

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

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**Appellate Case No. 2018-002198**

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**RECEIVED**  
APR 15 2019  
SC Court of Appeals

Bernice G. Scott..... Appellant,

v.

Wiremonkey, LLC.....Respondent.

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**APPELLANT'S PETITION FOR REHEARING**

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Jefferson D. Griffith, III, S.C. Bar #: 2299,  
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**Other Counsel of Record:**

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**TABLE OF CONTENTS**

INTRODUCTION.....4

FACTS.....4

ARGUMENT FOR REHEARING.....5

CONCLUSION.....6

## INTRODUCTION

Appellant's counsel received correspondence from the Honorable Jenny Abbott Kitchings, dated December 21, 2018, requesting that the parties in this Appeal serve and file a Memoranda addressing the issue of appealability within 10 days of Ms. Kitchings' correspondence. Appellant's Memoranda of Law was filed and served on **January 2, 2019** and there was no Return from the Respondent. Thereafter, this Court issued its Order filed on April 4, 2019, finding that Appellant's Appeal was not immediately appealable. Appellant's Petition for Rehearing follows.

## FACTS

The Lower Court's Order was immediately appealable, because the Lower Court's Order affected the "mode and manner" of Trial for Plaintiff/Appellant. Plaintiff/Appellant's case was begun and filed in Circuit Court and after a Default by the Defendant/Respondent in Circuit Court, Plaintiff/Appellant's counsel applied to the Lower Court Judge for a Judgment by Default to complete the Default process in Circuit Court. The same Lower Court Judge had previously granted Plaintiff/Appellant an "Entry of Default" in this action on November 8, 2018. After an appropriate delay to allow for the Defendant/Respondent to seek relief from that Entry of Default, which did not occur, Plaintiff/Appellant's counsel sought a Judgment by Default. The Lower Court Judge then, *sua sponte* issued an Order on December 5, 2018, "remanding" Plaintiff/Appellant's case to the Magistrate's Court, although the case had never been in Magistrate's Court, at any time. On December 6, 2018, Plaintiff/Appellant's counsel objected to the Lower Court's action and Plaintiff/Appellant was notified by the Lower Court's staff that the Plaintiff/Appellant's objection was denied on the same date. The Lower Court Judge then apparently sent Plaintiff/Appellant's case to Circuit Court to a random Magistrate's office, not located near the Plaintiff/Appellant's residence.

## ARGUMENT FOR REHEARING

This Court overlooked or misapprehended the Law in South Carolina that an Order affecting “mood and manner” is immediately appealable and furthermore, that if an Order is immediate appealable, that Order must be immediately appealed or any right to appellate review, is barred forever.

Specifically, The Lower Court’s *sua sponte* Order changed and affected the “mode and manner”<sup>1</sup> of Plaintiff/Appellant’s Trial and affected a substantial right of Plaintiff/Appellant and therefore the Lower Court’s Order was immediately appealable. Lester v. Dawson, 327 S.C. 263, 266, 491 S.E. 2d 240, 241 (1997); e.g., Foggie v. CSX Transp., Inc., 431 SE 2d 587 (1993), “Issues regarding mode of trial **must be raised in the trial court at the first opportunity**, and the order of the trial judge is immediately appealable.” Foggie supra, at 590, (emphasis not in original).

Not only was the Lower Court’s Order immediately appealable, the Lower Court’s Order was required by South Carolina Law to be immediately appealed. If Plaintiff/Appellant had not immediately appealed the Lower Court’s Order, Plaintiff/Appellant’s right to Appellate review, would have been barred forever. Cobb v. South Carolina Dept. of Transp., 618 SE 2d 299 (2005). Lester, 327 S.C. at 266, 491 S.E. 2d at 241 (citing Foggie, 313 S.C. at 103, 431 S.E.2d at 590).

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<sup>1</sup> “Legislative words are to be given their plain and ordinary meaning. Smith v. Eagle Constr. Co., 282 S.C. 140, 318 S.E.2d 8 (1984). ‘Manner’ is defined as ‘[a] way, mode, method of doing anything, **or mode of proceeding in any case or situation.**’ BLACK’S LAW DICTIONARY at 868. (6th Ed.1990).” (Emphasis not in original). Dissent of Moore and Chandler JJ., Johnson v. Spartanburg County School D. 7, 444 SE 2d 501 (1994).

**CONCLUSION**

Based on the foregoing, this Court should rehear the issue of appealability and find that because (i) the Lower Court's *sua sponte* Order affected the "mode and manner" of Appellant's case, the Lower Court's Order was immediately appealable and (ii) furthermore, South Carolina Law requires that the Lower Court's Order be immediately appealed. Appellant's Appeal should proceed as originally filed.

**AUSTIN & ROGERS, P.A.**



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**As Counsel for Appellant/Petitioner.**

April 15, 2019  
Columbia, South Carolina

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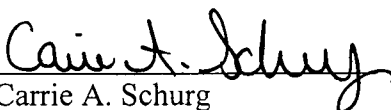
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**PROOF OF SERVICE**

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I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have caused Appellant's Petition for Rehearing and this Proof of Service, to be served on April 15, 2019, via U.S. Mail, as addressed below.

Mr. Corey Willis,  
Wiremonkey, LLC  
2126 Woodtrail Drive  
Columbia, South Carolina 29212  
*Pro Se*

  
Carrie A. Schurg

April 15, 2019  
Columbia, South Carolina