

The Supreme Court of South Carolina

RE: Relaxation of Rule 238(c), SCACR, for State Agencies.

ORDER

Rule 238(c), SCACR, Forms of Papers, provides that copy may be typed or reproduced on both sides if the type or reproduction does not show through. At the present time, all petitions for certiorari, motions, and briefs received by the appellate courts are printed on only one side of the piece of paper. Because of the current budget crisis, we relax the Rule for State Agencies so, if it is more cost-effective to use double-sided printing, they may do so.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E. C. Burnett, III J.

s/Costa M. Pleicones J.

Columbia, South Carolina

February 24, 2003



**OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA**

FILED DURING THE WEEK ENDING

February 24, 2003

ADVANCE SHEET NO. 7

**Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.judicial.state.sc.us**

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25581 - James Furtick v. S.C. Probation, Parole & Pardon Services	Denied 02/20/03
25582 - Robert Lee Burnett v. State	Denied 02/20/03
25587 - Ronald Gardner v. S.C. Dept. of Revenue	Pending
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- 2003-UP-124 - The State v. Roshell Frierson
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- 2003-UP-125 - Carolina Travel v. Milliken
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- 2003-UP-126 - John Brown v. Spartanburg County
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- 2003-UP-127 - City of Florence v. Phillip Tanner
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- 2003-UP-128 - Diversified Distributors v. Bell Appliance
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- 2003-UP-129 - The State v. Walter Davis
(York, Judge John C. Hayes, III)
- 2003-UP-130 - Moses Anderson v. State of South Carolina
(York, Judge Howard P. King)
- 2003-UP-131 - The State v. Jerry M. Collins
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- 2003-UP-132 - The State v. Rodney Anstett
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- 2003-UP-134 - The State v. Joseph Harlan Clark
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- 2003-UP-135 - The State v. Michael Frierson
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PETITIONS FOR REHEARING

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|--|----------------|
| 3565 - Clark v. SCDPS | Pending |
| 3573 - Gallagher v. Evert | Pending |
| 3574 - Risinger v. Knight | Pending |
| 3579 - The State v. Dudley | Pending |
| 3580 - FOC Lawshe v. International Paper | Pending |
| 3581 - Nexsen v. Haddock | Denied 2/20/03 |

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3592 - Gattis v. Murrells Inlet	Denied 2/20/03
3593 - McMillian v. Gold Kist	Pending
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2002-UP-611 - Allgood, V., et al. v. GE Capital	Denied 2/21/03
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2002-UP-765 - The State v. Raysor	Denied 2/21/03
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2002-UP-792 - SCDSS v. Ihantiuk	Denied 2/21/03
2002-UP-794 - Jones v. Rentz	Denied 2/20/03
2002-UP-798 - Brantley v. Newberry	Denied 2/20/03
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2003-UP-009 - Belcher v. Davis	Denied 2/20/03
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2003-UP-018 - Rogers Grading v. JMC Corp	Pending
2003-UP-019 - The State v. Wigfall	Denied 2/21/03
2003-UP-021 - Capital Coating v. Browning	Denied 2/20/03
2003-UP-022 - Settles v. Settles	Denied 2/21/03
2003-UP-023 - The State v. Killian	Denied 2/20/03
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2003-UP-033 - Kenner v. USAA	Denied 2/20/03
2003-UP-036 - The State v. Traylor	Pending
2003-UP-052 - SC 2nd Injury v. Liberty Mutual	Pending
2003-UP-053 - Cherry v. Williamsburg County	Pending
2003-UP-054 - University of Georgia v. Michael	Pending
2003-UP-055 - Benn v. Lancaster	Pending
2003-UP-056 - McClain v. Jarrard	Pending
2003-UP-059 - SCDSS v. Ceo	Denied 2/21/03
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2003-UP-072 - Waye v. Three Rivers	Pending
2003-UP-073 - The State v. Walton	Pending
2003-UP-076 - Cornelius v. School District	Pending
2003-UP-083 - Miller v. Miller	Pending

2003-UP-084 - Miller v. Miller	Pending
2003-UP-085 - Miller v. Miller	Pending
2003-UP-088 - The State v. Murphy	Pending
2003-UP-091 - The State v. Thomas	Pending
2003-UP-096 - The State v. Boseman	Pending
2003-UP-098 - The State v. Dean	Pending
2003-UP-101 - Nardon V. Davis	Pending

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3314 - The State v. Woody, Minyard	Pending
3489 - The State v. Jarrell	Pending
3500 - The State v. Cabrera-Pena	Pending
3501 - The State v. Johnson	Pending
3504 - Wilson v. Rivers	Granted 2/20/03
3505 - L-J v. Bituminous	Pending
3518 - Chambers v. Pingree	Pending
3521 - Pond Place v. Poole	Pending
3523 - The State v. Arnold	Granted 2/20/03
3527 - Griffin v. Jordan	Pending
3533 - Food Lion v. United Food	Pending
3539 - The State v. Charron	Pending
3540 - Greene v. Greene	Pending

3541 - Satcher v. Satcher	Pending
3543 - SCE&G v. Town of Awendaw	Pending
3544 - Gilliland v. Doe	Pending
3545 - Black v. Karrottukunnel	Pending
3546 - Lauro v. Visnapuu	Pending
3548 - Mullis v. Trident	Pending
3549 - The State v. Brown	Pending
3550 - State v. Williams	Pending
3551 - Stokes v. Metropolitan	Pending
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3562 - Heyward v. Christmas	Pending
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2002-UP-329 - Ligon v. Norris	Pending
2002-UP-368 - Roy Moran v. Werber Co.	Pending
2002-UP-401 - The State v. Warren	Pending
2002-UP-411 - The State v. Roumillat	Pending
2002-UP-412 - Hawk v. C&H Roofing	Pending
2002-UP-480 - The State v. Parker	Pending

2002-UP-485 - Price v. Tarrant	Pending
2002-UP-489 - Fickling v. Taylor	Pending
2002-UP-498 - Singleton v. Stokes Motors	Pending
2002-UP-504 - Thorne v. SCE&G	Denied 2/24/03
2002-UP-509 - Baldwin Const v. Graham, Barry	Granted 2/20/03
2002-UP-513 - Frazier, E'Van v. Badger	Pending
2002-UP-514 - McCleer v. City of Greer	Pending
2002-UP-516 - The State v. Parks	Pending
2002-UP-537 - Walters v. Austen	Pending
2002 -UP-538 - The State v. Ezell, Richard	Pending
2002-UP-547 - Stewart v. Harper	Pending
2002-UP-549 - Davis v. Greenville Hospital	Pending
2002-UP-586 - Ross v. USC	Pending
2002-UP-587 - Thee Gentlemen's Club v. Hilton Head	Pending
2002-UP-594 - Williamson v. Bermuda	Pending
2002-UP-598 - Sloan v. Greenville	Pending
2002-UP-599 - Florence v. Flowers	Pending
2002-UP-603 - The State v. Choice	Pending
2002-UP-609 - Brown v. Shaw	Pending
2002-UP-613 - Summit Contr. v. General Heating	Pending
2002-UP-615 - The State v. Floyd	Pending

2002-UP-656 - SCDOT v. DDD(2)	Pending
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2002-UP-691 - Grate v. Georgetown	Pending
2002-UP-715 - Brown v. Zamias	Pending
2002-UP-724 - The State v. Stogner	Pending
2002-UP- 753 - Hubbard v. Pearson	Pending
2002-UP-769 - Babb v. Estate of Charles Watson	Pending
2002-UP-775 - The State v. Charles	Pending
0000-00-000 - Dreher v. Dreher	Pending
0000-00-000 - Hattie Elam v. SCDOT	Pending

PETITIONS - UNITED STATES SUPREME COURT

2002-UP-029 - Poole v. South Carolina	Pending
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PER CURIAM: McKnight was indicted for homicide by child abuse and distribution of cocaine after giving birth to a stillborn infant which had benzoylecgonine, a substance metabolized by cocaine, in its system. At the conclusion of the state's evidence, the trial court granted McKnight a directed verdict on the distribution of crack cocaine charge.¹ The state appeals the grant of a directed verdict to McKnight.

In State v. Holliday, 255 S.C. 142, 177 S.E.2d 541 (1970), this Court recognized limited situations where the state may appeal, stating,

While a limited right of appeal in criminal cases has been conferred upon the State by statute in a number of jurisdictions, the extent of the right of the prosecution to appeal in this jurisdiction has been defined by our judicial decisions.

Based primarily upon the double jeopardy provisions of the Constitution, we have long recognized that the State has **no right of appeal from a judgment of acquittal in a criminal case**, State v. Lynn, 120 S.C. 258, 113 S.E. 74; **unless the verdict of acquittal was procured by the accused through fraud or collusion**, State v. Johnson, 248 S.C. 153, 149 S.E.2d 348.

(Emphasis supplied). Citing State v. Rogers, 198 S.C. 273, 17 S.E.2d 563 (1941), the Court noted that “no writ of error, appeal, or other proceeding lies on behalf of the state to review or to set aside a verdict or a judgment of acquittal in a criminal case, **although there may have been error committed by the court**, or a perverse finding by the jury.” 255 S.C. at 145, 177 S.E.2d at 542-43. (Emphasis supplied). These cases are premised upon the basic double jeopardy principle that

¹ The jury convicted McKnight of homicide by child abuse, and we affirmed that conviction in State v. McKnight, Op. No. 25585 (filed Jan. 27, 2003)(Shearouse Adv. Sh. No. 3 at 42)(McKnight I).

a defendant in a criminal prosecution is in legal jeopardy when he has been placed upon trial under a valid indictment and a competent jury has been sworn. State v. Steadman, 216 S.C. 579, 59 S.E.2d 168 (1950).²

Accordingly, as there is no right in this state³ to appeal the grant of a directed verdict in the defendant's favor, the state's appeal is dismissed.

APPEAL DISMISSED.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

² The state may appeal an order quashing an indictment, State v. Bouknight, 55 S.C. 353, 33 S.E. 451 (1899); State v. Young, 30 S.C. 399, 9 S.E. 355 (1889), or the grant of a new trial after conviction if based on an error of law. State v. Dasher, 278 S.C. 395, 297 S.E.2d 414 (1982); State v. DesChamps, 126 S.C. 416, 120 S.E. 491 (1923). These situations, however, involve either a dismissal prior to the jury being sworn, or the grant of a new trial following **conviction**, not an **acquittal**.

³ The state's reliance on federal caselaw is misplaced. This Court has specifically noted that the state's right of appeal is governed by statute and caselaw. State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986)(federal cases cited by appellant concern federal statute and had no applicability to state court appeals); State v. Holliday, supra (extent of the right of the prosecution to appeal in this jurisdiction has been defined by our judicial decisions).

FACTS

Husband and Wife divorced in 1985. By consent, a modification order was entered in 1987 setting Husband's periodic alimony payments at \$400 per month and child support at \$800 per month for their three minor children. As each child reached eighteen, Husband reduced his child support payment proportionately. Finally, in 1995, the youngest child reached eighteen and Husband ceased paying child support altogether.

Wife commenced this action in 1998 seeking an increase in alimony or, in the alternative, child support for Nancy, the parties' middle child, who turned eighteen in 1993 but still lives with Wife. Nancy is disabled from Leigh's Syndrome, a degenerative metabolic disease with which she was diagnosed in 1995. Nancy first started experiencing problems related to her condition sometime in 1993, the year she turned eighteen. Nancy functions on the level of an eight- to ten-year-old and has eye and muscle mobility problems. She also suffers from obsessive-compulsive disorder and is afraid of strangers. She insists on sleeping in Wife's bed and cannot be alone for any significant amount of time. Wife assists Nancy with her daily care including meals, bathing, and dressing.

In response to Wife's complaint, Husband counterclaimed for a termination or reduction of alimony. He contested child support on the ground Nancy was over eighteen years of age.

After a hearing, the family court reduced Husband's alimony payment to \$150 per month but ordered him to pay child support for Nancy in the amount of \$553.14 per month, reduced by the amount of his monthly health insurance premium for Nancy. Child support was ordered retroactive to the date of filing of Wife's complaint.

disability prevents the child from becoming emancipated, the presumption of emancipation upon reaching majority is inapplicable. Parker v. Parker, 230 S.C. 28, 31, 94 S.E.2d 12, 13 (1956) (emancipation is effected by operation of law when a child attains majority unless there is some “infirmity of mind or body rendering the child unable to take care of itself”).

We construe the language of § 20-7-420(17) to be consistent with this common law duty and hold the family court is vested with jurisdiction to order child support for an unemancipated disabled adult child. Further, we discern the legislature’s intent that a noncustodial parent share the burden of supporting a child who cannot be emancipated because of a disability that arose before majority but was diagnosed only after the child turned eighteen.

Emancipation is a factual issue dependent upon the circumstances of each case. Timmerman v. Brown, 268 S.C. 303, 233 S.E.2d 106 (1977). In this case, there is no challenge to the fact that Nancy is not emancipated. Further, her disability has prevented her emancipation. The family court therefore had jurisdiction under § 20-7-420(17) to order child support in this case.²

2. Equal protection

Husband contends the underscored language of § 20-7-420(17) violates equal protection because a married parent has no legal

Sayne v. Sayne, 284 S.W.2d 309 (Tenn. App. 1955); Van Tinker v. Van Tinker, 229 P.2d 333 (Wash. 1951).

² Husband also argues the award of child support was not in Nancy’s best interest because she will lose benefits such as Social Security Income and medicaid. The record indicates an administrative law judge has ruled that the child support payments do not make Nancy ineligible for Social Security Income. Although there is speculation in the record that Nancy’s eligibility for other government programs may be affected, it is mere speculation. This issue is without merit.

v.

Virginia Williams, Russell
Williams, Cecilia Williams,
Walker Scott Russell, Jr., and
Grace Johnson Russell, Respondents,

Of whom Walker Scott Russell,
a/k/a W. Scott Russell is Respondent/Appellant,

AND

Mildred Russell Williams
Neiman, a/k/a Mildred R.
Neiman is Appellant/Respondent,

And

Wachovia Bank, N.A., as
Personal Representative of the
Estate of Donald S. Russell,
deceased, Virginia U. Russell,
Donald S. Russell, Jr., John R.
Russell, Thaddeus Russell
Williams, a/k/a T. Russell
Williams, a/k/a Russell
Williams, Virginia Carol
Williams, a/k/a Virginia C.
Williams, a/k/a Virginia
Williams, and Cecilia Frances
Williams, a/k/a Cecilia F.
Williams are Respondents.

Appeal From Spartanburg County
Henry F. Floyd, Circuit Court Judge

