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Oct 06 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Court Judge

Appellate Case No. 2020-001689  
Case No. 2020ALJ300064AP

South Carolina Technical College System, ..... Appellant,

v.

Carla Jackson and South Carolina  
Department of Administration, ..... Respondents,

Of whom, Carla Jackson is the ..... Respondent.

**APPELLANT'S REPLY TO RESPONDENTS' RETURN  
TO MOTION FOR LEAVE OF COURT TO  
FILE RULE 60(b) MOTION IN THE  
ADMINISTRATIVE LAW COURT**

The Appellant South Carolina Technical College System ("SCTCS") has filed a motion, pursuant to Rule 60(b), SCRCP, and Rule 205, SCACR, for leave to file a Motion for Relief from Order or Judgment in the Administrative Law Court ("ALC"). This motion was filed in order to comply with Rule 60(b), SCRCP, which states: "[d]uring the pendency of an appeal, leave to make the motion must be obtained from the appellate court." Rule 60(b), SCRCP. *See also, Hudson v. South Carolina Dept, of Highways & Public Transportation*, 324 S.C. 245, 478 S.E.2d 839 (1996). The intent of the Rule 60(b) motion is to present after-discovered evidence, consisting of the four arrest warrants issued on or about March 4, 2021 and served on May 13,

2021, to the Administrative Law Court and the State Employee Grievance Committee. That evidence did not exist at the time the lower tribunals addressed the issues on appeal, including whether there were grounds for the decision by Denmark Technical College to terminate Jackson from employment.

The Respondent Carla Jackson has filed a return opposing SCTCS's motion for leave. In that return, Jackson appears to misapprehend the purpose of the SCTCS's motion which is not a Rule 60(b) motion directed *to this Court*. Instead, SCTCS's motion seeks leave as required by Rule 60(b) to file the Rule 60(b) motion in the lower tribunals. To be clear, the Rule 60(b) motion is intended to be adjudicated in the lower tribunals. Jackson cites the case of *Stogsdill v. South Carolina Department of Health & Human Services*, 415 S.C. 568, 784 S.E.2d 669 (2016), but that case is distinguishable because, as indicated, SCTCS is not filing the actual Rule 60(b) motion in an appellate court, which is what occurred and was rejected in *Stogsdill*.

Moreover, contrary to Jackson's argument, SCTCS is not seeking to supplement the appellate record with the arrest warrants issued to Jackson, but rather is seeking to supplement the records in the lower tribunals with the newly-discovered evidence which is a proper application of Rule 60(b)(2) and Rule 60(b)(5).

Moreover, Jackson devotes the remainder of her return to argue the *merits* of the Rule 60(b) motion. However, to reiterate, the merits of that motion are not before this Court. Instead, SCTCS is only seeking leave of this Court in order to file the Rule 60(b) motion in the lower tribunals and to ultimately have the merits of that motion heard and adjudicated in the ALC and before the State Employee Grievance Committee.

Finally, it is noted that Jackson, in her return, takes the opportunity to make a number of collateral and speculative accusations about the tactics and motives of the State Ethics Commission and its investigators in bringing charges against Jackson. Of course, the State

Ethics Commission is not even a party to this litigation and does not have the opportunity to be heard and defend itself on those accusations, which are collateral to the Rule 60(b) relief sought by SCTCS. Nonetheless, such accusations should not be relevant to nor guide this Court's consideration of the only issue raised – whether leave of court should be granted to allow SCTCS to file its Rule 60(b) motion in the lower tribunals to be heard on the merits before those bodies.

For the reasons stated in the motion and supplemented in this reply, the Appellant SCTCS respectfully renews its request for leave of Court to file its Rule 60(b) motion in the ALC and before the State Employee Grievance Committee.

Respectfully submitted,

LINDEMANN & DAVIS, P.A.

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Of whom, Carla Jackson is the ..... Respondent.

**CERTIFICATE OF SERVICE**

Pursuant to Section (d)(1) of the Supreme Court’s Order Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court, the undersigned employee of Lindemann & Davis, P.A., counsel for the Appellant, does hereby certify that service of **Appellant's Reply to Respondent's Return to Motion for Leave of Court to File Rule 60(b) Motion in Administrative Law Court** was made upon all counsel of record by email only this the 6th day of October 2021:

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†Certified Mediator

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**Via Email Only**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Email: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

RE: South Carolina Technical College System v. Carla Jackson  
Appellate Case Number: 2020-001689  
ALC Number: 20-ALJ-30-0064-AP  
Our File Number: 79.20391

Dear Ms. Kitchings:

In accordance with Section (b)(2) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court, please find enclosed for filing by email only **Appellant's Reply to Respondent's Return to Motion for Leave of Court to File Rule 60(b) Motion in Administrative Law Court** in the above referenced matter. Pursuant to Section (d)(1) of the same order, I am hereby serving a copy by email only upon all counsel of record.

If you have any questions, please advise.

Sincerely,

LINDEMANN & DAVIS, P.A.

Andrew F. Lindemann

AFL/jmb  
Enclosure

cc: Shannon M. Polvi, Esquire (w/ Enclosure, Via Email Only)  
Warren V. Ganjehsani, Esquire (w/ Enclosure, Via Email Only)