

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
DEADRA L. JEFFERSON, Circuit Court Judge

Case e No. 2015-CP-10-5000
Appellate Case No. 2019-000640

Jim Washington,.....Petitioner,
v.
Trident Medical Center, LLC.....Respondent.

PETITION FOR A WRIT OF CERTIORARI

Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
WTS Transport, LLC@yahoo.com
803-496-4655
Petitioner, Pro Se

RECEIVED
FEB 05 2020
SC Court of Appeals

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S.C. SUPREME COURT

CERTIFICATION


TO: DANIEL E.SHEAROUSE
CLERK OF COUURT

POST OFFICE BOX 11330
COLUMBIA, S.C. 29211
1231 GERVAIS STREET 29201
803-734-1080

JANUARY 27, 2020

Re: Jim Washington v. Trident Medical Center, LLC
Appellate Case No. 2019-000640

Please take note that Petitioner, Jim Washington do certify that a petition for rehearing of supersedeas/stay was made a finally denied on January 7, 2020 by the South Carolina Court of Appeals.

s/ 
Jim Washington
609 Signet Drive
Eutawville, S.C. 29048
WTS Transport, LLC@yahoo.com
803-496-4655
Petitioner, Pro Se

INTRODUCTION

In *Jim Washington v. Trident Medical Center, LLC*, The S.C. Court of Appeals Order filed on January 7, 2020 (Op.No. 2019-000640) incorrectly denied Petitioner's request to rehear the petition for supersedeas/stay to correct its own errors which were misapprehended, overlooked and failed to consider to make a correct determination to stay the appeal and remand the action to the circuit court. The Court of Appeals incorrectly refused to entertain to rehear the petition to correct its own errors which in effect dismiss the appeal by adopting Respondent's attorneys deliberate false contentions in their opposition to supersedeas/stay that all viable post-trial motions were entertained and ruled on and to affirmed the circuit court's orders and dismissal of the appeal because the issues Petitioner raised were manifestly moot. The Court of Appeals also incorrectly adopted Respondent's opposition to rehear/clarify in toto which deprived Petitioner of the opportunity to present his case and be heard that denial of rehearing in effect decided the appeal and dismiss the appeal on the issues of extrinsic fraud/invalid contract consent agreement and jurisdiction.

Petitioner Jim Washington ("Petitioner") now petitions this Court for certiorari. As shown herein, at least two of the factors in Rule 242(b), SCACR exist to justify the issuance of the writ. There is a novel question of law, conflict with this Court's precedent, constitutional issues and conflict with the United States Supreme Court's decision. The petition should be granted.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Petitioner, initiated this action by filing an appeal in the Court of Appeals followed by a request for extension of time to correct the transcript of the circuit court hearing. Petitioner, then proceeded to file a merit brief. Respondent filed their merit brief. Petitioner, followed by filing a petition for supersedeas/stay requesting to stay the appeal and remand to the circuit court to rule on three post-remittitur motions (one by Judge Dennis interwoven with the two by Judge Jefferson) that Judge Jefferson failed to rule on involving the merits of the issues on appeal of post-remittitur jurisdiction based in part on the January 27, 2016 pre-remittitur motion raising fraud upon the court and Judge Dennis June 22, 2018 post-remittitur decision to contact his law clerk and invalid contract consent agreement/ extrinsic fraud raised in Petitioner's February 4, 2019 post-remittitur motion that Judge Jefferson failed to rule on. Respondent, filed a response in opposition to Petitioner's petition for supersedeas/stay relying on their merit brief and Petitioner's merit brief as a basis to deny the petition raising the issue that Petitioner's allegations in his motions filed in the circuit court and on appeal were intrinsic fraud which provide no basis for relief, January 27, 2016 motion untimely under rule 59(e), SCRCR to seek relief from Judge Dennis final order and the Court lack jurisdiction. {App., pp. 92-94}.

After Respondent response in opposition to supersedeas/stay in the Court of Appeals was filed that Court issued a decision the next day denying Petitioner's request for supersedeas/stay. Petitioner, followed by filing a request to file a reply to Respondent's opposition to supersedeas/stay based on SCACR that required the Court of Appeals to wait five days notice to reply. The Court of Appeals granted Petitioner's request to file the reply but reaffirmed its prior order denying supersedeas/stay which adopted Respondent's response in opposition to supersedeas/stay in toto that all post-remittitur motions were entertained and ruled on thus remand was manifestly unwarranted and moot. Petitioner, filed a requested to hear his petition for supersedeas/stay before the full appellate court.

The full appellate court issued its order denying supersedeas/stay on the basis that two post trial motions dated 2016 would not be remand for hearing by adopting Respondent's initial merit brief in toto filed on September 27, 2019 in the Court of Appeals as the basis for denying the petition for supersedeas/stay and requesting Petitioner to file the record on appeal based on his designation of matter of record on appeal but not on the basis of the record in the petition for supersedeas/ stay as the record on appeal and that appeal would be heard after final briefing is completed . Petitioner, filed a request to rehear/clarify the Court of Appeals order denying the petition to correct its own errors concerning two 2016 motions because the Court had misapprehend, overlooked and failed to consider the correct dates and number of post-remittitur motions being challenge that affect the merits of the petition to remand and the appeal. Respondent in response in opposition to request to rehear/clarify the Court's order denied that Petitioner's challenges in the petition warrant remand and on the basis that the Court's action in the petition for supersedeas/stay did not have the effect of dismissing or finally deciding the appeal. Respondent, also challenged Petitioner's petition to rehear/clarify on the basis that Petitioner seeks to reargue issues and delay consideration of the merits of the appeal. Petitioner, filed his reply in response to Respondent's opposition to rehear/clarify on January 2, 2020. The Court of Appeals issued its order denying the petition to rehear/clarify on January 7, 2020 adopting Respondent's basis for denying the petition to rehear/clarify in toto expressly refusing to entertain the petition for rehearing and implicitly rejecting Petitioner ground that the Court's orders adopting Respondent grounds to deny the petition in effect finally decide the appeal on the issues of post-remittitur jurisdiction and extrinsic fraud/invalid contract consent agreement and dismissing the appeal. { App., pp. 21-22 }. This Petition for Certiorari followed.

QUESTIONS

1. **Did the Court of Appeals Orders erred by improperly adopting Respondent's grounds in their Oppositions to Supersedeas/Stay on the issues that no viable motions remained pending of extrinsic fraud/invalid consent, jurisdiction deprived Petitioner of the opportunity to present his case and be heard conflicts with this Court and the U.S. Supreme Court Precedents?**

ARGUMENTS

On October 28, 2019 Petitioner initiated in the Court of Appeals a petition for Supersedeas/Stay under Rule 241, SCACR seeking a stay of the pending appeal and remand to the circuit court to rule on all viable pending motions the circuit fail to rule on hereinafter referred as two January 27, 2016 Rule 60(b), SCRCF motions, a June 22, 2018 Judge Dennis post-remittitur jurisdictional decision/July 6, 2018 motion and February 4, 2018 post-remittitur rule 60(b), SCRCF motion. { App., pp. 97-114 }.

Respondent's in their **Opposition to Supersedeas/Stay** filed on November 7, 2019 relying on the issues in Petitioner's and Respondent's **initial brief pending on appeal** stated in pertinent part "On appeal, a central argument advanced by Appellant was that after the circuit court's initial order of dismissal, he filed a motion to reconsider which the circuit court never ruled on. As Respondent noted, however, the time to raise this issue was prior to proceeding with the merits of his original appeal. Appellant never requested that this Court refrain from considering and issuing a ruling in the initial appeal. In his most recent filing, Appellant appears to ask this Court to remand to permit a ruling on this now manifestly moot motion to reconsider. This appears to be in response to portion of Respondent's brief that detail the proper mechanism by which Appellant **could have** received a ruling on that motion **at the appropriate time**---i.e. , prior to brief and argue the merits of the initial appeal.

The proverbial ship has long since sailed for such relief and it is manifestly unwarranted in the present appeal. Quite simply, even if the Court were to remand, there would be nothing to rule on since all viable and pending motions were addressed by the circuit court." { App., pp. 92-94 }. In response the Court of Appeals in its Order filed December 9, 2019 stated in pertinent part "This court construes

Appellant's motion as a petition for supersedeas/stay under Rule 241 (d)(2) of the South Carolina Rules of Appellate Procedure. After careful consideration, the petition is denied. Finally, Appellant request this court to hold his appeal in abeyance to consider two 2016 motions. The request is denied. This court will consider the merits of the case once final briefing is complete." { App., p. 23}. Thus, Petitioner argues that the Court of Appeals erred by improperly adopting Respondent's grounds in Opposition to Supersedeas/Stay to deny Supersedeas/Stay because Petitioner's motions were viable warranting remand on the issues of post-remittitur jurisdiction due to Judge Dennis post-remittitur decision dated **June 22, 2018** instructing Petitioner to " contact his law clerk for further question and that Petitioner followed Judge Dennis instruction whereby it was eventual determined that a hearing would be held on **two pending rule 60(b) motions filed on January 27, 2016 as requested in** Petitioner post-remittitur motion filed on **July 6, 2018**" not just a rule 59(e), SCRCP motion. {App., p. 177 }. See Ex Parte Carter, 422 S.C. 623, 628-631, 813 S.E.2d 686(2018)(Same)(citations omitted)(quotations omitted); See also Hazel-Atlas Glas Co. v. Hartford-Empire Glass Co., 322 U.S. 238, 239-251, 64 S. Ct. 997, 88 L. Ed. 1250(1944)(Same); See Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 383-386, 559 S.E.2d 348(Ct. App. 2001)(Same)(citations omitted)(reverse and remand because circuit court had post-remittitur jurisdiction over issues). Moreover, Petitioner argues that the Court of Appeals erred because Petitioner, also brought to the Court's attention that post-remittitur motion also included a **February 4, 2019 memorandum of law in support of motion to vacate judgment/ motion to amend the pleadings** raising the issues of " invalid contract consent agreement/extrinsic fraud, and post- remittitur jurisdiction which were overlooked, misapprehended and failed to consider in the circuit court order, filed on March 18, 2019 and in the Court of Appeals decision." { App.,p.101}. On December 19, 2019 Petitioner, Filed his motion to rehear/clarify in the Court of Appeals bringing to the court's attention the correct dates and amount of motions that were being challenged that were overlooked, fail to consider and misapprehended in its December 9, 2019 order denying supersedeas/Stay which were critical to the

outcome of the appeal and Supersedeas/Stay which needed to be corrected. Petitioner, also explained that if the Court fail to make corrections it would **in effect** decide the appeal before it was heard and **in effect** dismiss the appeal. {App.,pp. 44-45 }. Respondent attorneys on December 27, 2019 filed their Response in Opposition to request to Rehear/Clarify stating “Despite the full Court’s clear and unequivocal denial of his Petition for Supersedeas/Stay and directive that the record on appeal be filed by December 20, 2019, Appellant has instead filed yet another motion to reargue issues and delay consideration of the merits of his appeal. The Court’s action on Appellant’s motion did not have the “effect of dismissing or finally deciding “ the appeal. See Rule 240(i), SCACR. Thus Appellant’s most recent request for rehearing is improper under the South Carolina Appellate Court Rules and should be denied.” {App.,pp.32 }. On January 7, 2020 the Court of Appeals issued its Order in response to Petitioner’s request for rehearing/clarify denying Supersedeas/Stay stating in pertinent part “Appellant has also filed a motion requesting clarification and rehearing of this court’s December 9, 2019 order. As to request for clarification, this court clarifies that Appellant’s outstanding motions is denied. This court will not entertain Appellant’s remaining arguments. See Rule 240(i), SCACR(“The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party’s appeal”). {App., p. 21 }. Accordingly, the Court of Appeals erred by denying Petitioner request for rehearing/clarify because the Court’s action had the “effect of dismissing the appeal and finally deciding” the appeal by improperly adopting Respondent’s grounds in Opposition to the Supersedeas and Opposition to rehear/clarify who relied on both parties initial brief to determine the appeal “lack merit, relief unwarranted because of manifestly moot motion to reconsider, such relief in the present appeal is unwarranted because no viable motion remained and there was insufficient evidence of extrinsic fraud. {App. 92-94 }. Accordingly, the Court of Appeals action “in effect” decided the appeal and dismissed the appeal because they were the very same issues and grounds that the Court of Appeals “used” to initially deny Supersedeas not **different**

issues “used “ as a basis to not stay the appeal and remand. {App. 92-94}. See Graham v. Graham, 301 S.C. 128, 129-130, 390 S.E.2d 469(Ct. App. 1990){citing cases reversing and remand because order was ambiguous}; See also Terry v. Terry, 400 S.C. 453, 455-460, 734 S.E.2d 646(2012){Same}(citation omitted){quotations omitted}; See Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 534(2016){quoting Black’s Law Dictionary 68 (10th ed. 2014){defining “affect” as “to produce an effect on; to influence in some way”}; See Contis v. Contis, 422 S.C. 74, 75-78, 810 S.E.2d 253(017){Finding the Court of Appeals erred. Reverse and remand to the Court of Appeals because they were the same issues). Accordingly, Petitioner was prevented from fully and fairly presenting his case and be heard on the issues of Judge Dennis post-remittitur decision dated June 22, 2018 to contact his law clerk for further question/post-remittitur jurisdiction, extrinsic fraud because the January 27, 2016 motions also sought relief under rule 60(b)(1) and (b)(3), SCRPC not just 59(e), SCRPC as Respondent’s attorneys repeated and deliberated scheme to misrepresented these facts to the Courts in their attempt to defraud the Courts which were timely and viable. Moreover, the February 4, 2019 motion not ruled on raising the issue of invalid contract consent agreement/extrinsic fraud was sufficient evidence of extrinsic fraud all which does provide a basis for relief. { App., pp. 92-93; pp. 182-183;pp.254-276; Exhibits- pp. 277-282}. See Chewing v. Ford MotorCompany, 374 S.C. 72, 82, 579 S.E.2d 605(2003){Extrinsic Fraud is “fraud that induces a person not to present a case or deprives a person of the opportunity to be heard”}; See also Ex Parte Carter, 422 S.C. 623, 626-632, 813 S.E.2d 686(2018){Same}(citations omitted){finding allegation of extrinsic fraud was sufficient where opposing party attorney systematically and repeatedly attempt to thwarted the biological couple from attending and be heard at the adoption consent proceeding and not candid that there remain outstanding pending rule 60(b) motions was critical to the extrinsic fraud issue. Further, finding the court abuse its discretion because it had authority and the motion timely file where biological couple followed judge instruction to file the motion); See also Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 239-

omitted)(quotations omitted); See Robinson v. Estate of Harris, 391 S.C. 114, 127-132, 705 S.E.2d 41(2011)(Justice Beatty, dissenting opinion finding that the circuit court order did not additionally rule on any other grounds or theory asserted by Petitioner.....as no other basis was clearly and fully developed in the circuit court order); See also Narruhn v. Alea London Limited, 404 S.C. 337, 340-341, 745 S.E.2d 90(2013)(holding that the issue of timeliness and authority were in error. The circuit court erroneously considered the date of the order rather than the date of the challenged order. As to authority finding the circuit court have authority because the Rule 60(b) motion presented a separate matter, does not run afoul of the general rule prohibiting one circuit judge from overruling another)(citations omitted); See also Terry v. Terry, 400 S.C. 453, 455-460 n.2, 734 S.E.2d 646(2012)(ruling on a court temporary order standing alone does not decide anything but recognizing the law does not leave parties without an immediate remedy in appropriate cases e.g. where the order is ambiguous citing Rule 241(c), SCACR petition for supersedeas of matter decided in the order on appeal. Moreover, this Court has authority to entertain a common law writ of certiorari). Thus, the Court of Appeals opinions adopting Respondent's basis for denying the petition for supersedeas/stay was error and directly conflicts with this Court's above cited Precedents and Precedent of the U.S. Supreme Court decisions which held the opposite results on the issues in the petition for writ of certiorari " that the allegations were sufficient for extrinsic fraud, timely challenged to grant relief and authority to rule on the issues." See The Florida Star v. B.J.F., 530 So.2d 286, 287-289(1986)(Same)(citations omitted)(quotations omitted). Thus, this Court should grant the writ for certiorari.

2. Did the Court of Appeals error by not entertaining rehearing had in effect denied rehearing by denying Petitioner's request to correct its own errors which in effect finally decided and dismissed the appeal by adopting Respondent's Oppositions to Supersedeas/Stay which relied on the issues in both parties initial brief and determined the appeal lacked merit and moot to denied Supersedeas/Stay?

On December 19, 2019 Petitioner filed a motion in the Court of Appeals requesting “ rehearing/clarification of its order filed on December 9, 2019 denying Supersedeas/Stay which materially affect the outcome of the petition and in effect deprive Appellant to present his claims and defense on appeal.” Petitioner explained to the court that the issues in his petition filed on October 28, 2019 were being overlooked and misapprehended which “ **in effect**” would deprive Petitioner to present his claims and defenses on appeal in infra, I and dismissed the appeal before it is heard if not corrected in the Supersedeas/Stay proceeding. {App., pp. 38 46}. In response to Petitioner’s request for rehearing the Court of Appeals January 7, 2020 Order states in pertinent part “ Appellant has also filed a motion for clarification, this court clarifies that that Appellant’s request to remand for the circuit court to consider any of Appellant’s outstanding motions is denied. This court will not entertain Appellant’s remaining arguments. See Rule 240(i), SCACR (“The court will not entertain petitions for rehearing unless the action the action of the court on the motion or petition has the effect of dismissing or finally deciding a party’s appeal”). { App., p. 21}. Respondent’s in their December 27, 2019 **Response in Opposition to Rehear/Clarify Supersedeas/Stay** states in pertinent part “ Despite the full Court’s clear and unequivocal denial of his Petition for Supersedeas/Stay and directive that the record on appeal be filed by December 20, 2019, Appellant has instead filed yet another motion seeking to reargue issues and delay consideration of the merits of the appeal. The Court’s action on Appellant’s motion did not have the [effect of dismissing or finally deciding] the appeal. See Rule 240(i), SCACR. Thus, Appellant’s most recent request for rehearing is improper under the South Carolina Appellate Court Rules and should be denied.” { App., p.3 }. Petitioner’s theory in this Petition for the writ is that the Court of Appeals erred in its decision to not entertain request for rehearing by “ adopting and relying on Respondent’s Oppositions to Supersedeas/Stay grounds that “ the Court’s action did not have the **effect of deciding the appeal or finally dismissing the appeal.**” Petitioner, argues that the Court decision was in error because Supersedeas was denied on the very **same** ground to not stay the appeal and

on a **different** ground. Thus, the Court's action did **"in effect decided the appeal and dismissed the appeal"**. {App., pp. 92-93 }. See Grahan v. Graham, 301 S.C. 128, 130, 390 S.E.2d 469(Ct. App. 1990){Reversing and remanding the family court order because language in the order was ambiguous(citations omitted); See also Terry v. Terry, 400 S.C. 453, 455-460, 737 S.E.2d 646(2012)(Same)(citations omitted)(quotations omitted). Moreover, Petitioner argues that the Court of Appeals order also **"in effect" act on** the request for rehearing/clarify by adopting Respondent's Response in Opposition to Rehear/Clarify Supersedeas petition within the meaning of Rule 242(c), SCACR("A decision is not final for purpose of review by the Supreme Court until the petition for rehearing or reinstatement has been act on by the Court of Appeal") because the Court was influence and implicitly adopted Respondent's **ground** that the Court's action did not have the "effect of finally deciding or dismissing the appeal. See Rule 240(i), SCACR. Thus, Appellant's most recent request for rehearing is improper under the South Carolina Appellate Court Rules and should be denied." See Rhame v. Charleston School District, 412 S.C. 273, 275-279, 772 S.E.2d 159(2015)(Same); See also Terry v. Terry, 400 S.C. 453, 455-460, 734 S.E.2d 646(2012)(Same); See Stokes-Craven Holding, Corp. v. Robinson, 416 S.C. 517, 534(2016){quoting Blacks Law Dictionary 68 (10th ed. 2014){defining "affect" as "to produce an effect on ; to influence in some way"}). Thus, Petitioner do request that this Court should in making its determination of whether or not the Court of Appeals **"in effect denied rehearing and finally decided and dismissal of the appeal"** should view the Orders not in isolation but from all surrounding circumstances as a whole to make a thorough determination as to whether or not the Court of Appeals (1) implied that denying request to remand was unnecessary because the appeal lacked merit and moot. Thus, implied that it was unnecessary to correct its own errors in the supersedeas proceeding therefore **"in effect" finally decided the appeal and finally dismissed the appeal** by improperly adopting Respondent's grounds in Opposition to Suppersedeas/Stay that the appeal lacked merit and moot therefore remand was unwarranted(2) Ruled that it was refusing to entertain

rehearing but also implicitly adopted Respondent's **grounds** in Oppositions to Supersedeas/Stays that "The Court's action did not have the [effect of finally deciding or finally dismissing the appeal]. Thus, Appellant's most recent request for rehearing is improper under South Carolina Appellate Court Rules and should be denied." This Court should also consider the fact supported by the evidence in the record that on January 2, 2020 Petitioner filed in the Court of Appeals his **reply** to Respondent's Opposition to request to rehear/clarify order denying Supersedeas/Stay. In his **reply** Petitioner's again requested the Court to correct its errors which has "in effect" had finally decided the appeal and dismiss the appeal before it was heard. Petitioner, further stated that "respondent's attorneys were engaged in a scheme to **attempt** to improperly influence the Court of Appeals decision to rule impartially on his pending **request for rehearing** by deliberately and repeatedly misrepresent the fact of the case to prevent the Court from correcting its own errors to grant rehearing and stay of the appeal and remand by stating "Petitioner has filed yet another motion to reargue issues that have ruled on to delay the Court from making a determination of the merits of the appeal" while knowing there remained pending outstanding motions not ruled in the circuit court. {App., p. 27; p.32}. Thus, Petitioner's theory is that even though the Court did not expressly state in its order filed on January 7, 2020 that "rehearing is denied" the Court action based upon all the circumstances was "**influence and in effect act on to deny rehearing**" by adopting Respondent's grounds in Opposition to Rehear/Clarify Supersedeas as its basis to not entertain rehearing. Accordingly, the Court in effect "**acted on denying rehearing**" within the meaning under Rule 242(c), SCACR("A decision of the Court of Appeals is not final for the purpose of review by the Supreme Court until the petition for rehearing or reinstatement has been acted on by the Court of Appeals"). See Terry v. Terry, 400 S.C. 453, 455-460, 734 S.E.2d 646(2012)(Same)(citations omitted)(quotations omitted); See also Staubes v. City of Folly Beach, 339 S.C. 406, 313-314, 529 S.E.2d 543(2000)(There was no express ruling on the motion but was implicitly and obviously decided based on the facts and circumstances of the case); See Doe v. Bishop of Charleston, 407 S.C. 128, 135, 754 S.E.2d

494(2014)(citing Weil v. Weil, 299 S.C. 84, 90, 382 S. E.2d 471, 474(Ct. App. 1989)(Same)(a court order should be interpreted not in isolation but based on all the facts and circumstances as a whole); See also Lightner v. Hampton Hall Club, Inc., 419 S.C. 357, 363-369, 798 S.E.2d 555(2017)(Same);See Graham v. Graham, 301 S.C. 128, 129-130, 390 S.E.2d 469(Ct. App. 1990)(Remanding issue to the family court because the order of supersedeas contained language that was ambiguous needed clarification); See also Georgia v. Ashcroft, 539 U.S. 461, 471-480, 123 S. Ct. 2498, 156 L. Ed.2d 428(2003)(Deciding the intent and effect of state wide plan must be considered based on all the surrounding circumstances as a whole not in isolation and the controversy not moot). Thus, this Court should also consider the critical and material fact in the record that Respondent's also relied on the issues involving the merits in the **initial merit** briefs of Petitioner and Respondent's as a basis to the determine " the appeal lacked merit which provide no basis for relief for intrinsic fraud , that Ex Parte Carter, 422 S.C. 623, 813 S.E.2d 686(2018) was not applicable to the issues of jurisdiction and timeliness, court lack jurisdiction and the circuit court entertained and ruled on all viable motions, thus it was manifestly unwarranted to remand to the circuit court because the issues were untimely under rule 59(e), SCRCP and moot." { App., p. 93-94; pp. 322-366 }. Thus, this Court should also consider the circumstances as shown in **infra I**, where the record in the Petition for Supersedeas /Stay showed that Petitioner's petition and appeal did not lack merit nor without evidentiary support in the record on the issues that Judge Dennis post-remittitur decision to contact his law clerk for further question which Petitioner follow his instruction thus the court had jurisdiction and timely filed, extrinsic fraud because Petitioner was deprived of the opportunity to present his case and be heard/invalid contract consent agreement both issues not ruled on by Judge Jefferson and the January 27, 2016 motion requested relief under rule 60(b)(1) and (b)(3), SCRCP not just under 59(e) are timely, viable and not moot which is extrinsic fraud that provide a basis for relief. See { **infra, I**, pp. 6-10}. Thus, Ex Parte Carter is applicable based upon Respondent's attorneys repeated attempt to prevent these issues to be ruled on by the circuit court and the Court of

Appeals issuance of a stay of the appeal to preserve the status quo pending a determination of the appeal and remand. See Melton v. Walker, 209 S.C. 330, 40 S.E.2d 161, 163(1946)(holding the effect of a supersedeas is to preserve the status quo pending the determination of an appeal); See also Abbeville County School District v. State, 410 S.C. 619, 630-631, 767 S.E.2d 157(2014)(Finding party may validly argue the overall funding scheme continues to disadvantage the children in the same fundamental way. Therefore, finding case not moot); See Kennedy v. The S.C. Retirement System, 349 S.C. 531, 532, 564 S.C. 322(2001)(In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument. Rule 221(a), SCACR); See also Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21-26, 602 S.E.2d 772(2004)(Same citing South Carolina and The United Supreme Court cases in support of reconsideration even on the merits. Reversing, S.C. App. Ct. decision dismissing the appeal as untimely); Richburg v. Baughman, 290 S.C. 431, 434-35, 351 S.E.2d 164, 166(1986)(Interpreting intent and effect of court judgments and Due Process of law); See Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 534-536(2016)(citing Black's Law Dictionary 68(10th ed. 2014)(defining "affect" as "to produce an effect on; to influence in some way"); See also Terry v. Terry, 400 S.C. 453, 455-460 n. 2, 734 S.E.2d 646(2012)(Majority opinion addressing matters where supersedeas and writ of certiorari may be granted in appropriate cases as an immediate remedy)(Dissenting opinion, 416 S.C. at 459 "Since the Court of Appeals does not have original jurisdiction to entertain common law writs. It would fall to this Court to decide all such matters. Moreover, it cannot be denied that, for example, final custody determinations can be influence by the status quo during litigation, especially if that process is lengthy. Thus, allowing an immediate and supersedeas in appropriate custody cases can result in fairness to both parties at the final custody hearing").

Accordingly, in view of all the surrounding circumstances the Court of Appeals "in effect" **acted on denying rehearing** within the meaning of Rule 242(c), SCACR and was in error that (1) "court action did


not have the effect of finally deciding and finally dismissing the appeal.” {App. , 21; pp. 93-94; pp. 322-366 }. See Terry v. Terry, 400 S.C. 453, 455-460, 734 S.E.2d 646(2012)(Same)(citations omitted)(quotations omitted); See also Staubes v. City of Folly Beach, 339 S.C. 406, 413-414, 529 S.E.2d 543(Same)(citations omitted)(There was no express ruling on the motion but implicitly and obviously decided based upon the fact and circumstances of the case);See Anal v. Frazier, 371 S.C. 512, 520-522, 641 S.E.2d 419(2007)(addressing the affect of a final order on issues). See Rule 240(i), SCACR (“ The court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party’s appeal.”).

Thus, based upon the above the factors under Rule 242(b), SCACR were met with evidence in support of both arguments presented support granting the writ for certiorari.

CONCLUSION

Based on the foregoing, this Court should grant the petition for writ of certiorari.

s/


Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
WTS Transport, LLC@yahoo.com
803-496-4655
Petitioner, Pro Se

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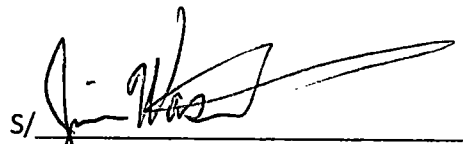
PROOF OF SERVICE

I, the undersigned Petitioner, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Pleadings: **Petitioner's Petition for Writ of Certiorari**

C. Mitchell Brown, Esquire
Blake T. Williams, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, S.C. 29211-1070

David H. Batten, Esquire
4141 Parklake Ave., Suite 350
Raleigh, N.C. 27612
Attorneys for Respondent Trident Medical Center, LLC

S/ 

Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
WTS Transport, LLC@yahoo.com
803-496-4655
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