THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Honorable J. Michael Baxley
Circuit Court Judge

APPELLATE CASE NO: 2011-185767

APPEAL FROM DARLINGTON COUNTY
J. MICHAEL BAXLEY, CIRECUIT COURT JUDGE

Pee Dee Health Care, P.A.,

Appellant,

v.

Estate of Hugh S. Thompson, III, and Louise T. Dailey, as Personal Representative of the Estate of Hugh S. Thompson, Respondent.

Respondent.

APPELLANT'S REPLY TO RESPONDENT'S RETURN TO THE PETITION FOR REHEARING

Appellant submits this Reply to the Respondent's Return to the Petition for Rehearing. Respondent discounts the governing law of *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005) and confuses temporary restraining orders/injunctions under Rule 65, SCRCP with an order disqualifying counsel. While much of the Return is repetitive, Appellant responds to the points raised as follows:

1. The sequence of events as indicated in the record on appeal unequivocally indicate that the motion for reconsideration of the order for summary judgment was filed three weeks after the notice of intent to appeal the order disqualification. Respondent does not dispute the actual sequence of events. Respondent attempts to claim that the notice of appeal did not deprive the circuit court of jurisdiction. However, an order of disqualification implicates the same concerns as an order denying the right of a party to a particular mode of trial. The order must be immediately appealed and all other facets of the case must be stayed, just as when a party is denied a trial by jury. If the court proceeds on a bench trial while the appeal is pending, the bench order would be void *ab initio*, as the circuit court in such an instance lacked jurisdiction (or authority) to proceed. See, *Turner v. Malone*, 24 S.C. 398 (1886) (judgment entered without jurisdiction is void ab initio). One cannot be held in contempt for failure to comply with a void order. *State ex rel. Bruce v. Rice*, 67 S.C. 236, 45 S.E. 153 (1903); *State v. Nathans*, 49 S.C. 199, 27 S.E. 52 (1897). The appeal of the disqualification was indisputably filed three weeks prior to the Rule 59(e) motion on summary judgment, and there was no intent to violate the order of disqualification, as that order was stayed pending appeal.

2. Respondent mistakenly relies on Rule 241(b)(8), which states that an appeal from an order granting an injunction or temporary restraining order is not subject to an automatic stay. Respondent ignores the fact that an order disqualifying a party's counsel of choice is not the same as restraining order under Rule 65, SCRCP, and in fact, is a denial of a substantial right and mode of trial. *See*, *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). Rule 241(b)(8) simply does not apply here.

3. The circuit court's decision on summary judgment filed three weeks after the Notice of Appeal was served on Respondent ended the case and obviously affected the case.

To determine otherwise (when the Appellant followed all the rules of appellate procedure properly, and did not file the motion to reconsider summary judgment until three weeks after the order of disqualification had been appealed) completely negates the right of the appellant to seek appellate review of the substantive issues regarding the motion for summary judgment because of the automatic stay and the lack of an order lifting the stay. Judge Baxley acted without authority to do so. As noted by Judge Cureton at the oral argument, Respondent should be estopped from raising any objection to the Rule 59(e) based on their silence. In other words, Respondent did not challenge Mr. Megna's filing of the motion for reconsideration on summary judgment in the trial court and should be estopped from doing so on appeal.

CONCLUSION

For the reasons set forth herein and in the Petition for Rehearing, Appellant's request for rehearing and the relief sought in the Petition should be granted.

Respectfully submitted,

James M. Griffin
Ariail E. King
Lewis, Babcock & Griffin, L.L.P.
P.O. Box 11208
Columbia, South Carolina 29211
(803) 771-8000

August 5, 2013.

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Honorable J. Michael Baxley
Circuit Court Judge

APPELLATE CASE NO: 2011-185767

APPEAL FROM DARLINGTON COUNTY
J. MICHAEL BAXLEY, CIRECUIT COURT JUDGE

Pee Dee Health Care, P.A.,

Appellant,

v.

Estate of Hugh S. Thompson, III, and Louise T. Dailey, as Personal Representative of the Estate of Hugh S. Thompson,
Respondent.

Respondent.

PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorney for Appellant Pee Dee Health Care, P.A., do hereby certified that I have served a copy of the foregoing **Appellant's Reply to Respondent's Return to the Petition for Rehearing**, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

John James
P.O. Box 507
Darlington, SC 29540

Renee Josey
PO Box 5478
Florence, SC 29501

Jaime Harmon

Columbia, South Carolina
August 5, 2013

A. CAMDEN LEWIS
KEITH M. BABCOCK
JAMES M. GRIFFIN
ARIAIL E. KING
MARGARET N. FOX*

*ALSO ADMITTED IN N.C.

OF COUNSEL
J. RYAN HEISKELL
ALSO ADMITTED IN D.C.

LB&G

LEWIS, BABCOCK & GRIFFIN L.L.P.

1513 HAMPTON STREET
P.O. BOX 11208 (29211)
COLUMBIA, S.C. 29201
FACSIMILE: 803-733-3541
TELEPHONE: 803-771-8000

WEBSITE: WWW.LBGLEGAL.COM

EMAIL: JLH@LBGLEGAL.COM

August 5, 2013

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: ***Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson, III, and Louise T. Dailey, as Personal Representative of the Estate of Hugh S. Thompson***
Appellant Case No. 2011-185767

Dear Ms. Abbott Kitchings:

Enclosed please find the original and one copy of Appellant's Reply to Respondent's Return to the Petition for Rehearing in the above-referenced case. Please file these documents and return the clocked copy to this office via our courier.

By copy of this letter and as evidenced on the Proof of Service, I am serving counsel of record.

If you have any questions, please do not hesitate to contact this office.

With kind regards, I am

Very truly yours,

Jaime Harmon
Assistant to James M. Griffin

/jh
Enclosures

cc: John James
Rene Josey