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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2021-CP-10-05289
Appellate Case No. 2022-000352

Medical University of South Carolina and University Medical
Associates of the Medical University of South Carolina,..... Appellants,

v.

HCA Healthcare, Inc.; Trident Medical Center, LLC;
Terry A. Day; Betsy Kay Davis; Joshua D. Hornig;
Eric J. Lentsch; David M. Neskey; and Anand K. Sharma..... Defendants.

Of whom HCA Healthcare, Inc. and Trident Medical Center, LLC;
are the..... Respondents.

MOTION TO HOLD APPEAL IN ABEYANCE

Respondents HCA Healthcare, Inc. (“HCA”) and Trident Medical Center, LLC (“Trident”
or collectively with HCA, “Respondents”), respectfully move pursuant to Rule 240(a), SCACR,
that the Court hold the above-captioned appeal in abeyance pending the circuit court’s resolution
of HCA Healthcare, Inc.’s pending Motion to Dismiss for Lack of Personal Jurisdiction.

INTRODUCTION

This appeal arises out of an action commenced by Plaintiffs Medical University of South
Carolina (“MUSC”) and University Medical Associations of the Medical University of South
Carolina (“UMA” or collectively with MUSC, “Appellants”) following decisions by six (6)

physicians to resign their employment with Appellants. Following their resignations, those physicians chose to transition their medical practices to Trident. Appellants chose not only to sue the six (6) physicians, but also Trident and HCA.

Specifically, on November 22, 2021, Appellants filed a Complaint against HCA, Trident, and the six defendant physicians.¹ In their Complaint, Appellants allege no specific acts by HCA. Instead, they allege merely that “Trident owns and operates a for-profit hospital that is wholly owned by wholly owned subsidiaries of HCA.” [Complaint ¶ 4]. In the Complaint, Appellants disregard the corporate forms of HCA and Trident and attempt improperly to unify those separate and distinct entities and to make identical common claims against both of them by means of nothing more than a common reference. In particular, Appellants’ Complaint imputes the alleged actions of a subsidiary company (Trident) on a distant parent corporation (HCA) by using an unwarranted self-serving reference to “HCA” in an attempt to unjustifiably impute allegations or liability to HCA.

On the same day Appellants filed their Complaint against both HCA and Trident, Appellants filed a Motion for Temporary Injunction also against both HCA and Trident. The relief sought by Appellants against both Trident and HCA was an injunction that:

1. Prohibits Respondents from further utilizing Appellants’ allegedly confidential and proprietary information, including instrument lists, patient lists, physician preference cards and financial data;
2. Prohibits Respondents from billing or collecting money for services performed utilizing any of Appellants’ allegedly confidential and proprietary information, including instrument lists, patient lists, physician preference cards, and financial data;
3. Prohibits Respondents from further interfering with MUSC’s Fellowship Program in any way, or recruiting any MUSC Fellow;

¹ On December 8, 2021, the day prior to the scheduled hearing on the Motion for Temporary Injunction, Appellants executed Settlement agreements with the six defendant physicians and dismissed them from the lawsuit.

4. Prohibits Respondents from contacting any Fellowship accreditation bodies regarding MUSC;
5. Prohibits Respondents from further recruiting or soliciting, or otherwise contacting current MUSC and UMA employees, associates, agents, and fellows regarding any potential employment with HCA; and
6. Requires Respondents to return all allegedly confidential and proprietary information taken, including, but not limited to instrument lists, patient lists, physician preference cards, and financial data.

On December 7, 2021, HCA filed a Motion to Dismiss the Complaint pursuant to Rule 12(b)(2), SCRPC, based upon the circuit court's lack of personal jurisdiction over HCA. That same day, HCA filed an affidavit of Michael Bray and a Memorandum of Law in Support of its Motion to Dismiss.

On December 9, 2021, the circuit court held a hearing on the Appellants' Motion for Temporary Injunction against both HCA and Trident. Prior to that hearing, Trident submitted a memorandum of law in opposition to Appellants' Motion for Temporary Injunction. In that memorandum, Trident again asserted the argument that Appellants have not met their burden to establish that the circuit court has personal jurisdiction over HCA and, therefore, the circuit court could not properly order injunctive relief against HCA.

On December 15, 2021, without conducting any hearing on HCA's Motion to Dismiss or issuing any decision on the issue of personal jurisdiction over HCA, the circuit court issued an order denying Appellants' Motion for Temporary Injunction in its entirety. Again, the circuit court's order did not include any analysis or decision on the issue of personal jurisdiction over HCA.

On December 28, 2021, Appellants filed a Motion to Alter or Amend the circuit court's December 15 Order.

On February 1, 2022, the parties received notice that the circuit court had scheduled a hearing on HCA's Motion to Dismiss for lack of personal jurisdiction for February 25, 2022. However, the hearing did not proceed as scheduled because Appellants filed a Motion to Continue the scheduled hearing due, in part, to Appellants' counsels' firm retreat in Las Vegas, Nevada.

On February 18, 2022, the circuit court issued an order denying the Appellants' December 28 Motion to Alter or Amend the order denying the motion for temporary injunction.

On March 21, 2022, Appellants filed a Notice of Appeal regarding the circuit court's two prior orders denying Appellants' request for injunctive relief. Thereafter, on May 20, 2022, Appellants filed their Initial Brief with the Court.

While the appeal has been pending, Appellants filed a Motion to Supersede Prior Orders Denying Appellants Injunctive Relief and to Grant a Temporary Injunction During Pendency of Appeal. In response to that Motion, Trident again asserted that Appellants have not met their burden of establishing that the circuit court has personal jurisdiction over HCA and, therefore, the circuit court cannot order injunctive relief against HCA. On June 29, 2022, the circuit court issued an order denying Appellants' Motion to Supersede Prior Orders Denying Appellants Injunctive Relief and to Grant a Temporary Injunction During Pendency of Appeal.

Presently, Respondents' have a deadline to file an Initial Brief by July 20, 2022.

ARGUMENT

I. The Court should hold the pending appeal in abeyance until the circuit court has ruled on HCA's Motion to Dismiss for lack of personal jurisdiction.

It is fundamental that for Appellants to proceed with any action against HCA, they must first establish personal jurisdiction over HCA. The issue of whether South Carolina courts have personal jurisdiction over HCA should be decided first because judgements made by courts which lack personal jurisdiction are void and a void judgment is a complete nullity. *See Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002); *Belle Hall*

Plantation Homeowner's Ass'n, Inc. v. Murray, 419 S.C. 605, 617-18, 799 S.E.2d 310, 316 (Ct. App. 2017). For this Court to hear Appellants' appeal while personal jurisdiction over HCA remains unadjudicated therefore risks conducting proceedings only to have them culminate in a legally void decision as to HCA. Instead, the Court should require the circuit court to first decide HCA's pending Motion to Dismiss for Lack of Personal Jurisdiction and resolve that foundational issue. Only after that motion is decided, should this appeal (or any other matter before the circuit court in this case) continue.

HCA (and Trident) have properly challenged and contested the existence of personal jurisdiction over HCA at every turn. In every submission to the circuit court, HCA and Trident have asserted and preserved the challenge to the circuit court's personal jurisdiction over HCA:

1. In response to the Complaint, HCA filed a Motion to Dismiss pursuant to Rule 12(b)(2) for lack of personal jurisdiction.
2. In response to the Appellants' Motion for Temporary Injunction, Trident argued the circuit court lacks personal jurisdiction over HCA and asserted that in the absence of such jurisdiction the circuit court had no authority to impose an injunction on HCA.
3. In response to Appellants' Motion for Supersedeas, Trident argued that Appellants have not met their burden of establishing that the circuit court has personal jurisdiction over HCA and, therefore, the circuit court could not grant Appellants' Motion for Supersedeas and order injunctive relief against HCA.

The record in this case plainly demonstrates that HCA (and Trident) has consistently and continually maintained the position that Appellants have not met their burden of establishing the existence of personal jurisdiction over HCA. *See Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 150, 723 S.E.2d 835, 839 (Ct. App. 2012). Despite this, the circuit court has not yet conducted a hearing or ruled on the issue, and HCA's Motion to Dismiss pursuant to Rule 12(b)(2) remains

pending before the circuit court. Nonetheless, Appellants continue their efforts to move forward with the case, and this appeal, without ever having established personal jurisdiction over HCA.

Recently, in *Williams v. Williams*, No. 2017-002358, 2022 WL 1654409 (S.C. Ct. App. May 25, 2022), the Court addressed an analogous issue. In particular, the Court addressed whether a case in the family court should have proceeded prior to the court ruling on a defendant's pending motion to dismiss for lack of personal jurisdiction. In *Williams*, the plaintiff wife (a South Carolina resident) filed a complaint in the South Carolina family court against the defendant husband (a North Carolina resident) seeking a divorce, custody of the parties' minor child, child support, alimony, and an order dividing his military retirement benefits. *Id.* at *1. Military retirement benefits are subject to specific statutory provisions regarding a court's personal jurisdiction over a military member's retirement benefits, *see* 10 U.S.C.A. § 1408(c)(4), and those provisions differ from the family court's jurisdiction to rule on the other issues in divorce proceedings. Therefore, in response to the complaint, the husband filed a motion to dismiss for lack of personal jurisdiction over the issues related to his military retirement benefits. The husband did not contest the family court's jurisdiction to consider the other issues in the divorce action (i.e. child support, alimony, child custody). *Id.* However, prior to any hearing or ruling on the husband's motion to dismiss for lack of personal jurisdiction, the family court proceeded to conduct a hearing on a request for temporary relief pursuant to Rule 21 of the South Carolina Family Court Rules. The husband again asserted that the family court lacked personal jurisdiction over him to consider any issue related to his military retirement benefits.

During the hearing on the request for temporary relief, the husband specifically argued that the family court had placed him in an impossible predicament of either appearing for the hearing and waiving his personal jurisdiction arguments, or not appearing at the hearing and forfeiting his other arguments. *Id.* at *2. The same day as the hearing on the motion for temporary relief, the

husband filed an answer and counterclaims and, again, asserted that the court lacked personal jurisdiction over him to consider any issue related to his military retirement benefits. *Id.* Following the hearing on the motion for temporary relief, the court finally held a hearing on the husband's motion to dismiss for lack of personal jurisdiction and it denied that motion on the grounds that the husband's prior actions in the litigation (filing an Answer and Counterclaim and participating in the hearing on the request for temporary relief) waived his personal jurisdiction argument. *Id.* Thereafter, the matter proceeded in the family court, and the family court issued an order granting the wife a divorce and awarding the wife a percentage of the husband's military retirement benefits. *Id.* at *4. The husband appealed the family court's final order.

On appeal, this Court reviewed the procedural history in the divorce action and found the family court erred in failing first to rule on the husband's motion to dismiss for lack of personal jurisdiction before addressing the other issues in the divorce proceedings. Specifically, the Court held:

Because Husband's motion asserted the family court's lack of personal jurisdiction over him in relation to his military retirement benefits, the family court **should have considered it first**. We agree with Husband that by not hearing the motion to dismiss first, he was placed in the position of either not answering Wife's complaint or potentially waiving his jurisdictional issue. The family court should have first considered whether it had jurisdiction over the military retirement benefits. Accordingly, the family court erred in not first hearing Husband's motion to dismiss for lack of jurisdiction.

Id. (emphasis added). Ultimately, the Court reversed the family court's award of a percentage of the husband's military retirement benefits to the wife on the grounds that the family court did not have personal jurisdiction over the husband to decide that issue.

Like the husband in *Williams*, HCA's first action in response to the Complaint was to file a Motion to Dismiss for Lack of Personal Jurisdiction. Like the family court in *Williams*, the circuit court ruled on a motion seeking temporary relief (Appellants' Motion for Temporary

Injunction) without first addressing HCA’s Motion to Dismiss for Lack of Personal Jurisdiction—despite that Motion having been filed prior to any hearing before the circuit court. Like the husband in *Williams*, HCA consistently and continually asserted that Appellants have not met their burden of establishing the existence of personal jurisdiction over HCA.

The procedural posture in this matter differs from the appeal in *Williams* in that Appellants here have appealed interlocutory orders denying their request for injunctive relief while in *Williams* the full and final decision by the family court was on appeal. Unlike the family court in *Williams*, the circuit court in this case retains jurisdiction to decide HCA’s Motion to Dismiss for Lack of Personal Jurisdiction and no order has been issued on that motion. *See* S.C. CODE ANN. § 14-3-450. Unlike the husband in *Williams*, HCA has not partially consented to the jurisdiction of any South Carolina court. Unlike the husband in *Williams*, granting HCA’s pending Motion to Dismiss for Lack of Personal Jurisdiction will completely end HCA’s participation in this case. Accordingly, HCA requests the Court hold the above-captioned appeal in abeyance until the circuit court rules on the Motion to Dismiss for Lack of Personal Jurisdiction that was filed on December 7, 2021.

II. Judicial economy favors holding the appeal in abeyance until the circuit court issues its final ruling on HCA’s pending Motion to Dismiss for Lack of Personal Jurisdiction.

The United States Supreme Court has expressly ruled that any judgment purporting to bind a defendant over whom a court has not acquired personal jurisdiction is void and “a State is forbidden to enter a judgment attempting to bind a person over whom it has no jurisdiction.” *Hanson v. Denckla*, 357 U.S. 235, 249-50, 78 S. Ct. 1228, 1237-38, 2 L. Ed. 2d 1283 (1958) (emphasis added). Based on this simple principle, it is clear that judicial economy favors holding the appeal in abeyance until the circuit court issues its final ruling on HCA’s pending Motion to

Dismiss for Lack of Personal Jurisdiction. Then, the issue in this appeal will be before this Court in a manner that will allow a more complete decision.

For example, if the circuit court grants HCA’s Motion to Dismiss while this appeal is pending—which it has the authority to do, S.C. CODE ANN. § 14-3-450—then all of the briefing and arguments relating to HCA submitted by the parties in this appeal will be moot because any judgment or order entered against HCA is void. *See Ex parte S.C. Dep’t of Revenue*, 350 S.C. 404, 408, 566 S.E.2d 196, 198-99 (Ct. App. 2002) (holding the master’s order was void and must be vacated because the master lacked personal jurisdiction over SCDOR); *see also Vinten v. Jeantot Marine Alls., S.A.*, 191 F. Supp. 2d 642, 650 (D.S.C. 2002) (“any judgment entered against a defendant over whom the court does not have personal jurisdiction is void” (citation omitted)). Equally, this Court’s time spent analyzing and considering the injunction in issue related to HCA will be wasted on moot issues. All of this potential waste can be avoided by simply holding the appeal in abeyance until the circuit court has ruled on a motion that is currently pending and ready to be heard. Furthermore, holding the appeal in abeyance until the circuit court issues an order adjudicating HCA’s Motion to Dismiss for Lack of Personal Jurisdiction complies with the Court’s policy favoring judicial economy by avoiding piecemeal appeals. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537–38, 773 S.E.2d 144, 146 (2015) (recognizing the policy favoring judicial economy by avoiding “piecemeal appeals”). Accordingly, judicial economy favors holding the appeal in abeyance until the circuit court rules on HCA’s Motion to Dismiss for Lack of Personal Jurisdiction.

CONCLUSION

For the reasons set forth herein, Respondents request the Court grant the Motion and issue an Order holding the above-captioned appeal in abeyance until the circuit court issues an order adjudicating HCA Healthcare, Inc.’s Motion to Dismiss for Lack of Personal Jurisdiction.

s/Katon E. Dawson Jr.

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Of whom HCA Healthcare, Inc. and Trident Medical Center, LLC;
are the..... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on July 12, 2022, copies of **RESPONDENTS’
MOTION TO HOLD APPEAL IN ABEYANCE** were served on all counsel of record via emails
containing the above referenced document to counsels’ individual AIS email addresses:

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
Jul 12 2022
SC Court of Appeals

Re: ***Medical University of South Carolina, et. al. v. HCA Healthcare, Inc., et. al.***
Case Number: 2022-000352

Dear Mrs. Kitchings,

Enclosed is Respondents Trident Medical Center, Inc. and HCA Healthcare, Inc.'s ("Respondents") Second Motion for Extension of Time to File Respondents' Initial Briefs and Designation of Matter to be Included in the Record on Appeal, Respondents' Motion to Hold Appeal in Abeyance, a Proof of Service for each of the attached motions, and two firm checks in the amount of \$50 for the filing fees for each of the enclosed motions.

Sincerely,

A handwritten signature in blue ink that reads 'Katon E. Dawson, Jr.'.

Katon E. Dawson, Jr.

KED

CC:

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