

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge
Carmen Tevis Mullen, Circuit Court Judge

Case No. 2009-CP-25-284
Case No. 2009-CP-25-285

RECEIVED

APR 26 2012

SC Court of Appeals

Patrice Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood Brantley
d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,
of whom

James Allen Grady is Appellant.

Gary Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood Brantley
d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,
of whom

James Allen Grady is Appellant.

MOTION TO DISMISS APPEAL

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Attorneys for Respondent

Pursuant to Rule 240, SCACR, Respondents Patrice and Gary Smart move this Court to dismiss the appeal in this matter. The basis for the motion are that the purported Appellant James Allen Grady is not an aggrieved party pursuant to South Carolina law, and further that the orders Mr. Smart purports to appeal are not appealable interlocutory orders.

BACKGROUND

This is an automobile wreck case. Patrice Smart filed a complaint against James Allen Grady and Louis Daniel Moffett in Jasper County in April 2008, alleging she suffered a loss of consortium because of injuries to her husband, Gary Smart, caused by the negligence of Grady and Moffett. She also filed a stipulation in May 2008 asserting her damages did not exceed \$75,000. On May 18, 2009, Judge Carmen T. Mullen signed a consent order of dismissal without prejudice, which was submitted by counsel for all parties. The Smarts were represented by lawyer R. Alexander Murdaugh. However, Alex Murdaugh withdrew once it became apparent he would be a witness in the case.

On June 24, 2009, Mr. Smart filed an action in Hampton County against Grady, Moffett, Lynwood Brantley d/b/a Brantley Hauling and Randolph Murdaugh, III. Mrs. Smart filed a separate action against these same defendants seeking recovery for loss of consortium. The complaints essentially alleged that Grady was operating a vehicle in Jasper County on the evening of December 22, 2007 and was towing a trailer with an ATV aboard but not properly secured. The ATV became detached and fell into the roadway where it was struck by a tractor-trailer truck being operated by Moffett in the same direction behind Grady. Murdaugh was traveling in the opposite direction and stopped to render assistance. Murdaugh parked his car on the shoulder with his high beam

lights illuminated, facing northward and angled toward oncoming traffic. Smart was traveling southward along the highway and ran into Moffett's truck, and there were no warning devices and the lights on the Murdaugh vehicle blinded Smart. Mr. Smart was seriously injured in the collision. The Smarts were represented by lawyer Mark B. Tinsley, their current counsel.

Defendant Brantley Hauling removed the cases to federal court, contending Murdaugh, the only South Carolina resident, was a sham defendant because the Smarts never intended on getting a judgment against Murdaugh. Grady joined in that removal as required by federal law. United States District Court Judge Sol Blatt heard the matter and ruled that the Smarts had to sue Murdaugh to avoid the "empty chair" defense. Judge Blatt held there was a colorable claim against Murdaugh and issued a bench ruling that the case would be remanded to Hampton County. Judge Blatt also noted that "once the Murdaugh firm got out of the case, the plaintiffs got new lawyers, it was a new case." The District Court then entered a written order granting the motion to remand the matter to state court in October 2009.

On March 31, 2010, Mr. Smart filed and served an offer of judgment for \$2,750,000 and Mrs. Smart filed an offer of judgment for \$500,000.

Pursuant to mandatory mediation rules, the cases were mediated. Defendant Grady's counsel and his insurer, USAA, who were present at the mediation, elected not to participate in the settlement, and they did not settle. However, the other defendants (Moffett and Brantley d/b/a Brantley Trucking) did settle.

On August 31, 2010, Grady's counsel wrote to Mr. Tinsley advising him that Grady's insurer, USAA, had reviewed the case and decided to offer the policy limits of

\$300,000 to resolve the matter.

On October 6, 2010, Mr. Smart executed a stipulation of dismissal as to Moffett, Brantley and Murdaugh due to a partial settlement of the claims. The stipulation was signed by Tinsley and by attorney John H. Tiller for Murdaugh. The stipulation retained the right to proceed against Grady. Mr. Tiller and Mr. Tinsley also executed a stipulation of dismissal of Mrs. Smart's consortium claim as to those same defendants. The stipulations were not signed, however, by any other party or counsel for any other party. On October 18, 2010, the defendant Grady filed and served an offer of judgment for \$300,000 upon the plaintiff, Mr. Smart.

Defendant Grady then sought to strike the stipulation of dismissal. Grady argued the stipulation was not properly executed under Rule 41, SCRPC. He also sought reallocation of the settlement proceeds in that motion.

On April 2, 2011, the Smarts and Murdaugh executed a Covenant not to Execute in consideration for the payment of \$95,000 to Mrs. Smart and \$5,000 to Mr. Smart... Murdaugh's counsel signed an affidavit that the Covenant replaced prior documents and "any prior agreement is rescinded."

On April 4, 2011, Judge Mullen held a hearing in Hampton County. Grady's counsel noted that all parties agreed the stipulation of dismissal was ineffective because the stipulation did not comply with Rule 41. Counsel for Grady added, "And they agree to that, which essentially moots our motion to change venue back to Jasper County."

On June 22, 2011, defendant Grady sent a stipulation of dismissal of Murdaugh with prejudice to all counsel in the case. Attorney Erin Dean signed the stipulation for Murdaugh and returned it to Grady's counsel. However, no one else signed the document.

On July 7, 2011, Grady filed a Motion to Drop Defendant Murdaugh from the case and to compel execution of the stipulation of dismissal as to Defendant Murdaugh. Grady contended that Mrs. Smart had settled her loss of consortium claims with respect to Moffett, Brantley and Murdaugh for \$1,040,000.00 and Mr. Smart settled his claims against those same defendants for \$10,000.00. Grady then pointed out that because the Stipulations of Dismissal were not fully executed by all parties upon filing, then the Stipulation was ineffective. Grady asserted the refusal to dismiss Murdaugh and the other defendants was solely to defeat diversity jurisdiction and to prevent a change of venue.¹

On July 8, 2011, Grady filed a motion to transfer venue from Hampton County to Jasper County. Grady contended that the matter had to be tried in the county where the wreck occurred (Jasper) or where the Smarts resided at the time (Jasper) under Section 15-7-30 of the South Carolina Code. Grady asserted the Smarts refused to execute a valid stipulation of dismissal as to Murdaugh pursuant to Rule 41, SCRPC, and further that Murdaugh is a nominal defendant whose presence in the case is solely to preserve venue in Hampton County.

On August 3, 2011, Judge Mullen held a second hearing to address a motion to enforce a settlement agreement and to compel execution of the stipulations of dismissal. Plaintiff Smart contended Murdaugh was still a defendant in the case so that venue remained proper in Hampton County. Mrs. Smart's case was settled in full so her case was dismissed. Grady countered that Murdaugh was a "nominal defendant" who was not in jeopardy in the case.

¹ The case was not removable because it had been pending for over a year at that time; therefore, diversity jurisdiction no longer existed. 28 U.S.C. § 1446(b).

Mr. Smart also asserted Grady waived any complaint to venue by not raising it in his answer and by withdrawing his prior motion to transfer venue.

On August 3, 2011, Judge Mullen entered a Form 4 Order denying the Motion to Compel Execution of Dismissal and the Motion to Transfer Venue. (Exhibit A). Judge Mullen also entered a separate Form 4 Order dismissing Mrs. Smart's case with prejudice, and ruled a pending Motion to Consolidate the two cases was "moot." (Exhibit B).

On August 10, 2011, Grady filed and served two notices of appeal, one for each case. (Exhibit C). It is those appeals that are currently pending before this Court.

On December 5, 2011, Grady filed a "Motion to Certify Appeals from the Court of Appeals, Consolidate Appeals and Correct Caption, Determine Appealability and Exercise 'Pendent' Jurisdiction, or in the Alternative, Petition for a Writ of Certiorari to the Court of Common Pleas" with the Supreme Court of South Carolina. That same date Grady filed a "Motion to Hold Appeals in Abeyance Pending Decision by Supreme Court" with this Court. On January 4, 2012, Respondents filed a Return to Grady's omnibus motion with the Supreme Court.

On April 5, 2012, the Supreme Court issued its order denying every one of Grady's motions. A copy of that Order is attached to this Motion.² (Exhibit D).

² This ruling renders moot Grady's pending motion to hold this appeal in abeyance. Furthermore, the Supreme Court neglected to send this order to this Court, so counsel is providing a copy.

MOTION TO DISMISS

This Court should dismiss these appeals. First, Grady lacks standing as an “aggrieved party” to appeal the trial court’s grant of Mrs. Smart’s Motion to Dismiss her consortium claim. Second, the remaining rulings are not appealable rulings pursuant to Section 14-3-330 of the South Carolina Code. These appeals are not proper.

I. Defendant Grady Does Not Have Standing as an “Aggrieved Party” to Appeal the Trial Court’s Grant of the Motion to Dismiss the Consortium Claim

Defendant Grady is not an “aggrieved party” to the order granting the motion to dismiss the consortium claim against him with prejudice and his appeal of that ruling is improper.

Rule 201, SCACR, provides “[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal.” See also *Ex parte South Carolina Dept. of Motor Vehicles*, 390 S.C. 457, 702 S.E.2d 568 (2010) (only an aggrieved party may appeal). An “aggrieved party” is one who is injured in a legal sense or has suffered an injury to person or property. *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). See also *North American Rescue Products, Inc. v. Richardson*, 396 S.C. 124, 720 S.E.2d 53 (Ct. App. 2011) (a party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest). *Accord Powell ex rel. Kelley v. Bank of America*, 379 S.C. 437, 665 S.E.2d 237 (Ct. App. 2008) (there is no material distinction in general standing principles juxtaposed to the ability of an “aggrieved party” to appeal pursuant to Rule 201, SCACR; word “aggrieved” refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a

burden or obligation).

The Order Grady purportedly complains about actually dismisses with prejudice an action against the putative appellant, Grady. His position is not damaged because Mrs. Smart has voluntarily dismissed her case against him with prejudice. He is not being denied some personal or property right, or having some burden or obligation imposed upon him. In fact, he is being relieved of the burden and expense of defending the consortium claim. He simply is not “aggrieved” in the sense of that word as used in Rule 201, SCACR.

Accordingly, this Court should dismiss this appeal pursuant to Rule 201, SCACR.

II. The Remaining Rulings on Appeal are Not Appealable

The remaining rulings that are subject of this appeal are (1) Judge Buckner’s oral ruling of August 8, 2011, dismissing co-defendants Louis Daniel Moffett and Lynwood Brantley d/b/a Brantley Hauling from the suit; (2) Judge Mullen’s order of August 3, 2011, denying Grady’s motion to compel the execution of stipulations of dismissal; and (3) Judge Mullen’s order of August 3, 2011, denying Grady’s motion to transfer venue. None of these interlocutory rulings are appealable under Section 14-3-330.

The motion before Judge Mullen was an attempt to enforce the purported terms of a settlement agreement between the Smarts and Murdaugh. In fact, Grady’s counsel repeatedly based his arguments below on his contention that he only wanted to force the Smarts to do what he claimed they had originally agreed to do, that is, dismiss Murdaugh from the case. Grady’s counsel included the Covenant and settlement documents and contended the failure to actually dismiss Murdaugh was a violation of that agreement. In

essence, then, the motion was to enforce a settlement, which Judge Mullen denied.

Assuming Grady even has standing to raise these points, the Supreme Court has held that the refusal to enforce the terms of an alleged settlement agreement is not immediately appealable under Section 14-3-330. *Peterkin v. Brigman*, 319 S.C. 367, 461 S.E.2d 809 (1995), cited with approval in *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006). The ruling is not immediately appealable.

The same is true of the venue ruling. Grady's insurer made the decision below to give up the venue motion in an attempt to keep Mr. Murdaugh in the case so as preserve its right to seek allocation of fault to Mr. Murdaugh for a portion of any verdict the Smarts may have obtained under Section 15-38-15 of the South Carolina Code (the amended joint and several liability statute). Now the insurer wants Mr. Murdaugh out of the case to resurrect its attempt to transfer venue and to pursue the case with an empty chair at the table. The insurer through Defendant/Appellant Grady at least wants the Court to declare Mr. Murdaugh to be a nominal party for venue purposes.

The trial court has ruled on the venue motion, and Supreme Court precedent prevents immediate review of that interlocutory decision. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000) (order refusing transfer of venue is not immediately appealable under Section 14-3-330). This Court is constitutionally bound by Supreme Court precedent. *See* S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents."); *State v. Orozco*, 392 S.C. 212, 224 n. 4, 708 S.E.2d 227, 233 n. 4 (Ct. App. 2011) (the decisions of the supreme court bind this court as precedents; where the law has been recently addressed by the supreme court and is unmistakably clear, the court of appeals has no authority to change it); *Duval*


v. Heritage Life Ins. Co., 339 S.C. 616, 620 n. 7, 529 S.E.2d 566, 569 n. 7 (Ct. App.2000)

(court of appeals is bound by the decisions of the supreme court). The Court should adhere to those precedents, dismiss this improper appeal, and permit the matter to proceed to trial.

CONCLUSION

For the reasons stated this Court should dismiss these appeals and remand these matters to the circuit court for further proceedings.

Respectfully submitted,



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Attorneys for Respondents

April 26, 2012

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON
IN THE COURT OF COMMON PLEAS

FILED

2011 AUG -3 PM 4:12

JUDGMENT IN A CIVIL CASE
CASE NO: 2009CP2500285

MYLINDA D. HETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

~~Gary Smart vs. James Allen Grady~~

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

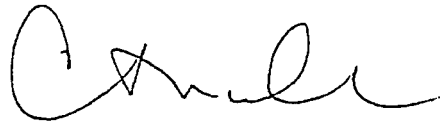
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Motion to Compel Execution of Dismissal is Denied
Motion to Transfer Venue is Denied

Dated at Hampton, South Carolina, this 3rd day of August 2011

Court Reporter: Debbie Everett



PRESIDING JUDGE - Hon. Carmen T. Mullen

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Mark Brandon Tinsley Gooding & Gooding, PA
P.O. Box 1000 Allendale, SC 29810

ATTORNEY(S) FOR THE PLAINTIFF(S)

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Meeting St., 3rd Floor Charleston, SC 29401
Kelly Dennis Dean Griffith Sadler & Sharp, PA P.O.
Drawer 570 Beaufort, SC 29901

ATTORNEY(S) FOR THE DEFENDANT(S)

Mylinda Nettles - Clerk of Court

EXHIBIT B

FILED

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF HAMPTON

2011 AUG -3 PM 4: 12

CASE NO: 2009CP2500284

IN THE COURT OF COMMON PLEAS

MYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

~~Patrice Smart vs.~~ James Allen Grady

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC;
 - Rule 41(a),
 - SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRPC;
 - Bankruptcy:
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
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 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Case Dismissed with Prejudice per Mark Tinsley. Motion to Consolidate is Moot.

Dated at Hampton, South Carolina, this 3rd day of August 2011

Court Reporter: Debbie Everett



PRESIDING JUDGE - Hon. Carmen T. Mullen

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

My linda Nettles - Clerk of Court

EXHIBIT C

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Hon. Perry M. Buckner and Hon. Carmen Tevis Mullen

Civil Action No.: 2009-CP-25-285

GARY SMART,..... Respondent,

-vs-

JAMES ALLEN GRADY, LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY
d/b/a BRANTLEY HAULING, RANDOLPH MURDAUGH, III,

of whom JAMES ALLEN GRADY is Appellant

NOTICE OF APPEAL

James Allen Grady, appeals the Order of the Hon. Perry M. Buckner granting Plaintiff's Motion to Strike LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY d/b/a BRANTLEY HAULING, dated August 8, 2011 (ruled upon orally prior to trial; transcript will be forthcoming) and the Order of the Hon. Carmen Tevis Mullen denying Defendants Motions to Compel the Execution of Stipulations of Dismissal as to Randolph Murdaugh, III and to Transfer Venue, dated August 3, 2011. Defendant James Allen Grady also appeals the Order of the Hon. Carmen Tevis Mullen, dismissing with prejudice Case 2009-CP-25-284, dated August 3, 2011, by way of a separately filed Notice of Appeal in accordance with the Clerk of the Appellate Court's instruction of August 8, 2011.

Additionally, Defendant Grady has attached the Notice of Appeal previously filed in Hampton County on August 8, 2011 (inadvertently dated August 6, 2011) so as to, in part, clarify the urgency and importance of the appeals in this matter and in Case No. 2009-CP-25-284.

Respectfully Submitted,

HOWELL, GIBSON & HUGHES, P.A.

By: 

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Beaufort, South Carolina

August 9, 2011

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FILED

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF HAMPTON

2011 AUG -3 PM 4: 12

CASE NO: 2009CP2500285

IN THE COURT OF COMMON PLEAS

HYLINDA D. HETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

~~Gary Smart vs. James Allen Grady~~

CHECK ONE:

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- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC; Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed; Reversed; Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Motion to Compel Execution of Dismissal is Denied
Motion to Transfer Venue is Denied

Dated at Hampton, South Carolina, this 3rd day of August 2011

Court Reporter: Debbie Everett



PRESIDING JUDGE - Hon. Carmen T. Mullen

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Hon. Perry M. Buckner and Hon. Carmen Tevis Mullen

Civil Action No.: 2009-CP-25-284

and

Civil Action No.: 2009-CP-25-285

FILED

AUG - 8 2011 @ 11:40am

CLERK OF COURT
HAMPTON COUNTY

PATRICE SMART, Respondent,

-vs-

JAMES ALLEN GRADY, LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY
d/b/a BRANTLEY HAULING, RANDOLPH MURDAUGH, III,

of whom JAMES ALLEN GRADY is Appellant

GARY SMART, Respondent,

-vs-

JAMES ALLEN GRADY, LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY
d/b/a BRANTLEY HAULING, RANDOLPH MURDAUGH, III,

of whom JAMES ALLEN GRADY is Appellant

NOTICE OF APPEAL

James Allen Grady, appeals the Order of the Hon. Perry M. Buckner granting Plaintiff's Motion to Strike LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY d/b/a BRANTLEY HAULING, dated August 8, 2011 and the Orders of the Hon. Carmen Tevis Mullen, dismissing with prejudice Case 2009-CP-25-284, dated August 3, 2011, and the Order denying Defendants Motions to

Compel the Execution of Stipulations of Dismissal as to Randolph Murdaugh, III
and to Transfer Venue, dated August 3, 2011.

Respectfully Submitted,

HOWELL, GIBSON & HUGHES, P.A.

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August 6, 2011

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John Tiller
Attorney for Randolph Murdaugh, III

Erin Dean
Attorney for Randolph Murdaugh, III

Duke Highfield
Ben Treywick
Attorneys for Louis Daniel Moffett, Lynwood Brantley d/b/a Brantley Hauling

Mitch Griffith
Attorney for UIM carrier State Farm

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Hon. Perry M. Buckner and Hon. Carmen Tevis Mullen

Civil Action No.: 2009-CP-25-285

GARY SMART,..... Respondent,

-vs-

JAMES ALLEN GRADY, LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY
d/b/a BRANTLEY HAULING, RANDOLPH MURDAUGH, III,

of whom JAMES ALLEN GRADY is Appellant

PROOF OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing
Notice of Appeal upon all counsel of record by affixing same with proper postage
and placing same with the United States Postal Service on the 9th day of August,
2011 addressed to the following:

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Attorney for Respondents Patrice and Gary Smart

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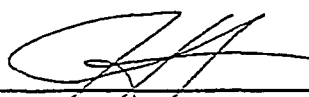
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August 9, 2011

THE STATE OF SOUTH CAROLINA
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APPEAL FROM HAMPTON COUNTY
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PATRICE SMART, Respondent,

-vs-

JAMES ALLEN GRADY, LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY
d/b/a BRANTLEY HAULING, RANDOLPH MURDAUGH, III,

of whom JAMES ALLEN GRADY is Appellant

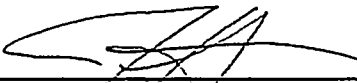
NOTICE OF APPEAL

James Allen Grady, appeals the Order of the Hon. Perry M. Buckner granting Plaintiff's Motion to Strike LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY d/b/a BRANTLEY HAULING, dated August 8, 2011. (ruled upon orally prior to trial; transcript will be forthcoming) and the Order of the Hon. Carmen Tevis Mullen denying Defendants Motions to Compel the Execution of Stipulations of Dismissal as to Randolph Murdaugh, III and to Transfer Venue, dated August 3, 2011. Defendant James Allen Grady also appeals the Order of the Hon. Carmen Tevis Mullen, dismissing with prejudice Case 2009-CP-25-284, dated August 3, 2011, by way of a separately filed Notice of Appeal in accordance with the Clerk of the Appellate Court's instruction of August 8, 2011.

Additionally, Defendant Grady has attached the Notice of Appeal previously filed in Hampton County on August 8, 2011 (inadvertently dated August 6, 2011) so as to, in part, clarify the urgency and importance of the appeals in this matter and in Case No. 2009-CP-25-284.

Respectfully Submitted,

HOWELL, GIBSON & HUGHES, P.A.

By: 
Patrick M. Higgins, Esquire
Jason Franklin Ward, Esquire
Howell, Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorneys for Appellant James Allen
Grady

Beaufort, South Carolina

August 9, 2011

Other Counsel of Record:

Mark B. Tinsley, Esquire
Gooding and Gooding, P.A.
Post Office Box 1000
Allendale, SC 29810
Attorney for Respondents Patrice and Gary Smart

John H. Tiller, Esquire
Haynsworth, Sinkler & Boyd, P.A.
Post Office Box 340
Charleston, SC 29402
Attorney for Randolph Murdaugh, III

Erin D. Dean, Esquire
Tupper, Grimsley & Dean, P.A.
Post Office Box 2055
Beaufort, SC 29901-2055
Attorney for Randolph Murdaugh, III

Duke R. Highfield, Esquire
Benjamin Traywick, Esquire
Young Clement Rivers, LLP
Post Office Box 993
Charleston, SC 29402
**Attorneys for Louis Daniel Moffett, Lynwood Brantley d/b/a Brantley
Hauling**

E. Mitchell Griffith, Esquire
Griffith, Sadler & Sharp, P.
Post Office Box 570
Beaufort, SC 29901-0570
Attorney for UIM carrier State Farm

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON
IN THE COURT OF COMMON PLEAS

FILED

2011 AUG -3 PM 4:12

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP2500284

MYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

~~Patrice Smart vs. James Allen Grady~~

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other: _____

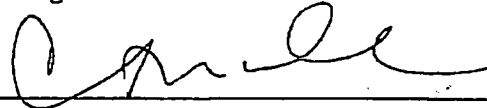
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court;

Case Dismissed with Prejudice per Mark Tinsley. Motion to Consolidate is Moot.

Dated at Hampton, South Carolina, this 3rd day of August 2011

Court Reporter: Debbie Everett



PRESIDING JUDGE - Hon. Carmen T. Mullen

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Mark Brandon Tinsley Gooding & Gooding, PA
P.O. Box 1000 Allendale, SC 29810

Patrick M. Higgins Howell Gibson & Hughes Pa
P.O. Box 40 Beaufort, SC 29902
Erin DuBose Dean Tupper Grimsley & Dean, PA

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Hon. Perry M. Buckner and Hon. Carmen Tevis Mullen

Civil Action No.: 2009-CP-25-284

and

Civil Action No.: 2009-CP-25-285

FILED

AUG - 8 2011 @ 11:40am

CLERK OF COURT
HAMPTON COUNTY

PATRICE SMART, Respondent,

-vs-

JAMES ALLEN GRADY, LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY
d/b/a BRANTLEY HAULING, RANDOLPH MURDAUGH, III,

of whom JAMES ALLEN GRADY is Appellant

GARY SMART, Respondent,

-vs-

JAMES ALLEN GRADY, LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY
d/b/a BRANTLEY HAULING, RANDOLPH MURDAUGH, III,

of whom JAMES ALLEN GRADY is Appellant

NOTICE OF APPEAL

James Allen Grady, appeals the Order of the Hon. Perry M. Buckner granting Plaintiff's Motion to Strike LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY d/b/a BRANTLEY HAULING, dated August 8, 2011 and the Orders of the Hon. Carmen Tevis Mullen, dismissing with prejudice Case 2009-CP-25-284, dated August 3, 2011, and the Order denying Defendants Motions to

Compel the Execution of Stipulations of Dismissal as to Randolph Murdaugh, III
and to Transfer Venue, dated August 3, 2011.

Respectfully Submitted,

HOWELL, GIBSON & HUGHES, P.A.

By: 

Jason Franklin Ward, Esquire
Patrick M. Higgins, Esquire
Howell, Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorneys for James Allen Grady,
Appellant.

Beaufort, South Carolina

August 6, 2011

Other Counsel of Record:

Mark B. Tinsley
Attorney for Respondents Patrice and Gary Smart

John Tiller
Attorney for Randolph Murdaugh, III

Erin Dean
Attorney for Randolph Murdaugh, III

Duke Highfield
Ben Treywick
Attorneys for Louis Daniel Moffett, Lynwood Brantley d/b/a Brantley Hauling

Mitch Griffith
Attorney for UIM carrier State Farm

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Hon. Perry M. Buckner and Hon. Carmen Tevis Mullen

Civil Action No.: 2009-CP-25-284

PATRICE SMART,..... Respondent,

-vs-

JAMES ALLEN GRADY, LOUIS DANIEL MOFFETT, LYNWOOD BRANTLEY
d/b/a BRANTLEY HAULING, RANDOLPH MURDAUGH, III,

of whom JAMES ALLEN GRADY is Appellant

PROOF OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing
Notice of Appeal upon all counsel of record by affixing same with proper postage
and placing same with the United States Postal Service on the 9th day of August,
2011 addressed to the following:

Mark B. Tinsley, Esquire
Gooding and Gooding, P.A.
Post Office Box 1000
Allendale, SC 29810
Attorney for Respondents Patrice and Gary Smart

John H. Tiller, Esquire
Haynsworth, Sinkler & Boyd, P.A.
Post Office Box 340
Charleston, SC 29402
Attorney for Randolph Murdaugh, III

Erin D. Dean, Esquire
Tupper, Grimsley & Dean, P.A.
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Beaufort, SC 29901-2055
Attorney for Randolph Murdaugh, III

Duke R. Highfield, Esquire
Benjamin Traywick, Esquire
Young Clement Rivers, LLP
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Charleston, SC 29402
**Attorneys for Louis Daniel Moffett, Lynwood Brantley d/b/a Brantley
Hauling**

E. Mitchell Griffith, Esquire
Griffith, Sadler & Sharp, P.
Post Office Box 570
Beaufort, SC 29901-0570
Attorney for UIM carrier State Farm

Respectfully Submitted,

HOWELL, GIBSON & HUGHES, P.A.

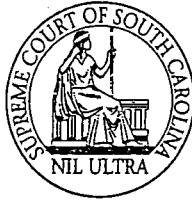
By: 

Jason Franklin Ward, Esquire
Patrick M. Higgins, Esquire
Howell, Gibson & Hughes, P.A.
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorneys for Appellant James Allen
Grady

Beaufort, South Carolina

August 9, 2011

EXHIBIT D



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080
FAX (803) 734-1499

April 5, 2012

Patrick M. Higgins, Esquire
Jason Franklin Ward, Esquire
Howell Gibson & Hughes, P.A.
P O Box 40
Beaufort, SC 29901-0040

Robert L. Widener, Esquire
McNair Law Firm, PA
P O Box 11390
Columbia, SC 29211

Re: Smart, Gary v. Grady, James, et al.

Dear Counsel:

The following Order has been endorsed on your requests in the above entitled matter:

“Motion to Certify Appeals from the Court of Appeals, Consolidate Appeals and Correct Caption, Determine Appealability and Exercise Pendent Jurisdiction, or in the Alternative, Petition for a Writ of Certiorari to the Court of Common Pleas is denied.

s/ Costa M. Pleicones J.
For the Court

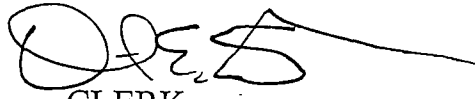
April 05, 2012.”

Smart, Gary v. Grady, James, et al.

Page 2

April 5, 2012

Very truly yours,



CLERK

DES/bfs

cc: Erin D. Dean, Esquire
H. Woodrow Gooding, Esquire
Mark B. Tinsley, Esquire
John H. Tiller, Esquire
John S. Nichols, Esquire

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
Perry M. Buckner, Circuit Court Judge
Carmen Tevis Mullen, Circuit Court Judge

RECEIVED

APR 26 2012

SC Court of Appeals

Case No. 2009-CP-25-284 and Case No. 2009-CP-25-285.

Gary Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood Brantley
d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,

of whom James Allen Grady is Appellant-Petitioner,

AND

Patrice Smart, Respondent,

v.

James Allen Grady, Louis Daniel Moffett, Lynwood Brantley
d/b/a Brantley Hauling and Randolph Murdaugh, III, Defendants,

of whom James Allen Grady is Appellant-Petitioner,

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel of record with a copy of the *Motion to Dismiss Appeal* by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

Robert L. Widener
MCNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211

Patrick M. Higgins
Jason Franklin Ward
HOSWELL, GIBSON & HUGHES, P.A.

Post Office Box 40
Beaufort, South Carolina 29901

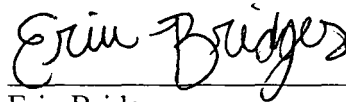
(Attorneys for Appellant-Petitioner, James Allen Grady)

John H. Tiller
HAYNSWORTH, SINKLER & BOYD, P.A.
Post Office Box 340
Charleston, South Carolina 29402

Erin D. Dean
TUPPER, GRIMSLEY & DEAN, P.A.
Post Office Box 2055
Beaufort, South Carolina 29901-2055

(Attorneys Randolph Murdaugh, III)

April 26, 2012



Erin Bridges
Paralegal

BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL
O. Eugene Powell, Jr.
Rebecca Cagle Patrick

April 26, 2012

VIA HAND DELIVERY

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

RE: Gary Smart v. Grady and Patrice Smart v. Grady
Case Numbers: 2009-CP-25-284 and 2009-CP-25-285

RECEIVED
APR 26 2012
SC COURT OF APPEALS

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of a *Motion to Dismiss Appeal* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Respondent and a \$25.00 check for filing this motion. Please return the additional filed copy to me via our courier.

If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/emb

Enclosures

cc: Mark B. Tinsley, Esquire
Robert L. Widener, Esquire
Patrick M. Higgins, Esquire
John H. Tiller, Esquire
Erin D. Dean, Esquire