

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

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**RECEIVED**

DEC 27 2019

Appellate Case No. 2019-001224

Case No. 2018-CP-40-5641

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SC Court of Appeals

Ronald I. Paul, .....

Appellant,

v.

South Carolina Department of Transportation; Paul D. de Holczer, individually and as a partner of the law firm of Moses, Koon & Brackett, PC; Michael H. Quinn, individually and as senior lawyer of Quinn Law Firm, LLC; J. Charles Ormond, Jr., individually and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner; Oscar K. Rucker, in his individual capacity as Director, Rights of Way South Carolina Department of Transportation; Macie M. Gresham, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; Natalie J. Moore, in her individual capacity as Assistant Chief Counsel, South Carolina Department of Transportation,..... Respondents.

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**RESPONDENTS' RETURN TO APPELLANT'S  
MOTION TO STRIKE ITEMS DESIGNATED  
FOR INCLUSION IN THE RECORD ON APPEAL**

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The Appellant Ronald Paul has filed a motion to exclude certain documents designated by the Respondents South Carolina Department of Transportation, Paul

D. de Holczer, Oscar K. Rucker, Macie M. Gresham, and Natalie J. Moore for inclusion in the Record on Appeal. Specifically, the Appellant seeks to strike or exclude the Motion to Dismiss filed by the Respondents and the supporting memorandum and filings (including prior orders from 2008 state court litigation and numerous federal court lawsuits) as well as the Order Granting Motions to Dismiss issued by Judge Jocelyn Newman filed November 13, 2019.

Rule 209(b), SCACR, provides that "the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." Rule 210(c), SCACR, then provides that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal."

The Motion to Dismiss filed by the Respondents and the supporting memorandum and filings (including prior orders from 2008 state court litigation and numerous federal court lawsuits) were definitely in the lower court's record at the time of the motion hearing held on April 16, 2019 and the decision issued by Judge Casey Manning on June 7, 2019. That motion and the procedural history that is addressed in those filings were discussed at length during the hearing before Judge Manning, which is well reflected in the transcript of the hearing attached as Exhibit C to the Appellant's motion. Thus, the procedural history is in the lower court record and was addressed with Judge Manning, which makes those documents from the

lower court record properly designated for the Record on Appeal. That history was designated because it supports the Respondents' argument that the Appellant has not and cannot make a showing to satisfy the exception in Rule 55(e), SCRCP. Judge Manning, in his Order, had concluded that Rule 55(e) provides "an additional basis for denying the Plaintiff's request for a default judgment to be entered against Rucker and Gresham." *See*, June 7, 2019 Order, p. 6.


As for the Order Granting Motions to Dismiss issued by Judge Jocelyn Newman filed November 13, 2019, that was admittedly not in the lower court record at the time of Judge Manning's Order. However, this is an interlocutory appeal, and the case has proceeded in the lower court since the appeal was filed. In that interim, the Respondents' Motions to Dismiss have been granted. It is anticipated that the Appellant will be filing an appeal from that Order, and that the appeals will then likely be consolidated. However, even if that does not occur, the November 13, 2019 Order was designated for inclusion in this Record on Appeal because the Respondents in their brief urged this Court to take judicial notice of that Order. Of course, as this Court has held in the past, it is well settled that "[a] court can take judicial notice of its own records, files, and proceedings for all proper purposes including facts established in its records." *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325, 327 (Ct. App. 1984).

Moreover, the November 13, 2019 Order is cited as support for additional sustaining grounds raised by the Respondents in their brief. That Order is clearly in the lower court record, and that cannot be disputed. In the case of *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), the Supreme Court explained that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." 526 S.E.2d at 723. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id.* See also, Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record"); Rule 207(b)(2), SCACR ("[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)"). In short, the November 13, 2019 Order is properly designated for inclusion in the Record on Appeal for that additional reason.

Based on the foregoing discussion, the Respondents SCDOT, de Holczer, Rucker, Gresham, and Moore respectfully request that the Court deny the Appellant's motion for exclude those filings and the November 13, 2019 Order from the Record on Appeal.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES P.A.

BY: 

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*Counsel for Respondents South Carolina  
Department of Transportation; Paul D. de  
Holczer, Oscar K. Rucker, Macie M.  
Gresham, and Natalie J. Moore*

December 20, 2019

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**CERTIFICATE OF SERVICE**

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The undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Respondents South Carolina Department of Transportation; Paul D. de Holczer, Oscar K. Rucker, Macie M. Gresham, and Natalie J. Moore, does hereby certify that service of **Respondents' Return to Appellant's Motion to Strike Items Designated for Inclusion in the Record on Appeal** was made upon the *pro se* Appellant and all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 20th day of December 2019:

Mr. Ronald I. Paul  
Post Office Box 4353  
Columbia, South Carolina 29240

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DEC 27 2019

Michael H. Quinn, Esquire  
Quinn Law Firm, LLC  
Post Office Box 6903  
Columbia, South Carolina 29260

SC Court of Appeals

J. Charles Ormond, Jr., Esquire  
Ormond - Dunn  
301 Stoneridge Drive  
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5 Calendar Court, Suite 202 (29206)  
Post Office Box 6923  
Columbia, South Carolina 29260

December 20, 2019

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Ronald I. Paul v. South Carolina Department of Transportations; Paul D. de Holczer, individually and as a partner of the law firm of Moses, Koon & Brackett, PC; Michael H. Quinn, individually and as senior lawyer of Quinn Law Firm, LLC; J. Charles Ormond, Jr. individually and as partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plante & Garner; Oscar K. Rucker, in his individual capacity as Director, Rights of Way South Carolina Department of Transportation; Macie M. Gresham, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; Natalie J. Moore, in her individual capacity as Assistant Chief Counsel, South Carolina Department of Transportation  
Court of Appeals Case Number: 2019-001224  
Civil Action Number: 2018-CP-40-5641  
Our File Number: 79.20087

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Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of **Respondents' Return to Appellant's Motion to Strike Items Designated for Inclusion in the Record on Appeal** in the above referenced matter. Please file the original and return a clocked-in copy to me in the enclosed envelope. By copy of this letter, I am serving copies on the *pro se* Appellant and all other counsel of record.

Thank you for your assistance in this matter. If you have any questions, please advise.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb  
Enclosures

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*\*Also Admitted in North Carolina  
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*Of Counsel*

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The Honorable Jenny Abbott Kitchings  
December 20, 2019  
Page Two

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cc: (w/ Enclosure)

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