

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
OCT 16 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.

RETURN TO APPELLANTS' PETITION FOR REHEARING

Patrick J. McLaughlin
Wukela Law Firm
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Attorney for Respondent

Respondent received the Appellants' Petition for Rehearing via email on October 12, 2018. This Return follows, pursuant to Rule 240(e) SCACR.

ARGUMENT

Appellants' petition for a rehearing arguing that the Court of Appeals did not address "exceptions to the general rule, recognized by the South Carolina Supreme Court" that discovery orders are generally not immediately appealable. (*Petition*, p.2). Appellants' petition continues to ignore the explicit requirements the South Carolina Supreme Court has imposed in order to appeal discovery orders and continues to mischaracterize a suggestion from a treatise as controlling precedent.

In what is now their third (3rd) filing since the Respondent's motion to dismiss pointed out the Appellants' failure to follow the South Carolina Supreme Court's explicit instructions on how a party may properly appeal a discovery order as outlined in Tucker v. Honda of South Carolina Manuf., 354 S.C. 574, 582 S.E.2d 405 (2005), the Appellants have yet to explain to this court why their failure to follow those instructions should be excused ("an order compelling discovery may be appealed **only** after the trial court holds a party in contempt." Tucker at 577, 406-407, emphasis added).

Instead of following these explicit instructions from a controlling South Carolina Supreme Court case, the Appellants take a suggestion offered in a treatise and try to elevate it to controlling precedent. The Appellants ignore the permissive-nature of the language used 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 instead they

try to cast that language as mandatory. Toal, *et al.*, Appellate Practice in South Carolina, 154 (2016, 3d ed), emphasis added. In doing so, the Appellants continue to refuse acknowledging that suggestion arises from 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, 475 S.E.2d 747 (1996). This case does not have those unique set of facts and as such, City of Columbia does not apply.

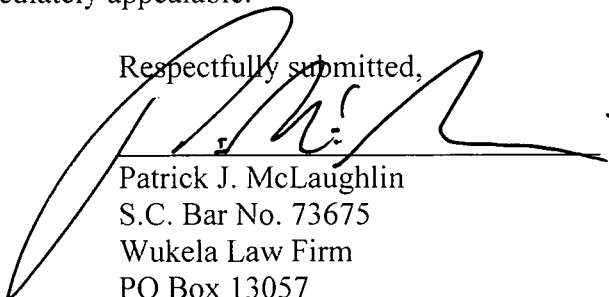
This latest attempt by the Appellants to continue to litigate a basic discovery dispute through the appellate courts without following the clear instructions from Tucker and appealing the discovery order **only** after the trial court has held them in contempt, is clearly an attempt by the Appellants 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 petition for rehearing on the grounds that it seeks to appeal a discovery order, which is interlocutory in nature and not immediately appealable.

October 15, 2018

Respectfully submitted,



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CERTIFICATE OF SERVICE

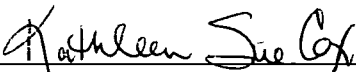
I, Kathleen Sue Cox, of the Wukela Law Firm, certify that she did serve copies of the Return to Appellants' Petition For Rehearing by the Respondent by depositing a copy of it and a Certificate of Service in the United States Mail, postage prepaid, on October 15, 2018, addressed to their attorneys of record. Said envelopes being addressed to the following person(s):

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

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Common Pleas Case No. 2017-CP-34-00064
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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 Return to Appellants' Petition For Rehearing by the Respondent;
2. Certificate of Service on the Appellants and Defendants;

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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First Class Mail

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Clerk, South Carolina Court of Appeals
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