

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 18 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.

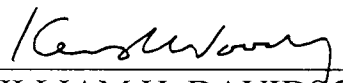
PETITION FOR REHEARING

The Appellant South Carolina Department of Employment and Workforce petitions the South Carolina Court of Appeals for a rehearing of the Court's Order of December 8, 2017, dismissing this appeal.

The grounds for the Appellant's petition for rehearing and the specific relief requested are addressed in the supporting memorandum filed herewith and incorporated herein.

This petition for rehearing is based on the Court's Order dismissing this appeal, the matters on file in this Court pertaining to this appeal, the supporting memorandum filed herewith, Rule 221(a), SCACR, Rule 224, SCACR, and other rules of court.

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December 18, 2017

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MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

The Appellant South Carolina Department of Employment and Workforce has petitioned the Court for a rehearing of the Court's Order of December 8, 2017, dismissing this appeal. Appellant respectfully requests that this Court reconsider its decision and reinstate this appeal for the reasons set forth herein and in previous filings.

The Order of December 8, 2017, provides in its entirety as follows:

Appellant has appealed the circuit court's orders certifying a class, finding the Plaintiffs have standing to represent the class, and denying reconsideration. After careful consideration, Respondents' motion to dismiss is granted because the underlying orders on appeal are not immediately appealable. *See Schein v. Lamar*, 214 S.C. 329, 263 S.E.2d 383 (1980); *Knowles v. Standard Savings and Loan Assoc*, 274 S.C. 58, 261 S.E.2d 49 (1979) (finding class certification orders are not immediately appealable). Remittitur will be sent as required by Rule 221(b), SCACR.

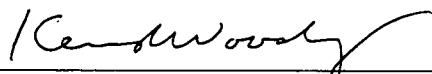
Appellant respectfully submits that the Court overlooked or misapprehended the nature of the order appealed from, as well as the contentions made by Appellant. The Court held that the appeal involved whether Plaintiffs “have standing to represent the class.” However, Appellant’s contention was not strictly related to class certification, but rather was that the dismissal of Appellant’s defenses pertaining to standing, justiciability, mootness and mitigation of damages affected substantial rights and effectively struck those defenses.¹ Amended Return to Motion to Dismiss Appeal at 6. As Appellant noted on p. 8 of its Amended Return, the court below in effect affirmatively granted judgment for Plaintiffs on the issue of standing and by logical extension did the same for the defenses of

¹ Appellant did request that if the Court were to hear the appeal with regard to standing and the defenses that were effectively stricken, class certification could also then then be considered, but only if the stricken defense were considered. Amended Return at 9-10, citing *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 163 (Ct. App. 2014).

justiciability, mootness and mitigation of damages. It is not as if the court below made a tentative conclusion that the two named Plaintiffs had standing for the limited purpose of going forward with class certification. The issue of standing and the related issues of justiciability, mootness and mitigation of damages were effectively decided by the court below once and for all in the orders from which this appeal was taken. Accordingly, and for the reasons set forth at pp. 2-9 of Appellant's Return, Appellant respectfully requests that the Court reconsider its order of dismissal and reinstate the present appeal.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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v.

South Carolina Department of Employment and Workforce, Appellant.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Appellant, does hereby certify that service of the **Petition for Rehearing** and **Memorandum in Support of Petition for Rehearing I** in the above-captioned matter was made upon all counsel of record by email and by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 18th day of December 2017:

Via Email and U.S. Mail
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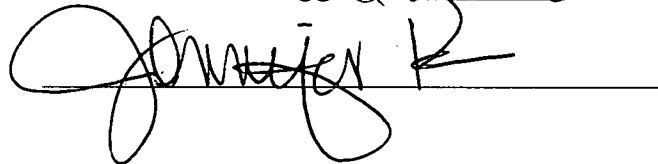
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A handwritten signature in black ink, appearing to read "Stephen R. Suggs", is written over a horizontal line.

DAVIDSON & LINDEMANN, P.A.

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December 18, 2017

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†Certified Mediator

Of Counsel
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Writer's Email: kwoodington@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: Archie Patterson and Tami Bollerman 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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Dear Ms. Kitchings:

Please find enclosed for filing the originals and seven copies each of the **Petition for Rehearing** and **Memorandum in Support of Petition for Rehearing** in the above referenced matter. Please file the originals and return a clocked-in copy 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 by email and U.S. Mail. 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
December 18, 2017
Page Two

cc: (w/ Enclosures)

Via Email and U.S. Mail

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