

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2016-CP-40-00910
Appellate Case No. 2017-001750

RECEIVED
JAN 11 2019
SC Court of Appeals

Darris Hassell, Respondent,

v.

City of Columbia, Appellant.

REPLY

This motion is filed pursuant to Rule 240(f) of the South Carolina Appellate Court Rules and this Court's order of January 8, 2019 instructing any reply be filed within 5 days of that date.

First, under the appellate court rules the circuit court lacks jurisdiction to proceed with matters affected by a pending appeal. It is difficult to imagine what could be more affected by the City's appeal than the City's motion for the circuit court to set aside the very verdict on appeal. Respondent seeks to sanction the City for that very same motion. The starting point has to be that the circuit court lacks jurisdiction to proceed. There is no other way to read Rule 205.

Second, this case is different from *Holmes v. East Cooper Community Hospital*. There, the motion for sanctions was filed *before* the appeal began. The circuit court had jurisdiction to consider

that motion for sanctions because, as held in *Hudson v. Hudson*, filing a notice of appeal does not deprive the circuit court of jurisdiction to consider a timely post-trial motion. *Holmes v. E. Cooper Cmty. Hosp.*, 408 S.C. 138, 161, 758 S.E.2d 483, 496 (2014) (citing *Hudson v. Hudson*, 290 S.C. 215, 215, 349 S.E.2d 341, 341 (1986)). This is not that. This motion for sanctions was filed after the original notice of appeal. It was also filed after the amended notice of appeal.

Third, keep in mind Respondent's argument that his motion for sanctions is timely because it involves Rule 11, not the Frivolous Civil Proceedings Act, and is therefore not subject to the requirement that it be filed within 10 days. This is important. The upshot of Respondent's position is that a party would be allowed to wait more than 10 days after a ruling, wait further until after an appeal from that ruling has been filed, file a motion for sanctions under Rule 11, and then seek to disrupt the appellate process by asking for a remand. No authority supports *that* procedure. It is different from *Holmes*, where the request for sanctions preceded the appeal. It is also different from *Pee Dee Health Care v. Estate of Thompson*, where the Rule 11 motion was filed after the appeal had been decided. 424 S.C. 520, 524-525, 818 S.E.2d 758, 760 (2018).

If Respondent wanted sanctions to be decided before the appeal began, the time to request a remand would have been months ago, before the City filed its initial appellant's brief. Respondent could have sought a remand and an order lifting the stay immediately after he filed for sanctions. No such motion was filed. It is hard to see why Respondent did not file such a motion if he so ardently desired a ruling on sanctions before the parties briefed this appeal.

The City believes judicial economy weighs in favor of proceeding with briefing rather than halting this appeal for a remand. If the City's appeal *is not* successful, the circuit court will regain jurisdiction to consider the motion for sanctions. If the case was in that posture, it is possible the

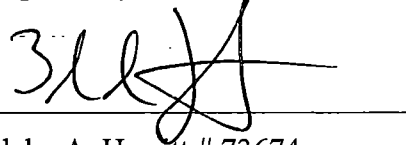
parties would be able to resolve the motion by agreement, obviating the need for the hearing. Remanding now would also guarantee an additional hearing and prolong an appellate process that has already been lengthy. It took over a year to adjudicate the City's final motion for a new trial.

If the City's appeal *is* successful, the motion for sanctions will be moot. Instead of halting this appeal and deciding an issue that may not need to be decided, the City believes this Court should adhere to its original decision and order this appeal to proceed.

January 11, 2019

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Blake A. Hewitt', is written over a horizontal line.

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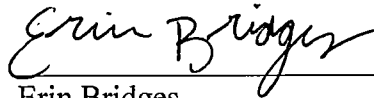
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City of Columbia Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with a copy of the *Reply* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

Paul L. Reeves, Esquire
Reeves and Lyle, LLC
PO Box 11126
Columbia, SC 29211



Erin Bridges

January 11, 2019

January 11, 2019

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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SC Court of Appeals

RE: Darris Hassell v. City of Columbia
Appellate Case No.: 2017-001750

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of the *Reply* in regards to this matter. I have also enclosed a Proof of Service upon counsel for the Respondent. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

Sincerely,



Erin Bridges
Paralegal to Blake A. Hewitt
BLUESTEIN THOMPSON SULLIVAN, LLC

/emb

Enclosures

cc: Paul L. Reeves, Esquire
W. Mike Hemlepp, Esquire