The South Carolina Court of Appeals

Dorothy A. Lehew, Respondent,

v.

R & W Foods, Inc. (d/b/a Allendale IGA), Dixie-Riverside, Inc., and Champion Beverage Distributors, LLC, Defendants,

Of whom R & W Foods, Inc. is the Appellant.

and

Robert Lehew, Respondent,

v.

R & W Foods, Inc. (d/b/a Allendale IGA), Dixie-Riverside, Inc., and Champion Beverage Distributors, LLC, Defendants,

Of whom R & W Foods, Inc. is the Appellant.

Appellate Case No. 2012-212922

ORDER

Appellant R & W Foods, Inc. filed a Notice of Appeal from an order dismissing Respondent Robert Lehew's loss of consortium action with prejudice and an order denying R & W's motion for reallocation. Respondents filed a motion to dismiss, arguing (1) R & W "lacks standing as an 'aggrieved party' to appeal the trial court's grant of . . . the [m]otion to [d]ismiss [the loss of] consortium claim," and (2) the order denying the motion to reallocate the settlement proceeds is not immediately appealable. After careful consideration of the motion, R & W's return, and Respondents' reply, the motion to dismiss is granted.

"Only a party aggrieved by an order, judgment, sentence or decision may appeal." Rule 201(b), SCACR. "A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest." *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). In the context of standing, the term "aggrieved" refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation. *N. Am. Rescue Prods., Inc. v. Richardson*, 396 S.C. 124, 134, 720 S.E.2d 53, 59 (Ct. App. 2011).

R & W has not alleged it has suffered or will suffer an injury resulting from the order granting dismissal. R & W has not suffered any grievance because it has not been found liable for any damages. *See Beaufort Realty*, 346 S.C. at 302-03, 551 S.E.2d at 590 (stating a party is not aggrieved where it "merely fear[s] the prospect of future harm" of a "purely conjectural and hypothetical" injury). Instead, the order dismissing the loss of consortium claim with prejudice benefits R & W because it no longer bears the burden of defending the claim. *See Knight v. Autumn Co.*, 271 S.C. 112, 115, 245 S.E.2d 602, 604 (1978) ("This [c]ourt is concerned with correcting errors that have practically wronged the appealing party and where . . . the appeal is prosecuted by a party who is not aggrieved in a legal sense by the order below, it becomes [this court's] duty to reject that appeal.").

This court strictly construes its appellate jurisdiction and generally hears appeals only after a final judgment has been entered. *See Hagood v. Sommerville*, 362 S.C. 191, 194-96, 607 S.E.2d 707, 707-09 (2005). Exceptions to the final judgment rule are rare, and this court must dismiss an appeal as not immediately appealable if the order is not a final judgment and does not fit within the parameters of section 14-3-330 of the South Carolina Code (1976) or a specialized statute. *See Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 379 (Ct. App. 2002) ("Absent some 'specialized statute,' this [c]ourt is not permitted to hear a case on appeal not comporting with the requirements of [subsections 14-3-330(1) and (2)]). Section 14-3-330 controls this court's analysis because there is no "specialized statute" in this context. Section 14-3-330 provides:

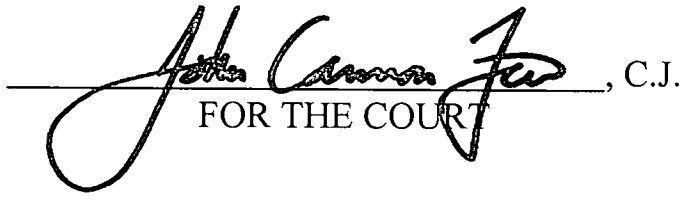
> The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:
>
> (1) Any intermediate judgment, order or decree in a law case involving the merits . . . ;

> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment form which an appeal might be taken or discontinues the action . . . .

"The provisions of section 14-3-330 . . . have been narrowly construed, and the immediate appeal of orders issued before or during trial generally has not been permitted." *State v. Wilson*, 387 S.C. 597, 601, 693 S.E.2d 923, 925 (2010).

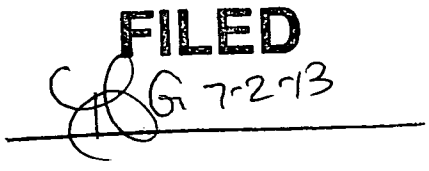
It is difficult to see how the question of allocating the settlement between Mrs. Lehew's damages claim and Mr. Lehew's loss of consortium claim is ripe for a court to hear until Mrs. Lehew has obtained a judgment. The purpose of allocation is to determine how much of the settlement should be set off against such a judgment, and until a judgment is entered, the court has no controversy to decide. A ruling made before the controversy arises appears to be advisory, and therefore might not be binding on a court that hears the matter after judgment.

Thus, the order denying R & W's motion to reallocate is not immediately appealable pursuant to section 14-3-330 because it neither involves the merits nor affects a substantial right. R & W retains the opportunity to contest Mrs. Lehew's damages at trial. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 7, 630 S.E.2d 464, 467 (2006) ("An order 'involves the merits,' as that term is used in [subs]ection 14-3-330(1)[,] and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense."); *Peterkin v. Brigman*, 319 S.C. 367, 368, 461 S.E.2d 809, 810 (1995) (stating that for an order to be appealable under section 14-3-330(2), the order must involve a substantial right and prevent a judgment from which an appeal may be taken). If necessary, R & W may renew the reallocation motion and seek a set-off in equity once a final judgment has been rendered in Mrs. Lehew's case. *See Rutland v. S.C. Dep't of Transp.*, 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012) ("A non-settling defendant is entitled to credit for the amount paid by another defendant who settles for the same cause of action."). Only after entry of a final judgment and a subsequent adverse ruling on any post-trial motions, such as a reallocation motion ripe to be decided, will R & W have standing as an aggrieved party to immediately appeal the set-off issue. Respondents' motion to dismiss is granted because R & W lacks standing to appeal the dismissal of the loss of consortium claim and the order denying the motion to reallocate is not immediately appealable.



, C.J.
FOR THE COURT

Columbia, South Carolina



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