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Nov 14 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. D. Morgan, Jr., Circuit Court Judge

Case No. 2022-CP-23-04451
Appellate Case No. 2023-001740

Danny Rose,

Respondent,

v.

Robert Rose, Gloria Rose-Ruch,
Mary Margaret Doll Rose, and John
Does 1-99, Defendants,

Of Whom Robert Rose, Gloria Rose-Ruch,
and Mary Margaret Doll Rose are the

Appellants.

MOTION TO DISMISS APPEAL

Respondent Danny Rose, by and through his undersigned counsel, moves for a dismissal of the within appeal pursuant to Rule 240, SCACR. Dismissal is proper because the circuit court order from which appeal has been taken is not immediately appealable. Therefore, this court lacks jurisdiction to hear an appeal of the circuit court order.

Rule 201, SCACR, states: "Appeal may be taken...from any final judgment, appealable order or decision." South Carolina Code Ann. §14-3-330 identifies what constitutes an appealable order. The appealed-from order in this matter does not fall within the

categories set forth within the statute: It does not involve the merits of the case, it is not a final judgment, it does not affect a substantial right, it does not strike a pleading, and it does not involve injunctive relief or the appointment of a receiver. Rather, the order at issue merely denies Appellants' request to conduct discovery while Appellants' first appeal, relating to the judgment on the pleadings entered by the circuit court in the same action, is pending. As the circuit court noted in its formal order, the discovery sought either will be unnecessary or will be conducted on remand. This determination is well within the discretion of the trial court and is not immediately appealable under Rule 201, SCACR or §14-3-330.

Further, Appellants' appeal is premature. Pursuant to Rule 203(b), SCACR, the 30-day time for filing a notice of intent to appeal is stayed when a timely motion pursuant to Rule 59(e), SCRCR, is made to the circuit court. The rule also provides: "When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment."

The circuit court entered a Form 4 order on October 16, 2023, denying Appellants' motion and requesting Respondent submit a formal order. Instead of following Rule 203(b)'s guidance and waiting for the formal order to be filed, Appellants hastily filed a 59(e) motion¹ challenging the Form 4 order on October 26, 2023. The circuit court subsequently entered a formal order denying Appellants' motion on October 30, 2023, which Appellants have mistakenly identified as the order denying the Rule 59 motion. In fact, the circuit court never ruled on Appellants' Rule 59(e) motion.

¹ Appellants' motion does not argue the circuit court overlooked or misapprehended an argument; rather, it simply repeats the arguments Appellants made in support of their motion and contends the circuit court failed to provide a basis for its decision; the formal order filed by the circuit court explains the court's reasoning.

Accordingly, for the reasons set forth hereinabove, this appeal should be dismissed.

Respectfully Submitted,

YOUNG LAW FIRM, LLC

s/William T. Young III

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Appellants.

CERTIFICATE OF SERVICE

The undersigned certifies that on November 14, 2023, he caused to be served the foregoing Motion to Dismiss upon all counsel of record, via electronic means, to counsel's email address on file with the South Carolina Attorney Information System.

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VIA ELECTRONIC and UNITED STATES MAIL

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

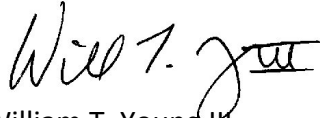
Re: *Danny Rose, Respondent v. Robert Rose, et. al, Appellants*
Appellate Case No: 2023-001740

Dear Ms. Kitchings:

Please find enclosed herewith the filing fee for Respondent's Motion to Dismiss in the above matter. If you need additional information please contact me at your convenience.

With Kind Regards,

Very Truly Yours,


William T. Young III

cc: T. Hunt Reid, Esq. (via email only)
John Martin Foster, Esq. (via email only)

