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Mar 09 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY  
Circuit Court

Donald B. Hocker, Circuit Court Judge

Civil Case No. 2019-CP-20-00241

Billy Larson .....Appellant,

v.

South Carolina Department of Corrections..... Respondent,

**Motion to Remand**

Pursuant to Rules 240 and 241 of the South Carolina Appellate Court rules, Appellant Billy Larson moves to remand for the purpose of allowing Judge Donald B. Hocker to rule on Appellant’s pending motion to reconsider, pursuant to Rule 59(e), SCRCF, along with other outstanding motions regarding: attorney’s fees and expenses, offer of judgment interest, and preventing the deposit of the judgment with the Court.

This matter was tried to a jury in September 2021. The jury returned a verdict in favor of Appellant—finding fifteen occurrences and awarding \$ 4,000,000 dollars. Both parties timely filed post-trial motions. Appellant’s motions concerned: attorney’s fees and expenses, collection of interest on the offer of judgment, and moving to prevent Respondent from depositing funds to the Court while on appeal. Respondent filed multiple post-trial motions, including a motion for remittitur. On February 10, 2022, Judge Hocker issued an order reducing the jury’s verdict to one occurrence and \$300,000 dollars. The order did not address any of Appellant’s motions.

Appellant subsequently filed a motion for reconsideration and renewed the outstanding motions that had been raised, but not ruled upon. As it stands, Judge Hocker has taken the matter under advisement to consider whether Respondent needs to brief the matter and how the motion will be addressed—if it at all.

Because of this posture, Appellant has appealed out of an abundance of caution to avoid any timeliness questions. *See Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 25602 S.E.2d 772, 780 (2004) (noting that if an appellate court determines that a Rule 59(e) motion as unnecessary, the party may “unwittingly forfeit the right to an appeal”). Appellant’s service and filing of a notice of appeal and motion for remand is made solely to protect his appellate rights and ensure that jurisdiction does not become an issue. It is well settled that if this Court were to later find that the motion for reconsideration was successive that this Court’s jurisdiction would be automatically barred if Appellant failed to file a notice of appeal. *See id.* at 15-18, 602 S.E.2d at 775-77 (citing cases in which appellate courts found a Rule 59 motion was improper and did not stay the time to appeal).

Because of the gravity of this unlikely, yet potential finding, Appellant filed a notice of appeal and now respectfully requests this Court remand this matter to Judge Hocker.

*Signature Page to Follow*

Respectfully submitted,

*s/Whitney B. Harrison*

Whitney B. Harrison (S.C. Bar No. 100111)  
McGowan, Hood, Felder, & Phillips  
1517 Hampton Street  
Columbia, SC 29201

Joel S. Hughes (S.C. Bar No. 73708)  
5205 Forest Drive, Suite Two  
Columbia, South Carolina 29206  
(803) 790-2800  
jhughes@bergerlawsc.com

Kyle J. White (S.C. Bar No. 101426)  
White, Davis, and White Law Firm  
209 E. Calhoun St.  
Anderson, SC 29621  
(864) 231-8090  
kyle@wdwlawfirm.com

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South Carolina Department of Corrections..... Respondent,

**Proof of Service**

The undersigned hereby certifies Appellant’s Notice of Appeal and Motion for Remand were served by email on March 9, 2022, to the following:

Andrew Lindemann: [andrew@ldlawsc.com](mailto:andrew@ldlawsc.com)

Damon Wlodarczyk: [damonw@rplfirm.com](mailto:damonw@rplfirm.com)

Respectfully submitted,

s/Whitney B. Harrison  
Whitney B. Harrison (S.C. Bar No. 100111)  
McGowan, Hood, Felder, & Phillips  
1517 Hampton Street  
Columbia, SC 29201

March 9, 2022  
Columbia, SC



McGOWAN HOOD  
FELDER & PHILLIPS LLC

CHAD A. MCGOWAN (SC,GA,NC)  
S. RANDALL HOOD  
JOHN G. FELDER, JR.  
ROBERT V. PHILLIPS  
W. JONES ANDREWS, JR.  
RUSSELL T. BURKE  
JORDAN C. CALLOWAY  
ASHLEY WHITE CREECH  
SHAWN B. DEERY  
CHANCE M. FARR (SC,NC)  
JULIA M. FLUMIAN  
KAMBRELL H. GARVIN

EVE S. GOODSTEIN  
WHITNEY B. HARRISON  
RICHARD A. "TREY" JONES III  
DANIEL W. LUGINBILL  
ANNA S. MAGANN  
G. DONOVAN MALLOY  
AMANDA N. PITTMAN  
S. RANEE SAUNDERS  
JAMES L. WARD, JR. (SC,NC)  
JAMES STEPHEN WELCH (SC,OK)  
JAY F. WRIGHT

1517 HAMPTON STREET  
COLUMBIA, SC 29201

T: 803.779.0100

WWW.MCGOWANHOOD.COM

E-MAIL: WHARRISON@MCGOWANHOOD.COM

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SC Court of Appeals

March 9, 2022

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

RE: *Billy Larson v. South Carolina Department of Corrections*  
Civil Case No. 2019-CP-20-00241

Dear Ms. Kitchings,

Enclosed are Appellant Billy Larson's: (1) Notice of Appeal and (2) Motion for Remand.

Appellant's motion requests the Court grant a remand to allow the lower court to rule on a pending 59(e) motion, along with outstanding motions that were raised and not ruled upon. By way of background, this matter was tried to verdict and Judge Donald B. Hocker on February 10, 2022, subsequently reduced the verdict. Appellant timely filed a 59(e) motion and opposing counsel has requested the opportunity to respond. Currently, this matter is under advisement to determine whether opposing counsel needs to brief the matter.

Appellant is filing this notice of appeal out of an abundance of caution to protect his appellate rights in light of the pending motions and to avoid any jurisdictional issue in the event this Court later determines the pending 59(e) was successive. Accordingly, Appellant respectfully requests that this Court grant a remand and hold the appellate matter in abeyance pending the lower court's disposition of the motions.

Please do not hesitate to let me know if the Court needs any further information.

Respectfully,

*s/Whitney B. Harrison*

Whitney B. Harrison

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Enclosures

cc: Andrew Lindeman  
Damon Wlodarczyk  
Kyle J. White  
Joel S. Hughes