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SEP 10 2018

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, Administrative Law Judge

Appellate Case: 2018-001613

Case No. 18-ALJ-17-0216-CC

Ex Parte: Representative Chip Huggins,Appellant,

In re: WKSC, LLC d/b/a Savannah's Gentlemen's Club & Steakhouse,Respondent,

v.

South Carolina Department of Revenue,Respondent.

**MOTION TO DISMISS APPEAL AND
INCORPORATED MEMORANDUM OF LAW**

The Honorable Chip Huggins has attempted to appeal the Administrative Law Court's Order Denying Intervention filed on September 5, 2018 in the above-referenced matter. As set forth below, this motion should be granted because Appellant Huggins cannot maintain an appeal on the Order as the issue raised in the appeal is now moot. The appeal should be dismissed and the Administrative Court action be allowed to proceed to the Merits hearing.

PROCEDURAL HISTORY

This matter is originally before the Administrative Law Court for a contested case

hearing. The Respondent WKSC, LLC, d/b/a Savannah's Gentleman's Club & Steakhouse applied for an on-premises beer and wine permit and restaurant liquor by the drink license. The applications for both were denied by Respondent South Carolina Department of Revenue. Respondent WKSC sought a contested case hearing with the ALC on June 20, 2018. The Court issued an Order and Notice of Hearing on July 19, 2018, which established the date of the contested merits hearings and the procedure of the court to be followed by all interested parties.

Due to the large number of protestants involved with Respondent WKSC's application, and anticipating a procedural drain upon the Court and its staff, an Administrative Memorandum to Individuals Protesting a License or Permit was issued. The memorandum contained, in no uncertain language, the deadline of August 10, 2018 for the filing of Motions to Intervene. The Memorandum was transmitted electronically to all named parties and protestants on July 19, 2018.

Appellant Huggins filed, through counsel, a Motion for Leave to Intervene on August 30, 2018, twenty days past the deadline established by the Court. Appellant, who was already a protestant and thus received the Memorandum establishing deadlines, claimed he met all necessary elements for intervention. Appellant attempted to establish good cause for the untimely filing of his motion.

A telephone conference was held on September 4, 2018 with counsel for all parties and the Appellant. Appellant's counsel restated all grounds for intervention and again attempted to establish good cause for the failure to file the Motion for Leave to Intervene in a timely manner. Counsel for Appellant asserted numerous reasons for the delay, including a difficulty in paying for representation and, as Appellant is a lay person, unfamiliarity with the proceedings. Counsel further represented the allowance of intervention would not delay the proceedings, as counsel was prepared to proceed on the scheduled hearing date.

The Court filed an Order denying Appellant's Motion to Intervene on September 5, finding Appellant had failed to establish good cause for the untimely filing of the motion. On September 6, Appellant filed a Notice of Appeal regarding the Order denying the Motion to Intervene.

ARGUMENT

I. THIS COURT SHOULD GRANT THE MOTION TO DISMISS THE APPEAL BECAUSE THE APPEAL IS MOOT.

This appeal is improper as the underlying issue is now moot. Counsel for Respondent WKSC has conveyed to counsel for Appellant it will consent to allow appellant to intervene in the Administrative Court Proceedings. The allowance of intervention renders this appeal moot.

Where there remains no actual controversy, an appellate court cannot adjudicate the proceedings. *Jackson v. State*, 331 S.C. 486, 489 S.E.2d 915 (1997); *see Jones v. Dillon-Marion Human Resources Dev. Comm'n.*, 277 S.C. 533, 291 S.E.2d 195 (1982). Further, "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible for the reviewing Court to grant effectual relief." *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 194 S.E.2d 713, 715 (1973).

An event has occurred in this proceeding. Respondent WKSC has made clear it will allow Appellant to participate in the Administrative proceedings as an Intervenor. As Appellant's appeal rests solely on the denial of its Motion to Intervene, this consent of the parties renders the appeal moot.

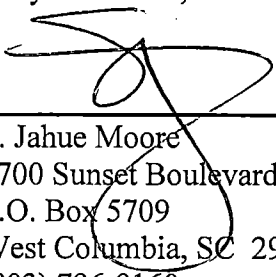
CONCLUSION

For the above-stated reasoning, this Court should grant the Motion to Dismiss Appeal as

the appeal is an improper interlocutory appeal.

Respectfully submitted,

By:



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West Columbia, South Carolina
September 10, 2018

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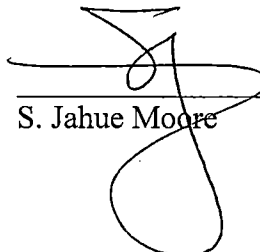
South Carolina Department of Revenue,.....Respondent.

PROOF OF SERVICE

I, S. Jahue Moore, attorney for Petitioner, certify that I have served the Motion to Dismiss Appeal on counsel of record for Respondent and Movant in this action by depositing a copy of same in the US Mail, postage prepaid, on September 10, 2018 to:

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S. Jahue Moore

West Columbia, South Carolina
September 10, 2018