

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2023-000623

Case No. 2020-CP-10-02357 _____

Jessica Taylor, individually and on behalf of others similarly situated,.....Appellant,

v.

Charleston Southern University,.....Respondent.

RESPONDENT’S MEMORANDUM REGARDING APPEALABILITY

Respondent Charleston Southern University (“Respondent” or the “University”) submits this memorandum in response to the Court’s letter of April 21, 2023 requesting memoranda from the parties regarding the immediate appealability of the Charleston County circuit court’s March 27, 2023 Order (“the Order”). The Order is not immediately appealable under well-established law that an order setting aside an entry of default may only be appealed at the end of a case. Further, the Order is not immediately appealable under S.C. Code Ann. § 14-3-330(1) or (2) because it does not involve the merits, it does not strike a part of any pleading, it does not affect a substantial right of the parties, and any alleged error in the Order can be appealed after entry of final judgment.

BACKGROUND

This is a putative class action brought by proposed class representative Jessica Taylor (“Appellant”) against the University. Appellant brings claims for breach of contract, breach of implied contract, unjust enrichment, and conversion against Respondent and seeks reimbursement

of tuition and fees from Respondent based on Respondent's closure of its campus and transition to online instruction to complete its classes during the Spring Semester of 2020 in response to the threat posed by the COVID-19 pandemic.

Appellant challenges the ruling that the circuit court lacked power to exercise jurisdiction over the case because it had not received a certified remand order from the federal district court. Relying on *Limehouse v. Hulsey*, the circuit court ruled that because its power to exercise jurisdiction did not resume in the absence of a certified copy of the remand order from the federal court, Respondent's time for answering in state court has not yet begun to run and, thus, the entry of default against Respondent was void. (*See* Order, at 3–5.) In the alternative, the circuit court found good cause under Rule 55(c), SCRPC, to set aside the entry of default. (*Id.* at 7–9). On April 7, 2023, the circuit court denied Appellant's motion to reconsider.

ARGUMENT

This attempted appeal should be dismissed because it raises issues that may only be reviewed on appeal after final judgment is entered. Section 14-3-330 of the South Carolina Code limits this Court's appellate jurisdiction to final judgments and certain interlocutory orders. *See* S.C. Code Ann. § 14-3-330; *Burkey v. Noce*, 398 S.C. 35, 37, 726 S.E.2d 229, 230 (Ct. App. 2012). Neither ruling in the Order meets the requirements of Section 14-3-330(1) or (2) and, thus, the Order is not immediately appealable. *See Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 379 (Ct. App. 2002) (“Absent some ‘specialized statute,’ this Court is not permitted to hear a case on appeal not comporting with the requirements of this section.”).

It is well settled under South Carolina law that an order setting aside an entry of default under Rule 55(c) or judgment of default under Rule 60(b) is not immediately appealable. *See e.g.*, *Jefferson by Johnson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 317, 368 S.E.2d 456, 456 (1988)

("[T]he grant or denial of a Rule 55(c) motion is not directly appealable under S.C. Code Ann. § 14-3-330."); *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008) ("As the order [granting relief from a judgment of default] does not meet the requirements of section 14-3-330(2) and does not fall within any of the other categories set forth in section 14-3-330, the order is not immediately appealable."); *Dibble v. Schade*, 308 S.C. 88, 93, 417 S.E.2d 104, 107 (Ct. App. 1992) ("An order granting a motion to set aside a default judgment is interlocutory and not immediately appealable."); *Pioneer Assocs., Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 348, 387 S.E.2d 711, 712 (Ct. App. 1989) ("The order in this case granting a motion to set aside a default judgment does not fall within any exception enumerated in Section 14-3-330, and we hold it is not immediately appealable."); *Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987) ("[A]n order setting aside an entry of default is not appealable until after final judgment."). The circuit court's finding of good cause for setting aside the entry of default under Rule 55(c) fits squarely within this proscription.

In addition, the circuit court's decision to void the entry of default because the court lacked "power to enter default" ("the *Limehouse* part of the Order") also does not render the Order immediately appealable.¹ The *Limehouse* part of the Order does not "involve the merits" of Appellant's underlying claims, as is required under Section 14-3-330(1) for an interlocutory order to be immediately appealable. To "involve the merits" of the case, an order "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Cooke v. Palmetto Health Alliance*, 367 S.C. 167, 174, 624 S.E.2d 439, 442 (Ct. App. 2005) (quoting *Mid-*

¹ Notably, even if the *Limehouse* part of the Order could be appealed immediately for some reason, it would be a meaningless review because the good cause finding would remain, and because that discretionary ruling is not immediately appealable, a reversal of the *Limehouse* part of the Order would be futile.

State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993)). “The phrase ‘involving the merits’ is narrowly construed. . . . An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties’ rights.” *Watson v. Underwood*, 407 S.C. 443, 458, 756 S.E.2d 155, 163 (Ct. App. 2014) (quoting *Ex parte Cap. U-Drive-It, Inc.*, 369 S.C. 1, 7, 630 S.E.2d 464, 467 (2006)). Plainly, here, the Order merely allows the case to proceed to a trial on the merits, rather than upholding an entry of default. Nothing in the case is “finally determined” and many “further acts” must be done before the parties’ rights are determined.²

Nor is the *Limehouse* part of the Order immediately appealable under the exception set forth in Section 14-3-330(2), which allows the immediate appeal of an order “affecting a substantial right” that, *inter alia*, “in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action.” S.C. Code Ann. § 14-3-330(2). “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.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000). South Carolina courts have repeatedly denied immediate appeals of interlocutory orders which do not affect a substantial right or strike a part of a pleading, as is required under Section 14-3-330(2). In *Tillman v. Tillman*, the court listed examples of interlocutory orders which were not immediately appealable under Section

² In her Notice of Appeal, Appellant apparently attempts to recast the Order as something other than what it is—an order setting aside the entry of default—by referring to subject matter jurisdiction. But the Order very clearly does not involve the merits, as it does not finally determine any element of Appellant’s claims. The Order makes clear that once the absence of the certified remand order in the state court record is rectified, the circuit court’s power to exercise jurisdiction in this case will resume, and Appellant will be able to continue the pursuit of her claims against Respondent. Accordingly, nothing is finally determined, and the Order is not immediately appealable under § 14-3-330(1).

14-3-330(2), including “orders denying a motion to amend an answer, denying a motion to file a late answer, and denying a motion to amend to file a third party complaint.” 420 S.C. 246, 249, 801 S.E.2d 757, 760 (Ct. App. 2017) (citations omitted). By contrast, an order granting a motion to dismiss is immediately appealable under section 14-3-330(2) because it “strikes a pleading.” *Id.*

Here, the Order does not strike a part of a pleading,³ does not deprive any party of a right to a jury trial,⁴ does not deprive Appellant of her choice of defendants,⁵ and it does not deprive any party of their choice of counsel.⁶ None of the types of interlocutory appeals allowed under Section 14-3-330(2) are comparable to the Order here, which merely sets aside an entry of default, and, as noted above, such orders are not immediately appealable. Simply put, there has been no final judgment in this case (yet). And, upon entry of final judgment in the case, Appellant may still appeal the Order. *See Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct. App. 2002) (dismissing appeal from order that “neither determines a substantial matter ‘forming the whole or part of some cause of action,’ nor prevents ‘a judgment from being rendered in the action’ from which [appellant] could then seek review”); *Breland*, 339 S.C. at 94, 529 S.C at 14 (“Requiring a defendant to wait until after trial to appeal the issue of proper venue is the most appropriate course to take where any error in that decision will not prejudice the defendant anymore than other interlocutory orders which, if in error, would require a new trial.”). As in *Tillman*, “Appellant has not reached the end of the road, however long and winding he may have made it.” *Tillman*, 420 S.C. 246 at 251, 801 S.E.2d at 760.

³See *Lebovitz v. Mudd*, 289 S.C. 476, 479, 347 S.E.2d 94, 96 (1986).

⁴ See, e.g., *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 332 (2000) (“[W]hen a trial court’s order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable.”).

⁵ See *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 567, 725 S.E.2d 926, 929 (2012).

⁶ See *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005).

For all the foregoing reasons, the circuit court's interlocutory Order is not immediately appealable, and the Court should dismiss Appellant's appeal.

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent Charleston Southern University, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by emailing a copy of same to the following address(es):

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