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Feb 10 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case Nos. 2015-CP-10-5379; 2017-002317
Opinion No. 5789 (S.C. Ct. App. Filed January 13, 2021)

William Sean Irvin, Jr., as Personal Representative of the Estate of
Jonathan Edward Irvin, Deceased, Appellant,

v.

City of Folly Beach, South Carolina Department of Highways and Public Transportation,
Daniel Wilcutt, and Mitchell Dewitt Rabon, Jr., Defendants,

Of whom Mitchell Dewitt Rabon, Jr., is the Respondent.

JOINT MOTION TO DISMISS APPEAL AND VACATE PRIOR OPINION

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AND

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Attorneys for Appellant

COMES NOW Appellant William Sean Irvin, Jr., as Personal Representative of the Estate of Jonathan Edward Irvin, Deceased, by and through its undersigned counsel, and Respondent, Mitchell Dewitt Rabon, Jr., by and through his undersigned counsel, pursuant to Rules 240 and 261, SCACR, and, on the grounds set forth below, hereby move this Honorable Court for an order dismissing the appeal and to vacate its prior Opinion. Additionally, Appellant and Respondent jointly request that the Court hold this matter in abeyance while the present Motion is pending.

1. On January 13, 2021, the Court of Appeals issued an Order affirming the Circuit Court's decision to grant Defendant/Respondent's Motion for Summary Judgment. See William Sean Irvin, Jr., as Personal Representative of the Estate of Jonathan Edward Irvin, Deceased v. City of Folly Beach, South Carolina Department of Highways and Public Transportation, Daniel Wilcutt, and Mitchell Dewitt Rabon, Jr., Op. No. 5789 (S.C. Ct. App. filed January 13, 2021). Appellant timely filed its Petition for Rehearing and does not wish for Respondent to have to file a return while this Motion is pending and will take all necessary steps to avoid any prejudice to Respondent in the filing of this joint Motion.

2. While the parties vigorously maintain their respective positions as to whether summary judgment was appropriate, as set forth in their filings with this Honorable Court and the court below, this matter has been on appeal since 2017. The underlying lawsuit arises out of the death of Appellant's brother in 2013. The appeal and any potential Petition for Writ of Certiorari will continue to delay resolution of the underlying case in the court below.

3. Therefore, the parties have reached an agreement to seek vacation of the Court's Opinion No. 5789 and dismissal of the appeal. Appellant also agrees to withdraw the Petition for Rehearing and dismiss the underlying claims against Respondent in the court below. The details are

set forth in the Settlement Agreement attached as Exhibit 1 to this Motion, which will be signed or entered into the record contingent upon the Court of Appeals' January 13, 2021 Order being vacated and the appeal being dismissed.

4. Pursuant to Rule 261(d), SCACR, the parties jointly request the extraordinary relief of vacation of the Court of Appeals' Opinion and dismissal of this appeal.

Respectfully submitted,

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Attorneys for Appellant

Charleston, SC
February 10, 2021

EXHIBIT 1

SETTLEMENT AGREEMENT
Circuit Case No.: 2015-CP-10-5379
South Carolina Court of Appeals Opinion No. 5789

William Sean Irvin, Jr. as PR for the Estate of
Jonathan Edward Irvin, Deceased Plaintiff

v.

City of Folly Beach, SC Department of Highways
and Public Transportation, Daniel Wilcutt and
Mitchell Dewitt Rabon, Jr., of whom

Mitchell Dewitt Rabon, Jr., is Defendant.

William Sean Irvin, Jr. (“Irvin”) and Mitchell Dewitt Rabon, Jr. (“Rabon”) agree to resolve the lawsuit between them arising from the October 5, 2013 motor vehicle collision that involved the death of Jonathan Edward Irvin:

1. Irvin agrees immediately to withdraw his Petition for Rehearing filed with the South Carolina Court of Appeals and agrees not to file any future petition for rehearing or file a motion for a Writ of Certiorari with the South Carolina Supreme Court.
2. Irvin agrees he will, if necessary, dismiss all claims against Rabon in the underlying litigation and will file any document as required in the Court of Common Pleas to substantiate that Rabon is dismissed with prejudice from the underlying lawsuit. Further, Irvin agrees not to file any subsequent motion or pleading at any time that adds Rabon as a party to the underlying lawsuit.
3. Each party will bear all costs and expenses, including legal fees, for the lawsuit and the appeal. This allocation shall constitute the consideration for this Settlement Agreement.

William Sean Irvin, Jr.

Brooklyn O’Shea, Attorney for
Plaintiff Irvin

Mitchell Dewitt Rabon, Jr.

David Cobb, Attorney for Defendant Rabon

Dated: This ____ Day of _____, 2021.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
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Kristi L. Harrington, Circuit Court Judge

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William Sean Irvin, Jr., as Personal Representative of the Estate of
Jonathan Edward Irvin, Deceased, Appellant,

v.

City of Folly Beach, South Carolina Department of Highways and Public Transportation,
Daniel Wilcutt, and Mitchell Dewitt Rabon, Jr., Defendants,

Of whom Mitchell Dewitt Rabon, Jr., is the Respondent.

PROOF OF SERVICE

I, Brooklyn A. O'Shea, of O'Shea Law Firm, LLC, counsel for the Appellant above-named, do hereby certify that I have served the *Joint Motion to Dismiss Appeal and Vacate Prior Opinion, Cover Letter, and Proof of Service* on all counsel of record pursuant to The South Carolina Supreme Court Order: Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020), Appellate Case No. 2020-000447, by AIS Email on February 10, 2021 addressed as follows:

David S. Cobb, Esq.
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Max G. Mahaffee, Esq.
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ATTORNEY FOR DANIEL WILLCUTT

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ATTORNEY FOR CITY OF
FOLLY BEACH

Roy P. Mabank, Esq.
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ATTORNEY FOR SCDOT

(signature page to follow)

Charleston, SC
February 10, 2021

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February 10, 2021

Via Facsimile: 803-734-1839

Via Email: ctappfilings@sccourts.org

Via US Mail:

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

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SC Court of Appeals

Re: William Sean Irvin, Jr., as Personal Representative of the Estate of Jonathan Edward Irvin, Deceased v. City of Folly Beach, South Carolina Department of Highways and Public Transportation, Daniel Wilcutt, and Mitchell Dewitt Rabon, Jr.
Civil Action No.: 2015-CP-10-5379
Appellate Case No.: 2017-002317

Dear Ms. Kitchings:

Please find enclosed the Joint Motion to Dismiss Appeal and Vacate Prior Opinion and the Proof of Service for same. Also enclosed is our firm's check in the amount of \$50.00 for the filing fee. Thank you for your assistance with this matter.

With kind regards, I am,

Sincerely,

Brooklyn O'Shea

Brooklyn A. O'Shea
brooklyn@oshealaw.com

Enclosures

cc: David Cobb, Esq. (via email only)
Max Mahaffee, Esq. (via email only)
Victoria Anderson, Esq. (via email only)
Roy Maybank, Esq. (via email only)
Thomas Goldstein, Esq. (via email only)
Ian O'Shea, Esq. (via email only)