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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2022-001280

Case No. 2021-CP-40-02306

FREDDIE EUGENE OWENS, BRAD KEITH SIGMON, GARY DUBOSE TERRY, and RICHARD BERNARD MOORE, *Respondents-Appellants*,

v.

BRYAN P. STIRLING, in his official capacity as the Director of the South Carolina Department of Corrections, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; and HENRY MCMASTER, in his official capacity as Governor of the State of South Carolina, *Appellants-Respondents*.

INITIAL REPLY BRIEF OF RESPONDENTS-APPELLANTS

Lindsey S. Vann (No. 101408)
Emily Paavola (No. 77855)
Hannah L. Freedman (No. 103373)
Brendan Van Winkle (No. 104768)
Allison Franz (No. 105189)
JUSTICE 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201

John H. Blume (No. 743)
CORNELL LAW SCHOOL
158 Myron Taylor Hall
Ithaca, NY 14853

Joshua Snow Kendrick (No. 70453)
KENDRICK & LEONARD, P.C.
506 Pettigru (29601)
P.O. Box 6938
Greenville, SC 29606

John Christopher Mills
J. CHRISTOPHER MILLS, LLC
2118 Lincoln Street
Columbia, SC 29202

Elizabeth Franklin-Best (No. 72555)
ELIZABETH FRANKLIN-BEST, P.C.
3710 Landmark Drive, Suite 113
Columbia, SC 29204

Counsel for Respondents-Appellants

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INTRODUCTION

Appellants claim the trial court's discovery ruling was quite limited and only prevented Respondents from "pursu[ing] discovery about SCDC's efforts to obtain lethal injection drugs." Resp. Br. Apps. at 1. They also claim their requested protective order was equally focused on this narrow topic, and suggest that once the circuit court issued a Form 4 order on July 5, 2022 (hereafter "the Discovery Order"), ruling on that request, those issues never came up again. Resp. Br. App. at 9, 5. That is not what happened.

To be sure, Respondents sought discovery on SCDC's purported efforts to obtain lethal injection drugs. But they also requested a significant amount of other relevant information, including:

- The names and addresses of any persons known to Appellants to be witnesses concerning the facts of the case.
- A list of photographs, plats, sketches or other prepared documents related to the facts of the case.
- A list of each person involved in the creation of the current protocols for lethal injection, firing squad and electric chair, and a description of the role each person played in the creation of those protocols.
- A description of how Appellants recruit or identify individuals who will carry out executions by all three methods.
- The professional qualifications of individuals who will participate in executions by all three methods.
- All documents related to the electric chair maintained by Appellants, including autopsies from prior executions by electrocution.
- All documents related to lethal injection maintained by Appellants, including autopsies from prior executions by lethal injection.
- All documents related to the firing squad maintained by Appellants.

Mot. Protective Order, Exs. 1, 2 (June 9, 2022).

Appellants objected to *all* these requests. *Id.*, Exs. 3a, 3b. Specifically, they moved for a protective order seeking to prohibit discovery regarding four categories of evidence: (1) "[a]ny discovery on SCDC's protocols" for all three methods of execution, *id*. at 4; (2) the "entirety" of Respondents' requested discovery regarding lethal injection, *id.* at 8; (3) Respondents' "myriad

requests for information concerning SCDC's attempts to procure lethal injection drugs, to purchase bulk components for lethal injection drugs to have them compounded, and to create a compounding pharmacy to have drugs for lethal injection compounded at SCDC," *id*.; and, (4) any inquiry into "facts that are reasonably calculated to lead to, or may result in, discovery of" the identity of execution team members, *id*. at 10. Their position was that these categories of information were "irrelevant" because Respondents did not "challenge the constitutionality of lethal injection in South Carolina," and because Respondents raised a facial challenge to the firing squad and electrocution. *Id*. at 4, 5. They also argued, based on their own "broad" construction of the phrase "member of an execution team," that ten of Respondents' interrogatories and eleven requests for production were objectionable because they sought information that might, through some chain of events, eventually lead to the disclosure of a "member of the execution team.[1] *Id*. In a Discovery Order containing no discussion of her reasoning, Judge Newman denied Appellants' motion for a protective order as to the protocols but granted a protective order "as to the remaining topics (i.e., lethal injection information, members of the execution team, etc.)." Discovery Order at 1.

Armed with this non-specific language, during depositions Appellants' counsel directed their witnesses not to answer a broad range of questions, including ones as general as "[do you

[1] S.C. Code Ann. § 23-4-580 (2013) prohibits the disclosure of "the identity of a current or former member of an execution team" absent a court order issued "for the proper adjudication of pending litigation." Appellants interpret the phrase "member of an execution team" so broadly as to permit essentially total secrecy surrounding the execution process, and they maintained this position at trial. *E.g.* Mot. Protective Order at 11-12 (June 9, 2022) (arguing that "member of an execution team" prohibited Respondents from seeking "information that may lead to the disclosure of the identities of persons participating in executions, to include persons participating in the planning of executions, persons participating in the training of executions, persons participating in the implementation of executions, persons and companies involved in [Appellants'] efforts to obtain lethal injection drugs, persons and companies involved in [Appellants'] efforts to obtain the raw components of lethal injection drugs, and persons and companies involved in [Appellants'] efforts to identify or develop a compounding pharmacy to produce lethal injection drugs in usable form"); Tr. 24-25.

have] any knowledge of the prior executions that have occurred in the South Carolina Department of Corrections." Mot. for Ruling Pltfs.' Mot. Compel & Clarification Scope Disc. Order at 7 (July 19, 2022) (hereinafter "Mot. for Ruling"). In support of this position, counsel asserted that "[b]ecause [the protocols] [were] the only part of the Motion for Protective Order that was denied," they could direct their witnesses not to respond to anything Appellants' counsel determined might be covered by the Discovery Order.[2] Mot. Protective Order Protect Responses Oral Dep. Questions Posed Dir. Bryan Stirling & Colie Rushton at 2-3 (July 19, 2022) (hereinafter "Second Mot. Protective Order").

At both depositions, and again at the start of trial, Respondents' counsel made a record of the substance of questions he intended to ask. Counsel explained, "I don't agree with [the Discovery Order]" but acknowledged that "we can't ask about lethal injection, we can't ask about members of the execution [team]." Tr. 78:3-7. But for the Discovery Order, he noted, he would have asked a series of questions about lethal injection. Two weeks before trial, Respondents sought clarification on the scope of permitted discovery, explaining Appellants had taken an overly broad view of what subjects were covered by the Discovery Order. Mot. for Ruling. Judge Newman did not make a pretrial decision on this request and instead heard argument on the first day of trial about the discovery dispute.

First, Respondents' counsel addressed the issue of Appellants' broad interpretation of S.C. Code Ann. § 23-4-580. For example, regarding electrocution, counsel stated:

[2] Indeed, in a second motion for a protective order, filed after Stirling and Rushton had been deposed, Appellants doubled down, asserting that the Discovery Order "shielded" their witnesses from any "lines of questions concerning information that could reasonably reveal the identities of members of the execution team," and took the broad position that even "backwards-looking discovery concerning both historical accounts and information related to execution autopsy records" would result in the disclosure of execution team members. Second Mot. Protective Order at 3.

> We know records exist that tell us how it went, but we're not allowed to look at them. We're not allowed to see them, we're not allowed to ask any questions about them solely to avoid identifying someone who is now, will be or may have been on the execution team.

Tr. 73. Counsel emphasized that the relevant information is in the sole possession and control of Appellants. Tr. 75 ("[T]hey have the information. We can't get it."); Tr. 77 ("[T]here's not another source of information because it doesn't exist because the Department of Correctios has it and they keep it confidential.").[3]

Second, Respondents' counsel stated he wished to ask, "another series of questions that involve the availability of lethal injection drugs that you have ruled on [in] a protective order." Tr. 133. He sought the Court's guidance on "however you determine that we can preserve our issue." *Id*.; *see also* Tr. 138 ("how would you like for me to at least place the substance of my inquiry on the record?"). Appellants' counsel responded that this topic "clearly was covered by the protective order," and objected to Respondents' request to proffer the questions:

> To the extent they're talking about this on appeal, the appeal would be that discovery decision, which is well within your discretion, so I'm not sure what the benefit of going through question by question—if you've already said that topic is off limits, then what's the purpose except to see if I slip up and forget to object to something or—I mean, I don't understand the purpose.

Tr. 139. Respondents' counsel then proposed that another way to preserve the issue was "to say Judge, here [are] the questions that I would have asked him in the trial if not for your order and then you'd say yes, those are all pursuant to my order, and then at least the Supreme Court knows

[3] Following this discussion, Judge Newman slightly altered her pretrial ruling by ordering Appellants to produce autopsies of previous executions by electrocution. However, the court never ordered Appellants to produce autopsies of executions by lethal injection, *see* Tr. 162-65, although they later reported they have at least fifteen lethal injection autopsies in their possession. Tr. 174. Thus, Appellants' claim that the dispute over autopsy records is now moot is incorrect. Resp. Br. Apps. at 4, n.3.

what I was trying to do." Tr. 141. Judge Newman responded, "Well, then there it is. It's on the record." *Id*. In an effort to make clear what he "would have asked," Respondents' counsel added he wished to ask questions about:

> [T]he efforts made to get [lethal injection drugs], you know, the frequency, the diligence of that, and those we were prevented from asking. And I think that what I just said probably properly preserves the issue for the Supreme Court that we would have wanted to delve into the true efforts to ensure availability, and—and you ruled against us.

Tr. 143. Counsel concluded by stating he believed this sufficiently preserved the discovery issues for appeal, "so let's leave it there." Tr. 144. Judge Newman concurred, "we'll leave it there." *Id*.

ARGUMENT

Appellants claim that "[a]t trial, Respondents never tried to ask any questions about SCDC's efforts to obtain lethal injection drugs to any witness." Resp. Br. Apps. at 5. Similarly, in their opening brief, Appellants argued Respondents failed to satisfy the *Glossip* test[4] (an argument Appellants raised in the alternative) because Respondents did not put on evidence (like the fifteen lethal injection autopsies on which they sought discovery) that lethal injection is a less painful method or that it is one the State could readily implement. Br. Apps. at 39, 41. Appellants similarly asserted Respondents failed to prove Act 43 is ex post facto because "Respondents offered no evidence whatsoever about lethal injection," *id.* at 42, and "[t]he comparison required for an ex post facto claim must look at the method South Carolina uses for lethal injection." *Id*. at n.9. These arguments are untenable in the face of Appellants' own successful efforts to bar Respondents

[4] *Glossip v. Gross*, 576 U.S. 863 (2015).

access to the very information (which is in Appellants' sole possession) they now fault Respondents for failing to offer.[5]

I. THE CIRCUIT COURT'S DENIAL OF DISCOVERY CREATED A VACUUM OF INFORMATION REGARDING THE AVAILABILITY OF LETHAL INJECTION DRUGS WHICH APPELLANTS ARE ATTEMPTING TO EXPLOIT.

In addition to criticizing Respondents for not offering evidence that SCDC could carry out an execution by lethal injection, Appellant's Initial Brief also makes numerous unfounded assertions about SCDC's efforts to obtain lethal injection drugs. *See, e.g.,* Br. Apps. at 1 ("[D]espite its diligent efforts," SCDC has been "unable to obtain the drugs necessary to carry out an execution by lethal injection"); *id.* at 6 ("For about a decade, SCDC has been unable to obtain or compound the drugs necessary for lethal injection"). Given Respondents' arguments that lethal injection is an available, more humane alternative method of execution, and that the term "available" in the context of the statute is vague and/or an unconstitutional delegation to the Director of legislative power, the information Respondents sought, but were denied, was definitely relevant.

During Director Stirling's tenure as Director of SCDC, there have been 243 executions by lethal injection carried out by thirteen states and the federal government. In the 17 months since Act 43 was passed, 20 people have been executed by lethal injection by Alabama, Arizona, Mississippi, Missouri, Oklahoma, and Texas. *See* https://deathpenaltyinfo.org/executions/execution-database (last visited Oct. 20, 2022). There are

[5] In addition, Appellants' arguments are internally inconsistent. On the one hand, they argue Respondents must lose because they did not present affirmative evidence about lethal injection's availability or its effects on the human body. On the other hand, they argue that the discovery dispute below was properly resolved in their favor because all of the information Respondents sought was irrelevant. Resp. Br. Apps. at 10 ("nothing about the discovery Respondents were not allowed to pursue was relevant to their claims").

also currently dozens of executions scheduled in those same jurisdictions, all of which, at present, will utilize lethal injection as the method of bringing about the demise of the inmate. Thus, against this backdrop, especially given the Supreme Court's repeated recognition that lethal injection, properly administered, is the most humane known method of execution, *see, e.g.*, *Barr v. Lee*, 140 S. Ct. 2590, 2591 (2020) (per curiam), information regarding lethal injection, and SCDC's efforts to procure necessary drugs should have been provided to Respondents.[6]

As things currently stand, no reason has been provided in this litigation as to why South Carolina is the only state in the country that intends to execute condemned prisoners which is unable to obtain lethal injection drugs (whether that be pentobarbital or other drugs used by the states in their protocols).[7] In fact, the only evidence of the Director's efforts that has ever been produced to the Court is a letter from Hikma Pharmaceuticals reminding him of Hikma's objection

[6] In addition to their arguments about *Glossip*, Appellants repeatedly point to other lawsuits as evidence that lethal injection is, in fact, not humane. Specifically, they insist that because other death row inmates have and continue to challenge lethal injection as inhumane, Respondents must lose. But this argument, like their other arguments, ignores the facts. First, most challenges to lethal injection have been focused on improperly administered lethal injection, which will produce botched executions, not lethal injection executions that are properly administered. *See, e.g.*, *Baze v. Rees*, 553 U.S. 35 (2008) (plurality opinion) (challenging three-drug protocol and proposing one-drug protocol as alternative method); *Grayson v. Warden*, 869 F.3d 1204, 1211–12 (11th Cir. 2017) (challenging specific protocol and proposing alternative protocols, including a "single injection of . . . compounded pentobarbital"); *Glossip v. Chandler*, No. CIV-14-0665-F, 2022 WL 1997194 (W.D. Okla. June 6, 2022) (challenging three drug protocol and proposing alternative method of fentanyl plus commercially compounded pentobarbital or sodium thiopental); *Cooey v. Strickland*, No. 2009 WL 4842393 (S.D. Ohio Dec. 7, 2009) (challenging lethal injection based on flaws in the administration of the protocol). Second, and most importantly, not a single one of the out-of-state challenges to lethal injection has been successful, and several of them have culminated in opinions from the Supreme Court of the United States announcing that lethal injection is, as a matter of law, the most humane known method of execution. *Baze*, 553 U.S. at 62; *Barr*, 140 S. Ct. at 2591.

[7] Appellants argue that information regarding whether SCDC has or has not attempted to obtain pentobarbital is irrelevant because "SCDC has always used a three-drug protocol that does not include pentobarbital." Resp. Br. Apps. 10. This assertion is belied by information provided by SCDC regarding its current execution protocol. *See, e.g.*, Letter Plyler to Vann (Nov. 20, 2020), Ex. 1 to Resp. Mot. Dismiss (Mar. 22, 2022).

to the use of their products for lethal injection. *See, e.g.*, Letter Stirling to Shearouse (June 8, 2021), Ex. A. However, this is hardly evidence given that Hikma, a New Jersey pharmaceutical sends this type of form letter to Departments of Corrections nationwide. Its limited probative value is even further diminished by the fact that it does not manufacture any of the drugs designated in South Carolina's lethal injection protocol.

Thus, the information Respondents sought would have supported their as applied challenge to the statute, i.e., that lethal injection is in fact available and should thus be a method of execution offered to them (and other inmates) when their executions are scheduled. Other information sought, for example, who developed the protocols, their expertise and training, and the identity of people who had witnessed an execution would also have been relevant to other issues before the Court and provided additional support for the Circuit Court's judgment.[8] Evidence about how humane lethal injection is in South Carolina is also relevant to Respondents' ex post facto claim and to Appellants' arguments about the *Glossip* test—both of which, Appellants concede, require a comparison between how SCDC carries out lethal injection and how it carries out (or intends to carry out) other methods of execution. The circuit court abused its discretion when it granted Appellants' overbroad protective order and prevented Respondents from accessing evidence in support of their claims. If the Court does not affirm the circuit court on any other basis, the Court

[8] As to training and experience, that information would have tended to make it "more probable or less probable" that the executioners would make mistakes during the course of an execution and therefore cause additional pain and suffering to the condemned. *See* Rule 401, SCRE. As to the individuals who have witnessed executions, their identities could have been disclosed with a court order (as Respondents proposed), *see* S.C. Code Ann. § 24-3-580, and that information would have likely led to testimony about previous executions by SCDC using lethal injection and electrocution. That testimony, in turn, would have had a tendency to make it "more probable or less probable" that those methods are painless or painful.

should remand to the circuit court with instructions to permit discovery as Respondents initially requested.

II. THE SOLE ISSUE IN THE CROSS-APPEAL IS PROPERLY BEFORE THE COURT AND WAS ADEQUATELY BRIEFED IN RESPONDENTS'-APPELLANTS' OPENING BRIEF.

A. The Cross-Appeal Issue Was Amply Preserved Below.

It is axiomatic that in this State, a losing party must "present his issues to the lower court and obtain a ruling on them in order to preserve an issue for appellate review." *L'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000). This long-standing rule "is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments" and "serves as a keen incentive for a party to prepare a case thoroughly." *Id.* at 422, 526 S.E.2d 724. To preserve a matter for appellate review, a party must raise the issue before the trial court and, upon a denial, file an objection that is "sufficiently specific to inform the trial court of the point being urged by the objector." *Wilder Corp v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 713, 733 (1998).

Here, Respondents clearly preserved their objections to the Discovery Order. First, Respondents filed a motion to compel discovery that specifically addressed the items of discovery at issue in this cross-appeal. *See* Pltfs.' Resp. Opp. Defs.' Mot. Protective Order Prohibit Limit Scope of Disc. & Mot. to Compel Disc. (June 14, 2022). Second, when the court denied that motion and granted Appellants' protective motion in the Discovery Order, Respondents filed a motion asking the court to clarify its earlier ruling. *See* Mot. for Ruling. At the outset of the trial, with that motion still outstanding, counsel for Respondents went out of their way to ensure that these issues were preserved. As is described above, Respondents' counsel reiterated that they were seeking lethal injection autopsies and noted that although they understood the court had ruled against them on that matter, they "just want[ed] to preserve that for the record." Tr. 162:18-22. They stated

multiple times that they wished to proffer a "series of questions that involve the availability of lethal injection drugs," and they sought the court's guidance on "however you determine that we can preserve our issue." Tr. 133; *see also* Tr. 106 ("I want the Supreme Court to know what I was trying to ask and it sounds like that—that you do not feel comfortable with me doing any kind of proffered questions."); Tr. 107 ("I just know the Supreme Court of South Carolina is very particular about error preservation, and that's the only reason that I'm keeping on talking."); Tr. 140 ("I just want to make sure that in a—a later day what I don't want to happen is for someone to say you didn't keep trying.").

Thus, Respondents "prepare[d] [their] case thoroughly" and did not "keep[] an ace card up [their] sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give [them] another opportunity to prove [their] case." *L'On*, 338 S.C. at 422, 526 S.E.2d at 724. To the contrary, they put the circuit court on notice that they disagreed with the Discovery Order, they made specific objections on the record, and the trial court had ample opportunity to "rule properly after it ha[d] considered all relevant facts, law, and arguments." *Id.* The circuit court also acknowledged that the issue was preserved. Tr. 141. Appellants' arguments to the contrary are inconsistent with the facts and the law.

B. Respondents-Appellants Have Standing to Appeal.

According to Appellants, because the Circuit Court ruled in Respondents' favor on the merits of the claims below, Respondents "did not have a right to appeal." Resp. Br. Apps. at 6. This is because, they assert, "Respondents are in no way aggrieved by the September 6 order." Resp. Br. Apps. at 6. This argument ignores three basic principles of civil procedure.

First, Rule 201(b), SCACR provides that "a party aggrieved by an order, judgment, sentence or decision may appeal." In this context, the 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." *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct. App. 1998). The rule is designed to prevent a party from appealing a decision "which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person." *Id.* Here, Respondents were directly harmed by the Circuit Court's ruling on discovery: as is described in detail above, the ruling deprived Respondents of an opportunity to access evidence that directly bears on their case in chief. That is a legally cognizable harm for the purposes of Rule 201(b), SCACR. *See Fairchild v. S.C. Dep't of Transp.*, 385 S.C. 344, 358 n.5, 683 S.E.2d 818, 825 n.5 (Ct. App. 2009) (concluding that a party was "aggrieved" by a trial court's interlocutory ruling and therefore had "standing to appeal" that issue through a cross-appeal).

Second, in general, discovery orders are interlocutory and therefore cannot be immediately appealed. *Eldridge v. City of Greenwood*, 308 S.C. 125, 126-27, 417 S.E.2d 532, 534 (1992). Respondents, therefore, could not have appealed from the Circuit Court's ruling on the discovery matters until the underlying merits of the case were resolved, and the issue from which Respondents appealed—the September 9 order—was the only appealable order. Respondents properly filed a notice of cross-appeal that raised the discovery matters, in recognition of the fact that the discovery order impeded Respondents from developing an additional sustaining ground. Thus, although Respondents prevailed below on the merits, the only way for them to put that additional claim related to the availability of lethal injection drugs before this Court was to do what they did here—preserve the discovery matter below; wait for the court to rule on the merits of the claims; and file a cross-appeal raising the discovery issue.

Third, "an order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court and a ruling on appeal will avoid unnecessary litigation." *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991), *overruled on other*

grounds by Huntley v. Young, 319 S.C. 559, 462 S.E.2d 860 (1995). Thus, "the 'winner' in the lower court"—here, Respondents—"may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *L'On*, 338 S.C. at 419, 526 S.E.2d at 723. This rule flows from the premise that "[i]t would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review," and the rule therefore "promotes judicial economy and finality in private and public affairs, which are important public policies." *Id.* at 420-421, 526 S.E.2d at 723. The basis for Respondents' cross-appeal appears in the record on appeal and ruling on this issue (if the Court does not find Respondents prevail on all other grounds) would promote the values of judicial economy and finality in public affairs. *Id.* at 420-21, 526 S.E.2d at 723.

C. The Cross-Appeal Is Adequately Briefed.

Appellants also argue that Respondents have abandoned their cross-appeal by inadequately briefing it. In support of this assertion, they point to two facts: Respondents only cited one case in support of the cross-appeal issue in their main brief and Respondents' argument on the cross-appeal occupies a single paragraph. Resp. Br. App. 8-9. Neither point has any legal basis.

A party abandons an issue on appeal "by failing to raise it in the appellate brief." *Id.* at 420, 526 S.E.2d 723. Notably, this rule does not impose a word or a citation count. Instead, the rule is aimed at ensuring appellate courts have adequate information before them and that they are not required to invent arguments that a party failed to adequately address. *E.g.*, *Bluffton Towne Center, LLC v. Gilleland-Prince*, 412 S.C. 554, 574, 772 S.E.2d 882, 893 (2015) (a party abandoned an appellate issue when she "merely provided a recitation of the trial transcript and made a conclusory argument, while citing no legal authority to support her claim"). Here, the facts and underlying argument that give rise to the cross-appeal were more fully addressed in the first several parts of

Respondents' opening brief, and the legal question at issue in the cross-appeal—whether the trial court abused its discretion—is a straight-forward matter that does not require voluminous briefing. If, as *Dunn v. Dunn* explains, this Court determines that the lower court abused its discretion by granting Appellants' motion for a protective order because that decision was "without reasonable factual support [or] resulted in prejudice to the right of [Respondents]," the Court should remand the matter to the circuit court with instructions to allow discovery on the contested matters to proceed. 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989). No additional argument is necessary for the Court to assess Respondents' cross-appeal, and the matter is therefore properly before the Court.

CONCLUSION

Respondents were denied access to a significant amount of information relevant to their claims. Nevertheless, the circuit court correctly ruled in Respondents' favor on all grounds, and this Court should affirm for the reasons set out in Respondents' brief. Such a decision would render the issues raised in Respondents' cross-appeal moot. If this Court does not affirm, however, additional fact-finding is warranted.

[*Signature block appears on the next page*.]

Respectfully submitted,

s/Lindsey S. Vann

Lindsey S. Vann (No. 101408)
Emily Paavola (No. 77855)
Hannah L. Freedman (No. 103373)
Brendan Van Winkle (No. 104768)
Allison Franz (No. 105189)
JUSTICE 360
900 Elmwood Avenue, Suite 200
Columbia, SC 29201

John H. Blume (No. 743)
CORNELL LAW SCHOOL
158 Myron Taylor Hall
Ithaca, NY 14853

Joshua Snow Kendrick (No. 70453)
KENDRICK & LEONARD, P.C.
506 Pettigru (29601)
P.O. Box 6938
Greenville, SC 29606

John Christopher Mills
J. CHRISTOPHER MILLS, LLC
2118 Lincoln Street
Columbia, SC 29202

Elizabeth Franklin-Best (No. 72555)
ELIZABETH FRANKLIN-BEST, P.C.
3710 Landmark Drive, Suite 113
Columbia, SC 29204

Counsel for Respondents-Appellants

October 20, 2022.