

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY

Robert E. Hood, Circuit Court Judge

RECEIVED

Apr 20 2020

S.C. SUPREME COURT

Case No. 2007-CP-40-3365

Appellate Case No. 2020-417

Estate of Edward James Mims, Laura M. Cole, Personal Representative,
Petitioner,

v.

The South Carolina Department of Disabilities and Special Needs, Kathi Lacy, and
Stan Butkus, Respondents.

RETURN TO MOTION TO ADD PARTY

Respondents, the South Carolina Department of Disabilities and Special Needs (DDSN), Kathi Lacy and Stan Butkus, submit the following by way of Return to Petitioner’s “Motion to Add Party,” filed on March 19, 2020 in this case (Appellate Case No. 2020-417, involving certiorari under SCACR Rule 242).¹ By

¹ Prior to the filing of the Motion to Add Party, a “Petition for Writ of Certiorari, Mandamus or Supersedeas” had been filed by Petitioner on March 6, 2020, seeking relief under several different appellate court rules.

letter of March 10, 2020, the Clerk of this Court advised Petitioner’s counsel that “If you believe that additional parties should be added to this case, you will need to file a motion seeking that relief.” (3/10/20 letter at 2 n. 2). Respondents respectfully submit that the present motion to add a party to the case for the first time on appeal should be denied.

FACTS AND PROCEDURAL HISTORY

By order dated December 5, 2019, the Court of Appeals dismissed the present appeal as involving an order that is not immediately appealable, citing *Ex Parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986) and *Waddell v. Kahdy*, 309 S.C. 1, 419 S.E.2d 783 (1992). App. II, 154. Petitioner sought rehearing, which was denied by the Court of Appeals on February 5, 2020. App. II, 152.

The present case, Appellate Case No. 2020-417, involves a request that this Court grant certiorari under SCACR Rule 242 to review the dismissal of Petitioner’s appeal to the Court of Appeals. Respondents’ Return to the Petition for Certiorari itself is due on April 27, 2020, and will be filed on or before that date. Respondents will ask this Court to deny review under Rule 242, citing the same reasons given by the Court of Appeals for dismissing the appeal as interlocutory.²

² These Respondents and others also will be filing a Return in Appellate Case No. 2020-424, in which the same petitioner seeks to invoke the original jurisdiction of this Court pursuant to SCACR Rule 245, essentially on the same issues involved in the present appellate case. The Returns filed in that case will oppose the Petition in that case.

As noted above, the present Return is filed in opposition to Petitioner’s motion to add a party to the case for the first time on appeal.

ARGUMENT

The Motion to Add Party seeks “to add as a party, in his official capacity only, [Governor] Henry D. McMaster, who is chairman of the state agency [the State Fiscal Accountability Authority] responsible for the administration of the Insurance Reserve Fund. . . .” Motion at 2.³ The Motion contains no mention whatsoever of any legal authority which would support the involuntary addition of a new party to an appeal.

In certain very rare situations, appellate courts have permitted the addition of a party to an existing appeal, but only at the request of the party itself, and only when for some reason, the party’s interests would not be protected by the existing parties to the appeal. *See generally*, 4 C.J.S. Appeal and Error § 342. However, counsel’s research has not located any authority that even addresses the concept that a party to an appeal may move to add a nonparty who has not sought to intervene in the appeal, much less any authority that permits such an addition of a new party. (The Office of the Governor has advised that it does not have a record of receiving Petitioner’s

³ The allegations made by Petitioner in the Motion, which repeat those made in the “Petition for Writ of Certiorari, Mandamus or Supersedeas,” will be addressed in other Returns, as noted above. The present Return only addresses the issue of whether a new party can be added for the first time on appeal.

motion, but does not intend to appear or intervene in this appeal.) There is nothing in the South Carolina Appellate Court Rules suggesting that an appellate court will add a new party on appeal on motion of one of the existing parties. Instead, the present motion falls within the category of matters that will not be heard by an appellate court on the ground that they should have been raised in the lower court. *See, e.g., Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [circuit court] to be preserved for appellate review.”)(emphasis added).

Finally, to the extent that Petitioner believes the Court should hear the views of the Governor and/or the State Fiscal Accountability Authority on the arguments raised by Petitioner, the Rule 245 case, Appellate Case No. No. 2020-424 has named as Respondents “Henry D. McMaster, in his capacities as Governor of the State of South Carolina and Chair of the State Fiscal Accountability Authority.” That party (or those parties) will be presenting their views about Petitioner’s claims in that appellate case.

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that Petitioner’s Motion to Add Party should be denied.

Respectfully submitted,

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