

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge
Case No. 2017-CP-34-00064

Appellate Case No. 2018-001510

RECEIVED
SEP 17 2018
SC Court of Appeals

Gary Locklear, Individually and as Personal Representative of the
Estate of Roy Locklear, Respondent,

vs.

Marlboro County, Marlboro County Sheriff's Office, Marlboro
County Detention Center, Dr. Charles Bush, Southern Health Partners,
And South Carolina law Enforcement Division, Defendants.

Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

REPLY TO APPELLANTS' RETURN

Patrick J. McLaughlin
Wukela Law Firm
PO Box 13057
Florence, SC 29504
T: 843-669-5634
Attorney for Respondent

Respondent received the Appellants' Return via USPS on September 11, 2018. This Reply follows, pursuant to Rule 240(f) SCACR.

ARGUMENT

Appellants' return seeks to take a suggestion from a treatise and elevate it in to a new rule for the appellate courts of South Carolina. To do so would result in South Carolina's appellate courts being asked to referee basic discovery disputes, causing unnecessary and unjust delay.

Specifically, Appellants take the suggestion offered by former Chief Justice Toal, in her book, Appellate Practice in South Carolina, that "where an appealed order has the effect of revealing the very thing the appellant was claiming should remain confidential, an immediate appeal **may** well be warranted and permitted by the appellate court," and mischaracterizes this suggestion as an "assertion that discovery orders like this which compel the production of confidential and proprietary matter are immediately appealable." Response at 3-4, citing Toal, *et al.*, Appellate Practice in South Carolina, 154 (2016, 3d ed), emphasis added.

However, that suggestion that some discovery orders **may** warrant an immediate appeal speaks only to a unique case where the production of confidential material was precisely why the litigation had been commenced and was the entirety of the matter in controversy. City of Columbia v. A.C.L.U. of South Carolina, Inc., 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996). Contrary to Appellants' argument, City of Columbia does not "address the very issue here – disclosure of proprietary and confidential information pursuant to a discovery request." Response at 5. Instead, City of Columbia addresses a party's attempts to prevail on the actual merits of a certain type of case (declaratory judgment actions involving FOIA exemptions) through a discovery request during litigation.

The Appellants are asking this Court to allow parties who are unsuccessful in litigating a common discovery dispute (Orders of Protection), to immediately appeal when they are unsuccessful in those common discovery disputes. To do so would invite unnecessary delay and needless appeals. Preventing such spurious appeals is precisely the reasoning behind the general rule that orders compelling discovery that do not involve the merits of the case are interlocutory and may not be appealed. Tucker v. Honda of S.C. Mfg., 353 S.C. 574, 577, 582 S.E.2d 405, 406 (2003), citing Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986); Grosshuesch v. Cramer, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008), citing Hamm v. S.C. Pub. Serv. Comm'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994); Wallace v. Interamerican Trust Co., 246 S.C. 563, 568-69, 144 S.E.2d 813, 816 (1965).

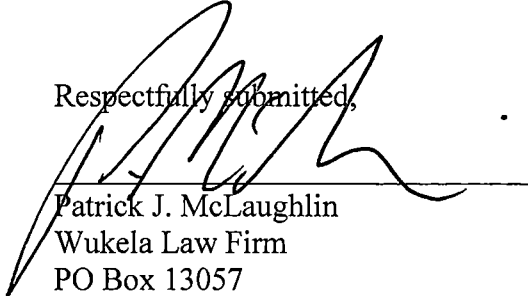
Further, the Appellants' failure to follow the clear instructions from Tucker that an order compelling discovery may be appealed **only** after the trial court holds a party in contempt, is clearly an attempt by the Appellants to continue to delay responding to discovery while avoiding penalty for doing so. Tucker at 577, 406-407.

CONCLUSION

Based on the above, the Plaintiff respectfully requests that the Court dismiss Bush/SHP's appeal on the grounds that it seeks to appeal a discovery order, which is interlocutory in nature and not immediately appealable.

September 12, 2018

Respectfully submitted,



Patrick J. McLaughlin
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Attorney for Respondent

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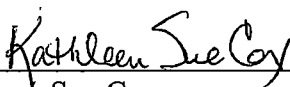
CERTIFICATE OF SERVICE

I, Kathleen Sue Cox, of the Wukela Law Firm, certify that she did serve copies of the Respondent's Reply To Appellant's Return on the Appellants and Defendants by depositing a copy of it and a Certificate of Service in the United States Mail, postage prepaid, on September 12, 2018, addressed to their attorneys of record. Said envelopes being addressed to the following person(s):

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SC Court of Appeals

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

Re: Appellate Case No. 2018-001510
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Dr. Charles Bush, Southern Health Partners, And South Carolina law Enforcement
Division, Defendants.
Of whom, Southern Health Partners and Dr. Charles Bush are Appellants.

Dear Ms. Kitchings:

Enclosed please find for filing the following:

1. Original and six (6) copies of Respondent's Reply To Appellants' Return;
2. Certificate of Service on the Appellant and Defendants.

Please stamp and return a copy of the Respondent's Reply To Appellants' Return and a copy of the Certificate of Service.

Yours truly,

WUKELA LAW FIRM

PATRICK J. MCLAUGHLIN

PJM:ksc
Enclosures

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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cc:
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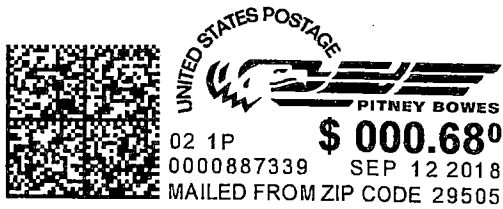
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Attorney for Marlboro County, Marlboro County Sheriff's Office,
Marlboro County Detention Center



First Class Mail

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To:

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
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