

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jun 20 2022

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
BENTLEY PRICE, CIRCUIT COURT JUDGE

S.C. SUPREME COURT

Appellate Case No.: 2021-000837

In the Matter of Estate of Paul Brandon Barringer, II

Hampton Barringer Luzak,Appellant,

v.

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the
Estate of Paul Brandon Barringer, II, J. Randolph Light, Jr., Merrill B. Light
as putative trustee of the Paul B. Barringer, II Revocable Trust dated
December 4, 1998, and Merrill B. Light as Trustee of the Merrill Barringer
Light Revocable Trust, Respondents,

AND

Hampton B. Luzak,Appellant,

v.

Merrill U. Barringer,Respondent,

Coastal Forest Resources Company ("CFRC"),Intervenor/Respondent.

**APPELLANT'S REPLY TO RESPONDENTS' RETURN TO APPELLANT'S
MOTION TO ALTER OR AMEND ORDER OF APRIL 29, 2022**

Appellant Hampton B. Luzak (“Appellant”) submits this Reply to Respondents’ Return to Appellant’s Motion to Alter or Amend Order of April 29, 2022 filed by Merrill Barringer, individually and as personal representative of the estate of Paul Brandon Barringer, II, and Merrill B. Light, individually and as putative trustee of the Paul B. Barringer, II Revocable Trust dated December 4, 1998, and as trustee of the Merrill Barringer Light Revocable Trust (collectively, “Respondents”) on June 10, 2022.

On April 29, 2022, this Court certified this appeal pursuant to Rule 204(b), SCACR, and issued an order vacating a summary judgment order of the circuit court and dismissing this appeal as moot (“Vacating Order”). Because there was no hearing before this Court and the matter was not fully briefed before this Court addressed the merits of the appeal,¹ Appellant styled her post-order motion as a Motion to Alter or Amend the Order. Since the Vacating Order resulted in the dismissal and termination of the appeal in this matter, Appellant’s motion has the equivalent effect of a petition for rehearing under Rule 221(a), SCACR.² Rule 221(a) expressly prohibits a return to petitions for rehearing after the filing of a final order unless requested by the appellate court. This Court did not request Respondents to submit a return to appellant’s motion,

¹ Appellate Case No. 2021-000837 was not ready for consideration when it was certified by this Court and certification occurred *sua sponte* by this Court. The parties were unaware the appeal had been certified and was being considered without consideration of the Record on Appeal, which was not yet filed. All parties had filed their initial briefs before the Court of Appeals and the Designations of Matter to be included in the Record on Appeal. However, this Court did not have the Record on Appeal or the final briefs with citations to the Record before it when it ruled on the merits of the appeal after certification. This Court certified the appeal pursuant to Rule 204(b), SCACR, and issued its Vacating Order vacating summary judgment orders of the circuit court. Appellant agrees the circuit court did not have authority to grant summary judgment while Appellant’s appeal of the bifurcation order was still pending. This Court then dismissed this appeal as moot in the same order without addressing the other issues pending before it. The motion filed was therefore not one for rehearing or reconsideration, but was properly styled as a motion to alter or amend (by considering and addressing the remaining issues which were pending on appeal in Appellate Case No. 2021-000837).

² See *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 147 (2015) (declining to base the court’s “decision on the manner in which the motion was characterized—one of bifurcation” but rather looking to the effect of the order at issue); see also *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct.App.2011) (noting that appellate courts “focus on the effect of the order, not the label given to the motion or to the order granting it.”). Rule 240(a), SCACR does not expressly limit Petitions for Rehearing to final orders of the appellate court, hence Appellant’s election to label her motion as one to Alter or Amend.

and Respondent's *sua sponte* filing was improper. The Court therefore should disregard the Respondents' Return of June 10, 2022.

Even if Respondents' filing of a Return was proper, Respondents did not address the issue raised by Appellant in her Motion to Alter or Amend. Appellant requested that the Court alter or amend its order of April 29, 2022 to confirm that its order vacated all of Judge Price's orders at issue in this appeal. This appeal involves multiple orders, specifically orders entered by the Honorable Bentley Price granting Intervenor-Respondent CFRC's Motion for Intervention and Protective Relief filed on June 7, 2021 and Respondent Merrill Barringer Light's Motion for Summary Judgment regarding Paul Barringer's February 28, 2012 Will and First Trust Amendment filed July 6, 2021.³ Appellant requested that this Court alter or amend its Vacating Order to confirm that it was vacating both the CFRC Intervention order and Respondent Merrill Light's summary judgment order. Respondents' Return did not respond to the fact that these two orders were not included in the Court's Vacating Order nor did it address the issue of whether the two trial court orders should or should not be included in the Vacating Order. Instead, Respondents simply rehashed the arguments in their Petition for Rehearing which asked that the Court completely reverse its Vacating Order and reinstate the final orders of the trial court at issue in this appeal. Under the guise of a return, Respondents essentially presented the same Petition for Rehearing as they did before.

³ Appellant also appealed an order issued December 30, 2020 by the Honorable Carmen Mullen bifurcating issues for trial which was included in this appeal pursuant to S.C. Code Ann. § 14-3-330(1) (allowing appeals of other orders related to issues on appeal). In order to completely address the issues raised in Appellate Case No. 2021-000837, a ruling on the December 30, 2020 order and the other final orders on appeal was therefore necessary in order to fully dispose of Appellate Case No. 2021-000837. Since this Court did not address the December 30, 2022 order in its April 29, 2022 order, Appellant has filed a Supplemental Notice of Appeal again raising the issues from the December 30, 2022 as a Supplement to still-pending Appellate Case No. 2021-001337, which remains pending before the Court of Appeals. However, the motion to alter or amend simply requests this Court to address the other final orders that were appealed as part of Appellate Case No. 2021-000837.

Although Appellant asserts that Respondents improperly filed a return to her Motion to Alter or Amend, which return should not be allowed as discussed above, Appellant nonetheless replies to Respondents' return in the event the Court finds Respondents' filing of a return to be proper. In rehashing their Petition for Rehearing in their Return, Respondents asserted that this Court erred in holding that the trial court lacked authority to grant a motion for summary judgment while Appellant's appeal of the circuit court's bifurcation order was still pending. At issue in Appellant's Notice of Appeal were three orders of the trial court that ruled on various motions heard by the circuit court on May 27, 2021. Those orders included an Order Granting CFRC's Motion for Intervention and Protective Relief filed June 7, 2021 (**Exhibit A**), the Order on Motions filed June 7, 2021 (**Exhibit B**), and the Order Granting Defendant Merrill Light Summary Judgment as to February [2]8, 2012 Will and First Amendment to the Paul B. Barringer, II, Revocable Trust, dated December 4, 1998 (**Exhibit C**). The Order on Motions included a provision ordering as follows:

Regarding Merrill Barringer's Motion to Set Trial Date filed May 5, 2021, the Court rules that trial shall proceed on the bifurcated claims only. A trial on the first phase as indicated in Judge Mullen's Order granting bifurcation is set to begin on August 30, 2021.

Order on Motions filed June 7, 2021, ¶ 13.

Pending at the time the trial court heard the motions on May 27, 2021 and issued its subsequent orders was Plaintiff's appeal of the bifurcation order of Judge Mullen from December 30, 2020. The appeal was pending in the Court of Appeals in case no. 2021-000159. The trial court thus directly ruled on the matter that was pending on appeal both at the time the matter was argued on May 27, 2021 and the date the order was issued on June 7, 2021. The issues addressed and ruled upon by the trial court pursuant to the May 27, 2021 hearing clearly included a matter affected by the pending appeal. The appellate court, though, had obtained

exclusive jurisdiction over the matter pursuant to Rules 205 and 241(a), SCACR. The trial court was therefore without jurisdiction to proceed on May 27, 2021 and enter its orders of June 7 and July 6, 2021.

Appellant requests that this Court dismiss Respondents' Petition for Rehearing and grant the relief requested in Appellant's Motion to Alter or Amend the Order of April 29, 2022.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (S.C. Bar No. 498)
BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com

James R. Gilreath (S.C. Bar No. 02133)
William M. Hogan (S.C. Bar No. 65272)
THE GILREATH LAW FIRM, PA
110 Lavinia Avenue (zip 29601)
P.O. Box 2147
Greenville, South Carolina 29602
Telephone: 864.242.4727
Facsimile: 864.232.4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

Thomas W. Traxler (S.C. Bar No. 5624)
CARTER, SMITH, MERRIAM ROGERS &
TRAXLER, PA
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Telephone: 864.242.3566
Facsimile: 864.232.1558
tom.traxler@carterlawpa.com

S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, South Carolina 29205
Telephone: 803.777.7465
Facsimile: 803.777.7465
amedlin@sc.rr.com

Charles B. Macloskie (S.C. Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
Beaufort, South Carolina 29901
Telephone: 843.524.0909
Facsimile: 843.521.1379
macloskielawfirm@hargray.com

Attorney for Appellant Hampton B. Luzak

June 20, 2022