

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JAN 22 2013

S.C. Supreme Court

IN THE MATTER OF THE CARE AND TREATMENT
OF THOMAS SIMMONS,

Appellant

v.

STATE OF SOUTH CAROLINA

RESPONDENT'S MOTION TO DISMISS APPEAL

On January 2, 2013, Appellant Thomas Simmons filed a Notice of Appeal in the S.C. Court of Appeals from an Order filed in the circuit court on December 6, 2012. Respondent State of South Carolina is informed the Notice of Appeal has been transferred to this Court for review. For the reasons set forth below, Respondent State of South Carolina hereby moves to dismiss the appeal as interlocutory.

1. The December 6, 2012 Order is not a final order. Rather, it is simply a scheduling order stating the matter will be set for re-trial after the appeal pending before this Court is resolved. That appeal is on the preliminary list for oral argument in March, 2013.

2. The December 6, 2012 Order does not grant, continue, modify or refuse an injunction of any kind. Rather, as stated above, it merely indicates when the matter will be set for re-trial.

3. The December 6, 2012 Order does not involve the merits of the action pending before the circuit court, nor does it affect a substantial right which determines the action and prevents a judgment from which appeal may be taken or discontinues the action. Further, it does not grant or refuse a new trial, or strike any pleading in the action, or any part thereof.

4. In short, the December 6 2012 Order is an interlocutory order that is not immediately appealable under any provision of S.C. Code §14-3-330 (1976 & 2012 Supp).

Based on the foregoing, Respondent State of South Carolina respectfully submits the appellate courts do not have jurisdiction to consider this appeal, and requests an order dismissing the appeal for lack of jurisdiction.

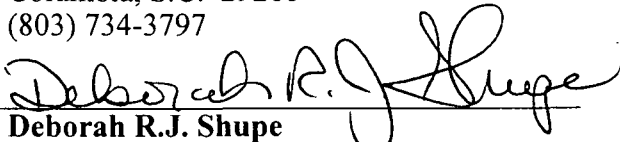
Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
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(803) 734-3797

By:



Deborah R.J. Shupe
Senior Assistant Deputy Attorney General
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Attorneys for Respondent Alan Wilson

Columbia, South Carolina

January 22, 2013

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE MATTER OF THE CARE AND TREATMENT
OF THOMAS SIMMONS,

Appellant

v.

THE STATE OF SOUTH CAROLINA,

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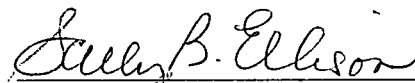
PROOF OF SERVICE

I, Sally B. Ellison, certify I served Respondent's Motion to Dismiss Appeal by depositing copies in the United States mail, postage prepaid, addressed to:

Gene M. Connell, Jr., Esquire (1 copy)
Kelaher, Connell & Connor, P.C.
PO Drawer 14547
Surfside Beach, SC 29587-4547

I further certify all parties required by Rule to be served have been served.

This 22nd day of January, 2013.


SALLY BELLISON
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3797



ALAN WILSON
ATTORNEY GENERAL

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Gene M. Connell, Jr., Esquire
Kelaher, Connell & Connor, P.C.
PO Drawer 14547
Surfside Beach, SC 29587-4547

Re: In the Matter of the Care and Treatment of Thomas Simmons, Appellant

Dear Mr. Connell:

Enclosed herewith and served upon you is one copy of Respondent's Motion to Dismiss Appeal, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

Enclosures

cc: ~~The~~ Honorable Daniel E. Shearouse (original and 7 copies enclosed)