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Feb 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HAMPTON COUNTY
Bentley D. Price, Circuit Court Judge

Appellate Case No. 2023-000171

Manuel Santis-CristianiAppellant,

v.

Richard Alexander “Alex ”Murdaugh,
Ronnie L. Crosby, William F. Barnes, III,
Russell Laffitte, Palmetto State Bank,
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.,
and Medical University Hospital Authority d/b/a
Medical University of South CarolinaRespondents.

MEMORANDUM OF RESPONDENTS RONNIE L. CROSBY,
WILLIAM F. BARNES, III, AND PETERS, MURDAUGH,
PARKER, ELTZROTH & DETRICK, P.A.

Respondents Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A. (“PMPED”), Ronnie L. Crosby, and William F. Barnes, III (collectively, “Respondents”) file their memorandum concerning the appealability of the order Petitioner seeks to appeal, as requested by this Court in its letter dated February 15, 2023. For the reasons below, Petitioner Manuel Santis-Cristiani’s (“Petitioner”) Notice of Appeal is premature and seeks review of an unappealable form order, and for these reasons, his appeal should be dismissed.

STATEMENT OF THE FACTS

On October 7, 2022, Petitioner filed a lawsuit in Hampton County Circuit Court alleging various causes of action sounding in legal malpractice against several attorneys, including Richard Alexander “Alex” Murdaugh, a former attorney who was indicted on November 18, 2021, for allegedly misappropriating a portion of the proceeds from Petitioner’s settlement of personal injury product liability claims against auto and tire manufacturers. The amount, \$70,000, was set aside for and should have been paid to third-party interpleader defendant Medical University Hospital Authority (hereinafter “MUSC”) for medical services provided to Petitioner following an automobile crash. Respondents learned in 2021 that the funds had not been paid out as they should have been but rather that the funds were paid into a secret bank account maintained by Alex Murdaugh for the purpose of diverting funds away from the law firm, clients, and others.

Respondents strongly dispute the factual and legal bases for the allegations against them in Petitioner’s complaint and, accordingly, filed a Motion to Interplead Funds with the Court and a Motion for Rule 11 Sanctions. Respondents maintain that Petitioner received all the funds owed to him from the settlement of his case, proof of which was provided to the court (and to Petitioner) at the hearing on this motion. Respondents further contend that MUSC may have a valid lien to the funds in question, a belief supported by a review of Petitioner’s client file and a collections action initiated by MUSC against Petitioner in the Circuit Court for Charleston County. Respondents filed a separate motion to dismiss under Rule 12(b)(6), which is not at issue.

In their Motion to Interplead, Respondents asked the Court to accept funds over which Respondents make no claim and to hold the funds pending a determination on who should recover the funds: Petitioner or MUSC.

Respondents further asked the Court to impose sanctions under Rule 11, SCRPC and pursuant to S.C. Code Ann. §§ 15-36-10 *et seq.*, for Plaintiff's counsel's filing a frivolous action with false allegations and without first requesting the client file as part of a reasonable pre-suit investigation when it was offered to Petitioner's Counsel by Respondents upon written receipt of a client authorization.¹ As set forth in the Motion for Rule 11 Sanctions and exhibits thereto, and through affidavits and live testimony by witnesses at a hearing on December 1, 2022 before Judge Price, Respondents argued that Petitioner's counsel's failure to undertake a reasonable investigation into Petitioner's claims and counsel's decision instead to lodge false and inflammatory allegations against Respondents were done willfully and in bad faith, all in violation of Rule 11, SCRPC, and sanctionable pursuant to S.C. Code Ann. § 15-36-10 *et seq.*

On January 3, 2023, Judge Price filed a Form 4 order, granting leave for Respondents to interplead the funds and granting sanctions against Petitioner's counsel. The Form 4 order included the following language by the Court: "This matter came before the Court on December 1, 2022 in Hampton County upon Motion by Defendants PMPED, Ronnie Crosby, and William Barnes. The Court hereby grants leave to interplead funds with the Court and grants sanctions against Plaintiff's counsel. A more formal Order is forthcoming."

On February 2, 2023, Petitioner filed this appeal from the Form 4 order. On February 15, 2023, the Court of Appeals sent a letter to all counsel expressing concern that this order may not be appealable and asking for memoranda on appealability. In response to the Court's request,

¹ As of this filing, Petitioner's counsel still has not provided a client authorization necessary under the Rules of Professional Conduct to obtain the client file.

Respondents respectfully submit this memorandum. The Form 4 order is not an appealable order, and consequently, Petitioner's appeal should be dismissed.

ARGUMENT

1. The trial court's order is interlocutory and does not come within one of the statutory exceptions to the final judgment rule.

The Court of Appeals has jurisdiction over appeals of only those interlocutory orders involving the merits of a case or affecting a substantial right. S.C. Code Ann. § 14-3-330. Without special statutory authority, an interlocutory order is appealable only if the order falls within one of the categories of appealable judgments, decrees, or orders listed in S.C. Code Ann. § 14-3-330. Although an order granting Rule 11 sanctions may be appealable under certain circumstances, *see, e.g., Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 257, 578 S.E.2d 11, 12 (2003), appeals of sanctions are usually appropriate only at the conclusion of the case. *See, e.g., Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 257, 578 S.E.2d 11, 12 (2003). This interlocutory order is not appealable because it did not involve the merits, did not affect a substantial right, and did not prevent a judgment from which an appeal could be taken later. Because this Order is not a final judgment and does not fit any of the exceptions to the finality rule of our courts, this appeal should be dismissed.

2. Petitioner's appeal is premature under Rule 203(b)(1), SCACR.

Appeals may be taken from final orders. South Carolina Appellate Court Rule 203(b)(1) addresses the circumstance where a judge issues a form order. That rule provides that “[w]hen a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.”

The Form 4 order issued by Judge Price expressly stated that a more formal order will be issued. This is the type of short order contemplated by Rule 203(b)(1) and for which the rules require waiting “until receipt of written notice of entry of the more complete order or judgment,” assuming the formal order is immediately appealable. Rule 203(b)(1), SCACR. This provision is intended to allow trial courts to issue complete orders that set out the court’s findings or provide specific instructions to the parties and from which the Court of Appeals would have a basis for review.

This provision in the Rule also allows the trial court additional time to communicate its written opinion and instructs the parties to wait for the complete order before seeking to appeal. “The written order is the trial judge’s final order and as such constitutes the final judgment of the court. The final written order contains the binding instructions which are to be followed by the parties.” *Ford v. State Ethics Comm'n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001) (citing Rule 58, SCRCPP).

Moreover, the Form 4 order did not set forth the court’s findings for a decision on a motion for sanctions. “A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanctions imposed.” *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). When a party appeals an order granting sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act, “an appellate court reviews the findings of fact with respect to the decision to grant sanctions under the FCPSA by ‘taking its own view of the evidence.’” *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 641-42, 760 S.E.2d 399, 410 (2014) (citing *Father*, 353 S.C. at 260, 578 S.E.2d at 14). Without the court’s findings that are to be in the trial court’s complete order, the Court of Appeals would be unable to review the trial court’s findings

of fact. The appellate courts must review the trial court's decision to award sanctions and the terms of those sanctions under an abuse of discretion standard. *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.e.2d 46, 50 (2008). In this case, the trial court has not yet issued its formal order or ordered the terms of the sanctions, so the appellate court cannot review the trial court's rationale or the appropriateness of the sanctions.

We do not need to speculate about the trial court's intention to issue a complete order. In December, the trial court requested that Respondents draft an order granting leave to interplead funds and granting sanctions. The court also provided Petitioner's counsel the opportunity to respond to the proposed order. Multiple drafts of the order were exchanged, and Petitioner's counsel actively participated in this process, sending letters to the court with objections. In a letter to Judge Price dated February 20, 2023, Petitioner's counsel now takes the position that the trial judge does not have jurisdiction to enter a formal order during the pendency of this appeal while also asking the trial court to reconsider the Form 4 order.² *See* Exhibit A (Letter to Judge Price dated Feb. 20, 2023). This vacillation shows this appeal is premature and permitting it would allow the losing party on any Form 4 ruling to forestall entry of the formal order by appealing the Form 4 order. This is not fair to the trial courts and does not provide orderly administration of justice for appeals or predictable finality.

Petitioner alleges in the notice of appeal that the Form 4 order is "ambiguous" as to whether the trial court retained jurisdiction to enter a formal order. (Not. of App.). There is nothing ambiguous in the order. If any ambiguity existed, which it does not, the proper procedure was to file a Rule 59(e), SCRCP, motion. Filing a notice of an appeal instead, in an attempt to

² On February 27, 2023, counsel received a notification from the Circuit Court indicating that the Court has vacated its Form 4 order dated January 3, 2023. *See* Exhibit B. The Form 4 order vacating the earlier ruling necessitates a determination from the Court of Appeals on the trial court's jurisdiction as raised by Petitioner.

delay the entry of sanctions and interpleader, is improper, frivolous, and a waste of judicial resources. To the extent that Petitioner’s counsel’s February 23, 2023 letter is an attempt at a Rule 59(e) motion, it is untimely.

There is no mystery to the court’s intent to issue a forthcoming order, and Petitioner’s attempt to challenge the trial court’s reservation of jurisdiction appears to be an attempt to avoid the consequences of the forthcoming sanctions order, or at least to delay them.³ Whatever the motivation for this appeal, this form order fits the provision of Rule 203(b)(1) which renders this appeal premature. The Form 4 order also lacks the findings of fact and the terms of the sanctions—the key elements to be reviewed when the order is final and an appeal is timely.

3. Petitioner’s appeal appears to seek an advisory opinion on a future event.

Petitioner’s Notice of Appeal does not argue any procedural defect in the order, nor does Petitioner challenge its merits. Instead, Petitioner questions “whether or not the trial court maintained jurisdiction that would allow it to issue a formal order at a later date.” *See* Petitioner’s Notice of Appeal at 2. In other words, Petitioner is asking for the Court of Appeals to approve or disapprove something that has not yet happened. That request, in itself, is premature and is essentially a request for an advisory opinion, which the Court of Appeals should not entertain when it does not affect the outcome. *Sangamo Weston, Inc. v. Nat’l Surety Corp.*, 307 S.C. 143, 146, 414 S.E.2d 127, 129 (1992) (concluding that appellate courts will not issue advisory opinions that are purely academic and do not affect the outcome).

³ Respondents reserve the right to move for sanctions under Rule 269, SCACR, for the filing of an appeal that is taken for the purpose of delay and is not in compliance with the appellate court rules.

CONCLUSION

This appeal is improper and warrants dismissal. First, this appeal is premature because it addresses a form order in which the trial court expressly reserved jurisdiction to issue a more formal Order. Second, this form order is interlocutory because it did not end the case; and it does not involve the merits, affect a substantial right, or prevent a judgment from which an appeal could be taken later. Third, Petitioner's appeal should also be dismissed because it seeks an advisory opinion on actions not yet taken by the trial court. For all of these reasons, the Court of Appeals should dismiss this appeal.

Respectfully submitted,

s/ Wallace K. Lightsey _____

Wallace K. Lightsey (SC Bar No. 6476)

Matthew T. Richardson (SC Bar No. 15647)

James H. May (SC Bar No. 74278)

Jessica L. Monsell (SC Bar No. 105232)

WYCHE, P.A.

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***Attorneys for Respondents Ronnie L. Crosby,
William F. Barnes, III, and Peters, Murdaugh,
Parker, Eltzroth & Detrick, P.A.***

February 27, 2023

Greenville, South Carolina

Exhibit A

GLENN WALTERS
ATTORNEY AT LAW, P. A.

1910 Russell Street • ORANGEBURG, S.C. 29116

TELEPHONE: (803) 531-8844 • FACSIMILE: (803) 531-3628 • Toll Free: (888) 966-8844

Email: glennwalterspa@gmail.com (for all email replies)

February 20, 2023

Via email only: bpricesc@sccourts.org

Judge Bentley D. Price

Subject: **RE: Santis-Cristiani v. Murdaugh et al.; C.A. No. 2022-CP-25-00285**

Dear Judge Price:

This letter responses to Mr. Lightsey's email to you, dated February 17, 2023 @ 4:48 pm, in which he requests you to sign the Third Proposed order in the above-referenced case. Like all the proposed orders before this one, the Third Proposed order is factually and legally defective. As you recall, after entertaining my voluminous objections, you have refused to sign the proposed orders that Mr. Lightsey tendered in the past. Our objections are factually specific and are based on the transcript—we renew our objections as previously stated in all forms. To that end, I respectfully request that you do not sign Mr. Lightsey's Third Proposed order that he now attempts to slip in through the back door.

More importantly, I also object to you signing the Third Proposed Order because you no longer have subject matter jurisdiction in this matter in that the case is still pending at the South Carolina Court of Appeals. The form order was ambiguous as to whether the time to file an appeal had commenced. Therefore, out of the abundance of professional caution, I filed the appeal, and I am preparing to respond to the Court's ten day request to show via Memorandum that the appeal is ripe. Until this matter is resolved by the South Carolina Court of Appeals, I contend that you do not have jurisdiction to enter an additional orders.

Finally, as the Court will recall, your initial instructions were that you would determine the "sanctions" once the Rule 12(b)(6) Motion was determined by Judge Pope (See attached E-mail dated 12/7/2022). On January 5, 2023, Judge Pope considered the Rule 12(b)(6) Motion in the Plaintiff's favor (See attached Order of Judge Pope and Affidavit of Attorney Desa Ballard). Therefore, the inescapable legal conclusion is that a finding by Judge Pope removes factual or legal basis to support Rule 11 Sanctions in this matter. I respectfully ask the Court to reconsider its conclusions for sanctions, which would preclude any appeal in this matter.

[Only the signature block and CC addresses are contained on this page].

Sincerely,

Glenn Walters, Sr.

Glenn Walters

Attorney for Plaintiff

Cc: Clerk of Court

Attorneys of Record and interested parties via Email and ECF:

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Exhibit B

Manuel Santis-Cristiani
PLAINTIFF(S)

Richard Alexander
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This Order hereby vacates this Court's previous ruling granting sanctions against Plaintiff's Counsel in the Form 4 Order dated January 3, 2023. Defendant's can re-file their Motion for Sanctions after disposition of the case. The ruling granting leave to interplead funds stands. Furthermore, the Court orders that the funds, in the amount of \$70,000, should be interplead with the Clerk of Court in their interest-bearing account.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/27/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Hampton Common Pleas

Case Caption: Manuel Santis-Cristiani VS Richard Alexander "Alex" Murdaugh ,
defendant, et al
Case Number: 2022CP2500285
Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM HAMPTON COUNTY
Bentley D. Price, Circuit Court Judge

Appellate Case No. 2023-000171

Manuel Santis-CristianiAppellant

v.

Richard Alexander “Alex ”Murdaugh,
Ronnie L. Crosby, William F. Barnes, III,
Russell Laffitte, Palmetto State Bank,
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.,
and Medical University of Hospital Authority dba
Medical University of South CarolinaRespondents

PROOF OF SERVICE

I hereby certify that a copy of the **MEMORANDUM OF RESPONDENTS RONNIE L. CROSBY, WILLIAM F. BARNES, III, AND PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.** has been served upon Appellant’s counsel pursuant to the Supreme Court’s Order *Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022)*, by electronic mail, on the 27th day of February, 2023, addressed as follows:

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-and-

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/s/ Wallace K. Lightsey

Wallace K. Lightsey

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February 27, 2023

Greenville, South Carolina

February 27, 2023

VIA ELECTRONIC SUBMISSION

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
E-Mail: ctappfilings@sccourts.org

**Re: Manuel Santis-Cristiani v. Peters, Murdaugh, Parker,
Eltzroth & Detrick, et al
Appellate Case No: 2023-000171**

Dear Ms. Kitchings:

Attached for filing is *Memorandum of Respondents Ronnie L. Crosby, William F. Barnes, III, and Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A. and Proof of Service*. By copy of this letter, we are serving all counsel of record with this submission to the Court.

Sincerely,

s/Jessica Monsell

Jessica Monsell
jmonsell@wyche.com

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