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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Steven H. John, Circuit Judge

Appellate Case No. 2022-000811
Circuit Court Case No. 2022-CP-2200032

Ernest F. Middleton, III, and Joyce J. Middleton, Michael J.
Farrar and Diana Farrar, Robert H. Hunt and Jeane M. Sullivan,
the Colony Homeowners Association, Inc., and Keep It Green, Inc.

Respondents

v.

Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004
Revocable Trust dated June 18, 2004

Appellant

RESPONDENTS' MOTION TO DISMISS APPEAL

/s/ Cynthia Ranck Person
Cynthia Ranck Person, Esquire (SC Bar #105126)

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ATTORNEY FOR RESPONDENTS

September 30, 2022

MOTION TO DISMISS APPEAL

Respondents move to dismiss this appeal filed by *pro se* Appellant, Benjamin F. Goff, Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004 (hereinafter “Goff”), of the trial court’s order dated June 3, 2022, denying his Motion to Dismiss on the basis that this order is interlocutory and is not otherwise an appealable order.

PROCEDURAL HISTORY

Respondents filed a Declaratory Judgment Complaint on January 7, 2022, against Georgetown County and Appellant Goff challenging the validity of two zoning ordinances changing the zoning on property owned by Goff. Goff, *pro se*, filed a Motion to Dismiss on January 25, 2022, requesting dismissal of the Complaint pursuant to Rule 12(b)(5) and (6), SCRCF. The trial court heard Goff’s Motion to Dismiss on May 19, 2022, and on June 3, 2022, issued an order denying said motion. It is this interlocutory order from which Goff appeals.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS APPEAL

Section 14-3-330 of the South Carolina Code of Laws which governs appellate jurisdiction in law cases, provides as follows:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (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.

Accordingly, appellate courts may review only final decisions except in very limited circumstances, none of which applies in this case.

“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, 363 S.C. 191,195, 607 S.E.2d 707, 709 (2005). “The provisions of Section 14-3-330, including subsection (2), have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed.” Id. at 196, 709.

“The basic policy behind denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted.” Watson v. Underwood, 407 S.C. 443, 458, 756 S.E.2d 155, 163 (Ct. App. 2014). It is well settled in South Carolina that denial of a motion to dismiss is not immediately appealable. McLendon v. S.C. Dep't of Highways & Pub. Transp., 313 S.C. 525, 443 S.E.2d 539 (1994); Moyd v. Johnson, 289 S.C. 482, 347 S.E.2d 97 (1986); Mid-State Distribs. v. Century Imps., 310 S.C. 330, 336, 426 S.E.2d 777, 781 (1993).

In the present case, the order denying Goff’s Motion to Dismiss does not amount to a determination of any factual or legal issue on the merits of the case. All factual and legal issues remain open for determination. It would not promote judicial economy or the interests of justice to permit appeals while litigation is still proceeding.

CONCLUSION

For the foregoing reasons, Respondents respectfully request this court to dismiss this appeal and allow litigation to proceed.

Respectfully submitted,

/s/ Cynthia Ranck Person
Cynthia Ranck Person, Esquire (SC Bar #105126)

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PROOF OF SERVICE

The undersigned hereby certifies that Respondents' MOTION TO DISMISS APPEAL was served this 30th day of September, 2022, upon Appellant by placing a copy of same in the U.S. Mail, postage prepaid, addressed:

Benjamin F. Goff, Sr. Trustee
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PRO SE APPELLANT

/s/ Cynthia Ranck Person
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