

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Deadra L. Jefferson
Presiding Judge

Appellate Case No.: 2021-001170

RECEIVED

Jul 29 2022

S.C. SUPREME COURT

Eddie B. Lewis.....Respondent

v.

Saul, LLC and Wells Fargo Bank National Association

Of Whom Saul, LLC isAppellant

And Of Whom Wells Fargo Bank National Association is also the.....Respondent.

RESPONDENT EDDIE B. LEWIS' RETURN TO
PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE CASE

This is a premises liability action which was commenced by the filing of a Summons and Complaint in the Beaufort County Court of Common Pleas on December 5, 2018. In his Complaint, the Plaintiff-Respondent Eddie B. Lewis (“Lewis”) alleges that he suffered personal injuries as a result of a fall and that his fall was the result of the negligence of the Defendants. He alleges that the Defendant-Respondent Wells Fargo Bank National Association (“Wells Fargo”) rented or leased the premises on which he suffered his fall from the Defendant-Appellant Saul, LLC (“Saul”).

An Amended Complaint, which simply corrected the address of the subject premises, was filed on January 7, 2019. Appendix, pp. 17-25 (Amended Summons and Complaint).

On January 17, 2018 the Appellant Saul filed its Answer to the Amended Complaint and on February 11, 2019 the Respondent Wells Fargo filed its Answer to the Amended Complaint. In their Answers, both Defendants admit that the Appellant Saul was the owner and landlord of the subject premises, and the Respondent Wells Fargo was the tenant. Both Defendants, however, denied liability to the Plaintiff. Each Defendant denied that it exercised dominion or control over the premises at the time of Plaintiff’s fall. Appendix, pp. 26-31 (Answer of Respondent Wells Fargo).

On January 20, 2020 Appellant Saul filed a Motion for Summary Judgment, asserting that pursuant to the terms of the lease between it and the Respondent Wells Fargo it had “released the complete and exclusive control of the subject property to Wells Fargo,” and accordingly owed no duty to the Plaintiff. Appendix, pp. 37 (Appellant Saul’s Motion for Summary Judgment, pg. 6).

As a result of a hearing held on March 17, 2020 the Honorable Deadra L. Jefferson, Presiding Judge, granted the Appellant Saul's Motion for Summary Judgment. Appendix, pp. 2-8.

On March 19, 2021 the Respondent Wells Fargo filed a Motion to Set Aside the aforesaid summary judgment motion pursuant to Rule 60, SCRPC. Appendix, pp. 224-25. This motion was made on the ground that there were "significant misrepresentations" made to the Court as to the terms of the lease between Saul and Wells Fargo, the contractual relationship of the parties, and which Defendant was responsible for the condition and maintenance of the area where the Plaintiff fell. *Id.*

As a result of a hearing held on March 23, 2021 Judge Jefferson filed an Order on September 21, 2021 granting the Respondent Well Fargo's Motion to Set Aside the Summary Judgment Pursuant to Rule 60, SCRPC. Significantly, the Court concluded that there would be "little prejudice in requiring the parties to proceed with a hearing on the merits of Saul, LLC's motion for summary judgment." Appendix, pg. 14. Judge Jefferson then directed the Clerk to re-schedule Saul's summary judgment motion on the next available motions roster. Before this could be done, however, Saul filed this appeal.

ARGUMENT

I. THE SOUTH CAROLINA COURT OF APPEALS PROPERLY DISMISSED THIS APPEAL AND THIS DISMISSAL DOES NOT CONFLICT WITH THE DECISION OF THIS COURT IN *WINSLOW BROS. & SMITH CO. V. GOSSETT*, 120 S.C. 164, 112 S.E. 825 (1922).

The Appellant Saul argues that the decision by the South Carolina Court of Appeals to dismiss this appeal conflicts with the decision of *Winslow Bros. & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922). Petition for Writ of Certiorari, pg. 11. The decision by the South Carolina Supreme Court in *Winslow Bros.* is extremely succinct, and in its entirety consists of the following:

“This is an appeal from an order vacating a judgment by default. Such an order is not appealable unless there was an erroneous exercise of discretion on the part of his Honor, the Circuit Judge, of which fact the appellant has failed to satisfy this Court. Appeal dismissed.”

Winslow Bros. & Smith Co. v. Gossett, 120 S.C. 164, 112 S.E. 825 (1922).

Appellant Saul twists the plain meaning of the *Winslow Bros.* decision and, in effect, rewrites it to read that **any Order is immediately appealable** if there is an erroneous exercise of discretion on the part of the Circuit Judge. Unlike the Order in *Winslow Bros.*, which was an Order vacating a judgment by default, the Order which is the subject of the instant appeal simply reschedules Appellant Saul’s Motion for Summary Judgment for another hearing. Most significantly, Saul’s summary judgment has not been denied. It is still pending, unresolved, and waiting to be heard. Absolutely no decision on its merits has been made.

Additionally, even if the decision in *Winslow Bros.* had any applicability to the subject Order, it is clear that Judge Jefferson did not abuse her discretion in rescheduling Saul’s summary judgment motion for another hearing. As Appellant Saul correctly notes in its Petition, an abuse of discretion means that the ruling of the Trial Court was (1) without reasonable factual support, (2) which resulted in prejudice to the rights of the Appellant, and therefore, (3) in the circumstances amounted to an error of law. Petition for Writ of Certiorari, pg. 11, citing *Bridges v. Wyandotte Worsted Co.*, 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961).

Judge Jefferson’s Order is replete with “reasonable factual support.” After initially noting that “a Court must balance the interest of finality against the need to provide a fair and just resolution of the dispute.” (Citing *Raby Construction, LLP v. Orr*, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004), Judge Jefferson spends the next four (4) pages of her Order detailing the facts upon which her Order is based. Appendix, pp. 12 – 15.

Judge Jefferson notes that at the hearing on Saul's Motion for Summary Judgment Saul, and the Respondent Lewis, represented to the Court "that Wells Fargo was not necessary for the disposition of Saul, LLC's Motion for Summary Judgment." Appendix, pg. 12. Judge Jefferson then notes:

"However, the overwhelming majority of the findings of fact and conclusions of law contained in Saul, LLC's Consent Order to the Court contained a myriad of findings regarding the interpretation of the lease between Saul, LLC and Wells Fargo and liability findings that related not to Saul, LLC and the Plaintiff, but to Wells Fargo, a party who was not present at the March 17, 2020 hearing and was not afforded an opportunity to be heard, and most importantly, that Lewis and Saul, LLC knew Wells Fargo was not going to be present for the hearing on the motion."

Appendix, pg. 12. Judge Jefferson expressly notes that "This is particularly troubling in light of the fact that counsel for Lewis and Saul, LLC knew that Wells Fargo's representation was in flux, objected to Wells Fargo's request for a continuance, and did not advise the Court that Wells Fargo sought a continuance." *Id.*, pg. 13.

In her Order, Judge Jefferson notes that "While it was incumbent upon Wells Fargo to file a Motion for Continuance, the Court is nevertheless troubled that Saul, LLC failed to advise the Court of Wells Fargo's request for a continuance when Saul, LLC was aware of the transition of Wells Fargo's representation. This is heightened by Lewis and Saul, LLC's knowledge that Wells Fargo would not be represented and that (Wells Fargo's Attorney) would not be able to attend the hearing on March 17, 2020." *Id.*, pg. 13, fn. 6.

It is clear from Judge Jefferson's Order, and the factual findings expressly contained therein, that she was "particularly troubled" by the fact that Saul, LLC did not disclose to her the fact that Wells Fargo's representation was in "flux" and that Wells Fargo wanted the motion continued because its new counsel was not able to attend the hearing. Since the so-called "Consent Order" granting summary judgment went beyond simply granting summary judgment to Saul, but

also laid responsibility squarely with Wells Fargo, Judge Jefferson, balancing the equities, concluded that Saul should not profit from its lack of candor to the Court.

More specifically, Judge Jefferson, in balancing these equities, found that they weighed heavily in disposing of Saul's motion on its merits and giving Wells Fargo the opportunity to participate, stating:

“Finally, this Court finds that the degree of prejudice the Plaintiff and Saul, LLC will suffer if relief is granted is not so high as to outweigh the other factors. Wells Fargo was a party to the March 17, 2020 hearing, however, was not present at the hearing and was not afforded an opportunity to be heard. Both the Plaintiff and Saul, LLC knew that Wells Fargo would not be represented at the March 17, 2020 hearing and, therefore, this Court finds little prejudice in requiring the parties to proceed with the hearing on the merits of Saul, LLC's Motion for Summary Judgment. This is consistent with South Carolina's policy favoring the disposition of issues on their merits rather than on technicalities.”

Appendix, pp. 14 – 15.

Accordingly, Judge Jefferson did not abuse her discretion in vacating the Order granting Saul's Motion for Summary Judgment. In so doing, her Order contains reasonable factual support for her decision. Additionally, Saul has suffered absolutely no prejudice inasmuch as its Motion for Summary Judgment has not been denied, it has simply been rescheduled for another hearing and awaits disposition on its merits.

II. S.C. CODE ANN. §14-3-330 DOES NOT AUTHORIZE THE IMMEDIATE APPEAL OF AN ORDER THAT SIMPLY RESCHEDULES A MOTION HEARING.

Saul argues that a plain reading of S.C. Code Ann. §14-3-330 establishes that this “narrow type of case” is in fact immediately appealable. Petition for Writ of Certiorari, pg. 13. Nothing, however, could be further from the truth. The Order in this case is not a final judgment, it does not involve the merits, it does affect a substantial right, it does not in effect determine any issue, it does not prevent a judgment from which an appeal might be later taken, and it does not discontinue

the action. The Order that is the subject of this case simply reschedules a motion for another hearing.

“An appeal ordinarily may be pursued only after a party has obtained a final judgment.” *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005); citing *Mid-State Distributors, Inc. v. Century Imps., Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993). “The right of appeal arises from and is controlled by statutory law.” *Id.*

“The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by (§14-3-330 of the South Carolina Code of Laws).” *Hagood, supra*, 362 S.C. at 195, 607 S.E.2d at 708. “An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable.” *Id.*

Section 14-3-330 provides that the following types of judgments, decrees, and orders are directly appealable:

- “(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 ...;
- (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.

The subject Order in this case has absolutely no effect on the merits of this action, nor does it affect any substantial rights of the parties or limit any party’s ability to present its case. The net

effect of the Order under appeal is to simply just reschedule Saul's Motion for Summary Judgment for another hearing.

The subject Order in this case is an Order granting a party relief pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure, and the South Carolina Supreme Court has held that such an order is not immediately appealable. See, e.g., *Pocisk v. Sea Coast Construction of Beaufort*, 380 S.C. 584, 587, 671 S.E.2d 98, 100 (2008).

In *Pocisk v. Sea Coast Construction of Beaufort*, *supra*, the Court entered a judgment against the Pocisks. The Pocisks filed a motion to vacate the judgment pursuant to Rule 60(b), SCRCF, and to restore the case to the trial roster. The Court granted the motion, vacating the judgment and restoring the case to the trial docket. Sea Coast Construction appealed this Order, and the South Carolina Supreme Court dismissed the appeal stating:

“The Pocisks assert the order granting Rule 60(b) relief is not immediately appealable. We agree.”

Id., 380 S.C. at 587, 671 S.E.2d at 100. The Court noted that an “order granting Rule 60(b) relief does not affect a substantial right” and accordingly is not immediately appealable. *Id.*, 380 S.C. at 588-89, 671 S.E.2d at 101 (numerous citations omitted). See also, *Pioneer Associates, Inc. v. Ticor Title Insurance Company*, 300 S.C. 346, 387 S.E.2d 711 (1989) (appeal dismissed because order granting Rule 60(b), SCRCF, motion to set aside a default judgment is not immediately appealable).

Judge Jefferson's Order vacating the Consent Summary Judgment Order is not a final judgment. It does not affect the merits of this action in the least. It does not affect a substantial right. It does not determine any issue. It does not even deny Saul's Motion for Summary

Judgment.¹ Her Order simply reschedules Saul's Motion for Summary Judgment for another hearing. A "plain reading" of S.C. Code Ann. §14-3-330 does not authorize the immediate appeal of an Order that simply reschedules a hearing.

III. THIS COURT'S HOLDING IN *WINSLOW BROS.* DOES NOT CREATE AN APPEALABLE ISSUE.

The argument by Saul under this third enumerated argument, appears to be duplicative of the arguments raised under Arguments I and II, *supra*. Rather than repeat his arguments raised under these earlier enumerated arguments, the Respondent Lewis simply directs the Court's attention to the earlier portions of this Brief. In short, however, Judge Jefferson did not abuse her discretion inasmuch as her Order contains reasonable factual support and Saul has suffered no prejudice. S.C. Code Ann. §14-3-330 does not authorize the immediate appeal of an Order rescheduling a hearing inasmuch as it does not affect the merits or affect a substantial right or determine any issue.

CONCLUSION

An order granting a Rule 60, SCRCPP, motion to set aside a judgment is not immediately appealable. The net effect of Judge Jefferson's Order in the instant case is to simply schedule the Appellant Saul's Motion for Summary Judgment for a new hearing, the same effect as if she had simply continued the original hearing to begin with. Following Judge Jefferson's Order, the Appellant Saul's Motion for Summary Judgment remains pending and probably would have been heard by now but for this appeal. Judge Jefferson's decision to, in effect, simply rehear Saul's Motion for Summary Judgment has no effects on the rights of any party to this action. The Order under appeal is essentially a decision not to decide anything until a further hearing can be held.

¹ Even if Judge Jefferson had denied Saul's Motion for Summary Judgment, instead of simply rescheduling it, it would still not be appealable inasmuch as the denial of a Motion for Summary Judgment is not directly appealable. See, *e.g.*, *Morris v. Anderson County*, 349 S.C. 607, 564 S.E.2d 649 (2002).

It is accordingly respectfully requested that the Petition for Writ of Certiorari be denied, and the case remanded to the Beaufort County Court of Common Pleas so Saul's Motion for Summary Judgment may be heard on its merits.

Respectfully submitted,

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