

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the First Circuit

The Honorable Diane S. Goodstein

Case No.: 2022-CP-18-00295

LAURA ABERNATHY.....Plaintiff /Appellant,

v.

ERVIN W. LAMBERT, SR., PERSONAL REPRESENTATIVE OF THE ESTATE OF ERVIN
W. LAMBERT, JR., DECEASED.,.....Defendant/Respondent.

NOTICE OF APPEAL

Plaintiff, Laura Abernathy, appeals from two orders of the Honorable Diane S. Goodstein, one dated April 12, 2023 (**Exh. A**, denying Plaintiff's Motion to Consolidate and requesting a jury trial) and the other dated December 19, 2022 (**Exh. B**, denying Plaintiff's Motion to Amend).

Plaintiff moved to consolidate two separate actions involving the same parties and overlapping facts, one which is to be tried non-jury and one which is to be tried to a jury, being concerned that the nonjury trial would decide factual issues that Plaintiff is entitled to have decided by a jury. Plaintiff therefore requested a jury trial as part of its consolidation motion. The April 12, 2023 order denied that motion. That ruling is immediately appealable because it denied a request for a jury trial, affecting a substantial right. S.C. Code § 14-3-330(2); *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997); *see also Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74,

78, 533 S.E.2d 575, 577 (2000) (noting that the “majority of cases requiring immediate appeal involve review of denials of trial by jury and are based on the public policy consideration of advancing the constitutional mandate to preserve the right to trial by jury inviolate”).

The December 19, 2022 order denied Plaintiff’s motion to amend. While a denial of a motion to amend is not ordinarily appealable prior to final judgment, this order may now be considered in conjunction with the April 12 order because this Court may hear the appeal of an otherwise unappealable order when a separate appealable order is before it. *Cox v. Woodman of the World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001).

Defendant received notice of the latter order on April 12, 2023 and timely notices this appeal.

The transcripts are being requested.

Respectfully submitted:

EPTING & RANNIK, LLC

April 21, 20223
Charleston, South Carolina

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