Official capacity; and Robert J. Baker, former Bishop of,
Charleston in his official capacity, are.....Appellants.

REPLY IN SUPPORT OF EMERGENCY PETITION
FOR SUPERSEDEAS ORDER TO STAY TRIAL

The Appellants respectfully submit this Reply in response to the Respondents' Return to Emergency Petition By Diocese Appellants for *Supersedeas* Order to Stay Trial.¹

ARGUMENT

The Appellants have timely appealed several orders that affect real and substantial rights. Despite the commencement of that appeal, which was done as soon as practicable, the trial court has stated its intention to proceed with a trial on Monday, May 15, 2017. Thus, the Appellants had no choice but to file the pending emergency petition for *supersedeas*.

Although the Respondents' Return to the petition purports to oppose the Appellants' request for relief, it does not make any strenuous arguments against it. The Respondents do offer a different interpretation of *Morrow v. Fundamental Long-Term Care Holdings, LLC*,² a case cited in the Emergency Petition. But they do not acknowledge or discuss the Supreme Court's statement in *Morrow* that it is not the *characterization* of the motion or order that determines appealability. 412 S.C. at 539, 773 S.E.2d at 147. Rather, "an appellate court should look to the *effect* of an interlocutory order to determine its appealability." *Id.* (quoting *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011)) (emphasis added). As the Appellants have demonstrated in the Emergency Petition, the *effects* of the challenged orders directly impact the Appellants' substantial rights, and, therefore, the orders are immediately appealable. The Respondents do not address that crucial issue in any significant way.

In addition, the Respondents effectively concede several significant points that support granting the requested relief to the Appellants. First, although the Respondents disagree with the

¹ The Appellants will file and serve a separate Reply to the improper Return by the Defendants Lawrence E. Richter, Jr., David Haller and Richter & Haller, LLC, who are not parties to this appeal.

² 412 S.C. 534, 773 S.E.2d 144 (2015)

Appellants' interpretation of *Morrow*, they at least tacitly acknowledge that a good faith debate exists as to whether and to what extent *Morrow* has affected or changed South Carolina law on the appealability of certain kinds of orders.³ This legitimate and important legal question warrants more attention and analysis from the parties to this appeal and the Court than the current truncated schedule allows.

Second, the Respondents admit that the proper procedural mechanism for presenting their arguments on appealability is a motion to dismiss the appeal, which the Respondents state they will file if the Court grants the current petition. A motion to dismiss the appeal – governed by the standard timelines in the South Carolina Appellate Court Rules – would give the Respondents a full and fair opportunity to challenge the appealability of the orders. The Appellants would then have the same full and fair opportunity to demonstrate that the orders are immediately appealable. Both sides would have time to research and brief the issues extensively and to present their arguments. Similarly, the Court would have ample time to consider the parties' positions, analyze the relevant authorities and reach a decision on its own schedule, without any emergency time constraints. This issue is important enough to deserve this kind of non-rushed analysis.

Third, the Respondents have the only prejudice they will experience would from a *delayed* ruling but this Court, and *not* a decision to grant the petition and stay the trial. The Return makes it clear that what the Respondents really want is a fast answer, one way or the other. The only prejudice they even attempt to claim involves costs and expenses related to John Doe 10. The Respondents do not specify what exactly those costs and expenses are, but it appears they stem primarily from John Doe 10's need to travel to South Carolina for trial. Even

³ See Return, p. 4 (“If the Diocese reads *Morrow* correctly, and *Fulmer* and *Flagstar* have been overruled, then the trial must be stayed and this interlocutory appeal permitted.”).

if John Doe 10 has a non-refundable plane ticket, any prejudice to John Doe 10 could easily be avoided. If the Court grants the current petition, and if the Respondents can demonstrate *specific* and reasonable travel costs already incurred by John Doe 10, the Court could order the Appellants to reimburse those costs. This result would prevent any prejudice to John Doe 10, while also protecting the Appellants' right to have their arguments in favor of appealability heard in the normal course.

Finally, the Respondents have admitted that there is nothing procedurally improper or irregular about the Emergency Petition.⁴ As the Respondents tacitly acknowledge, the trial court's refusal to recognize the automatic stay under Rule 205, SCACR, left the Appellants no choice but to make an emergency request for *supersedeas*. Thus, there are no procedural bases to challenge the current petition.

All of these admissions, whether direct or implied, establish the following facts:

1. A legitimate legal question is presented as to the appealability of the challenged orders under Supreme Court precedent.
2. The proper procedural method for the Respondents to challenge appealability, if they choose to do so, is a motion to dismiss the appeal pursuant to Rule 240, SCACR.
3. The normal timelines established in Rule 240, SCACR, would give the parties a full and fair opportunity to address the legal questions involved, and they would also allow the Court to give those important questions the necessary level of deliberation.
4. If it grants the current petition, the Court could order the Appellants to pay John Doe 10 any non-refundable travel expenses he has already occurred, thereby preventing any prejudice to the Respondents.

⁴ See Return, p. 4.

5. Granting the current petition is the only way to fully protect the rights of both the Appellants and the Respondents in this unusual situation.

CONCLUSION

Therefore, the Appellants request that the Court grant the Emergency Petition and stay any trial or other proceedings in the lower court throughout the pendency of this appeal.

Respectfully submitted,

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ATTORNEYS FOR APPELLANTS

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PROOF OF SERVICE

The undersigned, an attorney in this matter for the Appellants, certifies that I have this 9th day of May, 2017, served copies of the **Reply In Support of Emergency Petition for Supersedeas Order to Stay Trial** upon counsel for the Respondents and counsel for the Defendants in the lower court by causing them to be deposited in the United States mail with sufficient postage attached, addressed to:

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(Attorney for Defendant David K. Haller).

Copies have also been sent to counsel via e-mail due to the time sensitive nature of the petition.



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May 9, 2017

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May 9, 2017

Via Hand Delivery

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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Re: John Doe 2, et al. v. The Bishop of Charleston, et al.
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2013-CP-10-3733, 2013-CP-10-4175, 2010-CP-10-4176
Our File No. 8427.252

Dear Ms. Kitchings:

Enclosed are the following materials: (1) the original and seven copies of the Reply in Support of Emergency Petition for *Supersedeas* Order to Stay Trial, and (2) the original and one copy of the Proof of Service. Please file the originals and necessary copies and return the extra stamped copies to our courier. Thank you for your kind assistance.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

R. Hawthorn Bant

for Richard S. Dukes

RSD
Enclosures

Turner | Padgett

Hon. Jenny Abbott Kitchings
May 9, 2017
Page 2

cc: Gregg Myers, Esq.
James L. Bruner, Esq.
Susan Taylor Wall, Esq.