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Mar 13 2024

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS**

**R. Lawton McIntosh, Circuit Judge
R. Scott Sprouse, Circuit Judge**

**Appellate Case No. 2023-001516
Common Pleas Case No. 2022-CP-3700182**

Dorothy Pierce,

Plaintiff-Appellant,

v.

**Jerry Edwards; Edwards Group
Holdings, Inc.; Edwards Printing;
Richard Hunt McDuff; MJM Law LLC;
Riley Morningstar; The Journal
Newspaper; and Hal Welch,**

Defendants-Appellees.

DEFENDANTS-APPELLEES' MOTION TO DISMISS

Defendants-Appellees Jerry Edwards, Edwards Group Holdings, Inc., Edwards Printing, Riley Morningstar, The Journal Newspaper, and Hal Welch (together, the "Journal Defendants"), through undersigned counsel, hereby move to dismiss this appeal and state as follows:

I. INTRODUCTION

Plaintiff-Appellant Dorothy Pierce a/k/a Dorothy Wells a/k/a Queen Dorothy Amolo a/k/a Dorothy Alweny ("Plaintiff") seeks appellate review of two interlocutory orders entered in the Oconee County Court of Common Pleas. The first, issued by the Honorable R. Scott Sprouse, concluded that certain records the Journal Defendants had withheld during discovery as

attorney-client privileged were indeed privileged and properly withheld. The second, issued by the Honorable R. Lawton McIntosh, denied Plaintiff's motion to reconsider sanctions that the Court had entered against her for refusing to comply with a prior order compelling Plaintiff to produce documents that the Journal Defendants had requested in discovery. Because neither of those orders fits within the narrow confines of this Court's limited appellate jurisdiction over interlocutory orders set forth in S.C. Code Ann. § 14-3-330, this appeal should be dismissed.

II. PROCEDURAL BACKGROUND

This case arises out of several underlying lawsuits involving Plaintiff. One lawsuit concerns the contested last will and testament of Plaintiff's late husband, Seneca resident Doyle Pierce. Another lawsuit was brought by a North Carolina hot sauce company that claims Plaintiff passed off damaged industrial machinery through her Seneca-based equipment distribution business. A third lawsuit arises out of Plaintiff's unsuccessful attempt to open a face-mask manufacturing business during the COVID-19 pandemic.

The Journal, a Seneca-based newspaper that regularly reports on matters in the Oconee County courts as part of its local news coverage, published a series of news reports in March 2022 about Plaintiff and her involvement in these lawsuits. Plaintiff responded by filing this action against the Journal Defendants and their co-defendants, asserting claims for defamation, invasion of privacy, intentional infliction of emotional distress, negligence, unjust enrichment, and discrimination, and seeking more than a quarter of a billion dollars in damages.

In June 2022, the Court of Common Pleas granted the Journal Defendants' motion to dismiss as to all of those claims except for defamation.

A. The March 22, 2023 Order

On October 16, 2022, Plaintiff served the Journal Defendants with her first set of requests for production of documents. The Journal Defendants timely served Plaintiff with their responses and objections, which included objections to disclosing records protected from discovery by attorney-client privilege. Plaintiff moved to compel, and the Court ordered the Journal Defendants to “submit privilege logs for any evidence that they indicated as privileged in their responses to Plaintiff’s discovery requests within thirty (30) days,” noting that “[t]he Court will then conduct an in-camera review of the disputed items.” Order (Feb. 13, 2023).

The Journal Defendants timely provided the Court with a privilege log and a copy of the withheld communication, and the Court issued an order stating that, “[a]fter in-camera review of the Privilege Log and submitted correspondence . . . , the court finds that such information is privileged and shall not be subject to discovery by the Plaintiff.” Order (Mar. 22, 2023). That order (the “March 22, 2023 Order”) is the first that Plaintiff has appealed at this time.¹

B. The September 1, 2023 Order

Plaintiff, by contrast, participated insufficiently in discovery. When Plaintiff belatedly responded to the Journal Defendants’ discovery requests, she failed to produce or identify vast amounts of responsive material, including any records related to her claim for hundreds of millions of dollars in alleged damages.

The Journal Defendants notified Plaintiff of these discovery deficiencies, by letter, on November 22, 2022 and agreed to give Plaintiff until December 1, 2022 to remedy them. Plaintiff failed to cure her deficient responses. The Journal Defendants therefore moved the Court to compel Plaintiff to provide complete responses to their written discovery requests. The

¹ The March 22, 2023 Order is attached hereto as Exhibit A.

Court heard argument on the Journal Defendants' motion to compel on January 27, 2023. Following the hearing, the Court ordered Plaintiff, *inter alia*, to "provide all records in her possession that relate to her claim for damages . . . to Defense Counsel within fifteen (15) days." Order (Feb. 13, 2023).

When Plaintiff failed to comply with that order, the Journal Defendants moved on March 3, 2023 to sanction Plaintiff for this failure to participate fully and fairly in discovery. Once again, the Journal Defendants gave Plaintiff additional time to provide the required discovery materials and agreed, by email, to withdraw their sanctions motion if she were to do so. Plaintiff subsequently produced a "Partial Preliminary Estimate of Damages" spreadsheet that she apparently created for purposes of this litigation, along with certain customer exchanges with identifying information improperly redacted, falling far short of her full discovery obligations.

Because Plaintiff did not comply with the Court's order, the Journal Defendants moved the Court to sanction Plaintiff for failing to satisfy her discovery obligations. The Court issued an order granting that motion on April 4, 2023. In that order, the Court directed Plaintiff "to provide any and all information regarding her alleged damages to the Defendants, as well as a full and complete witness list, by April 23, 2023," and the Court cautioned that "[i]f Plaintiff fails to do so, Plaintiff will be constrained to the witnesses currently identified, and will be allowed to present only the three documents submitted as Court Exhibits 1, 2, and 3 at the March 22, 2023 hearing as evidence of her damages." Order (Apr. 4, 2023).

On April 21, 2023 Plaintiff filed a motion to reconsider the Court's April 4, 2023 Order granting sanctions against her for failure to comply with the Court's February 13, 2023 Order, which required her to produce the documents requested by the Journal Defendants. In her motion to reconsider, Plaintiff argued that she did in fact supply the requested documents. This

production, however, included just three documents – Court Exhibits 1, 2, and 3 presented to the Court at the March 22, 2023 hearing – and the Court found that these documents were insufficient to satisfy Plaintiff’s discovery obligations. The Court further reiterated its prior ruling, holding that these three documents are to be the only documents Plaintiff can use to support her claims for damages as a result of her failure to provide the requested financial information. The Court therefore issued an order on September 1, 2023 denying Plaintiff’s motion to reconsider and maintaining the sanctions entered against Plaintiff. Order (Sept. 1, 2023). That order (the “September 1, 2023 Order”) is the second that Plaintiff has appealed.²

III. SCOPE OF JURISDICTION OVER INTERLOCUTORY APPEALS

The jurisdiction of this Court to hear interlocutory appeals is limited by statute to certain circumstances. *See* S.C. Code Ann. § 14-3-330. Although Section 14-3-330 sets out the jurisdiction of the Supreme Court, “[t]he court of appeals also exercises its appellate jurisdiction under this statute.” *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 573 (S.C. Ct. App. 2010); *see also* S.C. Code Ann. § 14-8-200(a) (explaining that Court of Appeals “shall apply the same scope of review that the Supreme Court would apply in a similar case”).

As relevant here, under Section 14-3-330, this Court has jurisdiction to hear appeals from “[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions” and from “[a]n order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants

² The September 1, 2023 Order is attached hereto as Exhibit B.

or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14-3-330(1)-(2).³

“An interlocutory order is appealable under subsection (1) only if it involves the merits, that is, finally determines some substantial matter forming the whole or part of some cause of action or defense.” *Jefferson by Johnson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 318 (1988) (internal quotation marks omitted). “An appellate court has jurisdiction to review an order affecting a substantial right [under subsection (2)(a)] when the order has the effect of discontinuing the action or preventing an appealable judgment.” *Lakes v. State*, 333 S.C. 382, 384-85 (S.C. Ct. App. 1998). Similarly, when an order “deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable” under subsection (2)(c). *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72 (2000).

IV. ARGUMENT

The Court should grant the Journal Defendants’ motion to dismiss because neither of the two rulings from which Plaintiff noticed this putative appeal falls within the narrow scope of this Court’s jurisdiction to review interlocutory orders. The March 22, 2023 Order denied Plaintiff’s motion to compel, concluding that the Journal Defendants had properly withheld certain records in discovery as privileged, and the September 1, 2023 Order limited the evidence that Plaintiff can use to establish her alleged damages as a sanction for failing to timely produce responsive and unprivileged financial records during discovery. Both rulings thus do not “involve[] the merits” of this case but rather are ordinary civil discovery orders, and as the Supreme Court has long and consistently held, “an order compelling discovery does not ordinarily involve the merits

³ Section 14-3-330 also allows for appellate jurisdiction in certain circumstances following final orders in special proceedings and interlocutory orders involving injunctions. *See* S.C. Code Ann. § 14-3-330(3)-(4). These circumstances are inapplicable here.

of the case and may not be appealed.” *Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 577 (2003); *Patterson v. Spector Broad. Corp.*, 287 S.C. 249, 249 (1985) (“This appeal is from an order compelling discovery which is interlocutory and not directly appealable.”); *Lowndes Prod., Inc. v. Brower*, 262 S.C. 431, 433 (1974) (dismissing appeal “in accord with the rule that, ordinarily, an order denying or compelling discovery is not directly appealable”); *Wallace v. Interamerican Tr. Co.*, 246 S.C. 563, 568 (1965) (dismissing appeal where challenged order “was simply a ruling made by the court in the progress of the cause requiring the pre-trial production of books and records deemed necessary to a proper and expeditious trial of the merits,” as “[s]uch [an] order no more involved the merits than a ruling upon the admissibility of evidence, and is not appealable before final judgment”).

V. CONCLUSION

For the foregoing reasons, the Court should dismiss this putative appeal because the underlying orders are not immediately appealable.

WHEREFORE, for the reasons stated above, the Journal Defendants request as follows:

- a. That the Court dismiss this appeal in its entirety; and
- b. That the Court issue such other and further relief as it deems appropriate.

Respectfully submitted this 13th day of February, 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served all parties with a true and accurate copy of the motion to dismiss of Defendant-Respondents Jerry Edwards, Edwards Group Holdings, Inc., Edwards Printing, Riley Morningstar, The Journal Newspaper, and Hal Welch by depositing a copy of the aforementioned documents in the United States mail, First Class, in an envelope with due and proper postage affixed thereto and addressed as shown below this 13th day of March 2024 and sending via e-mail service:

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