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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

Case No.: 2020-CP-43-00734
Appellate Case No.: 2022-000832

Ronald L. Jones, Petitioner,

v.

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

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES 3

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED 5

COUNTER-STATEMENT OF THE CASE 5

ARGUMENT 6

I. THE COURT OF APPEALS DID NOT ERR BY DISMISSING PETITIONER'S INTERLOCUTORY APPEAL ..... **Error! Bookmark not defined.**

A. The Court of Appeals' decision to dismiss this interlocutory appeal is in accord with S.C. Code Ann. § 14-3-330 7

B. The Court of Appeals' Order is in accord with the prior decisions of this Court, including *Thornton* 12

II. PETITIONER HAS STILL FAILED TO SHOW HOW HE HAS BEEN PREJUDICED BY THE CIRCUIT COURT'S RULING 14

CONCLUSION 14

TABLE OF AUTHORITIES

CASES

CFRE, LLC v. Greenville Cty. Assessor,
395 S.C. 67, 716 S.E.2d 877 (2011) 11

Cobb v. Maccaro,
310 S.C. 303, 423 S.E.2d 156 (Ct. App. 1992).....9

Ex parte Capital U-Drive-It, Inc.,
369 S.C. 1, 630 S.E.2d 464 (2006) 7, 8

Hagood v. Sommerville,
362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005) 8

Harbert v. Atlanta & Charlotte Air Line Ry. Co.,
74 S.C. 13, 53 S.E. 1001 (1906) 11

Link v. Sch. Dist. of Pickens Cty.,
302 S.C. 1, 393 S.E.2d 176 (1990) 8

Morrow v. Fundamental Long-Term Care Holdings,
412 S.C. 534, 773 S.E.2d 144 (2015) 8, 9

State v. Ledford,
422 S.C. 244, 810 S.E.2d 868 (2018) 7

Tatnall v. Gardner,
350 S.C. 135, 564 S.E.2d 377 (Ct. App. 2002).....13

Thornton v. S.C. Elec. & Gas Corp.,
391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011).....9, 11, 12

Tillman v. Tillman,
420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017).....11

Visual Graphics Leasing Corp. v. Lucia,
311 S.C. 484, 489, 429 S.E.2d 839, 841 (Ct. App. 1993).....14

STATUTES & RULES

Rule 12(f), SCRCP.....5

S.C. Code Ann. § 14-3-330..... *passim*

S.C. Acts Part I., tit. I, sec. 11, Gen. Assemb., Reg. Sess. (S.C. 1869-70) 11

S.C. Code Ann. § 14-11-85.....8

S.C. Code Ann. § 15-48-200.....8

S.C. Code Ann. § 1-23-390.....8

OTHER

Pleading, Black's Law Dictionary (11th ed. 2019) 10

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals correctly dismiss Petitioner's appeal of a plainly unappealable interlocutory order by adhering to controlling statutory authority and case law?

II. Assuming for the sake of argument that the Court of Appeals erred in dismissing the case and that the circuit court erred in its analysis of the underlying issue, has Petitioner shown any harm from the alleged error?

COUNTER-STATEMENT OF THE CASE

On May 4, 2020, Petitioner filed this lawsuit against Respondents Gary A. Jones, Sr., Becky J. Jones, and Ima Lee Jones, claiming Petitioner was entitled to relief pursuant to an oral gift and the doctrine of promissory estoppel. On June 10, 2020, Petitioner filed his First Amended Complaint, adding a cause of action for civil conspiracy directed at Respondents Gary A. Jones, Sr., and Becky J. Jones.

The parties subsequently engaged in discovery, including the deposition of Respondent Shelley Allsbrooks on March 16, 2021. Following the deposition of Respondent Allsbrooks, Petitioner filed his Second Amended Complaint on April 22, 2021, adding Respondent Allsbrooks as a defendant to his claim for civil conspiracy. (Appx. 10-16). On May 6, 2021, Respondents filed an Answer to Petitioner's Second Amended Complaint and a Motion to Strike certain factual allegations that had been raised in the Second Amended Complaint. (Appx. 17-18). The circuit court heard argument on Respondents' Motion to Strike, and on September 22, 2021, pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure,[1] the circuit court, exercising its broad

[1] Rule 12(f), SCRCP ("**Motion to Strike.** Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.").

discretion, ordered stricken from the Second Amended Complaint three purely factual allegations that it found were inappropriately included and at the pleading stage of the litigation.[2] (Appx. 1-3). Petitioner filed a timely Rule 59(e) Motion, and the circuit court denied the same on October 8, 2021. (Appx. 4-5).

Petitioner filed his Notice of Appeal of the circuit court's interlocutory order the same day. Respondents immediately filed a Motion to Dismiss, and the Court of Appeals granted the Motion and dismissed Petitioner's appeal on March 14, 2022. (Appx. 6-7). Petitioner filed a Petition for Rehearing, and the Court of Appeals denied the Petition on May 18, 2022. (Appx. 47-57); (Appx. 8-9). A Petition for a Writ of Certiorari followed.

ARGUMENT

This case—currently before the Court on a narrow question of appealability—involves a family land dispute. However, it is unnecessary for the Court to delve deeply into the underlying

[2] The circuit court struck the following factual allegations from the Second Amended Complaint:

> 13. Defendant, Shelley Allsbrooks has also testified that Plaintiff, Ronald L. Jones has occupied the Property for a little over ten years.
>
> 30. Defendants, Gary A. Jones, Sr.[,] Becky J. Jones, and Shelley Allsbrooks combined together and acted in concert, to injure Plaintiff and cause economic loss to Plaintiff and to cause Plaintiff to incur Special Damages. Defendants' express intent was to cause economic loss to the Plaintiff, Ronald L. Jones, as best shown by Defendant, Shelley Allsbrooks demand that a "15-foot-wide recreational easement", be placed on Plaintiff, Ronald L. Jones' current Property in front of the front door of Plaintiff's residence, which would render the Property worthless as to any resale, etc. As to the 15-foot-wide recreational easement, Defendant, Shelley Allsbrooks declared, "Uncle Ronnie is going to have to like it or [he] gets nothing."
>
> 31. Specifically, Defendant, Shelley Allsbrooks took the lead in discussions against the economic interests of the Plaintiff, Ronald L. Jones. Defendant, Shelley Allsbrooks met and conspired with Defendant, Gary A. Jones, Sr. between five and ten times, both in person and electronically, against the economic interests of the Plaintiff, Ronald L. Jones.

(Appx. 10-16); (Appx. 1-3).

facts of this matter in order to quickly dispense of the pending Petition for a Writ Certiorari. The analysis is simple. Petitioner erroneously appealed an interlocutory order. The Court of Appeals correctly dismissed the appeal. And this Court should deny the instant Petition. Should Petitioner's interlocutory appeal proceed on this minor, insignificant issue, this case would become antithetical to South Carolina's disfavor of piecemeal appeals and would encourage the infamous "stop-and-start enterprise" consistently denounced by our appellate courts in South Carolina. *See State v. Ledford*, 422 S.C. 244, 249, 810 S.E.2d 868, 870 (2018) (dismissing an appeal and holding the issue was not immediately appealable due to the unnecessary creation of a "stop-and-start enterprise").

I. THE COURT OF APPEALS DID NOT ERR BY DISMISSING PETITIONER'S INTERLOCUTORY APPEAL.

A review of the circuit court's order, the governing appealability statute, and relevant case law makes certain that Petitioner has no foundation to support any argument that the Court of Appeals should have reviewed his interlocutory appeal. To be sure, the circuit court's order is not immediately appealable, and Petitioner's attempt to appeal the same and recent effort to have this Court grant certiorari is, quite frankly, an improper attempt to delay litigation and frustrate the ordinary pretrial procedures below. Therefore, this Court should refuse to expand the narrow construction of section 14-3-330 of the South Carolina Code and should deny certiorari, thereby allowing the proper pre-trial procedures to proceed accordingly without any more unnecessary disruption or delay.

A. The Court of Appeals' decision to dismiss this interlocutory appeal is in accord with S.C. Code Ann. § 14-3-330.

A party's right to appeal arises from and is governed by statute. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Traditionally, an appeal may be pursued only

after the entry of final judgment. *Id.* "A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). "An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005).

"The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section 14-3-330 of the South Carolina Code]." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 6, 630 S.E.2d at 467. "Absent a specialized statute,[3] an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable." *Id.* Section 14-3-330 is "construed narrowly" with the goal of avoiding "circuitous litigation and needless appeals." *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. To be sure, "[p]iecemeal appeals" are disfavored in South Carolina. *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

No specialized statute permits Appellant's present appeal; therefore, to be immediately appealable, the circuit court's order must fit neatly into one of the categories set forth in section 14-3-330. *See id.* at 195, 607 S.E.2d at 708. Again, "[t]he provisions of section 14-3-330 have been construed by this Court to serve the underlying policy favoring judicial economy by avoiding 'piecemeal appeals.'" *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534,

[3] Section 14-3-330 is not the only statute which governs appealability, "*e.g.*, S.C. Code Ann. § 14-11-85 (direct appeals from masters); S.C. Code Ann. § 15-48-200 (arbitration orders); S.C. Code Ann. § 1-23-390 (1986) (appeals under the Administrative Procedures Act)." *Link v. Sch. Dist. of Pickens Cty.*, 302 S.C. 1, 5, 393 S.E.2d 176, 178 (1990) (cleaned up). However, this case only involves the application of section 14-3-330.

537-38, 773 S.E.2d 144, 146 (2015). Section 14-3-330 narrowly provides for appellate jurisdiction over:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.
>
> (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
>
> (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330; *see also Cobb v. Maccaro*, 310 S.C. 303, 305, 423 S.E.2d 156, 157 (Ct. App. 1992) ("Only interlocutory orders which (1) involve the merits; (2) affect a substantial right; or (3) involve certain orders regarding injunctions and appointments of receivers, can be appealed."). "Our courts have previously looked beyond the labels on motions and orders to discern their actual effect for purposes of appealability." *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 303, 705 S.E.2d 475, 478 (Ct. App. 2011).

Here—under the well-established approach to analyzing the appealability of interlocutory orders—the circuit court's order is not immediately appealable. The effect of the circuit court's order is clear. The circuit court granted Respondents' Motion to Strike, which simply removed three factual allegations from Petitioner's Second Amended Complaint. The circuit court's order

did not dismiss Petitioner's case; the circuit court's order *did not* dispense of any of Petitioner's causes of action; the circuit court's order *did not* constitute a final judgment; and the circuit court's order *did not* prevent an appeal of Petitioner's complained issue following a final judgment in this matter. Importantly, the removal of these three alleged *facts* is not akin to the dismissal of a *case* or the removal of a *pleading*.

Petitioner's three causes of action fully remain, and Petitioner can still attempt to prove the stricken facts at trial. Petitioner is in no way prohibited from doing so at the appropriate time. The circuit court narrowly found the factual allegations to be inappropriately presented at the pleadings stage. Nothing more. Therefore, looking at the effect of the circuit court's order and viewing it through the requisite "narrow" lens that favors judicial economy and disfavors piecemeal litigation, Petitioner's appeal fails to fit any subsection set forth in section 14-3-330.

Petitioner now concedes that 14-3-330(2)(c) is the only subsection that could *potentially* provide him relief. (Pet. Br. at 9). However, despite unrelenting effort, Petitioner is still attempting to "fit a square peg in a round hole." Subsection 14-3-330(2)(c) allows for the immediate appeal of an interlocutory order whenever it "strikes out an answer or any part thereof or any pleading in any action." This portion of subsection 14-3-330(2) is disjunctive and is triggered whenever (a) an answer or any part thereof is struck, *or* (b) a pleading is struck. Neither apply under the facts of this case.

Simply put, under the appealability statute, a pleading is not the equivalent of a factual allegation. Black's Law Dictionary defines a "pleading" as "[a] formal *document* in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials, or defenses." *Pleading*, Black's Law Dictionary (11th ed. 2019) (emphasis added). Necessarily, a factual allegation is a smaller component of a pleading. To be immediately appealable, an entire

pleading must be struck, not just a small component thereof. If the General Assembly intended for the striking of "any part" of a pleading to be immediately appealable, it would have said so, like it chose to do under disjunctive part (a). *See* S.C. Code Ann. § 14-3-330(2) ("An order affecting a substantial right made in an action when such order . . . (c) strikes out an answer or any part thereof **or** any pleading in any action." (emphasis added)). Clearly, "any part thereof" only applies to an Answer.

Petitioner, without reading the statute in its entirety (as we must), erroneously seizes upon the word "strike." *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("We therefore should not concentrate on isolated phrases within the statute."); *id.* ("Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose."). However, the use of the word "strike" in subsection 14-3-330(2) and in the circuit court's order granting the motion to "strike" is of no moment. To explain, the word "strike" in subsection 14-3-330(2)(c) and Rule 12(f) has completely different origins. *See Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 302, 705 S.E.2d 475, 478 (Ct. App. 2011) (explaining this distinction and holding a circuit court's striking of class allegations is not immediately appealable simply because of the use of the word "strike" in the appealability statute). In subsection 14-3-330(2)(c), the word "strike" comes from its code pleading predecessor enacted in 1870. *See* S.C. Acts Part I., tit. I, sec. 11, Gen. Assemb., Reg. Sess. (S.C. 1869-70). This subsection, which has not changed in over 100 years, "includes the phrase 'strikes out an answer or any part thereof, or any pleading in any action.'" *Thornton*, 391 S.C. at 302, 705 S.E.2d at 478 (quoting *Harbert v. Atlanta & Charlotte Air Line Ry. Co.*, 74 S.C. 13, 16, 53 S.E. 1001, 1001-02 (1906)). On the other hand, a Rule 12(f) motion to "strike" originated in the Federal Rules of Civil Procedure decades after and without any reference to the use of the word "strike" in subsection 14-3-330(2)(c). *See*

id. at 302, 705 S.E.2d at 478 (citing Rule 86 of the South Carolina Rules of Civil Procedure for the July 1, 1985 effective date of the Rules).

Therefore, this Court should deny certiorari because section 14-3-330 does not permit Petitioner's interlocutory appeal.

B. The Court of Appeals' Order is in accord with the prior decisions of this Court, including *Thornton*.

A litany of case law supporting the Court of Appeals' decision has been cited above. Nevertheless, Petitioner claims *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011), lends support to his appealability argument.[4] It does not.

In *Thornton*, this Court issued an opinion with three different holdings: (1) the circuit court's order striking class action allegations was not immediately appealable; (2) the circuit court's order granting summary judgment under the Mining Act was not immediately appealable; and (3) the circuit court's order denying summary judgment as to the statute of limitations was not immediately appealable. *Id.* Petitioner highlights a discussion in *Thornton* which cites to two cases that discussed appealability stemming from the predecessor statute to subsection 14-3-330(c)(2). *Thornton* summarized, "An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial." *Id.* at 304, 705 S.E.2d at 479.

Here, the circuit court's order did not remove a material issue from the case. Thus, the order does not prevent the issue from being litigated on the merits. Petitioner still has the same three causes of action. Nothing prevents Petitioner from alleging the very same stricken facts into

[4] In fact, Petitioner cites only to *Thornton* in his argument concerning appealability. No other cases are cited.

evidence at the appropriate time. The circuit court's ruling simply found the stricken factual allegations were inappropriately included at the pleading stage. The circuit court did not rule that Petitioner cannot attempt to prove the stricken facts at a later stage in the litigation. Moreover, should Petitioner believe that he was somehow harmed by the circuit court's decision to strike, at the pleading stage, the three factual allegations from the Complaint, Petitioner will have the opportunity to argue error and prejudicial harm after a final judgment has been issued in the circuit court.

Although not entirely on point, *Tatnall v. Gardner*, 350 S.C. 135, 564 S.E.2d 377 (Ct. App. 2002), highlights why Petitioner's argument as to appealability is simply a non-starter. In *Tatnall*, the Court of Appeals held it lacked jurisdiction to consider an appeal of a circuit court order denying a defendant's motion to amend an Answer to allege third party claims against a co-defendant. 350 S.C. at 138, 564 S.E.2d at 379. The Court of Appeals explained that at "the conclusion of the present action," the defendant could then appeal and argue error. *Id.* at 138-39, 564 S.E.2d at 379. Here, the circuit court allowed Petitioner to amend his pleading but subsequently struck three factual allegations from the same. If the order in *Tatnall* is not immediately appealable, then surely Petitioner's complained of order must succumb to the same appellate dismissal.

In short, Petitioner cannot cite to a single case that supports his tortured construction of section 14-3-330.[5]

[5] Petitioner inappropriately delves into the merits of his appeal in a clear attempt to shift focus away from the fact that this matter is not immediately appealable. (Pet. Br. at 10-11). However, this Court can quickly disregard Petitioner's argument because the underlying merits of the circuit court's order are not before this Court because the Court of Appeals dismissed the case on appealability grounds. However, if this Court finds the order is immediately appealable, Respondents will gladly supplement to discuss the merits of the case for the Court's benefit.

II. PETITIONER HAS STILL FAILED TO SHOW HOW HE HAS BEEN PREJUDICED BY THE CIRCUIT COURT'S RULING.

Respondents are compelled to draw the Court's attention to a glaring defect in Petitioner's appeal of the circuit court's order. Respondents stand firm that the circuit court did not err in granting their Motion to Strike. However, assuming for sole purpose of this single argument in the Return, the circuit court erred. However, an elementary concept of every appeal is (1) error and (2) harm resulting from said error. *See Visual Graphics Leasing Corp. v. Lucia*, 311 S.C. 484, 489, 429 S.E.2d 839, 841 (Ct. App. 1993) ("An error is not reversible unless it is material and prejudicial to the substantial rights of the appellant."). Petitioner cannot—despite tortured attempts to do so—show any harm that has resulted from the circuit court's decision. The fact that the circuit court struck three factual allegations from the Second Amended Complaint in no way prohibits Petitioner from attempting to prove the very same factual allegations at trial by competent evidence. Therefore, Petitioner's claims of prejudice only exist in the realm of hypotheticals and speculation, neither sufficient to justify an interlocutory appeal to our appellate courts.

CONCLUSION

Based on the foregoing analysis, Respondents respectfully request the Court deny the Petition for a Writ of Certiorari and remand this matter to the circuit court to proceed accordingly. Petitioner's attempt to create piecemeal litigation is inappropriate and is in conflict with the well-established South Carolina law governing appealability. Denial of the Petition promotes the policy of our state to allow for final judgments prior to beginning the appellate process and best effectuates judicial economy by avoiding unnecessary and piecemeal appeals. To be sure, our state disfavors interlocutory appeals for the purpose of allowing our judicial system to run its course and avoid creating additional burdens that are not, and may never be, necessary.

Furthermore, Petitioner has completely failed to show any prejudice stemming out of any alleged error committed by the circuit court. Therefore, the Petition should be denied.

Respectfully submitted,

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