

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2019-002076
Case No. 2018-CP-40-5641

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MAR 05 2020
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.

**RESPONDENTS' RETURN TO APPELLANT'S
MOTION FOR LEAVE TO FILE RULE 60(b) MOTION AND
MOTION FOR LACK OF JURISDICTION AND MOTION TO REMAND**

The Appellant Ronald Paul has filed a motion seeking leave of court to file a Rule 60(b) motion in the Circuit Court and requesting a remand of this case for that purpose. The Respondents oppose that motion as procedurally unnecessary.

By way of procedural background, Circuit Court Judge Jocelyn Newman heard arguments on the Respondents' motions to dismiss on August 8, 2019. She indicated from the bench that she was granting those motions. A Form 4 Order was entered the next day, August 9, 2019, stating that the Respondents' motions were granted and there would be a "Formal Order to follow." On August 19, 2019, the Appellant filed a Rule 59(e) motion seeking reconsideration of the Form 4 Order. The "formal order" had not been issued at that time. Later, on November 13, 2019, Judge Newman issued the "formal order" which set forth the bases and legal analysis for her granting the Respondents' motions to dismiss. On November 25, 2019, the Appellant filed another Rule 59(e) directed at the November 13, 2019 Order. On November 26, 2019, Judge Newman issued a Form 4 Order denying the Appellant's Rule 59(e) motion filed on November 25, 2019.

Based on that history, the Appellant contends that Judge Newman has not issued a ruling on his Rule 59(e) motion filed on August 19, 2019. He seeks a remand for a decision on that earlier Rule 59(e) motion. The Respondents submit that that is not necessary and would elevate form over substance for several reasons.

First, it is clear from the Form 4 Order filed on November 25, 2019, that Judge Newman was denying reconsideration of her decision to grant the Respondents' motions to dismiss.

Second, the Form 4 Order filed on August 9, 2019, expressly states "Formal Order to follow," thus indicating that the Form 4 Order was not final. *See, Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 567 S.E.2d 514, 518 (Ct. App. 2002) (holding that a form order is not a final order if the circuit court specifies that a formal order will be filed). Thus, the Rule 59(e) motion filed on August 19, 2019, was filed prematurely. The Appellant ultimately had the opportunity and did seek reconsideration after the formal order was filed on November 13, 2019. The Rule 59(e) motion filed on November 25, 2019, specifically addressed the rulings made in Judge Newman's final order.

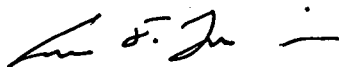
Third, as a corollary to the preceding point, the order that is actually on appeal is Judge Newman's final order entered November 13, 2019. That is the order for which the Appellant sought reconsideration on November 25, 2019, and received a ruling by Form 4 Order filed November 26, 2019. The Form 4 Order filed August 9, 2019 is not a final order, and thus is not the order actually on appeal.

Fourth, and most importantly, a comparison of the Appellants' two Rule 59(e) motions demonstrates that the two motions are almost verbatim. Many

portions of both motions are actually verbatim, making the same arguments and citing the same authority. Undoubtedly, the issues and arguments raised in the earlier Rule 59(e) motion are also raised in the latter Rule 59(e) motion. Thus, from a practical standpoint, the Appellant has already received a ruling on those very issues and arguments. Consequently, a remand so that Judge Newman may rule on the earlier Rule 59(e) motion, which was prematurely filed and duplicative of the later motion that has definitely been adjudicated, would constitute elevating form over substance -- that being a practice in which this Court and the Supreme Court typically do not engage. *See e.g., Chapman v. South Carolina Department of Social Services*, 420 S.C. 184, 801 S.E.2d 401, 404 (Ct. App. 2017); *South Carolina Second Injury Fund v. American Yard Products, Inc.*, 330 S.C. 20, 496 S.E.2d 862, 864 (1998). Additionally, given the law of the case, the remand would be futile, a waste of judicial resources, and result in a further delay of a final adjudication of this matter.

Based on the foregoing reasons, the Respondents respectfully request that the Court deny the Appellant's motion for leave of court to file a Rule 60(b) motion and for a remand.

Respectfully submitted,



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March 4, 2020

CERTIFICATE OF SERVICE

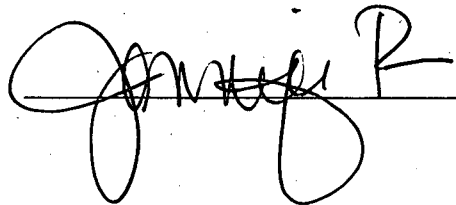
The undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Respondents South Carolina Department of Transportation; Paul D. de Holczer, Oscar K. Rucker, Macie M. Gresham, and Natalie J. Moore, does hereby certify that service of the **Respondents' Return to Appellant's Motion for Leave to File Rule 60(b) Motion and Motion for Lack of Jurisdiction and Motion to Remand** 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 4th day of March 2020:

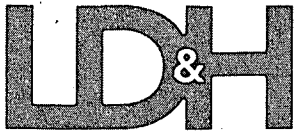
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The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Ronald I. Paul v. South Carolina Department of Transportations; *et al.*
Court of Appeals Case Number: 2019-001224
Civil Action Number: 2018-CP-40-5641
Our File Number: 79.20087

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of **Respondents' Return to Appellant's Motion for Leave to File Rule 60(b) Motion and Motion for Lack of Jurisdiction and Motion to Remand** 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.

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

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

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SC Court of Appeals

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The Honorable Jenny Abbott Kitchings
March 4, 2020
Page Two

cc: (w/ Enclosure)

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