

The South Carolina Court of Appeals

H. Marshall Hoyler, Appellant,

v.

State of South Carolina, Merry Land Properties, LLC,
and Nancy Deering Carey, Respondents.

Appellate Case No. 2013-000647

ORDER

Appellant appeals the master-in-equity's order denying Appellant's motion for reconsideration and granting Respondent Nancy Deering Carey's motion to intervene. Respondents State of South Carolina (State) and Merry Land Properties filed motions to dismiss, arguing the order is not immediately appealable. Appellant filed a return, arguing the order is immediately appealable because the master lacked subject matter jurisdiction. The State and Merry Land filed replies.

In 2007, Appellant filed an action against the State and sought a declaratory judgment regarding title to marshland. The master issued an order joining thirty-two property owners as defendants in the action because, among other reasons, their property rights would be impacted by the master's decision. Appellant then filed a motion to reconsider and also served and filed a notice of appeal. This court dismissed the appeal as not immediately appealable and subsequently denied Appellant's petition for rehearing. The supreme court denied Appellant's petition for writ of certiorari in 2012. On remand, the master addressed the still-unresolved motion to reconsider the joinder order. The master denied the motion to reconsider and granted Carey's motion to intervene, and this appeal followed.

After careful consideration of the parties' filings and case law, we find the underlying order is not immediately appealable. "[A]n order making a third party a defendant is not immediately appealable." *Duncan v. Gov't Employees Ins. Co.*, 331 S.C. 484, 485, 449 S.E.2d 580, 580 (1994) (citing *Edgefield Cnty. Hosp.*

Trustees v. Cannon Const. & Supply Co., 273 S.C. 500, 501, 257 S.E.2d 501, 501 (1979)). "[A]n order granting a motion to intervene is not immediately appealable." *Id.* at 486, 449 S.E.2d at 580.

In his return, Appellant seeks to argue for the first time that the master lacked subject matter jurisdiction under section 48-39-220 of the South Carolina Code (2008). Although lack of subject matter jurisdiction may be raised at any time, including on appeal, Appellant's argument does not change the nature of the underlying order, which is not immediately appealable. *See* S.C. Code Ann. § 14-3-330(1), (2)(a) (1976 & Supp. 2012) (providing this court has appellate jurisdiction to review final judgments and interlocutory orders (1) involving the merits or (2) affecting a substantial right when the order "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action"). Accordingly, we grant Respondents' motions to dismiss.



FOR THE COURT

Columbia, South Carolina

cc: Jeff D. Griffith, III
Richard Lee Whitt
J. Emory Smith, Jr.
Mary Duncan Shahid
Stephen Peterson Groves, Sr.
Alysoun M. Eversole

FILED
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