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Jun 06 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

The Honorable Michael S. Holt, Circuit Court Judge

Case No. 2022-000683

Sheanna Simmons, Plaintiff,.....Appellant,

v.

Cagle Brothers Logging, Inc.; Ronnie Dewayne James, Jr.,
and Charles Ingram Lumber Co., Inc., Defendants,

of Which Cagle Brothers Logging, Inc. and Ronnie Dewayne James, Jr.,Respondents.

APPELLANT’S MEMORANDUM ADDRESSING APPEALABILITY

This court can and should hear the appeal now, as it implicates Appellant’s substantial right not to be the victim of judge shopping. What Respondents did here is capable of repetition, and unless it is dealt with now, it will almost certainly always evade review. While it is true that the statute governing appeals is to be narrowly construed to preserve judicial economy by avoiding piecemeal appeals, it is not to be so narrowly construed as to thwart justice. What happened here should never have happened, and this court should not allow Respondents to hide behind a procedural technicality to prevent justice being done.

It is axiomatic that one circuit judge cannot overrule another. Unfortunately, that’s exactly what happened here. On November 29, 2021, Judge Paul M. Burch ruled that Respondents had to

produce certain documents under certain conditions by a certain date. Respondents didn't do that. Instead, they persuaded a *different* judge, Judge Michael S. Holt, to allow them to produce the documents under *different* conditions on a *different* date, and to relieve Respondents of their duty to comply with Judge Burch's Order. In other words, **Respondents persuaded Judge Holt to overrule Judge Burch.** This kind of judge shopping is simply not allowed — put another way, Judge Holt had no power and no authority to change the terms of Judge Burch's November 29, 2021 Order.

One does not have to think too long or too hard to realize the disastrous results which would ensue from allowing circuit judges to overrule one another. Unfortunately, this is exactly what will happen if this course requires Appellant to wait until the end of the case before an appeal can be brought. Here's why: This case ends only one of three ways: (a) either the matter is settled, (b) Appellant wins at trial, or (c) Appellant loses at trial. If the case settles, or if Appellant wins, then obviously Appellant will not appeal. And if Appellant loses, it will almost certainly not be as a result of this one particular ruling – meaning that no appeal can result there either. Accordingly, as a practical matter, we have a situation that is capable of repetition yet evading review.

What Respondent somehow managed to pull off here – persuading one circuit judge to overrule another – cannot be allowed to stand. Surely this Court does not endorse such a result, essentially making our trial courts into a wild west free-for-all where any circuit judge can overrule any other as long as they stick to discovery disputes and other sorts of purportedly interlocutory things knowing that they will evade review. If that's the case, then we should expect judge shopping to become routine.

Both Appellant and Respondents have a right to have their matter decided by an impartial judiciary that adheres to the rules, and that exercises only those powers provided by the

Constitution, the Legislature, and the Supreme Court. Here, Respondents persuaded Judge Holt to exercise power he simply does not have. Such an unlawful exercise of power should not be permitted to evade review.

June 6, 2022
Charleston, South Carolina

s/ Lane D. Jefferies
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PROOF OF SERVICE

I certify that the Appellant’s Cover Letter, Memorandum Addressing Appealability, and Proof of Service was served on Respondents by Electronic Mail and U.S. Mail on June 6, 2022, addressed to Respondent’s attorney of record, T. David Rheney at P.O. Box 10589, Greenville, South Carolina, 29603.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

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s/ Lane D. Jefferies

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Commercial Litigation Division

June 6, 2022

Sent via U.S. Mail and Email

The South Carolina Court of Appeals
Attn: Clerk of Court
P.O. Box 11629
Columbia, SC 29211

RE: *Sheanna Simmons v. Cagle Brothers Logging, Inc., et al.*
Appellate Case No.: 2022-000683

To Whom it May Concern,

Enclosed for filing, please find Appellant's Memorandum Addressing Appealability to be included in the record on appeal.

Sincerely,

/s/Jillian Lail

Jillian Lail
Paralegal

Enclosures as stated.

cc: T. David Rheney
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