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May 12 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Bentley D. Price

APPELLATE CASE NO. 2023-000699

CASE NO. 2022-CP-23-04704

Marcelo Torricos, as Trustee of the John W. Beeson Irrevocable Trust II FBP James H. Beeson
dated August 5, 2021, Respondent,

v.

The Greenville County Planning Commission..... Appellant.

RESPONDENT’S MEMORANDUM OF LAW

APPEALABILITY OF ORDER

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PROCEDURAL HISTORY

On or around June 1, 2022, Gray Engineering Consultants submitted a Preliminary Subdivision Application (PP-2022-105) (the “Application”) to the Greenville County Planning Commission (“the Planning Commission”) on behalf of Respondent for property located on Augusta Road and Garrison Road in Greenville County (TMS# 0603020102501, 0603020102200, and portion of 0603020102102) (“Property”). This subdivision was proposed to be named Langford Hills and consists entirely of unzoned property in southern Greenville County.

At its July 27, 2022 meeting, County Planning Staff recommended to the Planning Commission conditional approval of the Application. However, the Planning Commission ultimately voted to deny the Application on a split 4-3 vote. By letter dated August 2, 2022, Greenville County notified Respondent of the Planning Commission’s decision to deny the Application.

On August 26, 2022, Respondent filed a Notice of Appeal, Appeal, Request for Pre-Litigation Mediation, and Request for Declaratory Judgment appealing Greenville County Planning Commission’s denial of the Application. A hearing was held before the Honorable Bentley D. Price on February 23, 2023, and an Order Vacating and Remanding the Planning Commission’s July 27, 2022, Denial of the Langford Hills Preliminary Subdivision Application was filed by the Court on March 31, 2023 (“the Order”).

On April 10, 2023, the Planning Commission filed a Motion to Alter or Amend the Judgment, which was subsequently denied by order filed April 25, 2023. A Notice of Appeal was filed by the Planning Commission on April 27, 2023.

ARGUMENT

“Appeal may be taken, as provided by law, from any final judgment, appealable order, or decision.” Rule 201(a) SCACR. To promote judicial efficiency and orderly adjudication of disputes on appeal, the rules involving appealability seek to prevent multiple appeals of non-final matters. See *Bolding v. Bolding*, 283 S.C. 501, 323 S.E.2d 535 (Ct. App. 1984). It is a fundamental rule of appellate procedure that a judgment or order must be final before it can be appealed. See *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005); *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993); *Doe v. Howe*, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2004).

If there is some further act that must be done by a court prior to a determination of the rights of the parties, then an order is interlocutory and not immediately appealable. *Charlotte Mecklenburg Hosp. Auth.*, 387 S.C. 265, 692 S.E.2d 894 (2010); *Hooper v. Rockwell*, 334 S.C. 281, 513 S.E.2d 358 (1999); *Adickes v. Allison & Bratton*, 21 S.C. 245 (1884).

A judgment, order, or decree to be final for purposes of an appeal or error, must dispose of the cause, or a distinct branch thereof, as to all the parties, reserving no further questions or directions for future determination. It must finally dispose of the whole subject-matter or be a termination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined. In other words, a final judgment is one which operates to divest some right in such a manner as to put it beyond the power of the Court making the order to place the parties in their original condition after the expiration of the term; that is, it must put the case out of Court, and must be final in all matters within the pleadings.

Good v. Hartford Accident & Indem. Co., 201 S.C. 32, 41-42, 21 S.E.2d 209, 212 (1942) (internal citations omitted). If a judgment determines the applicable law while leaving open

questions of fact, then it is not a final judgment. *Mid-State Distribs., Inc.*, 310 S.C. 330, 426 S.E.2d 777.

Here, the Order is not a final order because it requires further acts by the court prior to determination of the rights of the parties, i.e. whether Respondent's application is approved or denied. Specifically, the Order requires the Planning Commission to review the application from Respondent and approve, conditionally approve, or deny same. (Order pp. 11-12 ¶ 5). If the Planning Commission denies the application, then Respondent may appeal that decision for further consideration by the court of whether the Planning Commission's reasons for denial are "not supported by law, the facts, are arbitrary, unreasonable, harmless error or an abuse of discretion." (Order p. 12 ¶ 6).

Further, allowing an appeal of the Order at this stage of the proceedings in this case would impede judicial efficiency. If the Planning Commission believes the Order is in error, then it will have the opportunity to appeal when the rights of the parties are finally determined. As such, allowing an appeal now would lead to multiple appeals in the same case. This is directly contrary to the reason interlocutory appeals are barred except in certain special circumstances, none of which apply here.

The Order is similar to the order appealed from in *Charlotte-Mecklenburg*. In *Charlotte-Mecklenburg*, both parties sought review of an Administrative Law Court (ALC) order granting one parties' motion for partial summary judgment, granting another party's motion for summary judgment, and remanding the case to the Department of Health and Environmental Control (DHEC) for a determination of whether any of the parties was entitled to a certificate of need. 387 S.C. at 265, 692 S.E.2d at 894. After certifying the case from the Court of Appeals, the

Supreme Court ultimately dismissed the appeals, finding the ALC's order was not immediately appealable. *Id.* The Court reasoned:

The order of the ALC in this case is not a final order. If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory. *Hooper v. Rockwell*, 334 S.C. 281, 513 S.E.2d 358 (1999); *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993); *Adickes v. Allison & Bratton*, 21 S.C. 245 (1884). A judgment which determines the applicable law, but leaves open questions of fact, is not a final judgment. *Hooper v. Rockwell*, *supra*; *Mid-State Distributors, Inc. v. Century Importers, Inc.*, *supra*; *Good v. Hartford Accident & Indemnity Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942). A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined. *Good v. Hartford Accident & Indemnity Co.*, *supra*.

Id. at 267, 692 S.E.2d at 894-95. Therefore, despite the ALC's ruling on some questions of law, because the ALC's order remanded the matter to DHEC for further findings regarding whether the applicants were entitled to a certificate of need, the Court held a final determination as to the certificate of need had not been made. *Id.* at 267, 692 S.E.2d at 895.

Similarly, here, the Circuit Court has ruled on some questions of law and remanded the matter to the Planning Commission for consideration of Respondent's application. A final determination as to the approval or denial of Respondent's application has not been made. As such, the Order is not final and not appealable at this time.

CONCLUSION

Therefore, based on the foregoing, Respondent respectfully submits that the Order is not appealable and requests that the appeal be dismissed.

Respectfully submitted,

May 12, 2022

s/Luke A. Burke
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PROOF OF SERVICE

The undersigned certifies that a true copy of the foregoing:

**RESPONDENT’S MEMORANDUM OF LAW
APPEALABILITY OF ORDER**

was this 12th day of May, 2023, e-mailed to counsel of record via the AIS e-mail on file:

Boyd Benjamin Nicholson, Jr., Esquire
(Via AIS e-mail: nnicholson@hsblawfirm.com)



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