

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Order, of the South Carolina Court of Appeals,
filed, April 4, 2019,
(Rehearing Denied, September 27, 2019)

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SC Court of Appeals

Bernice Scott.....Petitioner,

v.

Wiremonkey, LLC.....Respondent.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on September 27, 2019 and received by counsel for Petitioner on September 30, 2019.

INTRODUCTION

The decision of the Court of Appeals in this matter is in direct conflict with prior decisions of the South Carolina Supreme Court in a line of cases from the 2000's (State v. Wilson, 693 SE 2d 923 (2010)), dating back to at least the 70's, (Pelfrey v. Bank of Greer, 244 SE 2d 315 (1978)).

QUESTIONS PRESENTED FOR REVIEW

- I. THE COURT OF APPEALS MISAPPREHENDED OR OVERLOOKED PRIOR DECISIONS OF THIS COURT, THAT IF AN ORDER DEPRIVES A PARTY OF ITS SUBSTANTIAL RIGHT TO MODE AND MANNER OF TRIAL, THAT ORDER IS IMMEDIATELY APPEALABLE.

- II. THE COURT OF APPEALS MISAPPREHENDED OR OVERLOOKED PRIOR DECISIONS OF THIS COURT, THAT IF AN ORDER DEPRIVES A PARTY OF ITS SUBSTANTIAL RIGHT TO MODE AND MANNER OF TRIAL, THAT ORDER IS IMMEDIATELY APPEALABLE AND FAILURE TO IMMEDIATELY APPEAL THE ORDER, FOREVER BARS APPELLATE REVIEW.

STATEMENT OF FACTS

The Lower Court Judge issued an Order on December 5, 2018 **remanding** this case to the Magistrate's Court, although Petitioner's case had never been in the Magistrate's Court (*Appendix pg. 14*). In fact, Petitioner's case was begun and filed in Circuit Court. Petitioner filed her Notice of Appeal with the South Carolina Court of Appeals on December 12, 2018, (*Appendix pg. 17*). Thereafter, Petitioner's counsel received correspondence from the Honorable Jenny Abbott Kitchings, dated December 21, 2018, requesting that the parties in the Appeal serve and file a Memorandum addressing the issue of appealability, (*Appendix pg. 22*). Petitioner thereafter filed her Memorandum of Law on appealability on January 2, 2019, (*Appendix pg. 24*). Respondent did not file a Memorandum. Thereafter, the Court of Appeals issued its Order of April 4, 2019, finding that the Order Petitioner was appealing, was not immediately appealable, (*Appendix pg. 38*). Petitioner filed a timely Petition for Rehearing, (*Appendix pg. 31*), which was denied by the Court of Appeals on September 27, 2019, (*Appendix pg. 37*). Petitioner's Petition for Writ of Certiorari follows.

STATEMENT OF THE CASE

The Lower Court's Order was immediately appealable because the Lower Court's Order affected a substantial right of the Petitioner and affected the "mode and manner" of Trial for the Petitioner. Petitioner's case was begun and filed in Circuit Court. After a Default by the Respondent, Petitioner's counsel applied to the Lower Court Judge for a Judgment by Default to complete the Default process in the Lower Court. The same Lower Court Judge had previously granted Petitioner an "Entry of Default" in the action below on November 8, 2018, (*Appendix pg. 8*). After an appropriate delay to allow for the Respondent to seek relief from that Entry of Default, which the Respondent did not seek relief from, Petitioner's counsel sought a Judgement by Default from the Lower Court Judge, to complete the default process. The Lower Court Judge then, *sua sponte*, without a Hearing or Notice to Petitioner, issued an Order on December 5, 2018, "**remanding**" Petitioner's case to the Magistrate's Court, although Petitioner's case was not filed in, and had never been in, Magistrate's Court at any time, (*Appendix pg. 14*). Petitioner had paid the then required \$150 filing fee to the Lower Court to file Petitioner's Complaint and presumably the Magistrate's Court would have also required a filing fee, if Petitioner had not appealed. On December 6, 2018, Petitioner counsel objected to the Lower Court's action (*Appendix pg. 11*). Petitioner was notified by the Lower Court's staff that the Petitioner's objection was denied on the same date, (*Appendix pg. 12*). The Lower Court Judge then apparently sent Petitioner's case from the Lower Court to a random Magistrate's office, not located near the Petitioner's residence.

ARGUMENT

- I. THE COURT OF APPEALS MISAPPREHENDED OR OVERLOOKED PRIOR DECISIONS OF THIS COURT, THAT IF AN ORDER DEPRIVES A PARTY OF ITS SUBSTANTIAL RIGHT TO MODE AND MANNER OF TRIAL, THAT ORDER IS IMMEDIATELY APPEALABLE.

The Lower Court's *sua sponte* Order changed and affected the "mode and manner"¹ of Petitioner's Trial and affected a substantial right of Petitioner 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.

Right to Mode of Trial is a Substantial Right.

This Court has found that the right to a particular mode of trial is a well-established substantial right. State v. Wilson, 693 SE 2d 923 (2010).

¹ "In construing a statute, the 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**." BLACKS LAW DICTIONARY at 868 (6th Ed. 1990); (Emphasis not in original).

This Court has Provided Clear Guidance for Right of Mode of Trial.

The South Carolina Court of Appeals, disregarded or overlooked this Court's clear guidance on a denial of mode of trial, "In a well-established exception to the general rule, **we repeatedly have held that the denial of a party's right to a particular mode of trial is immediately appealable as a substantial right under Section 14-3-330(2)**. See Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 72, 533 S.E. 2d 331, 333 (2000) ('Pursuant to § 14-3-330(2), this Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable.')

(additional citations omitted); (emphasis not in original) Hagood v. Sommerville, 607 SE 2d 707 (2005).

II. THE COURT OF APPEALS MISAPPREHENDED OR OVERLOOKED PRIOR DECISIONS OF THIS COURT, THAT IF AN ORDER DEPRIVES A PARTY OF ITS SUBSTANTIAL RIGHT TO MODE AND MANNER OF TRIAL, THAT ORDER IS IMMEDIATELY APPEALABLE AND FAILURE TO IMMEDIATELY APPEAL THE ORDER, FOREVER BARS APPELLATE REVIEW.

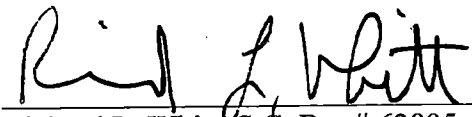
Not only was the Lower Court's Order immediately appealable, the Lower Court's Order was **required by prior decisions of this Court, to be immediately appealed**. If Petitioner had not immediately appealed the Lower Court's Order, Petitioner's right to Appellate review, would have been barred forever. Cobb v. South Carolina Dept. of Transp., 618 SE 2d 299 (2005). Lester v. Dawson, 266, 491 S.E. 2d 240, 241 (1997) (citing Foggie, 313 S.C. at 103, 431 S.E. 2d at 590). Hagood v. Sommerville, 607 SE 2d 707 (2005).

CONCLUSION

For the reasons stated, Petitioner asks the Court to grant the Petition for Writ of Certiorari.

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October 24, 2019
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