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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY

Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

Order of the S.C. Court of Appeals, filed, March 14, 2022
(Rehearing Denied, May 18, 2022)

Ronald L. Jones.....Petitioner,

v.

Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones, and
Shelley Allsbrooks,Respondents.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing in this matter was made and finally ruled on by the South Carolina Court of Appeals on May 18, 2022 and received by counsel for Petitioner on May 18, 2022.

QUESTIONS PRESENTED FOR REVIEW

I. DID THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS CONFLICT WITH S.C. CODE ANN. §14-3-330(2)(c)?

II. DID THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS CONFLICT WITH PRIOR DECISIONS OF THIS COURT INCLUDING *THORNTON V. S.C. ELEC. & GAS CORP.*, 391 S.C. 304, 705 S.E.2d 475, 479 (CT. OF APP. 2011)?

STATEMENT OF THE CASE

This matter began with the filing of the Complaint of Petitioner in the Sumter County Court of Common Pleas. Petitioner's Causes of Action are for Civil Conspiracy, Oral Gift, and Promissory Estoppel. Petitioner's Complaint was first amended on June 10, 2020. Respondents filed their Amended Answer on June 24, 2020. Petitioner's counsel took the deposition of witness Shelley Allsbrooks on March 16, 2021, (Appendix pg. 64). Thereafter, Shelley Allsbrooks was added as a Defendant, with consent of counsel for the Respondents, which consent was only as to adding Shelley Allsbrooks as a Defendant in this matter. The adding of Shelley Allsbrooks was by way of Petitioner's Complaint (Second Amended – By Consent), filed April 22, 2021, (Appendix pg. 10). Respondents filed their Answer to Petitioner's Second Amended Complaint on May 6, 2021. Thereafter, Respondents' counsel filed a Motion to Strike pursuant to Rule 12(f), of the South Carolina Rules of Civil Procedure, ("SCRCP"), on May 6, 2021, (Appendix pg. 17). After oral argument on August 31, 2021, Respondents' counsel's Motion was granted by the Circuit Court Judge's Order, on September 22, 2021, (Appendix pg. 01). Petitioner's counsel filed a timely Motion to Reconsider, Rehear, Alter of Amend Judgment on September 23, 2021, (Appendix pg. 19). Respondents did not Return to Petitioner's Motion. The Lower Court, without hearing oral argument, denied Petitioner's Motion by way of Order dated, October 8, 2021, (Appendix pg. 04). Petitioner's Notice of Appeal of both Circuit Court Judge's Orders followed on October 8, 2021. Petitioner's Appeal of both Circuit Court Orders followed. The Court of Appeals dismissed Petitioner's Appeal by its Order dated March 14, 2022, (Appendix pg. 06). Petitioner filed a timely Petition for Rehearing, which was denied by the Court of Appeals Order of May 18, 2022, (Appendix pg. 47 and pg. 08). Petitioner's timely Petition for a Writ of Certiorari follows.

ARGUMENT

**I. THE ORDERS OF THE LOWER COURT AND
THE COURT OF APPEALS ARE IN CONFLICT WITH
S.C. CODE ANN. §14-3-330(2)(c).**

§14-3-330(2)(c), Allows an Immediate Appeal of a Rule 12(f), SCRC Motion.

§14-3-330(2)(c) of the South Carolina Code of Laws, specifically supports the immediate appeal of the Lower Court's grant of a Rule 12(f), SCRC Motion to Strike. Specifically, §14-3-330(2)(c) reads as follows, "The Supreme Court...shall review upon appeal... An order affecting a substantial right made in an action when such ...order **strikes out** an answer or any part thereof or any pleading in any action." (Emphasis supplied), (Appendix pg. 71). The Lower Court's Order improperly struck "three important factual allegations" from the Petitioner's **pleading** (Complaint (Second Amended)), (Appendix pg. 01 and pg. 10). Respondents have expressly conceded that §14-3-330, S.C. Code Ann., (1976, as amended), primarily governs the right of a party to immediately Appeal, an order issued before or during trial, (Respondents' Motion to Dismiss p. 4, Appendix pg. 25).

The effect of the Lower Court's Order of September 22, 2021, was to actually, strike out part of a pleading. Namely, paragraphs "13", "30" and "31" from Petitioner's Complaint (Second Amended), (Appendix pg. 01 and pg. 10).

Therefore, the Court of Appeals erred in dismissing Appeal as premature.

II. THE ORDERS OF THE LOWER COURT AND THE COURT OF APPEALS ARE IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT INCLUDING *THORNTON V. S.C. ELEC. & GAS CORP.*, 391 S.C. 304, 705 S.E.2d 475, 479 (CT. OF APP. 2011)

Thornton v. S.C. Elec. & Gas Corp.

The abbreviated Order of the Court of Appeals included a citation to *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 304, 705 S.E.2d 475, 479 (Ct. of App. 2011). The Court of Appeals correctly stated the holding of *Thornton*, “Whether an order granting a Rule 12(f) motion to strike is appealable under section 14-3-330(2)(c) depends on the effect of the individual order under the facts and circumstances of the case.” Unfortunately, the Court of Appeals misapprehended the applicability of *Thornton*, to the facts of Petitioner’s Appeal.

The Effect of the Lower Court’s Order.

The effect of the Lower Court’s Order of September 22, 2021 was to actually strike out part of a pleading (Appendix pg. 01). Namely, paragraphs “13”, “30” and “31” from Petitioner’s Complaint (Second Amended), (Appendix pg.106). The case *sub judice*, is unlike *Thornton*, where the Court of Appeals disapproved of a Motion with a label of “Motion to Strike”, which in effect was not actually a “Motion to Strike”, *Thornton* at 303. In Petitioner’s case, the filing was actually a Motion to Strike and the Lower Court actually struck three paragraphs of Petitioner’s Complaint, (Second Amended), as described hereinabove. Therefore, under our facts and in light of S.C. Code Ann., § 14-3-330(2)(c), (1976, as amended), and *Thornton, supra*, the Lower Court’s Orders are immediately appealable and the Court of Appeals’ dismissal of the Appeal was in error.

The Lower Court Misapprehended the Facts of Petitioner's Appeal.

If this Court fails to grant Certiorari in this case to reverse the decisions of the South Carolina Court of Appeals and the Lower Court, the following improper actions will be permitted to stand.

- A fair reading of this matter shows that counsel for the Respondents, after becoming aware of the import of the three factual admissions made by now Respondent, Shelley Allsbrooks, in Deposition, improperly used a Rule 12(f), SCRCF Motion to Strike to remove the three important factual admissions by an improper manner. (Appendix pgs. 64-70 and pg.17).
- Counsel for the Respondents' Motion to Strike, granted by the Lower Court, which Motion misstated the Rule 12(f), SCRCF standards, to be, "immaterial", "**irrelevant**" and "**evidentiary**". Obviously, irrelevant and evidentiary are **not** Rule 12(f), SCRCF, standards. (Appendix pg. 17 and pg. 73).
- The Lower Court, in its Order of September 22, 2021, granting the relief sought in Respondents' Motion to Strike, was based on findings by the Court **unrelated** to Rule 12(f), SCRCF, although the rubric of the Motion was a Motion to Strike under Rule 12(f). (Appendix pg. 01).
- Before the Lower Court, Respondents' counsel apparently misled the Lower Court by arguing to the Lower Court that a "**code pleading case**" from 1973, *Stroud v. Riddle*, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973), supported Respondents' counsel's Motion before the Lower Court, even though "**fact pleading**" has been in effect in South Carolina since July 1, 1985. (Appendix pgs. 58-63).
- The Lower Court set forth its findings in paragraphs "2", "3" and "4", of its Order of September 22, 2021, with specific mention of "**evidentiary**" in paragraphs, "2", "3" and "4", indicating the Lower Court had adopted Respondents' counsel's improper argument that **evidentiary matters** should be struck, pursuant to Rule 12(f), SCRCF. (Appendix pg. 01).

- The Lower Court, specifically in paragraph “4” of its Order of September 22, 2021, **reveals that the Lower Court did not utilize Rule 12(f), SCRPC standards.** The Lower Court’s Order reads as follows, “...first paragraph numbered 13 as well as paragraphs 30 and 31 [of Petitioner’s Complaint] do not attempt to allege the existence of a cause of action or ultimate facts **but appear to allege evidentiary facts which are not necessary and should therefore be stricken.**” (emphasis added). (Appendix pg. 02).
- The Lower Court in its subsequent Order denying Petitioner’s “Motion to Alter or Amend”, dated October 8, 2021, shows that Petitioner’s Motion to Alter or Amend was (i) decided without briefs (ii) decided without oral argument (iii) decided without a return by Respondents and (iv) the Lower Court’s Order denying the Motion to Alter or Amend **does not even mention Rule 12(f), SCRPC.** (Appendix pg. 04).
- The Lower Court’s Order shows the “three important factual admissions” stricken by the Court, do not fall within the standards of Rule 12(f), SCRPC. The “three important factual allegations” are not redundant, immaterial, impertinent or scandalous. (Appendix pg. 73).

Respondents’ Claim that Evidentiary Facts Should be Stricken, is Unsupported.

Just because a bare minimum is required to survive a Rule 12(b)(6), SCRPC Motion to Dismiss, does not mean that providing evidentiary facts beyond the minimum is improper as Respondents’ counsel alleged before the Lower Court in Respondents’ inappropriate Rule 12(f), SCRPC Motion to Strike. (Appendix pg. 17). Respondents’ counsel did not provide any case law, on point, to support Respondents’ improper Motion to Strike evidentiary facts that did not favor Respondents’ case.

CONCLUSION

Based on the foregoing, and for the reasons stated, Petitioner asks the Court to grant his Petition for Writ of Certiorari.

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