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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable Diane S. Goodstein

Case No.: 2022-CP-18-00295
Appellate Case No.: 2023-000655

LAURA ABERNATHY.....Appellant,

v.

ERVIN W. LAMBERT SR., PERSONAL REPRESENTATIVE OF THE ESTATE OF ERVIN
W. LAMBERT, JR., DECEASED.....Respondent.

**RESPONDENT'S REPLY TO APPELLANT'S OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS**

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ARGUMENT

Appellant argues that the interlocutory order denying her motion to consolidate is immediately appealable pursuant to *S.C. Code Ann.* § 14-3-330 because it “affects a substantial right”. Specifically Appellant argues that the order denying her motion to consolidate denies her a right to a jury trial on her “breach of agreement claim” in her Wrongful Termination Action.

Respondent submits that Appellant’s argument is premature, speculative and contrary to the statutory and case law of this State. Respondent further submits that because Appellant has not actually been denied a right to a jury trial or had any other substantial right “actually affected” that this appeal is interlocutory, not immediately appealable, and thus not properly before this Court.

Appellant further argues that she did not waive her right to appeal because it did not arise until the lower court denied her motion to consolidate.

A. Premature, Speculative, and Contrary to SC law

Appellant argues that the Court in the DJ action *may* make a factual finding that would then be binding in the subsequent Wrongful Termination Action. Specifically Appellant argues that a factual finding *may* be determined in the DJ action that would then be binding on the “written” breach of agreement claim found in the Wrongful Termination action, thereby denying Appellant her right to a jury trial.

Respondent submits that Appellant’s argument is premature, speculative, and does not rise to the intent and/or meaning behind “affecting a substantial right” found in *S.C. Code Ann.* § 14-3-330(2). The assumption that something *may* or *could* happen does not mean it will. Furthermore, Appellant would still be able to raise these same arguments after the trial on the DJ action. Nothing

would prevent or prejudice Appellant from appealing the final decision in the DJ action. Furthermore, a final decision in the DJ action, specifically as it relates to any findings of fact would no longer be based on pure speculation as it is now. As a general rule only final judgments are appealable unless they fit into one of the exceptions set forth in *S.C. Code Ann.* § 14-3-330. Appellant has not provided any legal or other support for her contention that the denial of her motion to consolidate has “actually affected” her right to a jury trial in her Wrongful Termination action.

B. Waiver

As to the waiver of appeal issue raised by Respondent in his Motion to Dismiss, Respondent would rest on his previous argument. Appellant’s argument now, seems somewhat different than that initially set forth in her initial brief.

CONCLUSION

For the reasons set forth above and those previously set forth in Respondent’s Motion to Dismiss, Respondent would respectfully request this Court Grant Respondent’s Motion to Dismiss and remand the case back to the lower court so that the DJ action can proceed to trial and the Wrongful Termination action can move forward.

Respectfully Submitted,

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PROOF OF SERVICE

I certify that I have served **RESPONDENT’S REPLY TO APPELLANT’S
OPPOSITION TO RESPONDENT’S MOTION TO DISMISS** by electronic mail on December
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