

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Judge

Case No. 2021-CP-26-07488
American Health Law Association Arbitration Claim No. 7029
Appellate Case No. 2023-001587

Dr. Scott F. Duncan, M.D.Appellant,

v.

OrthoSC, LLC, a South Carolina limited liability company; Dr. Gene M. Massey, M.D.; and HCA
Healthcare, Inc., a Delaware corporation, Defendants,

Of which OrthoSC, LLC, a South Carolina limited liability company, and Dr. Gene M. Massey,
M.D are the Respondents.

MEMORANDUM REGARDING APPEALABILITY

As requested by the Court in its October 27, 2023 letter, respondents submit this memorandum discussing why the orders on appeal are not immediately appealable. Each of the orders attached to the notice of appeal relates to a request for the circuit court to compel compliance with or enforce subpoenas in an arbitration action, an action to which the respondents are not parties. The circuit court denied the requested relief. There has not been a final ruling in this action or in the arbitration action.

Given this backdrop, the appellant seeks to appeal a discovery order in a pending case. “[A]n order denying or compelling pretrial discovery is not directly appealable since it is an

intermediate or interlocutory decision.” *Ex parte Wilson*, 367 S.C. 7, 12–13, 625 S.E.2d 205, 208 (2005), citing *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1974); *Patterson v. Specter Broadcasting Corp.*, 287 S.C. 249, 335 S.E.2d 803 (1985); see Jean H. Toal *et al.*, *Appellate Practice in South Carolina* 152-55 (3d ed. 2016) (providing overview of general non-appealable nature of discovery orders). This includes orders relating to subpoenas issued to nonparties. *Id.*, citing *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). Our courts have held again and again that discovery orders are not final orders and are not directly appealable under S.C. Code Ann. § 14-3-330. *Whetstone*, 289 S.C. at 580, 347 S.E.2d at 881.

As a result, this appeal should be dismissed for want of an appealable order.

(Signature Page Follows)

Respectfully submitted,

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November 6, 2023
Greenville, South Carolina