

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BARNWELL COUNTY
Doyet A. Early, Circuit Court Judge

JUL 05 2017

SC Court of Appeals

Appellate Case No. 2017-001208
Case No. 2013-CP-06-0059

Lorenda Robinson, Elaine Nix, Archie Patterson,
and Tami Bollerman, Plaintiffs,

Of Whom, Archie Patterson and Tami Bollerman are Respondents,

v.

South Carolina Department of Employment and Workforce, Appellant.

**PETITION FOR REHEARING, CLARIFICATION, OR
RECONSIDERATION OF
ORDER DISMISSING APPEAL**

Appellant, the South Carolina Department of Employment and Workforce,
hereby petitions for an Order clarifying or reconsidering the Order of this Court
dated June 27, 2017, dismissing this appeal without prejudice. Appellant

respectfully submits that as shown herein, the posture of this appeal is not analogous to that of the case cited in the dismissal order.

The Notice of Appeal in this case involves two Orders: an Order dated April 29, 2016, and an Order denying reconsideration of that 2016 Order, the latter Order having been entered on April 27, 2017. The latter Order (the 2017 Order) was issued in response to a Rule 59(e) motion which Defendant-Appellant had filed on May 12, 2016. The 2017 Order held that the two Plaintiffs-Respondents (Bollerman and Patterson) have standing to bring this action, an issue not expressly addressed in the April 29, 2016 Order. The Appellant Department of Employment and Workforce filed a Rule 59 motion in connection with the 2017 Order on April 28, 2017, and that motion was still pending at the time of the filing of the Notice of Appeal in this case on May 22, 2017.

The present appeal was taken at the time it was taken because of the possibility that the April 28, 2017, Rule 59 motion might be considered a successive Rule 59(e) motion which would not stay the deadline for appeal of the 2017 Order. As noted above, Defendant-Appellant had previously filed a Rule 59(e) motion on May 12, 2016.

Defendant-Appellant then moved in this Court on June 13, 2017 for a remand of the case, with directions to the Court of Common Pleas to rule on the April 28, 2017 Rule 59(e) motion. That motion to remand was made in order to

ensure that the Court of Common Pleas had ruled on all the issues which Appellant seeks to present in this Court.¹

By Order dated June 27, 2017, this Court *sua sponte* dismissed this appeal without prejudice, citing *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986). Defendant-Appellant respectfully submits that the Court may have misapprehended the chronology and procedural facts of the present case, including the presence of a possible issue of there being a successive Rule 59(e) motion, which would not stay the time for an appeal.

The facts and procedural posture of this case are different from those in *Hudson*. In *Hudson*, the Rule 59(e) motion was filed several days after the Notice of Appeal, whereas in the present case, the Rule 59(e) motion was filed before the Notice of Appeal. *Hudson* in turn cited *Otten v. Otten*, 287 S.C. 166, 337 S.E.2d 207 (1985), as holding that a Notice of Appeal need not be filed so long as post-trial motions are pending. However, there is no indication that *Otten* involved anything other than an initial Rule 59(e) motion, with no issue about the possibility of there being a successive Rule 59(e) motion.

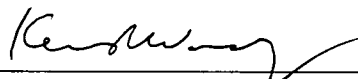
Defendant-Appellant therefore respectfully requests that the Court either (a) specifically hold that the April 28, 2017 Rule 59(e) motion was not successive, and therefore stayed the need to file a Notice of Appeal, or (b) reconsider and vacate

¹ Dan Williams, counsel for Plaintiffs-Respondents consented to that motion, noting that his consent was without waiving any other rights.

the June 27, 2017 dismissal of this case, and grant Defendant-Appellant's June 13, 2017 motion to remand. In the absence of one or the other of those actions by this Court, unnecessary doubt might remain as to whether the April 29, 2017 Rule 59(e) motion stayed the time for appeal.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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Columbia, South Carolina

July 5, 2017

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CERTIFICATE OF SERVICE

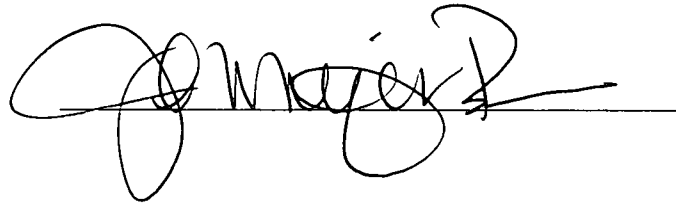
The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant, does hereby certify that service of the **Petition for Rehearing, Clarification, or Reconsideration of Order Dismissing Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 5th day of July 2017:

Daniel W. Williams, Esquire
Bedingfield & Williams, LLC
Post Office Box 616
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A handwritten signature in black ink, appearing to read "S. Suggs", written over a horizontal line.

DAVIDSON & LINDEMANN, P.A.

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July 5, 2017

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Of Counsel
Kenneth P. Woodington

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Hand Delivered

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

JUL 05 2017

SC Court of Appeals

RE: Lorenda Robinson, Elaine Nix, Archie Patterson, Tami Bollerman, Fred Alexander and Pamela Wooten v. South Carolina Department of Employment and Workforce
Court of Appeals Tracking Number: 2017-001208
Civil Action Number: 2013-CP-06-0059
Our File Number: 79.9168

Dear Ms. Kitchings:

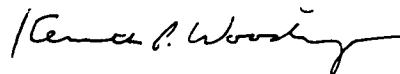
Please find enclosed for filing the original and seven copies of the **Petition for Rehearing, Clarification, or Reconsideration of Order Dismissing Appeal** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier. I have not enclosed a the filing fee since the Appellant is exempt pursuant to Rule 203(d)(1)(B)(iii), SCACR.

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

With highest regards, I am

Sincerely yours,

DAVIDSON & LINDEMANN, P.A.



Kenneth P. Woodington

KPW/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
July 5, 2017
Page Two

cc: (w/ Enclosure)

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