

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable H.W. Funderburk, Jr., Administrative Law Judge

Case No. 2017-000545

RECEIVED

DEC. 29 2017

SC SUPREME COURT

Melissa Spalt.....Respondent,

v.

South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety.....Petitioner,

Of Whom the South Carolina Department of Motor Vehicles is the Petitioner.

**PETITIONER SOUTH CAROLINA DEPARTMENT
OF MOTOR VEHICLES' REPLY BRIEF**

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STATEMENT OF ISSUES ON APPEAL

1. Did the Court of Appeals err in finding that DMV's appeal of the December 1, 2015 Final Order and Order of Remand issued by the Administrative Law Court was interlocutory?
2. Did the Court of Appeals err in failing to rule on the issue of whether the hearing officer correctly dismissed Respondent's challenge to her implied consent suspension?
3. Did the Court of Appeals err in failing to rule on the issue of whether the hearing officer correctly dismissed Respondent's challenge to her implied consent suspension without holding a hearing?

STATEMENT OF THE CASE

Petitioner retains the statement of the case set forth in its Brief. Petitioner specifically reminds this Court of the following sections of its statement of the case as originally set forth in its Brief:

- 1) On April 14, 2015, the Office of Motor Vehicle Hearings (hereinafter, "OMVH") e-mailed a Notice of Hearing to all parties, including the South Carolina Department of Motor Vehicles (hereinafter, "DMV"), for a hearing scheduled for June 23, 2015 (R. p. 127-131).
- 2) On Thursday, June 18, 2015, Respondent's counsel requested a continuance of the hearing scheduled for Tuesday, June 23, 2015 due to a conflicting court appearance her counsel had in the magistrate's court (R. p. 117-120). Despite Respondent's assertion that "[a]ll parties listed on the e-mail of the Original Notice of Hearing were copied on all communications between the Office of Motor Vehicle Hearings and Respondent,"¹ the DMV, a party to this case and a party included on the April 14, 2015 Notice of Hearing, was not copied on this continuance request. *Id.*
- 3) On June 24, 2015, the OMVH e-mailed an Order of Continuance and Notice of Hearing to all parties, including the DMV (R. p. 115-116). This Order rescheduled the hearing for August 11, 2015. *Id.*
- 4) On Friday, August 7, 2015 at 12:30 p.m., Respondent's counsel requested a continuance of the hearing scheduled for Tuesday, August 11, 2015 due to a conflicting court appearance her counsel had in the magistrate's court (R. p.

¹ Respondent's Brief, p. 6, ¶3, sentence 1.

109-114). Again, despite Respondent's assertions otherwise,² the DMV, a party to this case, was not copied on this request. *Id.*

5) On Monday, August 10, 2015, at 8:02 a.m., the OMVH e-mailed Respondent's counsel the denial of the request for continuance (R. p. 107).

6) Respondent's Counsel responded to this denial the same day at 1:28 p.m. and asked the OMVH hearing officer to reconsider the request for continuance.

Id. Again, despite Respondent's assertion otherwise,³ this request for reconsideration was not copied to DMV or to the South Carolina Department of Public Safety (hereinafter, "DPS"), and, in fact, was sent directly to the OMVH hearing officer as well as the OMVH hearing officer's scheduling assistant. *Id.*

7) On Monday, August 10, 2015, at 4:41 p.m., Respondent's counsel filed a second Motion for Continuance (R. p. 95-105). Again, despite Respondent's assertion otherwise,⁴ the DMV, a party to this case, was not copied on this request. *Id.*

ARGUMENT

Petitioner retains all arguments set forth in its Brief and adds the following arguments:

- 1. Did the Court of Appeals err in finding that DMV's appeal of the December 1, 2015 Final Order and Order of Remand issued by the Administrative Law Court was interlocutory?**

² Respondent's Brief, p. 5, ¶1, sentence 2; p. 5, ¶2, sentence 4; and p. 6, ¶3, sentence 1.

³ Respondent's Brief, p. 6, ¶3, sentence 1.

⁴ Respondent's Brief, p. 6, ¶3, sentence 1.

Respondent initially argues that Petitioner erroneously cited S.C. Code §14-3-330 as the appropriate statute setting forth the types of cases that may be considered by the South Carolina Court of Appeals. This argument is puzzling and misplaced since DMV only cited S.C. Code §14-8-200 in its Brief to this Court. However, even if DMV had cited S.C. Code §14-3-330 in its Brief to this Court with regard to the appellate jurisdiction of the South Carolina Court of Appeals and this Court, that citation would not be improperly placed. *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537, 773 S.E.2d 144, 145 (2015) (“Pursuant to Section 14-3-330, appellate courts have jurisdiction to immediately review... An order... when such order... grants or refuses a new trial...”) In this regard, Respondent also argues that DMV’s reliance on the *Morrow* case and the cases *Knight v. Johnson*, 244 S.C. 70, 135 S.E.2d 372 (1964) and *Daughy v. Northwestern R. Co. of South Carolina*, 92 S.C. 361, 75 S.E. 553 (1912) are ill placed because Respondent asserts those cases only discuss the appellate jurisdiction of this Court, the South Carolina Supreme Court. This is not accurate. The *Morrow*, *Knight*, and *Daughy* cases discuss appellate jurisdiction in general, and the concept of interlocutory appeals in particular.⁵ Thus, DMV’s reliance on those cases is not ill placed.

Next, Respondent argues that because the Administrative Law Court (hereinafter, “ALC”) Final Order and Order of Remand issued on December 1, 2015 did not order a “new hearing,” but rather ordered “a hearing on the merits” this appeal is interlocutory.

⁵ DMV does note that at the time of the *Knight* and *Daughy* cases, the South Carolina Court of Appeals did not exist. Application of these cases here, however, is still appropriate given this appeal is now before this Court and given the clear statement in the *Morrow* case that S.C. Code §14-3-330 deals with the jurisdiction of the appellate courts. If the *Morrow* decision was only discussing the appellate jurisdiction of this Court, it would not have referenced appellate courts.

This argument defies logic since the December 1, 2015 ALC Order declared itself to be a “Final Order...” in its’ own title. Moreover, this case had already been set for a hearing before the OMVH and did not proceed to a hearing on the merits solely because of Respondent’s and Respondent’s counsel’s failure to appear for the scheduled hearing. For these reasons, this case is clearly not an interlocutory appeal and was immediately appealable to the Court of Appeals.

For these reasons and the reasons already set forth in DMV’s Brief, the ALC’s Final Order and Order of Remand issued on December 1, 2015 was immediately appealable and the South Carolina Court of Appeals incorrectly found DMV’s appeal of that Order to be an interlocutory appeal.

2. Did the Court of Appeals err in failing to rule on the issue of whether the hearing officer correctly dismissed Respondent’s challenge to her implied consent suspension?

Respondent asserts on three (3) occasions that “all parties” were notified of her motions for continuance, reconsideration, etc... As evidenced by the documents in the Appendix, as highlighted in DMV’s Statement of the Case above, this is simply not true.⁶ DMV was repeatedly and consistently left out of all four (4) of Respondent’s motions for continuances and/or motions for reconsideration. Further, DPS was also left out of Respondent’s motion for reconsideration sent directly to the OMVH hearing officer on

⁶ Additionally, a review of Respondent’s *Motion for Reconsideration* dated August 14, 2015 demonstrates that Respondent admits she only served her August 7, 2015 request for a continuance via e-mail to DPS and the OMVH (R. p. 69, ¶2, sentence 2). Tellingly, Respondent immediately follows this admission up with the statement “As required by the rules all parties of record were notified of the request for a continuance” (R. p. 69, ¶2, sentence 3). Further, a review of the *Certificate of Service by Mail* for Respondent’s *Motion for Reconsideration* shows that DMV was not served with a copy of the *Motion for Reconsideration* (R. p. 71).

Monday, August 10, 2015.⁷ Failure to serve motions on opposing parties is no small matter and yet, Respondent did so repeatedly.

Respondent argues that her Counsel promptly notified the OMVH of his conflicting court appearances “as soon as the conflict became apparent.” Respondent states that her Counsel did not receive “confirmation that the jury trial which was scheduled in Richland County Central Court would in fact go forward on August 11, 2015” until “August 7, 2015.” Despite this assertion, Respondent has failed to ever attach or cite anything regarding a “confirmation that the jury trial which was scheduled in Richland County Central Court would in fact go forward on August 11, 2015.” So, the only evidence before the OMVH of when Respondent’s counsel became aware of the conflicting court appearance was the summary court summons, which states that Respondent’s counsel received the summons on July 16, 2015 (R. p. 51, 75, 105, and 114). Despite the July 15, 2015 summons being received by Respondent’s counsel on July 16, 2015, Respondent’s Counsel did not notify the OMVH of the anticipated conflict until Friday, August 7, 2015 at 12:30 p.m., three (3) weeks and (1) day after Respondent’s counsel received the summons.

Additionally, Respondent asserts that several cases cited in this section of DMV’s Brief are not in compliance with Rule 268(d)(2), SCACR and, as a result, should not be considered by this Court and should be stricken from the record. Specifically, Respondent asserts the following cases in this section are not in compliance with Rule 268(d)(2), SCACR:

⁷ This means, of course, that for this motion for reconsideration, that no party for the State of South Carolina was copied on/served with the motion for reconsideration.

- 1) *Brockman v. South Carolina Dept. of Motor Vehicles and Mauldin Police Dept.*, 2014 WL 2895374, 13-ALJ-21-0049-AP (SCALC 2014)
- 2) *Chadwick Dale Martin v. S.C. Dept. of Motor Vehicles*, 2007 WL 4184375 (2007)
- 3) *Joseph W. Hiller, Sr., v. S.C. Dept. of Labor, Licensing and Regulation*, 1999 WL 51899 (1999)
- 4) *S.C. Dept. of Revenue v. Edwin Alewine*, 1997 WL 816208 (1997)

Respondent fails to disclose that none of these cases are South Carolina Supreme Court cases or South Carolina Court of Appeals cases. Each of these cases are final decisions/final orders in ALC cases. Therefore, these are not “memorandum opinions” or “unpublished orders.” Three of these cases are published opinions of the ALC in its appellate capacity, in fact the *Brockman* case and the *Martin* case are the published opinions of the ALC in its appellate capacity over the OMVH. Only the *Alewine* case was not an ALC appellate opinion, but rather was a final order in a contested case hearing before the ALC. Given the fact that ALC appellate rulings are binding on the OMVH, unless overruled by this Court or the South Carolina Court of Appeals, it makes perfect sense for this Court to consider these cases as persuasive authority in determining the outcome of this case.

For these reasons and the reasons already set forth in DMV’s Brief, the Court of Appeals erred in failing to rule on the issue of whether the OMVH hearing officer correctly dismissed Respondent’s challenge to her implied consent.

3. Did the Court of Appeals err in failing to rule on the issue of whether the hearing officer correctly dismissed Respondent's challenge to her implied consent suspension without holding a hearing?

Again, Respondent asserts that several cases cited in DMV's Brief in this section are not in compliance with Rule 268(d)(2), SCACR and, as a result, should not be considered by this Court and should be stricken from the record. Specifically, Respondent asserts the following cases in this section are not in compliance with Rule 268(d)(2), SCACR:

- 1) *John McGeary v. S.C. Dept. of Motor Vehicles and S.C. Dept. of Public Safety*, 2011 WL 7119316
- 2) *S.C. Dept. of Motor Vehicles v. Willie Pitts*, 2007 WL 2377440⁸
- 3) *S.C. Dept. of Motor Vehicles v. Alana Marie Erwin*, 2007 WL 2452663⁹

Again, Respondent fails to disclose that none of these cases are South Carolina Supreme Court cases or South Carolina Court of Appeals cases. Each of these cases are final decisions/final orders in ALC cases. Therefore, these are not "memorandum opinions" or "unpublished orders." All of these cases are the published opinions of the ALC in its appellate capacity over the OMVH. Given the fact that ALC appellate rulings are binding on the OMVH, unless overruled by this Court or the South Carolina Court of Appeals, it makes perfect sense for this Court to consider these cases as persuasive authority in determining the outcome of this case.

⁸ Respondent claims this case is "unreported and unavailable to the Respondent." This is untrue. This opinion is available online at Westlaw.com.

⁹ Respondent claims this case is "unreported and unavailable to the Respondent." This is untrue. This opinion is available online at Westlaw.com.

Finally, Respondent argues there “is no waste of resources in requiring the State to meet its burden of proof” in this case. Petitioner respectfully disagrees. In this case, both the OMVH hearing officer and Trooper Grubes were present at the hearing on August 11, 2015 and were ready to go forward with the hearing. This required both the OMVH hearing officer and Trooper Grubes to prepare for the hearing, secure a location for the hearing (OMVH only), provide notice of the hearing to all parties (OMVH only), travel to the hearing, and wait for the case to be called (Trooper Grubes only). Thus, resources of the State have already been expended on this case. If the OMVH is required to hold a second hearing, all of these actions will have to be performed a second time. Thus, there is no question that holding a second hearing would further expend the resources of the State.

For these reasons and the reasons already set forth in DMV’s Brief, the Court of Appeals erred in failing to rule on the issue of whether the OMVH hearing officer correctly dismissed Respondent’s challenge to her implied consent suspension without holding a hearing on the record when Respondent and her counsel failed to appear for the scheduled hearing.

CONCLUSION

For the reasons set forth above and in DMV’s Brief, the Court of Appeals erred in holding that DMV’s appeal of the ALC Order was interlocutory and should have ruled on the merits of the appellate issues. Further, the ALC Order should be overturned and the OMVH Order of Dismissal issued August 12, 2015 should be reinstated in full.

Respectfully submitted,



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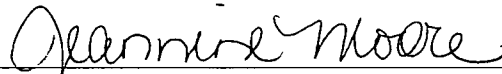
South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety.....Petitioner.

Of Whom the South Carolina Department of Motor Vehicles is the Petitioner.

PROOF OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, December 29, 2017,
I served one (1) copy of the Petitioner's Reply Brief by depositing with the United States
Postal Service, correct postage prepaid, to Counsel for the Respondent at the address
indicated below:

Michael Laubshire, Esquire
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Jeannine Moore, Paralegal

December 29, 2017
Blythewood, South Carolina