

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
DEC 04 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.

**RESPONDENTS' REPLY TO APPELLANT'S
RETURN TO MOTION TO DISMISS**

APPELLANT'S STATEMENT OF FACTS

Appellant, under the heading "Facts", argues the merits of his appeal rather than setting forth facts germane to whether either order is immediately appealable. Respondents did make a clear showing of standing to maintain this action as a class action and that the action should be certified as a class action. They reserve the right to argue the merits of the appeal at the appropriate time.

NEITHER ORDER IS IMMEDIATELY APPEALABLE

Standing Order

Appellant moved for an evidentiary hearing on the issue of standing, and as a result, the court issued an order finding the named plaintiffs had standing to represent the putative class. Had it styled its motion as a motion for summary judgment or a 12(b)(6) motion to dismiss for lack of standing, denial of those motions would not have been appealable. “[S.C. Code Ann.]14-3-330 is construed narrowly, eyeing the nature and effect of the order, not merely it’s label.” *Tilman v. Tilman*, 420 S.C. 249, 250, 801 S.E.2d 757, 760 (2017) The effect of the order was to allow the case to proceed as a Class action. It did not end the action. Nor did it reach the merits of the case.

The order did not strike any pleading, or any defense raised in Appellant’s pleading. It is common for responsive pleadings to assert defenses such as lack of standing, lack of subject matter or personal jurisdiction, improper venue etc. However, denial of a motion to dismiss on one of these grounds is not tantamount to striking the defense from the pleading. Moreover, the issue is preserved for review upon the entry of final judgment. If the case is not resolved, the court can hopefully hear one appeal as opposed to multiple appeals.

The order did not establish the law of the case. “Ordinarily an interlocutory order which merely decides some point or matter essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case and may be reconsidered and corrected before entering a final order on the merits.” *Shirley’s Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (internal citations omitted) The order in this case merely decides that the plaintiffs have standing to proceed in this cause. While standing is essential to proceed in any cause of action, it is collateral to the substantive issues in the case. It may be

reconsidered by the court at any time before final judgment in the case. Defendant will have the opportunity in this case to ask for reconsideration of both appealed orders.

Nevertheless, Appellant argues this court should take this appeal because it is unlikely the lower court will reconsider its order. Therefore, the interlocutory order should be treated as a final order or at least as a final determination of standing. This argument could be made for any interlocutory order, including orders denying motions to dismiss, orders denying summary judgment, and the class certification order in this case. Again, 14-3-330 is to be narrowly construed. *Tilman*, supra. Appellant's expansive construction of 14-3-330 allows the appeal of all orders denying summary judgment and denying Rule 12 (b) motions, since the losing party could argue the court is unlikely to change its ruling. In this case, the Appellant got what it asked for – an evidentiary hearing on the issue of standing. Notwithstanding how this issue was presented to the court, the result of the order was a finding that respondents had standing to proceed – a matter collateral to the substantive issues in this cause of action. Further, the lower court specifically ruled in its order denying Appellant's 59(e) motion that all issues raised in the pleadings are preserved - leaving open the possibility that it could reconsider its ruling on standing in the future.

Finally, as pointed out by Appellant, the order finding respondents have standing relates directly to the class certification order, (Appellant's Return, page 3) and the class certification order may be altered or amended at any time prior to the decision on the merits. Rule 23 (d) (1) S.C.R.C.P.

Class Certification Order

Appellant concedes that class certification orders normally are not immediately appealable. While it argues the merits of why the class should not have been certified, it gives

no reason the class certification order is immediately appealable under 14-3-330. Respondent does acknowledge the court may consider an appeal of the class certification order if it determines the order finding standing is immediately appealable.

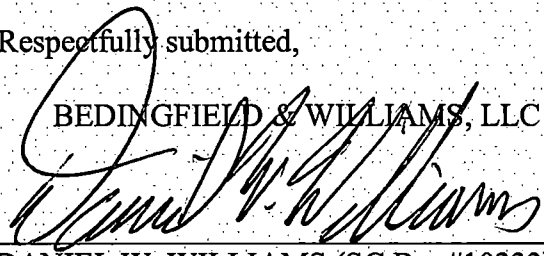
CONCLUSION

The appeal should be dismissed.

Respectfully submitted,

BEDINGFIELD & WILLIAMS, LLC

By:


DANIEL W. WILLIAMS (SC Bar #10233)
40 Wall Street
Barnwell, SC 29812
(803) 259-2759
Fax: (803) 259-5922
danwilliams@bellsouth.net

C. BRADLEY HUTTO
Williams & Williams
1281 Russell Street, P.O. Box 1084
Orangeburg, SC 29115
Phone: 803-380-4099
Fax: 803-928-5190
cbhutto@williamsattys.com

ALEX PATERRA
Pattera & Osmer, LLC
107 E. Park Avenue
Greenville, S.C. 29601
864-387-6872
alex.pattera@paterrallaw.com

STEPHEN R. SUGGS
South Carolina Appleseed Legal Justice Center
P.O. Box 7187
Columbia, SC 29202
(803) 779-1113, ext. 106
(803) 779-5951 (facsimile)
ssuggs@scjustice.org

Counsel for Plaintiffs/Respondents

Barnwell, South Carolina
November 30, 2017

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
DEC 04 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.

CERTIFICATE OF SERVICE

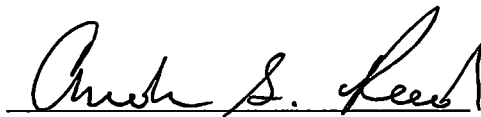
The undersigned employee of BEDINGFIELD & WILLIAMS, LLC, co-counsel for the Respondents, does hereby certify that I have served a copy of the enclosed Respondents' Reply to Appellant's Return to Motion to Dismiss in the above captioned matter by mailing a copy of same by United States Mail, postage prepaid, to the following addresses on November 30, 2017.

Kenneth P. Woodington, Esquire
Davidson & Lindemann, PA
P. O. Box 8568
Columbia, SC 29202-8568

**C. Bradley Hutto, Esquire
Williams & Williams
1281 Russell Street, P.O. Box 1084
Orangeburg, SC 29115**

**Alex Pattera, Esquire
PATERRA LAW FIRM, LLC
104 S. Calhoun St.
Greenville, S.C. 29601**

**Stephen R. Suggs, Esquire
South Carolina Appleseed Legal Justice Center
P.O. Box 7187
Columbia, SC 29202**

A handwritten signature in cursive script, appearing to read "Andrea S. Reed", written over a horizontal line.

Andrea S. Reed

Legal Assistant to Daniel W. Williams

LAW OFFICES
Bedingfield &
WILLIAMS, LLC

WALTER BEDINGFIELD
(1938-2002)

DANIEL W. WILLIAMS

November 30, 2017

RECEIVED
DEC 04 2017
SC Court of Appeals

The Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Archie Patterson, Tami Bollerman vs. SC Department of Employment and Workforce
Court of Appeals Tracking Number: 2017-001208
Civil Action Number: 2013-CP-06-0059

Dear Ms. Kitchings:

In connection to the above aforesaid matter, you will find the original and seven (7) copies of the Respondents' Reply to Appellant's Return to Motion to Dismiss. Please file the original and return a clocked-in copy of the same to me in the stamped reply envelope provided.

By copy of this letter to all counsel of record, I am hereby serving a copy of the Respondents' Reply to Appellant's Return to Motion to Dismiss upon them. Thank you for your courtesies in this matter.

Sincerely,



Daniel W. Williams

DWW:ar
Enc.

cc: Kenneth P. Woodington, Esquire
DAVIDSON & LINDEMANN, P.A.
PO Box 8568
Columbia, SC 29202-8568

C. Bradley Hutto, Esquire
WILLIAMS & WILLIAMS
PO Box 1084
Orangeburg, SC 29116

The Hon. Jenny Abbott Kitchings
November 30, 2017
Page 2

Alexander D. Pattera, Esquire
PATERRA LAW FIRM, LLC
104 S. Calhoun St.
Greenville, SC 29601

Stephen R. Suggs, Esquire
S.C. Appleseed Legal Justice Center
PO Box 7187
Columbia, SC 29202

RECEIVED

DEC 04 2017

SC Court of Appeals

F

\$3.46 US POSTAGE
10 OZ FIRST-CLASS PKG RATE
NO SURCHARGE
COMMERCIAL BASE PRICING

062S0008502082
FROM 29812



stamps.com
11/30/2017

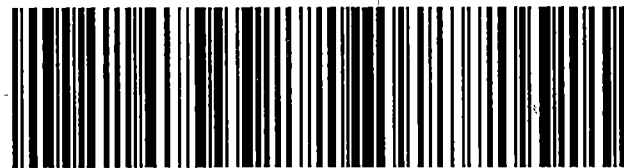
USPS FIRST CLASS MAIL®

Bedingfield & Williams, LLC
PO Box 616
Barnwell SC 29812

B012

SHIP TO: The Hon. Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211-1629

USPS TRACKING #



9400 1118 9956 0841 0556 79