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SC Court of Appeals

SOUTH CAROLINA
In The Court Of
Appeals

Case No. 2024-000168

Johnathan Daniels, Appellant.

v.

The City Of Cayce, Respondent

REPLY OF APPELLANT

May 29th, 2024

Johnathan M. Daniels, Appellant, Pro Se
P.O. Box 30651
Columbia, South Carolina 29230
Phone: (803) 770-8863
Email: chesssetbyj@yahoo.com

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STANDARD OF REVIEW

This present case under Appeal presents a novel question of law. In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000) (citing S.C. Const. art. V, §§ 5 and 9, S.C. Code Ann. § 14-3-320 and -330 (1976 & Supp. 2003), and S.C. Code Ann § 14-8-200 (Supp. 2003)); *Osprey, Inc. v. Cabana Ltd. Partnership*, 340 S.C. 367, 372, 532 S.E.2d 269, 272 (2000) (same); *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000) (same).

ARGUMENT IN REPLY

A. Despite Respondent's Repetitive Assertions, Appellant's Appeal Has Been Brought Under The Statutory Authority Of S.C. Code Ann. § 14-3-330 (2)(a) and (2)(c), Therefore S.C. Code Ann. §14-25-95 Is Not The Controlling Statute Governing This Court's Jurisdiction To Decide This Appeal.

In this case, Appellant's right of appeal arises from and is controlled by statutory law. *North Carolina Federal Sav. and Loan Ass'n v. Twin States Dev. Corp*., 289 S.C. 480, 347 S.E.2d 97 (1986). The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330 (1976 & Supp. 2003). An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable. *Baldwin Constr. Co. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004); *Woodard v. Westvaco Corp*., 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), overruled on other grounds, *Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002); *Mid-State Distributors*, 310 S.C. at 333 n.3, 426 S.E.2d at 780 n.3.

The three municipal orders challenged in the present appeal each fall into a category which make the orders immediately appealable under S.C. Code Ann. § 14-3-330 (2)(a) and (2)(c). Importantly, S.C. Code Ann. § 14-3-330 gives the South Carolina Supreme Court jurisdiction to hear this appeal.

An order affects a substantial right and is immediately appealable when it "**(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action,** (b) grants or refuses a new trial or **(c) strikes out an answer or any part thereof or any pleading in any action**[.]" Section 14-3-330(2) [bold added]. An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed. *Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002).

The provisions of Section 14-3-330, including subsection (2), have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial. See e.g. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) (order denying motion for change of venue is not immediately appealable because any error in the order can be corrected by new trial); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 77-78, 533 S.E.2d 575, 577 (2000) (order denying bifurcation of trial on issues of liability and damages in personal injury case is not immediately appealable as affecting a substantial right); *Townsend v. Townsend*, 323 S.C. 309, 312, 474 S.E.2d 424, 427 (1996) (denial of motions for disqualification of a judge and for a continuance are interlocutory orders not affecting the

merits, and thus are reviewable only on appeal from a final order); *Collins v. Sigmon*, 299 S.C. 464, 466, 385 S.E.2d 835, 836 (1989) (order allowing amendment of a pleading generally is not immediately appealable); *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986) (order directing a party or a non-party to submit to discovery is not immediately appealable; instead, the party or non-party must be held in contempt before an appeal may be taken challenging the validity of the discovery order); *Tatnall*, 350 S.C. at 138, 564 S.E.2d at 379 (order denying motion to amend pleadings to assert third party claims was not immediately appealable because the order did not affect a substantial right). In this present appeal before this Court, Appellant is aware of these limitations in the application of S.C. Code Ann. § 14-3-330.

Importantly, the South Carolina Supreme Court has recognized exceptions to the general rules regarding the application of S.C. Code Ann. § 14-3-330. "In a well-established exception to the general rule, we repeatedly have held that the denial of a party's right to a particular mode of trial is immediately appealable as a substantial right under Section 14-3-330(2). See *Hagood v. Sommerville*, 362 S.C. (2005), See *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000) ("Pursuant to § 14-3-330(2), this Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable.") (listing cases); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (order referring case to master in equity affects the mode of trial, a substantial right, and party waived his objection to the reference and his right to jury trial by failing to immediately appeal the order); *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386,

390 (Ct. App. 2004) (purpose of immediate appeal on right to particular mode of trial is to preserve party's constitutional right to trial by jury which would otherwise be lost.).

1. **The municipal order prohibiting Appellant's presentation of testimony, facts and argument in support of his Constitutional and S.C. § 1-32 unlawful religious burden defense, effectively "strikes" Appellant's answer. The order also denies Appellant his right to a trial by jury, and is immediately appealable.**

As explained in the Initial Brief Of Appellant, one of the municipal orders challenged in present appeal forbids presentation to the jury of (1) Appellant's Constitutional and S.C. § 1-32 unlawful religious burden defenses, (2) any religion based testimony or facts, (3) any exemptions or accommodations in the application of the law upon religious claimants, and (4) anything about religion "or anything that would have to do with a religious exemption to the laws." See Initial Brief Of Appellant at pg 44 – 46; See Municipal Transcript at pg. 3, line 20 through pg. 5, line 6. Despite Appellant's initial and repeated demands for a trial by jury, the municipal judge ordered that he (the judge) would hear Appellant's religious arguments and decide the case. Such an order denies Appellant of his Constitutionally protected right to a trial by jury. Further, the order "strikes out an answer" by disallowing all relevant facts that support the defense, and is immediately appealable under S.C. Code Ann. § 14-3-330 (2)(a) and (2)(c).

As regards the municipal order limiting Appellant's presentation of his defense to the jury, the **only** appeal the law allows is one that is made immediately under S.C. Code Ann. § 14-3-330 (2). The South Carolina Supreme Court has previously concluded, "as we have with regard to the right to a particular mode of trial, an order granting a motion to disqualify a party's preferred attorney *must* be immediately appealed or any later

objection in a subsequent appeal will be waived." *Cf.* *Flagstar Corp.*, 341 S.C. at 72, 533 S.E.2d at 333 (party is required to immediately appeal if denied a mode of trial to which he is entitled as a matter of right, and failure to do so forever bars appellate review of the issue).

Further, in its Initial Brief, Respondent attempts to deceive this Court by claiming that Appellant could present his unlawful religious burden defense at trial. However, as the municipal court transcript informs, it was Respondent that petitioned the municipal judge to disallow Appellant's presentation of the defense to the jury at trial. See Municipal Transcript at pg. 4, line 9 through to pg. 5, line 6.

As to timeliness in this appeal, Respondent seeks to have this Court overlook the facts, namely that South Carolina § 14-25-95 is not the controlling statute for this appeal, Appellant is a non-lawyer, and Appellant's court appointed attorney sabotaged Appellant's appeal by refusing to help make the appeal or present the defense. See Initial Brief Of Appellant at pg. 16, para. 2 through to pg. 19, para. 2; see Initial Brief Of Respondent.

2. **The municipal orders that denied dismissal of the charges after Respondent's failure to "demonstrate" as required by law in response to Appellant's Constitutional and S.C. § 1-32 motions are immediately appealable.**

South Carolina § 1-32 allows Appellant to present his religious burden defense as "a claim or defense in a judicial proceeding." Respondent appears to believe that there is only one type of "judicial proceeding", that being a trial. Contrarily, it seems that the South Carolina Legislature anticipated the reality that not all defenses are presented at a

trial, as it could have written the law to specify presentation of the defense only at trial, but did not. In this present case under appeal, judge Bobertz's municipal motion to quash hearing was an official judicial proceeding, and judge Jeffries' municipal motion to dismiss hearing was also an official judicial proceeding. At both hearings, Respondent's prosecutor was served written motions. The prosecutor had adequate time to review the documents, research the law, and present any legal argument before the municipal court. Respondent failed to adequately "demonstrate" per the requirements of the state and federal Constitutions and South Carolina § 1-32. On two occasions, in error, the municipal judges failed or refused to quash or dismiss the charges, as the law requires. This Court should address these failures now, or Appellant will be further oppressed and prejudiced beyond the ability of any later appellate court's ability to restore Appellant's rights.

Previously in *Hagood v. Sommerville*, 362 S.C., the South Carolina Supreme Court considered the importance of extenuating factors in determining the immediate appealability of an order granting a motion to disqualify a party's attorney. In *Hagood*, this Court considered foreign cases and arguments presented by the Appellant in that case in making the Court's determination. The present case deserves the same level of consideration, and in fact, even more urgently demands that the same considerations be given.

Respondent and Respondent's municipal court have already unlawfully burdened Appellant free exercise of religion, and other rights, as described in Appellant's motion to quash and motion to dismiss; and that unlawful burden continues to increase with each passing day during which Appellant lives under the serious threats of further prosecution,

fines and jail time. This circumstance warrants no less urgency than protecting the substantial rights that lead to concluding as the South Carolina Supreme Court did in *Hagood*. In Appellant's view, the substantial rights deprived by the orders challenged in the present case merit strict and vigorous scrutiny by this Court, because Appellant is being denied Constitutional, First Amendment rights, and unlike in *Hagood*, Appellant's rights are not being burdened solely in a court setting. Both, Appellant's daily personal existence and daily public life persist under constant religious persecution and oppression by Respondent, and the municipal court's error of allowing unjustified continued prosecution of Appellant creates the ongoing substantial burden of needing to defend against endless unlawful litigation.

The Court please consider that the Constitutionally protected First Amendment right to the free exercise of religion is among the most central and important Constitutional rights that South Carolina courts have taken an Oath to defend and uphold. Secondly, consider that Respondent has already twice failed to "demonstrate" under S.C. § 1-32, that the burden it is imposing on Appellant's free exercise of religion is lawful, thus establishing Respondent's illegal conduct. Thirdly, consider that, once Appellant's protected rights were illegally violated by Respondent (which is a state municipality), those violations could not be "taken back", or Appellant made whole at a later date. The municipal court's orders denying Appellant's motion to quash and motion to dismiss are, in effect, "final judgments" as to whether or not Appellant can enjoy the Constitutionally protected rights to free religious exercise and freedom of expression during the time period between the date the orders were made and the final outcome of a trial. This period of time has already been nearly two years! If unlawful deprivation of Appellant's

rights is allowed to continue, he will have suffered damages that no court could restore in the same substance of which Appellant has been robbed.

Therefore, Appellant reasonably argues that the municipal orders which denied Appellant's motion to quash and motion to dismiss (motions based on Appellant's proven claim of unlawful religious burden), after the municipality twice failed to "demonstrate" as required by South Carolina § 1-32, implicitly fall within the statutory definition of orders affecting a substantial right under Section 14-3-330(2)(a).[1] Upon Respondent's failures to "demonstrate" as required, Appellant had the right to continue in his religious freedom, to speak freely about his religious beliefs, and also the right to be free of the substantial burden of defending against further unwarranted prosecution resulting from his exercise of that religious freedom. Since the very moment that Respondent failed to "demonstrate", religious persecution has been foisted upon Appellant, with Appellant's loss of rights being immediate upon the orders being made. Therefore, because these orders issued by the municipal court have already been "executed", these orders effectively prevent a judgment from which an appeal might be taken at some later date, and immediate appeal under S.C. Code Ann. § 14-3-330 is appropriate.

In *Hagood*, the South Carolina Supreme Court considered the importance of the party's right to counsel of his choice in an adversarial system, the importance of the attorney-client relationship, the unfairness in requiring a party to pay another attorney to become familiar with a case and repeat preparatory actions already completed by the preferred attorney, and the fact that an appeal after final judgment would not adequately

[1] In *Hagood*, et South Carolina Supreme Court concluded, "The right to be represented by an attorney of ones choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case. Such an order implicitly falls within the statutory definition of a substantial right under Section 14-3-330(2)(a)."

protect a party's interests. That Court concluded, "the right to be represented by ones preferred attorney is closely related to the right to a particular mode of trial, a well-established substantial right. The right to be represented by an attorney of ones choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case. Such an order implicitly falls within the statutory definition of a substantial right under Section 14-3-330(2)(a)." *Id.*

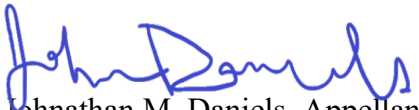
In this present case before this Court, both Appellant's right to free exercise of religion and his right to a trial by jury are well-established substantial rights. In making it's determination of whether the order challenged in *Hagood* was immediately appealable, the South Carolina Supreme Court considered a party's right to counsel of his choice, the attorney-client relationship, and even the unfairness in requiring a party to pay another attorney to become familiar with a case and repeat preparatory actions. Here now, this Court should consider Appellant's Constitutional rights to be free from unlawful substantial religious burden and oppression by the state, and to have a trial by jury as demanded. Appellant has not waived any of his rights, and has fought tooth and nail to defend and maintain his protected rights.

B. Conclusion.

It is an undeniable fact that an appeal after final judgment in this case would not adequately protect Appellant's Constitutionally protected interests in the free exercise of his religion or his right to a jury trial. Therefore, as in *Hagood*, this Court should

determine that the orders challenged in this case are immediately appealable and eligible for the relief requested from this Court.

May 29th, 2024



Johnathan M. Daniels, Appellant, Pro Se
P.O. Box 30651
Columbia, South Carolina 29230
Phone: (803) 770-8863
Email: chesssetbyj@yahoo.com