

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY  
CIRCUIT COURT

Robert E. Hood, Circuit Court Judge

Case No. 2019-000624

**RECEIVED**  
MAY 31 2019  
SC Court of Appeals

Dottie R. Bell.....Appellant,

v.

John C. Bentley .....Respondent.

**MEMORANDUM IN REPLY TO RESPONDENT’S MEMORANDUM ADDRESSING  
APPEALABILITY**

Comes now, Appellant in the above-styled action, and files this memorandum in reply to the Appealability Memorandum of Respondent. It is the position of the Appellant that the Circuit Court Judge’s denial of Plaintiff’s Motion to Substitute a Personal Representative or Real Party of Interest (“Motion to Substitute”) and subsequent denial of their Motion to Reconsider the Order is immediately appealable. None of the arguments proffered by Respondent support an alternative position.

**ARGUMENT**

- I. THIS INTERLCUTORY ORDER IS IMMEDIATELY APPEALABLE AS IT FALLS WELL WITHIN SECTION 14-3-330 (1), (2) AND (3) AND BECAUSE OF THIS, THIS COURT SHOULD FOLLOW THE PARAMETERS LAID OUT IN S.C.R.C.P. RULE 25(e) AND SUBSTITUTE A REAL PARTY OF INTEREST, BRYAN CASKEY.**

Defendant's first argument is that based upon the ruling of Judge Hood, "there is a nonexistent defendant, this action is a nullity, and therefore, no action is before the Court." Defendant later goes on to argue that Judge Hood's Order does not 1) finally determine the case 2) involve the merits, or 3) affect a substantial right as required by the statute. The Defendant cannot have it both ways.


Defendant is claiming that there is now a *non-existent* Defendant. In the same breath, they claim that notwithstanding that argument, Judge Hood's ruling does not determine the case, involve the merits of the case, or affect a substantial right of Plaintiff. Defendant points out that under Section 14-3-330(2), "to be immediately appealable...the order must 'in effect determine the action...or discontinue the action.'" By their own admission and argument, that is exactly what Judge Hood's Order does.

Because of this, this Court should follow Rule 25(e) of the South Carolina Rules of Civil Procedure which states, "Substitution of parties under the provision of [Rule 25] may be made...pending appeal, by the appellate court." Defendant fails to even acknowledge that the Rules allow this Court to take such an action. This Court should make the substitution of parties sought by Plaintiff. However, should this Court find that there are no exceptions that make this interlocutory appeal proper, this Court could make a substitution post final judgment of the trial Court.

### **CONCLUSION**

Based upon the foregoing reasons, Plaintiff has taken all proper steps in the filing of their Motion to Substitute and the interlocutory Order denying their Motion was improper. This current interlocutory Motion is proper for this Court, and Plaintiff prays this Court hear it.

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr. (73789)

C. David Beale, Jr. (102917)

2519 Devine Street, Suite A

Columbia, SC 29205

(803) 251-7517

(803) 251-7527 (f)

[jgoodwyn@goodwynlaw.com](mailto:jgoodwyn@goodwynlaw.com)

[dbeale@goodwynlaw.com](mailto:dbeale@goodwynlaw.com)

Attorneys for Plaintiff

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY  
CIRCUIT COURT

Robert E. Hood, Circuit Court Judge

Case No.: 2016-CP-28-1087

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Dottie R. Bell.....Appellant,

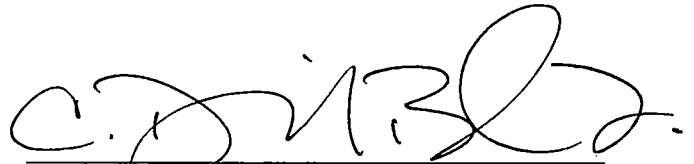
v.

John C. Bentley,.....Respondent.

**PROOF OF SERVICE**

I certify that I have served a copy of the **Memorandum in Reply to Respondent's Memorandum Addressing Appealability** on Carrie H. O'Brien, Esquire, Counsel for the Respondent, at the address below by depositing a copy of same in the United States Mail, postage prepaid, on May 30, 2019.

Carrie H. O'Brien, Esquire  
Walker Allen Grice Ammons & Foy, LLP  
225 East Worthington Avenue, Suite 200  
Charlotte, NC 28203



T. Jeff Goodwyn, Jr.  
C. David Beale, Jr.  
Goodwyn Law Firm, LLC  
2519 Devine Street, Suite A  
Columbia, SC 29205  
(803) 251-4517  
[jgoodwyn@goodwynlaw.com](mailto:jgoodwyn@goodwynlaw.com)  
[dbeale@goodwynlaw.com](mailto:dbeale@goodwynlaw.com)  
Attorneys for Appellant

May 30, 2019

# GOODWYN LAW FIRM, LLC

T. Jeff Goodwyn, Jr.\*  
C. David Beale, Jr.\*

Reply to:  
2519 Devine Street  
Suite A  
Columbia, South Carolina 29205

111-B Congress Street  
Winnsboro, South Carolina 29180

Tel. (803) 251-4517 (Columbia)  
Fax (803) 251-4527

Tel. (803) 635-1920 (Winnsboro)  
Fax (803) 635-2100

Email: jgoodwyn@goodwynlaw.com  
dbeale@goodwynlaw.com  
Web: www.goodwynlaw.com

\*Also Licensed in Georgia

May 30, 2019

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RE: Dottie R. Bell v. John C. Bentley**  
*Appellate Case No.: 2019-000624*  
*Our File No.: 8000-0260*

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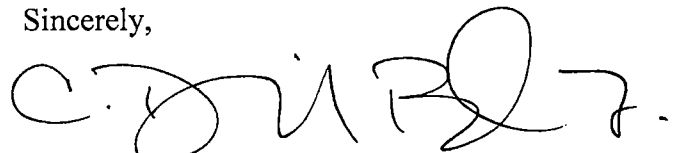
Dear Ms. Kitchings:

Enclosed for filing, please find the original and one copy of the **Memorandum in Reply to Respondent's Memorandum Addressing Appealability** and Proof of Service in regard to the above referenced matter. Please return a filed copy of same in the self-addressed stamped envelope provided.

As evidenced in the Proof of Service, I have served Carrier H. O'Brien, Esquire, counsel for the Respondent, with a copy of same.

Thank you for your attention to this matter and should you have any questions, please do not hesitate to contact me.

Sincerely,



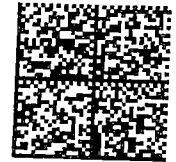
C. David Beale, Jr.

TJG/msb  
Enclosures

cc: Carrie Hailman O'Brien, Esquire

Goodwyn Law Firm, LLC  
2519 Devine Street, Suite A  
Columbia, S.C. 29205

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