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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

Appeal Case No. 2018-001510

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

v.

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.

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SC Court of Appeals

PETITION FOR REHEARING

For the reasons set forth below, Appellants respectfully submit this Petition for Rehearing, pursuant to Rule 221(a) and Rule 240, SCACR, in response to this Court's Order dismissing their appeal.

STANDARD

"A petition for rehearing . . . shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR.

Appellants submit that the following points were not addressed, were overlooked, or were misapprehended by the Court, and respectfully ask this Court to reconsider their Motion to Appeal.

1. **The Order does not address the exception to the appealability of discovery orders, which was argued by Appellants.**

In their Return to Respondents' Motion to Dismiss, Appellants admitted that discovery orders are generally not immediately appealable. *See Tucker v. Honda of South Carolina Manuf.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406 (2005) (discovery orders "do not *ordinarily* involve the merits" and are not immediately appealable) (emphasis added). However, Appellants argued that there are exceptions to the general rule, recognized by the South Carolina Supreme Court, and as is set forth in Appellants' Notice of Appeal and Return to Respondent's Motion to Dismiss Appellant's Appeal, and discussed in a leading authority on South Carolina Appellate law, Toal, *et al.*, APPELLATE PRACTICE IN SOUTH CAROLINA, 154 (2016, 3d ed). These were not addressed by this Court.

Specifically, an immediate appeal is warranted when orders require the disclosure of material that is confidential and/or proprietary in nature. The South Carolina Supreme Court addressed the issue of the appealability of discovery orders in *City of Columbia v. A.C.L.U. of South Carolina, Inc.*, 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996). *City of Columbia* shows one of the exceptions to the general rule is that discovery orders, which compel the production of confidential and proprietary matter, are immediately appealable.

The same is true in this Appeal. As is set forth in the Appellants' Return to Respondents' Motion to Dismiss Appellants' Appeal, the documents Respondents seek are proprietary and/or confidential in nature, and an appeal of the Order compelling production is warranted. *See Toal et al.*, APPELLATE PRACTICE IN SOUTH CAROLINA, 154 (2016, 3d ed) (citing *City of Columbia v.*

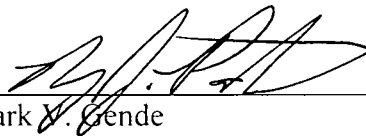
A.C.L.U. of South Carolina, Inc., 323 S.C. 384, 388, 475 S.E.2d 747, 849 (1996) (“if an order requires a party to turn over documents that the party feels are privileged or contain proprietary or confidential matters, and the party does not have a right to an immediate appeal, compliance the protection afforded by the privilege or confidentiality a nullity. [] Hence, where the appealed order has the effect of revealing the very thing the appellant is claiming should remain confidential, an immediate appeal may well be warranted and permitted by the appellate courts.” internal citations omitted)).

CONCLUSION

For the reasons stated above, Appellants respectfully submit this Petition for Rehearing asking the Court to address the circumstances where discovery orders can be appealed when orders require the production of confidential and proprietary information, and deny Respondents’ Motion to Dismiss.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.



Mark X. Gende
Ryan J. Patane
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR APPELLANTS

Columbia, South Carolina

October 12, 2018

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PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on Gary Locklear, individually and as Personal Representative of the Estate of Roy Locklear, by depositing a copy of the same in the United States Mail, Postage Prepaid, on October 12, 2018, addressed to their attorney of record, Patrick J. McLaughlin, Esquire, Post Office Box 13057, Florence, South Carolina 29504; to William H. Davison, II, as attorney for South Carolina Law Enforcement Division, P.O. Box 8568, Columbia, South Carolina; and Samuel F. Arthur, III, as attorney for Marlboro County, P.O. Drawer 1931, Florence, South Carolina 29503.

October 12, 2018



Mark W. Gende, Esquire
Ryan J. Patane, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29201
Attorneys for Appellant



SWEENY WINGATE & BARROW P.A.

October 12, 2018

Reply to: Main Office
Ryan J. Patane
(803) 256-2233 x7121
rjp@swblaw.com

VIA HAND DELIVERY

V. Claire Allen
Deputy Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29202

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SC Court of Appeals

RE: Gary Locklear v. Marlboro County, Dr. Bush, Southern Health Partners, et al.
Civil Action No.: 2017CP3400064
Appeal Case No.: 2018-001510
Our File: 5480-10735

Dear Ms. Allen:

Enclosed for filing are the original and six (6) copies of Appellants' Petition for Rehearing in the above-referenced matter. Please stamp and return a copy of the Petition and one copy of the Proof of Service to our courier. By copy of this correspondence with enclosures, opposing counsel is served with same.

Thank you for your assistance and should you have any questions or concerns, please do not hesitate to contact me directly.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Ryan J. Patane

RJP/smt
Enclosures

cc: Patrick J. McLaughlin, Esquire, Wukela Law Firm
Samuel F. Arthur III, Esquire, Aiken, Bridges, Nunn, Elliott and Tyler
William H. Davidson II, Esquire, Davidson & Lindemann, P.A.

S·W·B

SWEENEY WINGATE & BARROW P.A.

1515 LADY ST. (29201) ▪ PO BOX 12129 ▪ COLUMBIA, SC 29211

VIA HAND DELIVERY

V. Claire Allen
Deputy Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, SC 29202

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