

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

RECEIVED

AUG 01 2017

SC Court of Appeals

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.

AMENDED REPLY TO RETURN TO PETITION FOR REHEARING, etc.

Appellant, the South Carolina Department of Employment and Workforce, submits the following amended reply to Respondents' Return to the Petition for Rehearing, etc., filed in this case by Appellant.

Respondents have taken the position that the Rule 59 motion filed by Appellant in April 28, 2017, was not a successive Rule 59 motion, and that even if

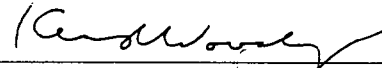
were to be regarded as such, Respondents would waive any argument to that effect. However, it is settled law in this state that a successive Rule 59(e) motion renders untimely a notice of appeal taken from an order on a successive motion. *See, e.g., Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004). When a notice of appeal is thereby rendered untimely, the appellate court lacks jurisdiction. In other words, the issue of successiveness is something that cannot be waived by a party to the case.¹

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 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.

¹ To the extent that Respondents claim that the orders under appeal are interlocutory and nonfinal, Response at 2, Appellant submits that that issue is premature in the present posture of this appeal. If the Court would prefer that the parties brief the issue of finality at present, Appellant stands ready to do so. Appellant's position in summary is that by concluding, following an evidentiary hearing, that two Plaintiffs in this case have standing to sue, the circuit court's April 27, 2017, Order "affect[ed] a substantial right made in an action when such order . . . (c) strikes out an answer or any part thereof. . . ," S.C. Code Ann. § 14-3-330(2), and is therefore immediately appealable. In this case, the defenses stricken would include standing to sue, absence of a case or controversy, and mootness, among others.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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Columbia, South Carolina

August 1, 2017

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CERTIFICATE OF SERVICE

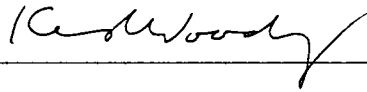
The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant, does hereby certify that service of the **Amended Reply to Return to Petition for Rehearing, etc.** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 1st day of August 2017:

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August 1, 2017

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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

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

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SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Amended Reply to Return to Petition for Rehearing, etc.** in the above referenced matter. This Amended Reply adds a footnote on p. 2 and is otherwise unchanged. Please file the originals and return clocked-in copies 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
August 1, 2017
Page Two

cc: (w/ Enclosure)

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The Honorable Jenny Abbott Kitchings
August 1, 2017
Page Three

bcc: (w/ Enclosure)

Via Email Only

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Employments and Workforce
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