

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Appellate Case No. 2017-000636

RECEIVED
JUN 12 2019
SC Court of Appeals

Amy Garrett, as Parent and Natural Guardian of C.A. V.S., Respondent,

v.

Antoine Van Steenwijk.....Appellant.

And

Amy Garrett.....Respondent,

v.

Antoine Van SteenwijkAppellant.

RESPONDENT’S MEMORANDA ON APPEALABILITY

Respondent Amy Garrett, individually and as Parent and Natural Guardian of C.A. V.S., submits this response to the Court’s May 31, 2019 letter regard appealability. The order on appeal is immediately appealable because it involves the merits and finally determines liability.

The Order on appeal is an order granting Plaintiff’s motion for summary judgment as to liability only. (R. pp. 1-3). It leaves open the issues of causation and damages. *Id.* “[A]n order granting summary judgment only on the issue of liability, leaving for determination the question of damages, is immediately appealable.” Toal, Jean H, et. al, Appellate Practice in South Carolina,

162 (3d ed. 2016) (citing *Nauful v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (1972)). In *Nauful*, the Supreme Court held that an order granting summary judgment “on the issue of liability alone, leaving only the question of damages for determination”, was immediately appealable. 258 S.C. at 142, 187 S.E.2d at 512. The Court explained, “[t]he interlocutory adjudication in this case determines that the defenses interposed by defendant are without merit and that he is liable to the plaintiff on the claim asserted in the complaint, leaving only the amount of the damages at issue.” *Id.* at 143, 187 S.E.2d at 513. Similarly, in this case, the Order on appeal determines that the defense of sudden emergency is without merit and that the Defendant’s deposition testimony is an admission of negligence. (R. pp. 2-3). Therefore, the Order finally determines issues that involve the merits of the action, and it is immediately appealable.

“The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330.” *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005). “An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable.” *Id.* at 195, 607 S.E.2d at 708. The Order granting Plaintiff’s motion for summary judgment as to liability involves the merits and affects a substantial right by striking out Defendant’s denial of liability and granting Plaintiff’s pleading asserting liability. S.C. Code Ann. § 14-3-330(1)-(2); see *Brown v. County of Berkeley*, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005) (“To involve the merits of a case, the order must finally determine some substantial matter forming the whole or a part of some cause of action or defense. To affect a substantial right, the order must determine the action and prevent a judgment from which an appeal might be taken or discontinue the action.” (internal quotation marks and citation omitted)).

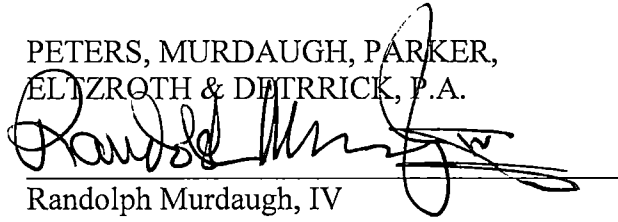
CONCLUSION

Respondent requests the Court address the merits of the appeal as briefed by the parties.

Respectfully submitted,

June __, 2019

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETTRICK, P.A.

A handwritten signature in black ink, appearing to read "Randolph Murdaugh, IV", written over a horizontal line.

Randolph Murdaugh, IV
101 Mulberry Street East
Post Office Box 457
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Phone: (803) 943-2111
Fax: (803) 914-2014
Attorney for Respondent

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Circuit Case No. 2015-CP-15-1124 & 1125
Appellate Case No. 2017-000636

Amy Garrett, as Parent and Natural Guardian of C. A. V. S.Respondent,

v.

Antoine Van Steenwijk..... Appellant.

And

Amy Garrett, Respondent,

v.

Antoine Van Steenwijk..... Appellant

CERTIFICATE OF SERVICE

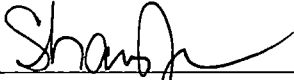
This is to certify that I, *Shanna M. Jarrell*, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Plaintiff(s), have this date forwarded via facsimile and mailed via the U.S. Postal Service, a true and correct copy of the within *Respondents' Memoranda on Appealability* with first class postage prepaid to:

Turner Padget Graham & Laney, PA
David S. Cobb, Esquire

P.O. Box 22129
Charleston, SC 29413

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

June 10, 2019
Hampton, SC

BY: 

Shanna M. Jarrell

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

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June 10, 2019

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
PO Box 11629
Columbia, SC 29211-1629

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*Re: Amy Garrett v. Antoine Van Steenwijk
Appellate Case No. 2017-000636*

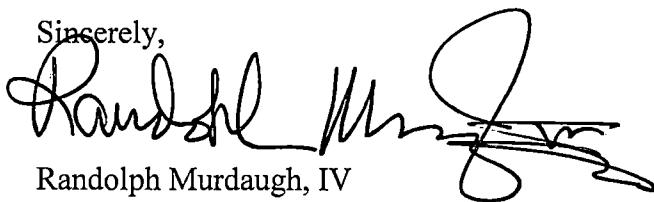
Dear Ms. Kitchings:

Enclosed please find the original and one copy of Respondent's Memoranda on Appealability regarding the above referenced matter. Please return a filed copy in the envelope provided.

By copy of this letter a copy is being served on counsel of record.

With kind regards, I am

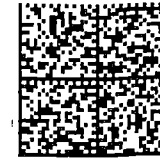
Sincerely,



Randolph Murdaugh, IV

RMIV/smj
Enclosures

CC: David Starr Cobb, Esquire



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