

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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JUN 17 2019

APPEAL FROM COLLETON COUNTY  
In the Court of Common Pleas

SC Court of Appeals

Perry M. Buckner, III, Circuit Court Judge

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 Steenwicjk..... Appellant.

And

Amy Garrett..... Respondent,

v.

Antoine Van Steenwicjk..... Appellant.

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**APPELLANT'S MEMORANDUM**

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Pursuant to the May 31, 2019 letter, Appellant offers the following comments in regard to the question of: whether an order in a negligence action which grants summary judgment as to liability only, but leaves open the issue of causation, damages, and comparative negligence is immediately appealable pursuant to S.C. Code Ann. § 14-3-330 and Nauful v. Milligan, 258 S.C. 139 187 S.E.2d 511 (1972).

Appellant asserts that the statute and precedent clearly hold that the trial court's order in these cases granting summary judgment order on the issue of fault

adverse to Appellant is immediately appealable. According to S.C. Code Ann. § 14-3-330, appellate review is available for:

(1) Any intermediate judgment, order or decree in a law case involving the merits and actions commenced in the Court of Common Pleas and General Sessions, brought there by original process or removed there from any inferior court of jurisdiction, and final judgments in such action; provided, that if no appeal be taken until final judgment is entered at the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action; (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

In Link v. Co District of Pickens County, 302 S.C. 1, 393 S.E.3d 176 (1990), the South Carolina Supreme Court stated that an order granting summary judgment was immediately appealable under S.C. Code Ann. § 14-3-330(2)(c) when that order had the effect of striking out a pleading and was immediately appealable under Section 14-3-330(1) when the order “involv[ed the] merits.” Id. (citing Nauful v. Milligan, 258 S.C. 139, 187 S.E.2d 511 (1972)). In that decision, the Court also cited Jefferson by Johnson v. Gene’s Used Cars, Inc., 295 S.C. 317, 368 S.E.2d 456 (1980) for the proposition that an order “involve[d] the merits” when the order finally determined “some substantial matter forming the whole or a part of some cause of action or defense.” Id., 393 S.E.2d at 179.

Further, in Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 500 S.E.2d 793 (Ct. App. 1998), the South Carolina Court of Appeals held that an order denying a Rule 12(b)(6), SCRPC, motion and finding the defendant liable for civil compensatory contempt was immediately appealable. In that case, the plaintiff contended the order was not final because the damages were undetermined and the merits of the cause of action for fraud had not been decided. The Court of Appeals concluded, however, that the order involved the merits and determined a substantial matter

forming the underlying cause of action. Petoseed's issues, therefore, were immediately appealable. Id., 500 S.E.2d at 793 n.1.

Further, in an unpublished opinion, Lucas v. Rawl Family Limited Partnership, 207 WL8434582 (2007), the South Carolina Supreme Court stated that, "an order granting a motion for partial summary judgment is immediately appealable." That decision cited the applicable statute and the Nauful decision.

In these current appeals, the trial court's decision that struck Appellant's first defense (the general denial of fault) and Appellant's ability to argue that he was not at fault because of a sudden emergency struck out a part of Defendant's answer. The order in effect decided the fault issue because the incident at question was a single-car accident after a tire blow-out, Appellant was the driver of the vehicle, and Respondents were the passengers in his vehicle. Consequently, this appeal was proper pursuant to S.C. Code Ann. § 14-3-330(2)(c). In addition, the partial summary judgment order also in effect determined the action because it addressed the fault issue adversely to Appellant, which clearly would be a substantial matter forming part of Appellant's defense. Therefore, the order "involved the merits" and was immediately appealable pursuant to S.C. Code Ann. 14-3-330(1).



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ATTORNEYS FOR APPELLANT

June 12, 2019

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM COLLETON COUNTY

In the Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

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 Steenwiczj..... Appellant.

And

Amy Garrett..... Respondent,

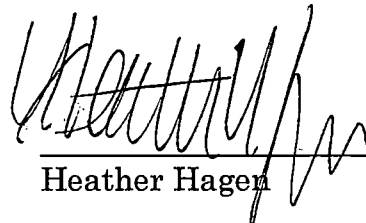
v.

Antoine Van Steenwiczj..... Appellant.

PROOF OF SERVICE

On June 13, 2019, I mailed a copy of **Appellant's Memorandum** to:

Randolph Murdaugh, IV  
Post Office Box 457  
Hampton, South Carolina 29924  
**Attorney for Respondents**

  
Heather Hagen

# Turner | Padget

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June 11, 2019

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

Re: 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  
Appellate Docket No.: 2017-000636  
TP File No.: 1464.7360

Dear Ms. Kitchings:

We enclose the original and a copy of Appellant's Memorandum, and proof of service. Please file the original and return a filed copy in the enclose envelope. If you have any questions or need additional information, please call me at your convenience. With kind regards,

TURNER PADGET



David S. Cobb

DSC/hah  
enclosures

cc: Randolph Murdaugh, IV (with enclosures)

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JUN 17 2019

SC Court of Appeals

# Turner Padget

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