

STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

**RECEIVED**  
OCT 14 2019  
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge  
Case No. 2018-CP-23-05309  
Appellate Case No. 2019-001605

---

Lucas Marchant,.....Respondent,

v.

John Doe and John Doe d/b/a as Democrats for Marchant,  
of which John Doe is the..... Appellant.

---

**MEMORANDUM ON  
APPEALABILITY**

---

Appellant John Doe<sup>1</sup> has appealed from an order that is neither final nor appealable under any other authority. This Court should dismiss the appeal and remand the matter to the Circuit Court to continue litigation.

**PROCEDURAL HISTORY**

Plaintiff Lucas Marchant, on October 16, 2018, filed a summons and complaint against John Doe asking for injunctive and declaratory relief related to violations of South Carolina campaign finance law. There was no response until John Doe, through counsel, filed a motion to quash subpoenas to Facebook on January 2, 2019.

On January 18, 2019, Plaintiff amended his Complaint, dropping his request for

---

<sup>1</sup> It is not entirely clear which Doe is which. One Doe appeared and then a second Doe appeared and claimed to be different from the first Doe. Marchant simply refers to "Doe" as the opposing party. It would be impossible to tell who is who without discovery in this case.

injunctive relief and adding a cause of action for defamation. Because there had been no responsive pleadings served at the time of the amendment, Plaintiff's amendment was properly filed without leave of Court, pursuant to Rule 15 or the South Carolina Rules of Civil Procedure.

The January motion to quash raised the following grounds in support of the motion: (1) the First Amendment right to publish anonymously; (2) the lack of false or fraudulent statements made by the Defendants; and (3) the lack of electioneering communication or campaign contributions.

A hearing was held on January 24, 2019, in front of Judge Gravely. Judge Gravely denied the motion to quash. He specifically found there was no constitutional right to make statements on Facebook such as those at issue in this case.

On February 25, 2019, John Doe filed an Answer in the case, denying all allegations and asserting no affirmative defenses. John Doe also filed a notice of appeal, intending to appeal Judge Gravely's order. This Court found the order from which Doe sought to appeal was not a final order and an appeal was improper. The matter was remanded to the Court of Common Pleas.

On May 10, 2019, there was an answer, motion to dismiss, motion to quash, and motion for a protective order filed by John Doe. The filings were from a John Doe who claimed to be a different John Doe than had previously appeared and filed an answer and motion in this case.

The Court of Common Pleas issued an order on August 28, 2019, denying all the Defendants' motions and ordering the case to proceed. Specifically, the circuit court ruled it had subject matter jurisdiction over Marchant's complaint. It declined to dismiss the case, finding the speech at issue in the case was not protected.

The Court also denied a protective order to Defendant John Doe. Doe sought to block discovery by arguing the case had not been served and was not “commenced” under the South Carolina Rules of Civil Procedure. Doe also moved to quash a subpoena to Facebook. The circuit court denied that motion.

### ARGUMENT

A party’s right to appeal is governed by statutory law. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6 (2006). An appeal can typically be pursued only after a final judgment in the matter. *Id.*; S.C. Code § 14-3-330; Rule 72, SCRCF; Rule 201(a), SCACR. To be immediately appealable, an order must fall within one of the subsections of §14-3-330. *Energys Del., Inc. v. Hopkins*, 401 S.C. 615, 617 (2013).

§14-3-330 sets four classes of orders that may be immediately appealable: (1) an order involving the merits of the action; (2) an order affecting a substantial right when the order would prevent judgment or discontinue the action, grants or refuses a new trial, or strikes a pleading; (3) affects a substantial right in a special proceeding after judgment; or (4) relates to an injunction or the appointment of a receiver. *Id.* Subsections 3 and 4 do not apply in this case. Subsection 1 does not apply; the order from the lower court simply ordered the case to proceed through discovery. It does not serve as a ruling on the merits.

Subsection 2 requires the order to affect the substantial rights of a party if *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.* §14-3-330(2)(emphasis added). This subsection, along with the rest has been narrowly construed to generally disallow the immediate appeal or orders issued before or during a

case. *Hagood v. Summerville*, 362 S.C. 191, 196 (2005). The Supreme Court has cautioned that piecemeal appeals should be avoided. *Id.*

The Court disfavors these piecemeal appeals for good reason. Factual disputes, and even the legal issues they trigger, are often best resolved by the trial court. In this case, two separate trial courts have considered the exact issues raised in this appeal. None of those orders were rulings on the merits. They were simply rulings on whether discovery and litigation in this case can proceed. The Defendants have not lost any mode of trial nor been prevented from choosing their representation. *Hagood v. Summerville*, 362 S.C. 191, 197 (2005)(an order granting a motion to disqualify a party's attorney affects a substantial right and may be immediately appealable, as is an order depriving a party of a particular mode of trial to which it is entitled).

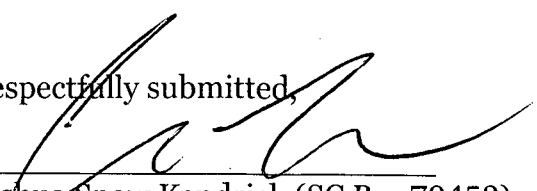
Even if Doe were to prove the trial court order involved a substantial right, which Marchant does not concede, that is only one element required for an appeal. An appeal affecting a substantial right must not only involve the right but must prevent a judgment from which the affected party can appeal. *Cobb v. Maccaro*, 310 S.C. 303, 305 (Ct.App. 1992).

The trial court has twice thoroughly analyzed Doe's claims it should not have to participate in this case and has twice ruled against Doe. Doe can certainly continue with this case and defend the defamation and ethics law causes of action until a ruling is rendered. Only at that time would an appeal be appropriate.

### **CONCLUSION**

Doe again appeals a non-final order related to participation in discovery and litigation. This Court should dismiss the appeal, remand the matter, and order any further relief required to Marchant.

Respectfully submitted,



---

Joshua Snow Kendrick (SC Bar 70453)  
Christopher S. Leonard (SC Bar 80166)  
KENDRICK & LEONARD, P.C.  
506 Pettigru Street (29601)  
P.O. Box 6938  
Greenville, SC 29606  
(864) 760-4000  
[Josh@KendrickLeonard.com](mailto:Josh@KendrickLeonard.com)

Greenville, South Carolina  
October 14, 2019

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2018-CP-23-05309  
Appellate Case No. 2019-001605

**RECEIVED**  
OCT 14 2019  
SC Court of Appeals

Lucas Marchant,.....Respondent,

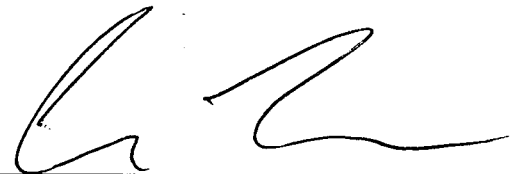
v.

John Doe and John Doe d/b/a as Democrats for Marchant,  
of which John Doe is the,.....Appellant.

CERTIFICATE OF SERVICE

The Memorandum of Appealability in this case were served by U.S. Postal Service this 14<sup>th</sup>  
day of October 2019 to the following address:

Samuel D. Harms  
33 Markey Point Drive  
Greenville, SC 29607



Christopher S. Leonard  
KENDRICK & LEONARD, P.C.  
P.O. Box 886  
Columbia, SC 29202  
(803) 667-3186