

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

R. Scott Sprouse, Circuit Judge

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Case No. 2014-CP-04-01780  
Appellate Case No. 2016-000562

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Nancy C. Perez

Appellant,

VS

South Carolina Department of Labor,  
Licensing and Regulation –  
Board of Nursing

Respondent.

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PETITION FOR A WRIT OF CERTIORARI

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Nancy C. Perez  
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Pro Se

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**Certificate of Counsel**

Nancy C. Perez certifies that a Petition For Reinstatement was made and finally ruled on by the Court of Appeals on September 14<sup>th</sup>, 2017.

**Statement of Issues**

Did the Court of Appeals err in dismissing the case because:

- 1- The trial court Order that Ms. Perez is appealing is written so the Court Reporter's transcript is unnecessary
- 2- In the alternative, a court reporter's transcript is necessary only when a litigant establishes that it is "meaningful appellate review"
- 3- The Court of Appeals has no jurisdiction to tax Ms. Perez' federal and state right to access the court in order to benefit a third party, i.e., the court reporter;
- 4- The court of appeals has no jurisdiction to amend the rules of Appellate procedure
- 5- The court of appeals has no jurisdiction to refuse to abide by binding precedents established by the Supreme Court rulings and previous Appellate panels
- 6- The Court of Appeals should have taken Judicial notice of the fact that the South Carolina Department of Labor, Licensing and Regulation agreed in writing to pay for the court reporter's transcript
- 7- The General Assembly intended that those who need the court reporter's transcript to pay for the same

### **Statement of the Case**

The Court of Appeals dismissed Ms. Perez' case because she failed to incorporate the court reporter's transcript into the Record on Appeal<sup>1</sup> . By Order dated April 26, 2016 the Clerk Of Court returned to Ms. Perez' her Initial Appellate Brief and her Reply Brief because Ms. Perez had not ordered the Court Reporter's Transcript and therefore the referenced documents were premature<sup>2</sup>.

On May 11<sup>th</sup>, 2016 Ms. Perez filed a Motion objecting to the Clerk of Court's Order<sup>3</sup>: Ms. Perez objected on the grounds that Rule 209(B), of the

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<sup>1</sup> Appendix 1

<sup>2</sup> Appendix 3

<sup>3</sup> Appendix 7

SC Rules of Appellate Procedure **only requires that she include in the Appellate Record matter which she believes are relevant to the appeal.**

Ms. Perez also objected because the only penalty imposed by Rule 210(h) is that the appellate court will not consider any fact which does not appear in the Record on Appeal<sup>4</sup>.

By Order dated July 29<sup>th</sup>, 2016 the Court of Appeals stated that unless both parties agree in writing Ms. Perez, the Appellant, must order the transcript of the entire proceedings below, citing Rule 207(a)(1)<sup>5</sup>. By letter dated April 13<sup>th</sup>, 2016 the Department of Labor, Licensing and Regulation agreed in writing to order and pay for the court reporter's record<sup>6</sup>. By motion dated August 10<sup>th</sup>, 2016 Ms. Perez informed the Court of Appeals that the Department of Labor, Licensing and Regulation had stated in writing that they would order and pay for the court reporter's transcript<sup>7</sup>.

By Letter dated December 5<sup>th</sup>, 2016 the Department of Labor, Licensing and Regulation complained, inter alia, that they have not received the record in appeal<sup>8</sup>.

Ms. Perez submitted a Motion to Reinstate the Appeal<sup>9</sup>

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<sup>4</sup> id

<sup>5</sup> Appendix 5

<sup>6</sup> Appendix 8

<sup>7</sup> Appendix 23

<sup>8</sup> Appendix 26

<sup>9</sup> Appendix 15

## Statement of Facts

Ms. Perez attempted to submit the Initial Appellate Brief and the Reply brief without making referencing the court reporter's transcript<sup>10</sup>. Ms. Perez believed that the court reporter's transcript was not relevant to the Appeal<sup>11</sup>. By letter dated April 13<sup>th</sup>, 2016 the Department of Labor, Licensing and Regulation agreed in writing to order and pay for the court reporter's record<sup>12</sup>.

## Argument

Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal<sup>13</sup>.

## I

### **COURT REPORTER'S TRANSCRIPT UNNECESSARY WHEN APPEALING A WRITTEN ORDER**

The Supreme Court has ruled that where , as here, a litigant is appealing a written order the Court Reporter's transcript is unnecessary<sup>14</sup>. Supreme Court

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<sup>10</sup> Appendix 11

<sup>11</sup> id

<sup>12</sup> Appendix 8

<sup>13</sup> Badaux v. Davis, 337 S.C. 195, 522 S.E.2d 835 (S.C.App. 09/20/1999) citing Eddy v. Eddy, 283 S.C. 582, 324 S.E.2d 70 (1984)

<sup>14</sup> Woodson v DLI Properties, LLC, et al, 753 S.E.2d 428 (S.C. 2014) citing Ford v. State Ethics Comm'n, , 545 S.E.2d 821, 823 (2001)

pronouncements constitute binding precedent on the Court of Appeals<sup>15</sup>. The Court of Appeals has no jurisdiction to disregard binding precedents.<sup>16</sup>

## II

### **THE SUPREME COURT HAS EXCLUSIVE AUTHORITY TO ADOPT AND AMEND RULES OF APPELLATE PROCEDURE**

Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in such courts<sup>17</sup>. Rule 207(a)(1) states “ *where a transcript must be prepared .....*” The Supreme Court interpreted the rule as not requiring a transcript where , as here, the order being appealed is written<sup>18</sup> . Therefore, the Court of Appeals was without jurisdiction to amend Rule 207(a)(1).

## III

### **AN APPELLATE PANEL CAN NOT OVERRULE A PREVIOUS PANEL UNLESS PROCEEDING EN BANC**

The Court of Appeals previously ruled that a litigant has a right to a court reporter’s transcript once he/she establishes that one is necessary for “meaningful Appellate Review”<sup>19</sup>. Rulings by former Appellate panels are binding precedent

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<sup>15</sup> State v Hoyle, 725 SE 2<sup>nd</sup> 720 (SC Appellate-2012)

<sup>16</sup> id

<sup>17</sup> Grazia v. South Carolina State Plastering, LLC, No. 26882 (S.C. 10/04/2010) citing S.C. Const., art. V, § 4 (2009)

<sup>18</sup> FN 12, supra

<sup>19</sup> State v. Ladson, 644 S.E.2d 271, 373 S.C. 320 (S.C.App. 04/09/2007)

unless overruled by the Court acting en banc<sup>20</sup>. The Court of Appeals did not require that the Department of Labor, Licensing, and Regulation prove that the court reporter's transcript was necessary.

#### IV

### **THE COURT OF APPEALS MAY NOT TAX MS PEREZ' FEDERAL AND STATE RIGHT TO LITIGATE**

The Department of Labor, Licensing, and Regulation failed or refused to identify the Appellate Court's authority to tax Ms. Perez in order to benefit a private third party, i.e., the court reporter. Ms Perez respectfully submits that Court of Appeals may not tax Ms. Perez' Federal and State rights to access the courts in order to seek due process of law and redress of grievances<sup>21</sup>. The Texas Supreme Court has ruled that : " We hold that filing fees that go to state general revenues -- in other words taxes on the right to litigate that **pay for other programs besides the judiciary -- are unreasonable impositions on the state constitutional right of access to the courts.**"<sup>22</sup>

#### V

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<sup>20</sup> State v Hoyle, 725 SE 2<sup>nd</sup> 720 (SC Appellate-2012)

<sup>21</sup> Ryland v. Shapiro, 708 F.2d 967 (5th Cir. 07/05/1983) citing First Amendment , Right to Petition Clause and Fourteenth Amendment Due process Clause

<sup>22</sup> LeCroy v. Hanlon, 713 SW 2d 335 342 (Tex. 1986)

**IT WAS THE INTENT OF THE LEGISLATURE THAT THOSE WHO NEED THE COURT REPORTER'S TRANSCRIPT PAY FOR THE SAME**

The SC General Assembly adopted SC Code Annotated § 1-23-600 (C) which requires the party who orders the transcript to pay for the same. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature<sup>23</sup>. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute<sup>24</sup>. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the courts have no right, no jurisdiction, to impose another meaning<sup>25</sup>.

**VI**

**THE COURT OF APPEALS WAS REQUIRED TO TAKE JUDICIAL NOTICE OF THE FACT THAT THE DEPARTMENT OF LABOR, LICENSING AND REGULATION HAD AGREED IN WRITING TO PAY FOR THE TRANSCRIPT**

Rule 207(a)(1) states :"*Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below*" By letter dated April 13<sup>th</sup>, 2016 the Department of Labor, Licensing and Regulation agreed in writing to order and pay for the court reporter's record<sup>26</sup>. The Court of Appeals should have

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<sup>23</sup> Charleston County Sch. Dist. v. State Budget and Control Bd., 313 SC 1, 437 SE 2d 6 (1993).

<sup>24</sup> In re Vincent J., 333 SC 233, 509 SE 2d 261 (1998)

<sup>25</sup> Paschal v. State Election Comm'n, 317 SC 434, 454 SE 2d 890 (1995))

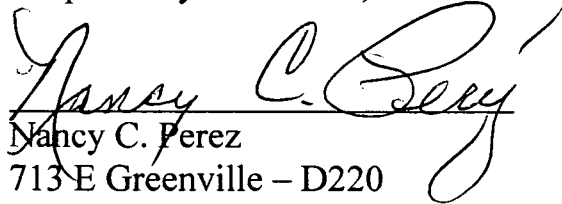
<sup>26</sup> Appendix 8

taken judicial notice of the referenced fact<sup>27</sup> when Ms Perez brought this fact to their attention<sup>28</sup>, Ms. Perez respectfully moves the Supreme Court to take appellate judicial notice of that fact<sup>29</sup>.

### Conclusion

For the reasons stated , Ms. Perez respectfully requests the Court to issue its Writ of Certiorari,

Respectfully Submitted,



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<sup>27</sup> A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records." *Wise v. Wise, et al* , No. 4879 (S.C.App. 08/24/2011) citing *Freeman v. McBee*, 280 S.C. 490,313 SE 2d 325 (Ct. App. 1984). See also Rule of Evidence 201(d) and (f)

<sup>28</sup> Appendix 23; While the motion was styled as Motion for Rehearing , it is the substance of the requested relief that matters "regardless of the form in which the request for relief was framed." *Lucey, et al P.A v. Amy Meyer*, No. 4960 (S.C.App. 03/28/2012) citing *Standard Fed. Sav. & Loan Ass'n v. Mungo*, 306 SC 22, 26 , 410 SE 2d 18 , 20 (Ct. App. 1991)

<sup>29</sup> Id