

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Jr., Administrative Law Court Judge

Appellate Case No. 2017-002455
Case No. 16-ALJ-30-0410-CC

Wayne's Automotive Center, Inc., Appellant-Respondent,

v.

South Carolina Department of Public Safety, Respondent-Appellant.

**RETURN IN OPPOSITION TO
APPELLANT-RESPONDENT'S
MOTION FOR WRIT OF SUPERSEDEAS**

RECEIVED
DEC 04 2017
SC Court of Appeals

The Appellant-Respondent Wayne's Automotive Center, Inc. ("Wayne's") has filed a Motion for Writ of Supersedeas with the South Carolina Court of Appeals in conjunction with the filing of its Notice of Appeal appealing the ruling from the Administrative Law Court that imposed upon Wayne's a sixty-day suspension and removal from the Wrecker Rotation List. The Respondent-

Appellant South Carolina Department of Public Safety ("SCDPS") opposes the motion because, in part, Wayne's has not complied with the procedure set forth in Rule 241(d), SCACR.

Rule 241(d)(1), SCACR, provides that "[e]xcept where extraordinary circumstances make it impracticable, an application for an order ... for supersedeas must first be made to the lower court ... which entered the order or decision on appeal." Rule 241(d)(1), SCACR. In addition, the petition seeking the writ of supersedeas is *required* to contain the following:

[A] showing that an application for this relief was made to the lower court or administrative tribunal, and was unjustifiably denied or that the relief granted failed to afford the relief which the petitioner requested. A certified copy of the lower court's or administrative tribunal's ruling must be included. If no application was made to the lower court or administrative tribunal, then *the petition shall state the extraordinary circumstances which made it impracticable to make such an application.*

Rule 241(d)(4)(c), SCACR. (Emphasis added).

In this case, Wayne's has made no application for a supersedeas to the Administrative Law Court which issued the orders on appeal. In addition, in its motion/petition seeking a writ of supersedeas, Wayne's has included no explanation or argument that there even exist extraordinary circumstances that make a petition filed in the Administrative Law Court impracticable. Moreover, no affidavits were filed to demonstrate that any such extraordinary circumstances

exist. In actuality, SCDPS submits that an application for relief made initially to the Administrative Law Court would not have been impracticable or problematic.

In addition, SCDPS has serious concerns about a writ of supersedeas being issued in this case without a number of strict conditions being attached. Specifically, SCDPS will request that any writ of supersedeas be conditioned on Wayne's full and strict compliance with S.C. Code of Regulations R. 38-600 and that Wayne's correct the billing violations identified by the Administrative Law Court with respect to all towing operations initiated from the Wrecker Rotation List that occur during the pendency of the appeal. Moreover, if Wayne's fails to meet those conditions, the writ of supersedeas should be subject to revocation by the Administrative Law Court or by this Court, whichever Court issues the writ of supersedeas.

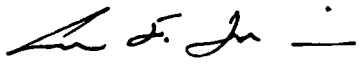
In addition, Rule 241(d)(3), SCACR, requires that the written petition seeking a writ of supersedeas be *verified* by the client. In this case, there is no compliance with that requirement; the motion includes no verification by a representative of Wayne's. The South Carolina Supreme Court has historically required strict compliance with statutes or court rules that require verification or sworn affidavits. *See e.g., Collins v. Doe*, 352 S.C. 462, 574 S.E.2d 739 (2002) (sworn witness affidavit requirement under Section 38-77-170); *Vines v. Self Memorial Hospital*, 314 S.C. 305, 443 S.E.2d 909 (1994) (verified claim

requirement under Tort Claims Act). Therefore, there is no reason that the verified petition requirement under Rule 241(d)(3), SCACR, should be excused.

In sum, based on the foregoing reasons, SCDPS submits that the Motion for Writ of Supersedeas should be denied.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN #13030
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

-and-

MARCUS K. GORE
General Counsel
South Carolina Department of Public Safety
Post Office Box 1993
Blythewood, South Carolina 29016
(803) 896-7780

*Counsel for Respondent-Appellant
South Carolina Department of Public Safety*

December 4, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Jr., Administrative Law Court Judge

Appellate Case No. 2017-002455
Case No. 16-ALJ-30-0410-CC

RECEIVED
DEC 04 2017
SC Court of Appeals

Wayne's Automotive Center, Inc., Appellant-Respondent,

v.

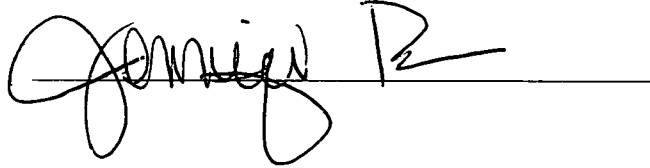
South Carolina Department of Public Safety, Respondent-Appellant.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent-Appellant South Carolina Department of Public Safety, does hereby certify that service of the **Return to Appellant-Respondent's Motion for Writ of Supersedeas** 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 4th day of December 2017:

Marcus K. Gore, Esquire
General Counsel
South Carolina Department of Public Safety
Post Office Box 1993
Blythewood, South Carolina 29016

Raymon E. Lark, Jr., Esquire
Austin & Rogers, P.A.
Post Office Box 11716
Columbia, South Carolina 29211

A handwritten signature in black ink, appearing to read "Raymon E. Lark, Jr.", is written over a solid horizontal line. The signature is stylized and cursive.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

December 4, 2017

Daniel C. Plyler
Joel S. Hughes†
David A. DeMasters
Steven R. Spreeuwers
Brandon M. Briggs
Ryan J. Patane

Of Counsel
Kenneth P. Woodington

*Also Admitted In North Carolina
†Certified Mediator

Writer's Email: alindemann@dml-law.com

Hand Delivered

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

RE: Wayne's Automotive Center, Inc. v. South Carolina Department of Public Safety
Appellate Case Number: 2017-002455
ALC Docket Number: 16-ALJ-30-0410-CC
Our File Number: 107.10114

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Return to Appellant-Respondent's Motion for Writ of Supersedeas** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier.

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

cc: Marcus K. Gore, Esquire (w/ Enclosure)
Raymon E. Lark, Jr., Esquire (w/ Enclosure)

RECEIVED

DEC 04 2017

SC Court of Appeals