THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Judge
The Honorable Daniel Coble, Circuit Court Judge

Case No. 2019 CP 40-04452

South Carolina Court of Appeals
Appellate Case No. 2023-001058

South Carolina Supreme Court
Appellate Case No. 2024-000588

Anesthesiology Professionals of Columbia, LLC,............ Respondent,

v.

Lifepoint Health d/b/a Providence Health and Providence Hospital, LLC,..................................... Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE SOUTH CAROLINA COURT OF APPEALS

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INDEX

TABLE OF AUTHORITIES iii
CERTIFICATE OF COUNSEL 1
QUESTION PRESENTED 1
STATEMENT OF THE CASE 1
ARGUMENT 5

I. The Order of Judge Coble is a Final, appealable Order pursuant to S.C. Code Ann. § 15-48-200(6). 6

II. The Orders of the Circuit Court Are Appealable Pursuant to S.C. Code Ann. § 15-48-200 (3) and (5). 10

A. The Circuit Court's Orders Deny Confirmation of the Arbitration Award By The Arbitrator and are Subject to Immediate Appeal Under Subsection 3 of the South Carolina Arbitration Act's Appeal Provisions 10

B. The Orders Vacate the Arbitrator's Award Without Directing a Rehearing as Prescribed by the South Carolina Arbitration Act and are, Therefore, Subject to Immediate Appeal Under S.C. Code Ann. § 15-48-200(5) 11

III. Though It Gave No Reasoning for Its Order, the Court of Appeals May Have Relied Upon the Label, Rather than the Substance of Lifepoint's Motion in the Challenge Action to Conclude that Lifepoint's Appeal was Interlocutory 13

A. Though Labeled as a Motion to Dismiss, the Motion was Substantively a Motion to Set Aside Judge Manning's Orders as Void for Lack of Personal Jurisdiction and Due Process. 14

IV. Judge Coble's May 31 Order Effectively "Finalized" Judge Manning's November 29 Order, Which On Its Face and On the Face of the Docket for the Challenge Action Was Not a Final Order in the Matter Pursuant to Rule 58(A), SCRCP. 17

A. On Their Face, Judge Manning's Orders Are Not Final For Purposes of Triggering the Time for Appeal Under Rule 203(B), SCACR But May Be Reviewed Directly on Appeal Because Judge Coble's Order in this Case is Properly Before the Court and Reviewing Judge Manning's Orders Would Serve Judicial Efficiency 17

(2) Alternately, Entry of Judge Coble's May 31 Order Essentially Excusing the Failure of the Clerk of Court to Enter a Final Judgment as Directed by Judge Manning Triggered the Time for Appeal and the Orders Were Timely Appealed by Lifepoint 19

CONCLUSION 20

Table of Authorities

Page(s)

Cases

BB&T v. Taylor,
369 S.C. 548, 633 S.E.2d 501 (2006) 4

Belle Hall Plantation Homeowners' Assoc., Inc. v. Murray,
419 S.C. 605, 799 S.E.2d 310 (Ct. App. 2017)....................16

Edge v. State Farm Mut. Auto. Ins. Co.,
366 S.C. 511, 623 S.E.2d 387 (2005) 18

Ex Parte Wilson,
367 S.C. 7, 625 S.E.2d 205 (2005) 8

Fields v. Regional Med. Ctr. Orangeburg,
363 S.C. 19, 609 S.E.2d 506 (2005) 13

Good v. Hartford Acc. & Indem. Co.,
201 S.C. 32, 21 S.E.2d 209 (1942) 7

Heffner v. Destiny, Inc.,
321 S.C. 536, 471 S.E.2d 135 (1995) 7

McDaniel v. U.S. Fidelity & Guar. Co.,
324 S.C. 639, 478 S.E.2d 868 (Ct. App. 1986)....................15, 16

Mickle v. Blackmon,
255 S.C. 135, 177 S.E.2d 548 (1970) 14

National Ave. Bldg. Co. v. Stewart,
910 S.W. 2d 334 (Mo. Ct. App. 1995)....................9, 10

Richland Cty v. Kaiser,
351 S.C. 89, 567 S.E.2d 260 (Ct. App. 2002)....................13

Sadisco of Greenville, Inc. v. Greenville Cty. Bd. of Zoning App.,
340 S.C. 57, 530 S.E.2d 383 (2000) 16

Winesett v. Winesett,
287 S.C. 332, 338 S.E.2d 340 (1985) 16

Rules

Rule 4(d)(3), SCRCP 8, 14

Rule 12(b)(2), SCRCP 8, 14, 15

Rule 52(b) SCRCP 17

Rule 52(c) SCRCP 17

Rule 58(a), SCRCP 14

Rule 58(a)(2), SCRCP 5, 18

Rule 60(b), SCRCP 8, 16

Rule 60(b)(4), SCRCP 14, 15, 16

Rule 203(b), SCACR 14, 17

Rule 203(b)(1), SCACR 4, 17, 18, 19

Statutes

S.C. Code Ann. §14-3-330 .... 7, 16

S.C. Code Ann. § 14-3-330(2)(b) 7

S.C. Code Ann. § 15-48-130 .... 1, 7, 10

S.C. Code Ann. § 15-48-130(a)(3) 11

S.C. Code Ann. § 15-48-130(a)(4) 11

S.C. Code Ann. § 15-48-130(c) 11, 12

S.C. Code Ann. § 15-48-130(d) 10

S.C. Code Ann. § 15-48-170 .... 2, 14

S.C. Code Ann. § 15-48-200 .... 6, 7

S.C. Code Ann. § 15-48-200(3) .... *passim*

S.C. Code Ann. § 15-48-200(5) .... *passim*

S.C. Code Ann. § 15-48-200(6) 1, 6, 7

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing with Suggestion for Rehearing En Banc was made and finally ruled upon by the Court of Appeals on March 18, 2024. (Appendix ["Appx."] pp. 140-168.)

QUESTION PRESENTED

Did the Court of Appeals err in dismissing this appeal as interlocutory where the appeal is from "a judgment or decree" entered pursuant to chapter 48 of Title 15 (the "South Carolina Arbitration Act") that fully resolved all claims as to all parties in Respondent's application to vacate the arbitration award in this matter pursuant to S.C. Code Ann. § 15-48-130, as provided by S.C. Code Ann. § 15-48-200(6), and where the orders appealed denied confirmation of the arbitration award, S.C. Code Ann. § 15-48-200(3), and vacated the award without directing a rehearing (S.C. Code Ann. § 15-48-200(5)) in the manner prescribed by S.C. Code Ann. 15-48-130(c)?

STATEMENT OF THE CASE

This matter comes before the Court on an unusual set of facts. On May 15, 2019, an arbitrator resolved a contractual dispute between the parties, ordering that neither party owed the other anything. (Appx. 73-93.) Jonah Fecteau, Lifepoint's Senior Associate General Counsel received the order that same day. (Appx. 94-96.) He thanked Erin Stuckey, Lifepoint's attorney in the arbitration,[1] for her "hard work and effort on the case" and indicated he looked "forward to working with [her] again in the future," ending the representation. (Appx. 95.)[2]

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[1] At the time of the arbitration, Ms. Stuckey was an attorney at Nelson Mullins Riley & Scarborough LLP ("Nelson Mullins"). She departed the firm prior to Lifepoint and Nelson Mullins discovering the lack of notice or disclosure to the firm or Lifepoint that Respondent had initiated the proceeding in the Circuit Court under S.C Code Ann. § 15-48-130 to vacate the arbitration decision ("the Challenge Action").

[2] By letter of March 2, 2018, Lifepoint engaged Nelson Mullins, through its partner Frank Powell in the Boston office, to represent it "in connection with an arbitration captioned [cont'd next page]

On August 12, 2019, Respondent initiated a matter in the circuit court to vacate the arbitrator's order ("the Challenge Action"). (Appx. 106-110.) Respondent did not serve its "Petition to Vacate" as prescribed by S.C. Code Ann. § 15-48-170. Rather, its counsel contacted Ms. Stuckey and asked if she would accept service. (Appx. 111-116.) She said she would. (Appx. 112.)

However, the record before the circuit court reflects that from May 15, 2019 (when Ms. Stuckey sent the arbitrator's order to Mr. Fecteau and received his thanks, ending the engagement), until after November 29, 2021, when Judge Manning's second order was entered, counsel for Respondent contacted no one but Ms. Stuckey about the Challenge Action. The record further reflects that no one -- not Erin Stuckey, not any other attorney or person at Nelson Mullins, not Respondent, not Respondent's counsel or personnel, not the Court nor any Court personnel -- ever communicated with anyone at Lifepoint, including but not limited to, Mr. Fecteau, about the filing of the Challenge Action or any of the subsequent proceedings that occurred in the circuit court. (Appx. 102-105, 111-116, 117-121.)[3] No one at Lifepoint ever authorized anyone, including Ms. Stuckey[4] or any other attorney at Nelson Mullins, to represent it or act on its behalf in the Challenge Action. Lifepoint was utterly unaware Respondent

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Anesthesiology Professionals of Columbia, LLC v. Providence Hospital …" and that Nelson Mullins had "not been asked to represent [it] in other legal matters" at that time. (Appx. 97-101.)

[3]The details and supporting proof that Lifepoint was never served, never authorized any attorney to accept service or act on its behalf in the Challenge Action, and had absolutely no notice of its existence until called by the arbitration company to schedule a new arbitration is set forth in detail, with supporting exhibits, at pages 2-5 of Appellants' Memorandum in Support of Appellate Jurisdiction filed July 31, 2023 (Appx. 34-37).

[4]Ms. Stuckey left the law firm of Nelson Mullins on December 31, 2021. The existence of the Challenge Action was not discovered by Lifepoint until 2022, when the arbitration company called to schedule a new arbitration. (Appx. 105.)

instituted the Challenge Action or that there was a judicial proceeding involving Lifepoint in the circuit court until after Judge Manning had vacated the arbitration order and the arbitration organization contacted Mr. Fecteau about setting up a new arbitration hearing. (Appx. 104-05.)

From August 12, 2019, Ms. Stuckey, with no authorization from Lifepoint and without once communicating with it after the May 15, 2019 arbitration order, proceeded to appear and make filings purportedly on its behalf. Thus, without the knowledge, acquiescence, or input of Lifepoint, the Challenge Action proceeded and resulted in Manning entering a "Proposed Order …" filed August 4, 2021, purporting to vacate the arbitration result ("August 4 Order" or "Judge Manning's First Order"). (Appx. 19-27.) Ms. Stuckey filed a motion to reconsider[5] (again, unknown to and unauthorized by Lifepoint) leading to a second Order of Judge Manning filed November 29, 2001 ("November 29 Order" or "Judge Manning's Second Order") (Appx. 28-30.), which denied the motion's request to rescind the August 4 Order of vacatur. However, in the November 29 Order, Judge Manning granted Ms. Stuckey's request to correct the August 4 Order and directed the Clerk to enter "an attached amended order," which was, in fact, ***not attached*** to the November 29 Order. (Appx. 29.) Nobody ever received the "amended order", and the Clerk never entered it on the docket in the Challenge Action.

After the passage of more than 30 days from the November 29 Order and entry of it on the court's docket, Lifepoint learned for the first time about the Challenge Action in 2022 when it received a notice from the arbitration company that a new arbitration proceeding would allegedly need to occur as a result of the Challenge Action. (Appx. 105.)

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[5] (Appx. 122-28.)

Thereafter, Lifepoint engaged counsel (the K&L Gates LLP firm, Appx. 052) and promptly moved to dismiss (in essence set aside) Judge Manning's August 4 and November 29 Orders on the basis of lack of personal jurisdiction and deprivation of due process. (Appx. 50-70.) Lifepoint was not, and never has been, served with the Challenge Action (either the summons or petition) nor did it authorize any counsel (including, but not limited, to Ms. Stuckey) to accept service for it in the Challenge Action. (Appx. 104-05.) *See BB&T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006)(default set aside on grounds of lack of personal jurisdiction). Lifepoint also requested an alternative ruling that Judge Manning's Second Order on the Motion to Reconsider filed by Ms. Stuckey be declared to be non-final because there had never been any final order entered by the Clerk as ordered by Judge Manning in the November 29 Order. (Appx. 61-62.)

Because of Judge Manning's retirement, Lifepoint's corrective motion was heard by Judge Coble. He issued an order on May 31, 2023 ("May 31 Order") (Appx. 4-18) denying Lifepoint's motion to set aside the August 4 and November 29 Orders. He also declined to declare that Judge Manning's Orders were not final for purposes of appeal because of the failure of the Clerk to enter a corrected, final order as directed. *Id.* This May 31 Order of Judge Coble meant the Challenge Action was final, the arbitration award was formally vacated, and a new arbitration would need to commence.

Lifepoint timely appealed from the May 31 Order of Judge Coble and the two orders of Judge Manning on June 30, 2023.[6] On July 11, 2023, the Court of Appeals issued an

[6] Lifepoint contends that because the Clerk failed to enter a correct, final order as directed in November 29 Order (Appx. 29), the time for appeal from Judge Manning's First and Second Orders never started to run pursuant to Rule 203(b)(1), SCACR or did not start to run until entry of Judge Coble's May 31 Order effectively declaring that Judge Manning's Orders were final despite the clerk's failure to carry out the directive of Judge Manning and the [cont'd next page]

order holding the time limits for perfecting the appeal in abeyance and requesting memoranda on the issue of appealability from the parties. (Appx. 31-32.) Lifepoint and Respondent filed their appealability memoranda on July 31, 2023. (Appx. 33-128 (Lifepoint); 129-138 (Respondent).) In a three-sentence order that did not expressly address any of the arguments raised by the parties, the court "dismiss[ed] the appeal as interlocutory" on August 29, 2023. (Appx. 139.) Lifepoint petitioned the Court of Appeals for rehearing and rehearing en banc on September 28, 2023.[7] (Appx. 140-66.) The Court of Appeals denied the petition for rehearing and rehearing en banc on March 18, 2024. (Appx. 167-68.) Lifepoint now seeks review by this Court to redress the erroneous dismissal of Lifepoint's appeal as interlocutory so that Lifepoint's appeal may be addressed on its merits.

ARGUMENT

Under Rule 242(b), SCACR a writ of certiorari is appropriately granted where a matter raises "novel questions of law," the decision of the Court of Appeals conflicts with prior decisions of this Court, or "[w]here substantial constitutional issues are directly involved" in the case. *Id.* The unusual facts of this case present both novel questions of law and important constitutional issues of personal jurisdiction and due process where, as here, an attorney, without the knowledge of or authority given by a Party, accepts service of a circuit court matter for the Party, appears ostensibly to defend the Party in the matter, and litigates the matter with adverse results to the Party, all without the knowledge of the Party or any communication of any kind with the Party. After the Party discovered the purported

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requirements of Rule 58(a)(2), SCRCP that judgments be entered to be effective. This argument is addressed *infra*, pp. 17-19.

[7] An extension of time until September 28, 2023 to file the petition was granted on September 22, 2023.

representation on its behalf and the adverse rulings entered against it, and after the Party raised the lack of personal jurisdiction of the circuit court over it to enter any orders or judgments and the denial of due process by being deprived of all opportunity to defend and confirm the arbitration award entered, the Party's appeal was summarily dismissed by the Court of Appeals. This summary dismissal compounds the constitutional violations and deprives Petitioner of all meaningful opportunity to defend the original arbitration decision.

Also, the Court of Appeals' summary dismissal of the appeal as "interlocutory" (Appx. 139) is in conflict with the prior decisions of this Court regarding finality and appealability of orders generally and is novel in the context of S.C. Code Ann. § 15-48-200 regarding appeals from orders in matters governed by the South Carolina Arbitration Act. For the reasons set forth more fully below and in the prior filings of Petitioner in the Court of Appeals, the Court should grant a writ of certiorari to review this case, reverse the decision of the Court of Appeals dismissing the appeal, and return the matter to the Court of Appeals for disposition on the merits..

I. THE ORDER OF JUDGE COBLE IS A FINAL, APPEALABLE ORDER PURSUANT TO S.C. CODE ANN. § 15-48-200(6).

The Court of Appeals held, without citation of authority and without any explanation or addressing of any of the arguments raised by the parties, that Lifepoint's appeal was interlocutory and, thus, subject to dismissal. This conclusion, whatever its undisclosed basis, is incorrect.

S.C. Code Ann. § 15-48-200(6) states:

> (a) An appeal may be taken from:
>
> ...
>
> (6) a judgment or decree entered pursuant to the provisions of this chapter [Chapter 48 of Title 15].

Id. Judge Coble's May 31 Order is a "judgment or decree" in the Challenge Action, which was initiated and existed pursuant to the South Carolina Arbitration Act, S.C. Code Ann. §§ 15-48-10, et seq., particularly S.C. Code Ann. §15-48-130. It is a "final judgment" because all claims and defenses by all parties that were asserted in the Challenge Action have been resolved.[8] *See Good v. Hartford Acc. & Indem. Co.,*201 S.C. 32, 41-42, 21 S.E.2d 209, 212 (1942) (defining a final judgment as one that "dispose[s] of the cause, or a distinct branch thereof, as to all the parties, reserving no further questions or directions for future determination. It must finally dispose of the whole subject-matter or be a termination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined", *quoting* 2 *Am.Jur*. 860, Section 22).

Absolutely nothing remains for the circuit court to decide in the Challenge Action. Respondent filed the Challenge Action to achieve vacatur of the arbitrator's decision. The Challenge Action resulted in the August 4 Order of the circuit court entitled "Petitioner's Proposed Order" purporting to vacate the arbitration result, remand for a new arbitration

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[8] S.C. Code Ann. § 15-48-200(6) is analogous to the general appellate statute, S.C. Code Ann. §14-3-330(1), that states an appeal lies from "final judgments" in law cases. In *Heffner v. Destiny, Inc.*, 321 S.C. 536, 471 S.E.2d 135 (1995), the Court concluded that in a proceeding under the South Carolina Arbitration Act in state court, the statutory grounds for appeal in that matter are governed by the specific provisions of S.C. Code Ann. § 15-48-200 rather than the general appellate provisions of S.C. Code Ann. § 14-3-330 where ***the two conflict***. *Id.* at 538, 471 S.E.2d at 156.

Here, there is no conflict as both statutes provide for an appeal from a final order entered in a circuit court proceeding. Of course, an implied repeal is disfavored, and the statutes should be read harmoniously if possible. Pursuant to S.C. Code Ann. § 14-3-330(2)(b), an order affecting a substantial right which "grants ... a new trial" is also immediately appealable. This provision is analogous to S.C. Code Ann. § 15-48-200(5) that allows an appeal from an order vacating an arbitration order and ordering a new arbitration proceeding, which is what happened here. The orders on appeal in this case grant a new arbitration proceeding with various restrictions imposed, but not agreed to by the parties in the arbitration agreement. This separate ground for appeal is addressed more fully in section II.B, *infra*, pp. 11-13.

hearing before an entirely different arbitrator, and limit the matters that could be raised in the new arbitration. (Appx. 19-27.) A motion to reconsider was filed (again, unknown to and unauthorized by Lifepoint) on August 16, 2021 (Appx. 122-28) leading to the November 29 Order of Judge Manning. (Appx. 28-30.) Respondent received its full, requested relief through the August 4 and November 29 Orders.

Lifepoint learned for the first time about the Challenge Action when it received a notice that an all new arbitration proceeding would allegedly need to occur as a result of the Challenge Action. (Appx. 105.) Lifepoint moved to dismiss (in essence set aside) the Orders of the Circuit Court vacating the arbitration decision on grounds, *inter alia*, of lack of personal jurisdiction over Lifepoint and failure of due process.[9] Alternately, it sought a ruling that the August 4 and November 29 Orders of Judge Manning be declared non-final because there had never been any final order sent out by the Clerk with the attachment ordered by the circuit court. On May 31, Judge Coble issued the May 31 Order (Appx. 4-18.) denying Lifepoint's motion in its entirety.

This Court has defined an "interlocutory" order as "[a] judgment or decree, leaving some further act to be done by the [circuit] court before the rights of the parties are determined …." *Ex Parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (brackets in the original). In this case, nothing remains for the circuit court to address or do. All claims

[9] As argued in its Memorandum regarding jurisdiction, pp. 5-8 (Appx. 37-40), Lifepoint's motion cited Rule 4(d)(3), SCRCP and Rule 12(b)(2), SCRCP as grounds for its motion to dismiss, but the substance of the motion, given the status of the Challenge Action (petition to vacate granted and matter remanded for a new arbitration with a new arbitrator), was a motion under Rule 60(b), SCRCP to set aside the circuit court's orders.

by all parties have been fully addressed. The circuit court has purported to vacate the arbitration award and dismiss the matter to arbitration for a new hearing. (Appx. 25-26.)

To the extent the Court of Appeals' order is predicated upon the idea that the issues raised in this appeal can be addressed after a new arbitration award, that idea is incorrect. If that is what the Court of Appeals intended, it would create a potentially endless cycle of unreviewable orders vacating arbitration awards and is inconsistent with S.C. Code Ann. §§ 15-48-200(3), (5), & (6). *See National Ave. Bldg. Co. v. Stewart*, 910 S.W. 2d 334, 340-41 (Mo. Ct. App. 1995) (holding that identical provisions in the Missouri Uniform Arbitration Act allow appeals from specific types of orders that apply independently of each other and holding that appeal is not precluded under any one applicable provision even if some other provision would preclude an appeal, thus harmonizing the provisions and preventing a situation where the process of vacatur of arbitrations and rehearings by arbitrators "could continue *ad infinitum*" without the appellate courts ever having an opportunity to review the correctness of the vacatur decision of the trial judge).

The Court of Appeals' order dismissing this appeal on the basis that it is interlocutory is contrary to fact and erroneous as a matter of law. The Challenge Action is complete. Nothing remains to be decided as to any issue or any party. A final judgment in the Challenge Action has been entered and is ripe for appeal. The Petition for Certorari should be granted, the dismissal of the appeal by the Court of Appeals vacated, and the matter set for briefing and disposition on the merits of the appeal before the Court of Appeals.

II. THE ORDERS OF THE CIRCUIT COURT ARE APPEALABLE PURSUANT TO S.C. CODE ANN. § 15-48-200 (3) AND (5).

S.C. Code Ann. § 15-48-200(3) & (5) state:

(a) An appeal may be taken from:

...

(3) An order confirming or denying confirmation of an award;

...

(5) An order vacating an award without directing a rehearing;

Id. As set forth below, these provisions provide independent grounds for a right of immediate appeal of the orders of the circuit court in the Challenge Action. *See National Ave. Bldg. Co. v. Stewart*, 910 S.W. at 340-41(holding that identical provisions in the Missouri Uniform Arbitration Act allow appeals from specific types of orders that apply independently of each other).

A. THE CIRCUIT COURT'S ORDERS DENY CONFIRMATION OF THE ARBITRATION AWARD BY THE ARBITRATOR AND ARE SUBJECT TO IMMEDIATE APPEAL UNDER SUBSECTION 3 OF THE SOUTH CAROLINA ARBITRATION ACT'S APPEAL PROVISIONS.

According to subsection 3 of the appeal provision of the South Carolina Arbitration Act, any order denying confirmation of an arbitration award is immediately appealable. In the Challenge Action, Respondent sought, and Judge Manning, in essence affirmed by Judge Coble, granted vacatur of the arbitration award under S.C. Code Ann. § 15-48-130. Assuming for sake of argument only that Lifepoint was subject to personal jurisdiction, Lifepoint opposed Respondent's petition to vacate.

The vacatur statute upon which the Challenge Action is predicated states that if a petition to vacate is denied and dismissed, "the court shall confirm the award." S.C. Code

Ann. § 15-48-130(d). By granting the vacatur petition of Respondent Judge Manning and Judge Coble effectively entered orders "denying confirmation of an award," thus triggering the right of appeal from the circuit court's orders under S.C. Code Ann. § 15-48-200(3). The orders were not interlocutory as stated without explanation by the Court of Appeals, but final orders as discussed above. The Petition should be granted and the Court of Appeal's order to the contrary reversed and the matter set for a decision on the merits before the Court of Appeals.

B. THE ORDERS VACATE THE ARBITRATOR'S AWARD WITHOUT DIRECTING A REHEARING AS PRESCRIBED BY THE SOUTH CAROLINA ARBITRATION ACT AND ARE, THEREFORE, SUBJECT TO IMMEDIATE APPEAL UNDER S.C. CODE ANN. § 15-48-200(5).

According to subsection 5 of the appeal provisions of the South Carolina Arbitration Act, any order vacating an arbitration award without directing a rehearing is immediately appealable. The South Carolina Arbitration Act does not, however, bestow upon the Circuit Court a freewheeling power to direct rehearing in any manner it chooses. Rather, the power to order a rehearing is specifically circumscribed by S.C. Code Ann. § 15-48-130(c), which states:

> In vacating the award on grounds other than stated in item (5) of subsection (a) [which is inapplicable in this case] the court may order a rehearing before new arbitrators ***chosen as provided in the agreement***, or in the absence thereof, by the court in accordance with § 15-48-30, or, if the award is vacated on grounds set forth in items (3) and (4) of subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 15-48-30.

Id. (bracketed phrase and emphasis added).

In the Challenge Matter, Judge Manning, in essence affirmed by Judge Coble, apparently vacated the arbitrator's order based on the grounds set forth in S.C. Code Ann. § 15-48-130(a)(3) & (4). (Appx. 24-26.) However, the August 4 and November 29 Orders go

beyond simply vacating the arbitration award and, contrary to the agreement between the parties and its arbitration provision, Article 23 (Appx. 152), which prescribes a single arbitrator and application of the American Health Lawyers Association Alternative Dispute Resolution Rules of Procedure for Arbitration (Appx. 154-66),[10] purports to dictate the appointment of a new arbitrator and restrict or condition the ability of any new arbitrator to conduct the arbitration in accord with those rules. (Appx. 25-26, ¶¶ 29, 30.)

For instance, the Rules prescribe the circumstances for removal of an arbitrator (Section 4.5, Appx. 165) and the process for selecting a new arbitrator (*See* sections 3.2-3.4, 4.7, Appx. 160-61, 166). Importantly, Section 3.1 of the Rules states that "the arbitrator, once appointed, shall have power to determine his or her jurisdiction ***and any issues of arbitrability***." (Appx. 160, emphasis added). Section 4.1 (Appx. 163) empowers the arbitrator, not the trial court remanding the case, to "take any actions and make any decisions that are necessary and proper to conducting a fair and efficient arbitration under the Rules." Also, when an arbitrator is replaced, Section 4.7 (Appx. 166) of the Rules states "[g]enerally, a replacement arbitrator will conduct an arbitration *de novo*. However, the parties may agree to alternative arrangements." The trial court here is not empowered to dictate how the new hearing before the new arbitrator will be conducted. As stated in S.C. Code Ann. § 15-48-130(c), it is the agreement of the parties that dictates the terms of any new arbitration before any newly chosen arbitrator selected in accordance with the terms of the agreement.

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[10]According to the Rules, section 1.1 (Appx. 159), the applicable version of the Rules is the one in effect at the time the arbitration action is filed with the American Health Lawyers Association. The arbitration in this case was filed in 2018 and the excerpts are from the version of the Rules then applicable effective April 30, 2017.

Here, because Judge Manning's Orders, declared to be final by Judge Coble, are inconsistent with the statute prescribing how a rehearing shall be ordered, there is no effective rehearing prescribed as envisioned by the statute. Thus, the Orders are immediately appealable pursuant to S.C. Code Ann. § 15-48-200(5). The Court of Appeals' unexplained order dismissing the appeal on the basis that it is interlocutory is contrary to the specific directives that such an order, either effectively denying confirmation of the arbitrator's award or vacating and remanding for rehearing in a manner contrary to the prescriptions of the South Carolina Arbitration Act, gives rise to a right of appeal under subsections (3) and (5) and is, therefore, erroneous as a matter of law. This Petition for Certiorari should be granted, the dismissal of the Court of Appeals vacated, and the matter set for briefing and disposition on the merits before the Court of Appeals.

III. THOUGH IT GAVE NO REASONING FOR ITS ORDER, THE COURT OF APPEALS MAY HAVE RELIED UPON THE LABEL, RATHER THAN THE SUBSTANCE OF LIFEPOINT'S MOTION IN THE CHALLENGE ACTION TO CONCLUDE THAT LIFEPOINT'S APPEAL WAS INTERLOCUTORY.

Because it cited no authority and gave no reasoning for its holding, Lifepoint cannot directly address why the Court of Appeals determined that the appeal was interlocutory. However, one possible reason was that it focused on the label used by Lifepoint in its motion attacking the jurisdiction of the circuit court after Lifepoint discovered the existence of the Challenge Action and the vacatur orders issued by Judge Manning. If the Court of Appeals did so, it ignored this Court's ubiquitous statements that it is the substance, rather than the label of a party's pleading or motion that governs its treatment. *See, e.g., Fields v. Regional Med. Ctr. Orangeburg*, 363 S.C. 19, 27-28, 609 S.E.2d 506, 510 (2005)(holding a court must look past the caption of a motion and address the substance of the motion and quoting *Richland Cty v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002), "[i]t is the

substance of the requested relief that matters regardless of the form in which the request for relief was framed," and citing *Mickle v. Blackmon*, 255 S.C. 135, 140, 177 S.E.2d 548, 549 (1970) for the rule of "treating [a] motion based on its substance and effect as opposed to how it was captioned").

A. THOUGH LABELED AS A MOTION TO DISMISS, THE MOTION WAS SUBSTANTIVELY A MOTION TO SET ASIDE JUDGE MANNING'S ORDERS AS VOID FOR LACK OF PERSONAL JURISDICTION AND DUE PROCESS.

Lifepoint learned for the first time about the Challenge Action in 2022 when it received a notice that an all new arbitration proceeding would allegedly need to occur as a result of the Challenge Action. (Appx. 105, ¶ 13.) Lifepoint promptly filed a motion, labeled "Respondents' Motion to Dismiss or in the Alternative to Enter a Final Order," citing Rule 4(d)(3), SCRCP and Rule 12(b)(2), SCRCP and alternately requesting that a final order be entered on Respondent's Petition to Vacate.[11] (Appx. 50-70.) As argued in its Memorandum regarding jurisdiction (Appx. 56-61), and as pointed out again in the rehearing petition to the Court of Appeals (Appx. 143-45), the substance of the motion, given the status of the Challenge Action (petition to vacate granted and matter remanded for a new arbitration with a new arbitrator), was substantively a motion under Rule 60(b)(4), SCRCP to set aside the circuit court's orders as void for lack of personal jurisdiction. Lifepoint argued that the proceedings before Judge Manning were void from their inception. The circuit court lacked personal jurisdiction over Lifepoint, and Lifepoint was denied due process because it was never served or otherwise given any notice of the Challenge Action as dictated by S.C. Code

[11] The circuit court's docket plainly reflected and Judge Coble found, that the directives of Judge Manning's order of November 29 were never carried out and a final order never entered as required by Rule 58(a), SCRCP thus triggering the time for appeal under Rule 203(b), SCACR (Appx. 15-16, 29.) This alternate argument for why this appeal is from a final order and timely is addressed in the next section of the petition, Section IV, *infra*, pp. 17-19.

Ann. § 15-48-170, nor authorized acceptance of service or defense of the matter on its behalf by anyone. Hence, Lifepoint was not allowed to defend the arbitrator's order and was denied due process. (Appx. 55-61.) *See McDaniel v. U.S. Fidelity & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1986) (holding that "[t]he definition of void under the rule [60(b)(4)] only encompasses judgments from courts which failed to provide proper due process, or judgments from courts that lacked subject matter jurisdiction or personal jurisdiction").

Lifepoint noted that it had not been served as required by statute, had never voluntarily appeared in the matter at any point, had never authorized Ms. Stuckey or any other person to act on its behalf in the Challenge Matter, and had never, from the inception of the case until notice from the arbitration company for the alleged need for a new arbitration, known of the existence of the Challenge Action. (Appx. 51, 55-61.)

Judge Coble's May 31 Order resolves a motion that substantively, and given the procedural posture, is properly treated as a Rule 60(b)(4), SCRCP motion to vacate as void the orders of Judge Manning for lack of due process and personal jurisdiction. Unlike a Rule 12(b)(2), SCRCP motion filed early in a matter as an initial response or after being asserted in an answer, here, there are no further proceedings to be taken in the circuit court in the Challenge Action as a result of Judge Coble's May 31 Order. The petition to vacate has been (albeit, respectfully, incorrectly) granted and upheld via the combination of orders including the incomplete Judge Manning Order and Judge Coble's refusal to set it aside (despite the lack of personal jurisdiction) and should now be subject to review by appeal to the Court of Appeals.

Further, our courts have repeatedly exercised appellate jurisdiction over and addressed appealed orders granting or denying motions under Rule 60(b), SCRCP, including Rule 60(b)(4), SCRCP. *See, e.g., Sadisco of Greenville, Inc. v. Greenville Cty. Bd. of Zoning App.*, 340 S.C. 57, 530 S.E.2d 383 (2000) (reversing summary dismissal of appeal by the Court of Appeals from denial of motion under Rule 60(b)(1) and citing *Winesett v. Winesett*, 287 S.C. 332, 338 S.E.2d 340 (1985) for the proposition that "a denial of a Rule 60(b) motion is directly appealable"); *Sijon v. Green*, 289 S.C. 126, 345 S.E.2d 246 (1986) (affirming a circuit court ruling on defendant's Rule 60(b)(4) motion that defendant, who received no notice of hearing in which judgment was entered against him, was entitled to vacatur of the judgment and a hearing to determine whether he received notice of the hearing); *Belle Hall Plantation Homeowners' Assoc., Inc. v. Murray*, 419 S.C. 605, 799 S.E.2d 310 (Ct. App. 2017) (upholding on appeal Master's vacation of foreclosure sale pursuant to Rule 60(b)(4) on grounds of lack of personal jurisdiction where homeowner was never properly served and had no notice of foreclosure hearing); *McDaniel*, 324 S.C. at 643-44, 478 S.E.2d at 870-71 (addressing appeal from denial of Rule 60(b)(4) motion and affirming on the basis of unreasonably late filing (four years) and inapplicability of the rule to the particular facts because judgment merely voidable, not void).

Because the Orders appealed from are final, not interlocutory as defined by this Court, and fit within the appeal grounds set forth in S.C. Code Ann. § 15-48-200(3), (5) & (6) and the analogous provisions of S.C. Code Ann. § 14-3-330, the Petition should be granted, the Court of Appeals reversed, and the matter set for disposition on the merits before the Court of Appeals.

IV. JUDGE COBLE'S MAY 31 ORDER EFFECTIVELY "FINALIZED" JUDGE MANNING'S NOVEMBER 29 ORDER, WHICH ON ITS FACE AND ON THE FACE OF THE DOCKET FOR THE CHALLENGE ACTION WAS NOT A FINAL ORDER IN THE MATTER PURSUANT TO RULE 58(A), SCRCP.

In its motion filed after it discovered the existence of the Challenge Action, Lifepoint also requested in the alternative a ruling that the November 29 Order of the Circuit Court on the Motion to Reconsider (*i.e.*, Judge Manning's Second Order) be declared to be non-final because there had never been any final order entered by the Clerk based on the attachment (which itself was never filed) as ordered by the circuit court. Had such declaratory relief been ordered, then Judge Manning's Orders could have been timely appealed. Judge Manning's Orders are immediately appealable for two reasons.

A. ON THEIR FACE, JUDGE MANNING'S ORDERS ARE NOT FINAL FOR PURPOSES OF TRIGGERING THE TIME FOR APPEAL UNDER RULE 203(B), SCACR BUT MAY BE REVIEWED DIRECTLY ON APPEAL BECAUSE JUDGE COBLE'S ORDER IN THIS CASE IS PROPERLY BEFORE THE COURT AND REVIEWING JUDGE MANNING'S ORDERS WOULD SERVE JUDICIAL EFFICIENCY.

Judge Manning's Orders, on their face, did not trigger the running of time for appeal of those orders under Rule 203(b), SCACR. Judge Coble committed error in not ruling this to be so. The August 4 order was the first substantive order in the Challenge Action. Assuming personal jurisdiction for sake of argument only, a motion for reconsideration was timely filed. (Appx. 122-28.) Thus, the time for filing an appeal of the August 4 order was stayed per Rule 52(b) & (c), SCRCP and Rule 203(b)(1), SCACR.

By its terms, the November 29 Order (Judge Manning's Second Order) effectively withdrew the August 4 "Proposed Order..." that had been filed. That August 4 Order had no further effect. Per the direction of Judge Manning, a substitute order was supposed to be supplied and was required to be entered in its place *nunc pro tunc,* but the substitute order was not attached

to the November 29 Order despite if being stated in the body of the November 29 order that it would be, and the Clerk, contrary to the November 29 Order, has never entered such an order. (Appx. 28-30.)

As stated in Rule 58(a)(2), SCRCP "[e]very judgment shall be set forth on a separate document. A judgment is effective only when so set forth and entered in the record." Here, Judge Manning's purported revised judgment was never set forth as a separate document and never entered on the record in this case. Thus, it was not "effective" to trigger the time for appeal under Rule 203(b)(1), SCACR which runs from "receipt of written notice of entry of the order or judgment." The ineffectiveness of the November 29 Order (Judge Manning's Second Order) to trigger the time for appeal is further supported by the last sentence of the same rule which states, "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." *Id.*

Even though Judge Manning's Orders are not, on their face, technically final for purposes of triggering the time for appeal under Rule 203(b)(1), SCACR, Judge Coble has now ruled that they were final by declining to grant relief to Lifepoint in this regard. Hence, the May 31 Order of Judge Coble and the Orders of Judge Manning are now appealable. Further, this Court has repeatedly held, "[a]n order that is not directly appealable may be considered if there is an appealable issue before the court" where immediate consideration would promote judicial economy and advance the resolution of some or all issues in the case. *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005). Here, as set forth above, the appeal from Judge Coble's May 31 Order is properly before the Court. The Court may, therefore, review Judge Manning's Orders although they are technically not finalized by entry of the

required written document in Lifepoint's view and the time for appeal of Judge Manning's Orders has not yet commenced.

(2) Alternately, Entry of Judge Coble's May 31 Order Essentially Excusing the Failure of the Clerk of Court to Enter a Final Judgment as Directed by Judge Manning Triggered the Time for Appeal and the Orders Were Timely Appealed by Lifepoint

Judge Manning's November 29 Order expressly stated that the original August 4 Order was superseded and that a new order was to be separately entered *nunc pro tunc* in its place. (Appx. 28-30.) This never occurred to trigger the time for the running of an appeal as required under Rule 203(b)(1),SCACR.

Again, assuming for sake of argument only that the circuit court had personal jurisdiction over Lifepoint at the time of Judge Manning's August 4 and November 29 Orders, Judge Coble's May 31 Order excusing the non-existence of the amended order and failure of the Clerk to enter the new order and the entry of the May 31 Order to that effect, arguably closed the hole in the record of the Challenge Action on post-judgment motions, thus triggering the 30-day appeal period pursuant to Rule 203(b)(1), SCACR. Lifepoint timely served its notice of appeal within the 30-day period -- June 30, 2022— after entry of the May 31 Order, much less the 30-day period after receiving notice of its entry. Thus, assuming Judge Manning had personal jurisdiction to act as to Lifepoint (which Lifepoint denies), then Lifepoint timely appealed from Judge Coble's and Judge Manning's orders and this Court has jurisdiction to directly review those orders on their merits.

CONCLUSION

For the reasons set forth above and in Lifepoint's filings in the Court of Appeals, the Petition for Writ of Certiorari should be granted, the decision of the Court of Appeal dismissing Lifepoint's appeal as interlocutory should be reversed, and the matter set for disposition on the merits before the Court of Appeals.

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