

**RECEIVED**

**Jul 31 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Daniel Coble, Circuit Court Judge  
L. Casey Manning, Circuit Court Judge

---

Case No. 2019-CP-40-04452  
Appellate Case No.: 2023-001058

---

Anesthesiology Professional of  
Columbia, LLC

Respondent,

v.

Lifepoint Health d/b/a Providence  
Health and Providence Hospital LLC

Appellants.

---

**RESPONDENT'S MEMORANDUM ADDRESSING APPEALABILITY OF ORDERS  
SET FORTH IN APPELLANT'S JUNE 30, 2023 NOTICE OF APPEAL**

---

Pursuant to Rule 240, SCACR, the Court should dismiss the present appeal because the orders Appellants Lifepoint Health d/b/a Providence Health and Providence Hospital LLC seek to appeal are not presently appealable, and therefore, the appeal is appropriately dismissed. Appellants missed the thirty-day window within which to appeal the August 4, 2021, Order and granting APC's Petition to Vacate the Arbitration Award and the November 29, 2021, Order denying Lifepoint's Motion to Reconsider. Rule 203(b)(1), SCACR. Additionally, the Court should dismiss the appeal of the May 31, 2023, Order on Appellants' Motion to Dismiss the arbitration proceedings because it is an interlocutory order not subject to immediate appeal. *See*

*Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (holding the denial of a motion to dismiss under Rule 12(b)(2), SCRC, is interlocutory and not directly appealable). Accordingly, Respondent Anesthesiology Professionals of Columbia, LLC (“APC”) respectfully requests the Court dismiss this appeal.

### **FACTUAL AND PROCEDURAL HISTORY**

Respondent APC entered into an agreement effective April 15, 2014, with Sisters of Charity Providence Hospitals to provide general anesthesiology services at the hospital (“the Agreement”). Appellants subsequently purchased the hospital operated by the Sisters of Charity in Richland County and received an assignment of the Agreement. A dispute arose between Respondent and Appellants regarding Respondent’s demand for 180 days of post-termination compensation provided under Section 7.2 of the Agreement. Unable to resolve this dispute with Appellants, and pursuant to the terms of the Agreement, Respondent filed a demand for arbitration with the American Health Lawyers Association (“AHLA”) in accordance with Article 23 of the Agreement on January 25, 2018.

On or about April 30, 2018, Appellants appeared through retained counsel, Erin Stuckey of Nelson Mullins. An evidentiary hearing was conducted by the selected AHLA arbitrator in Richland County on March 12, 2019, and March 28, 2019. Appellants were represented by Ms. Stuckey and Mr. Chris Daniels of Nelson Mullins at the arbitration hearing.

On May 15, 2019, the Arbitrator issued a Final Determination and Order (“the Arbitration Award”) finding that although the parties intended Respondent APC receive the compensation it sought under the Agreement, the arbitrator would not award the same having determined Section 7.2 was unenforceable because it violated the federal anti-referral law known as Stark.

A. Petition to Vacate the Award

On August 12, 2019, Respondent filed a Petition to Vacate the Arbitration Award (the “Petition”) pursuant to S.C. Code Ann. § 15-48-130. Upon filing the Petition, Respondent’s counsel corresponded with counsel for Appellants, Ms. Stuckey – who had represented Appellants throughout the arbitration – to inquire if she was authorized to accept service of the Petition on behalf of her clients, the Appellants. Specifically, counsel for Respondent stated:

Dear Erin:

I am providing you a courtesy copy of the Petition to Vacate the arbitration award in the above case that we filed on August 12, 2019, in the Richland County Court of Common Pleas.

I am requesting that you accept service on behalf of the [Appellants] in this action. To this end, I am also enclosing an acceptance of service form for you to execute on behalf of your clients. If you are authorized, please execute the acceptance forms and return to me at your earliest convenience. **If you are not able to do so, please notify me immediately so that we may effectuate service.**

*See* ((May 31, 2023 Order at 4, attached as Ex. 1 to NOA filed June 30, 2021 (hereinafter “May 2023 Order, NOA Ex. 1 at \_\_\_\_\_”).) (emphasis added).

Ms. Stuckey replied to the August 19, 2019, correspondence via her Nelson Mullins email account on August 20, 2019, stating, “wanted to let you know that I received this and **am checking with my client** regarding acceptance of service.” (Id.) (emphasis added). On August 27, 2019, Ms. Stuckey further responded via the same email, “**I can accept.** I am out of the office this afternoon but I will sign and return to you tomorrow.” (Id.) (emphasis added).

On September 3, 2019, Ms. Stuckey executed and mailed an acceptance of service form on behalf of Appellants to counsel for Respondent. (Id.) The acceptance of service form states, “I Erin Stuckey hereby accept service and acknowledge receipt of Petitioner’s Petition to Vacate Arbitration Award pursuant to S.C. Code Ann. § 15-48-130 on behalf of Lifepoint Health d/b/a

Providence Hospital and Providence Hospital LLC in connection with the above captioned matter on this 3<sup>rd</sup> day of September, 2019.” (May 2023 Order, NOA Ex. 1 at 4-5.) The acceptance of service form was filed with the lower court on September 10, 2019. (Id. at 5.)

Thereafter, Ms. Stuckey, on behalf of Appellants, engaged in the joint submission of a Consent Scheduling Order for Briefing that was filed with the lower court, and also filed Appellants’ initial brief and designation of matter to be included in the record on appeal on March 24, 2021, as well as their Final Brief in Opposition to the Petition to Vacate on June 1, 2021. (Id.) At a hearing conducted by the Honorable Casey Manning on June 22, 2021, on the Motion to Reconsider, Ms. Stuckey appeared and argued on behalf of Appellants. At the conclusion of the hearing, Ms. Stuckey, on behalf of Appellants, submitted a proposed order to chambers. (Id.)

On August 4, 2021, the lower court adopted Respondent APC’s proposed order in toto, vacating the Arbitration Award and ordering a new hearing be held in arbitration before a different arbitrator (“August 2021 Order and Final Judgment”). *See* (Aug. 4, 2021 Order & Final Judgment, attached as Ex. 2 to NOA filed June 30, 2023 (hereinafter “Aug. 2021 Order, NOA Ex. 2 at ¶ \_\_\_\_”).) However, prior to filing the same, the word “Proposed” was not removed from the caption of the filed version of the August 2021 Order and Final Judgment. (Id. at 1); *see also* (May 2023 Order, NOA Ex. 1 at 5.)

In response to this order, Ms. Stucky on behalf of Appellants, thereafter filed a Motion to Reconsider, to Alter or Amend, and to Correct a Clerical Mistake (“Motion to Reconsider”) the August 2021 Order and Final Judgment pursuant to Rules 59(e) and 60(a), SCRCF, on August 16, 2021. (May 2023 Order, NOA Ex. 1 at 5.) Among the relief sought in the Motion to Reconsider, was a request to remove the word “Proposed” from the caption of the August 2021 Order and Final Judgment, thereby correcting what Appellants described as a “scrivener/clerical error” contained

in the same. (May 2023 Order, NOA Ex. 1 at 5.)

Thereafter, the lower court notified the parties it was denying the same and requested Respondent APC submit a proposed order reflecting his ruling and correcting the scrivener's error. The order ("November 2021 Order), including Exhibit A which omitted "proposed" from the caption of the original August 2021 Order and Final Judgment, submitted by Respondent to the lower court, with Ms. Stuckey copied,<sup>1</sup> was adopted in toto by the lower court and thereafter sent to the Clerk of Court for filing. (Id. at 5-6.) Notably, the filed November 29, 2021, Order directed the Clerk of Court to file Exhibit A as a replacement for the original, and instructed the Clerk of Court that the replacement "shall retain the original filing date of August 4, 2021." *See* (Nov. 29, 2021 Order at 1, attached as Ex. 3 to NOA filed June 30, 2023 (hereinafter "Nov. 2021 Order, NOA Ex. 3 at \_\_\_\_\_")); *see also* (May 2023 Order, NOA Ex. 1 at 6.) Exhibit A, the replacement order, was never filed by the Clerk of Court despite Judge Manning's instruction. *See* (May 2023 Order, NOA Ex. 1 at 6.)

Following the expiration of the thirty-day window in which Appellants could have appealed the August 2021 Order and Final Judgment and the November 2021 Order denying their Motion to Reconsider, Respondent reinitiated proceedings with the AHLA to begin the process of selecting a new arbitrator and conducting a second arbitration.

#### B. Motion to Dismiss

On June 10, 2022, over two years after Nelson Mullins made its appearance on behalf of

---

<sup>1</sup> Contrary to the implication by Appellants that they had never seen the 2021 Orders involving the Petition, Ms. Stuckey was copied on the correspondence to the lower court submitting the proposed orders, including Exhibit A to the November 2021 Order, that were adopted in their entirety by the court. (NOA at 1.) While Appellants may maintain Ms. Stuckey was not their agent, it is simply disingenuous, and contrary to the findings of fact in this matter, to intimate "no one" received these orders. (May 2023 Order, NOA Ex. 1 at 5-6).

Appellants in the arbitration proceedings and had continued, through Ms. Stuckey, to litigate the appeal of the Arbitration Award in the lower court, Appellants filed a Motion to Dismiss claiming lack of personal jurisdiction (Rule 12(b)(2), SCRCPP) and absence of a final order and judgment on the Petition. Following this filing, the AHLA informed the parties it was staying arbitration until resolution of this motion. The parties thereafter submitted briefing to the lower court regarding Appellants' arguments contained in the motion to dismiss: (1) improper service of the Petition; (2) Ms. Stuckey's lack of actual or implied authority to accept service of the Petition on behalf of Appellants; (3) whether the August 2021 Order on file with the clerk containing the word "proposed" constituted a final order from which Appellants could appeal. *See* (May 2023 Order, NOA Ex. 1 at 6.)

On April 18, 2023, the lower court heard argument from the parties on the Motion to Dismiss. (Id. at 1.) Following the hearing, the parties were informed that the Honorable Daniel Coble was denying the same and he requested Respondent APC prepare a draft order. Counsel for Respondent submitted a proposed order, and Appellants were afforded an opportunity to submit proposed edits to Respondent's order. Having considered Respondent's submission, as well as the proposed edits submitted by Appellants, the court issued the May 2023 Order<sup>2</sup> containing the court's determination that,

[Appellants] voluntarily entered an appearance in this action through the actions of its counsel, Nelson Mullins, who executed a written acceptance of service on behalf of [Appellants], submitted filings in this Court, and argued the appeal from

---

<sup>2</sup> Appellants challenge the accuracy of the NEF for the May 2023 Order arguing the NEF incorrectly states Mr. Bozeman, Mr. Allen, and Mr. Coleman were provided a copy of the May 2023 Order. However, the NEF does not state these individuals were provided with a copy of the May 2023 Order; it merely indicates they were provided *with notice* that an order was filed. *See* (NEF of Order, C.A. No: 2019-CP-40-04452, filed May 31, 2023 (Richland Cty. Ct.C.P).) As to whether these three individuals received *the notice of the filing* (not a copy of the May 2023 Order), Appellants are silent. In any event, it is unclear to Respondent how this is germane to the present matter.

the arbitrator's ruling before this Court. Additionally, the Court is unpersuaded by Appellants' contention that a final order has not been entered on the Petition based on an argument that is tantamount to a scrivener's error.

(May 2023 Order, NOA Ex. 1 at 1-2.) Following receipt of this order, Respondent reinitiated the proceeding in arbitration.

C. Notice of Appeal

On June 30, 2023, Nelson Mullins - *on behalf of Appellants*- filed the present Notice of Appeal and paid the requisite filing fee. (Id. at 3.) Moreover, Ms. Stuckey, who now works for another firm, was served with the Notice of Appeal as *current counsel for the Appellants*. See (NOA Proof of Service at 1-2, App. No. 2023-001058, filed June 30, 2023.) Thus, the same firm (Nelson Mullins) and attorney (Ms. Stuckey) that Appellants claim did not have agency to represent them in the Petition in 2021 before the lower court continue to act on behalf of the Appellants in this appeal.

Following receipt of the Notice of Appeal, the Court requested the parties submit briefing on the appealability of the orders set forth in the Notice of Appeal.

**ARGUMENT**

1. Appellants failed to timely appeal the August 2021 Order and Final Judgment and November 2021 Final Order, thereby depriving this Court of appellate jurisdiction until a rehearing has been conducted in arbitration.

“A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Rule 203(a)-(b)(1), SCACR. A timely motion to alter or amend the judgment, however, tolls this thirty-day period until “receipt of written notice of entry of the order granting or denying such motion.” Id. “The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks

jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) (citing *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)).

In the present case, the lower court granted Respondent’s Petition to vacate the arbitration award and remanded the matter back to AHLA for a rehearing before a different arbitrator. *See* (Aug. 2021 Order, NOA Ex. 2 at 6, ¶ 29.) Within ten days of receiving notice that the lower court granted the Petition, Appellants filed their Motion to Reconsider. *See* (May 2023 Order, NOA Ex. 1 at 6.) The parties were notified on November 29, 2021, of the lower court’s denial of the Motion to Reconsider. Upon receipt of such notice, Appellants had thirty days within which to serve APC with a notice of appeal of the Final Order. Rule 203(b)(1), SCACR. Appellants did not appeal either 2021 order within this window of time, and the case was appropriately resubmitted to arbitration before the AHLA. Having failed to appeal these orders within the time afforded by Rule 203(b)(1), the Court does not have jurisdiction to entertain an appeal of these orders. Accordingly, the appeal of these orders should be dismissed, and Appellants should be prohibited from resurrecting their opportunity to appeal the August 2021 Order and Final Judgment granting the Petition to vacate the award and the November 2021 Order denying Appellants’ Motion to Reconsider.

2. The May 2023 Order is interlocutory and is not immediately appealable; therefore, the Court must dismiss this appeal for lack of appellate jurisdiction.

Under S.C. Code Ann. § 14-3-330, only certain interlocutory orders are immediately appealable: those that involve the merits of the case or affect a substantial right. *Richardson v. Halcyon Real Est. Servs., LLP*, 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023) (citing

*Burkey v. Noce*, 398 S.C. 35, 37, 726 S.E.2d 229, 230 (Ct. App. 2012)); *see also 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 [section 14-3-330].”) ““An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.”” *Id.* (quoting *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005)). The provisions of section 14-3-330 should be narrowly construed when determining whether an interlocutory order is immediately appealable, and orders issued before or during trial are generally not immediately appealable. *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

The Court should dismiss Appellants’ appeal of the May 2023 Order denying its Motion to Dismiss for lack of personal jurisdiction because it is an interlocutory order that is not immediately appealable under S.C. Code Ann. § 14-3-330. *Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780. Moreover, examination of the facts in the present case illustrates that the May 2023 Order denying relief under Rule 12(b)(2), SCRPC, and rejecting Appellants’ contention that the scrivener’s error in the caption of the August 2021 Order and Final Judgment invalidated its finality is not immediately appealable under section 14-3-330. The May 2023 Order does not conclusively determine the validity of any of Appellants’ counterclaims and defenses in this matter. *See Richardson*, 439 S.C. at 426, 887 S.E.2d at 157 (citing *Watson v. Underwood*, 407 S.C. 443, 458, 756 S.E.2d 155, 163 (Ct. App. 2014)); *see also Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780 (holding that party denied dismissal under Rule 12 “has not arrived at the end of the road,...has forfeited nothing, [and] must simply continue to trial.”) Nor does it affect a substantial right of the Appellants. *Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780,

n.4 (citing *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 402 S.E.2d 482 (1991) (finding the avoidance of trial did not constitute the impairment of a substantial right when examining the denial of a motion to dismiss for lack of jurisdiction)). Rather, following a rehearing in arbitration and entry of an award, Appellants will still have the option to appeal the May 2023 Order if they so choose because the underlying case has not been dismissed but for all intents and purposes is stayed pending a rehearing before the AHLA. Thus, it is clear that the May 2023 Order is an interlocutory order that does not finally end the case, and thus, “no immediate appeal is allowed.” *Richardson*, 439 S.C. at 425, 887 S.E.2d at 156 (quoting *Hagood*, 362 S.C. at 195, 607 S.E.2d at 709.)

### CONCLUSION

Based on the foregoing, Respondent respectfully requests the Court dismiss the present appeal finding the Court lacks jurisdiction to hear the same because (1) Appellants’ appeals of the August 2021 Order and Final Judgement and November 2021 Order are untimely and (2) the May 2023 Order is an interlocutory order and not immediately appealable.

Respectfully submitted,

By: *s/ James M. Griffin*  
James M. Griffin  
Margaret N. Fox  
GRIFFIN HUMPHRIES, LLC  
4408 Forest Drive, Suite 300  
P.O. Box 999 (29202)  
Columbia, S.C. 29206  
[jgriffin@griffinhumphries.com](mailto:jgriffin@griffinhumphries.com)  
[mfox@griffinhumphries.com](mailto:mfox@griffinhumphries.com)

*Attorneys for APC*

July 31, 2023  
Columbia, South Carolina

RECEIVED

Jul 31 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Daniel Coble, Circuit Court Judge  
L. Casey Manning, Circuit Court Judge

---

Case No. 2019-CP-40-04452  
Appellate Case No.: 2023-001058

---

Anesthesiology Professional of  
Columbia, LLC

Respondent,

v.

Lifepoint Health d/b/a Providence  
Health and Providence Hospital LLC

Appellants.

---

**PROOF OF SERVICE**

---

I, Jaime Harmon, legal assistant at Griffin Humphries LLC, attorneys for the Respondent, located at 4408 Forest Drive, Suite 300, Columbia, South Carolina 29206, hereby certify that on July 31, 2023, I have served all counsel in this action a copy of the **Respondent's Memorandum Addressing Appealability of Orders Set Forth in Appellant's June 30, 2023 Notice of Appeal** by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

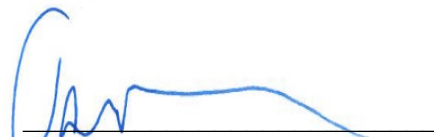
Served:

C. Mitchell Brown  
William C. Wood, Jr.  
NELSON MULLINS RILEY & SCARBOROUGH LLP  
Meridian Building, 17<sup>th</sup> Floor  
1320 Main Street  
P.O. Box 11070 (29211)  
Columbia, SC 29201  
[Mitch.brown@nelsonmullins.com](mailto:Mitch.brown@nelsonmullins.com)  
[Bill.wood@nelsonmullins.com](mailto:Bill.wood@nelsonmullins.com)

J. Walker Coleman IV  
Tre Allen Holloway  
K&L Gates LLP  
134 Meeting Street, Suite 500  
Charleston, SC 29401  
[Walker.coleman@klgates.com](mailto:Walker.coleman@klgates.com)  
[Tre.holloway@klgates.com](mailto:Tre.holloway@klgates.com)

Jeffrey S. Patterson  
K&L Gates LLP  
State Street Financial Center  
One Lincoln Street  
Boston, MA 02111-2950  
[Jeffrey.patterson@klgates.com](mailto:Jeffrey.patterson@klgates.com)

Erin Richardson Stuckey  
McGowan Hood Felder & Phillips  
1517 Hampton Street  
Columbia, SC 29201  
[estuckey@mcgowanhood.com](mailto:estuckey@mcgowanhood.com)



Jaime Harmon

Columbia, South Carolina  
July 31, 2023