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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court 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 Professional of Columbia, LLC, Respondent,

v.

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

RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

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QUESTION PRESENTED

Did the Court of Appeals err in dismissing the LifePoint's appeal of a motion to dismiss pursuant to Rule 12(b)(2) as interlocutory where the May 23, 2023 Order did not finally end the case, but rather upheld the prior orders vacating the arbitration award and remanding the case for further arbitration proceedings?

STATEMENT OF THE CASE

Respondent Anesthesiology Professionals of Columbia, LLC ("APC") entered into an agreement effective April 15, 2014, with Sisters of Charity Providence Hospitals to provide general anesthesiology services at the hospital ("the Agreement"). Petitioners Lifepoint Health d/b/a Providence Health and Providence Hospital LLC (collectively "LifePoint") subsequently purchased the hospital operated by the Sisters of Charity in Richland County and received an assignment of the Agreement. A dispute arose between Respondent and LifePoint regarding Respondent's demand for 180 days of post-termination compensation provided under Section 7.2 of the Agreement. Unable to resolve this dispute with LifePoint, and pursuant to the terms of the Agreement, Respondent filed a demand for arbitration with the American Health Lawyers Association ("AHLA") in accordance with Article 23 of the Agreement on January 25, 2018.

On or about April 30, 2018, LifePoint appeared through retained counsel, Erin Stuckey of Nelson Mullins. An evidentiary hearing was conducted by the selected AHLA arbitrator in Richland County on March 12, 2019, and March 28, 2019. LifePoint was represented by Ms. Stuckey and Mr. Chris Daniels of Nelson Mullins at the arbitration hearing.

On May 15, 2019, the Arbitrator issued a Final Determination and Order ("the Arbitration Award") finding that although the parties intended Respondent APC receive the compensation it sought under the Agreement, the arbitrator would not award the same having determined Section 7.2 was unenforceable because it violated the federal anti-referral law known as Stark.

A. Petition to Vacate the Award

On August 12, 2019, Respondent filed a Petition to Vacate the Arbitration Award (the "Petition") pursuant to S.C. Code Ann. § 15-48-130. Upon filing the Petition, Respondent's counsel corresponded with counsel for LifePoint, Ms. Stuckey – who had represented LifePoint throughout the arbitration – to inquire if she was authorized to accept service of the Petition on behalf of her clients. Specifically, counsel for Respondent stated:

> Dear Erin:
>
> I am providing you a courtesy copy of the Petition to Vacate the arbitration award in the above case that we filed on August 12, 2019, in the Richland County Court of Common Pleas.
>
> I am requesting that you accept service on behalf of the [Appellants] in this action. To this end, I am also enclosing an acceptance of service form for you to execute on behalf of your clients. If you are authorized, please execute the acceptance forms and return to me at your earliest convenience. **If you are not able to do so, please notify me immediately so that we may effectuate service**.

(May 31, 2023 Order, App'x at 8) (emphasis added).

Ms. Stuckey replied to the August 19, 2019, correspondence via her Nelson Mullins email account on August 20, 2019, stating, "wanted to let you know that I received this and **am checking with my client** regarding acceptance of service." (Id.) (emphasis added). On August 27, 2019, Ms. Stuckey further responded via the same email, "**I can accept.** I am out of the office this afternoon but I will sign and return to you tomorrow." (Id.) (emphasis added).

On September 3, 2019, Ms. Stuckey executed and mailed an acceptance of service form on behalf of LifePoint to counsel for Respondent. (Id.) The acceptance of service form states, "I Erin Stuckey hereby accept service and acknowledge receipt of Petitioner's Petition to Vacate Arbitration Award pursuant to S.C. Code Ann. § 15-48-130 on behalf of Lifepoint Health d/b/a Providence Hospital and Providence Hospital LLC in connection with the above captioned matter

on this 3rd day of September, 2019." (App'x at 8-9.) The acceptance of service form was filed with the lower court on September 10, 2019. (Id. at 9.)

Thereafter, Ms. Stuckey, on behalf of LifePoint, engaged in the joint submission of a Consent Scheduling Order for Briefing that was filed with the lower court, and also filed LifePoint's initial brief and designation of matter to be included in the record on appeal on March 24, 2021, as well as LifePoint's Final Brief in Opposition to the Petition to Vacate on June 1, 2021. (App'x at 9). At a hearing conducted by the Honorable Casey Manning on June 22, 2021, on the Motion to Reconsider, Ms. Stuckey appeared and argued on behalf of LifePoint. At the conclusion of the hearing, Ms. Stuckey, on behalf of LifePoint, submitted a proposed order to chambers. (Id.)

On August 4, 2021, the lower court adopted Respondent APC's proposed order in toto, vacating the Arbitration Award and ordering a new hearing be held in arbitration before a different arbitrator ("August 2021 Order and Final Judgment"). *See* (Aug. 4, 2021 Order & Final Judgment, App'x at 19-27). However, prior to filing the same, the word "Proposed" was not removed from the caption of the filed version of the August 2021 Order and Final Judgment. (Id. at 19)*; see also* (May 2023 Order, App'x at 9.)

In response to this order Ms. Stucky, on behalf of LifePoint, thereafter filed a Motion to Reconsider, to Alter or Amend, and to Correct a Clerical Mistake ("Motion to Reconsider") the August 2021 Order and Final Judgment pursuant to Rules 59(e) and 60(a), SCRCP, on August 16, 2021. (May 2023 Order, App'x at 9.) Among the relief sought in the Motion to Reconsider, was a request to remove the word "Proposed" from the caption of the August 2021 Order and Final Judgment, thereby correcting what LifePoint described as a "scrivener/clerical error" contained in the same. (Id.)

Thereafter, the lower court notified the parties it was denying the same and requested

Respondent APC submit a proposed order reflecting his ruling and correcting the scrivener's error. The order ("November 2021 Order"), including Exhibit A which omitted "proposed" from the caption of the original August 2021 Order and Final Judgment, submitted by Respondent to the lower court, with Ms. Stuckey copied, was adopted in toto by the lower court and thereafter sent to the Clerk of Court for filing. (App'x at 9-10.) Notably, the filed November 29, 2021, Order directed the Clerk of Court to file Exhibit A as a replacement for the original, and instructed the Clerk of Court that the replacement "shall retain the original filing date of August 4, 2021." *See* (Nov. 29, 2021 Order, App'x at 28); *see also* (May 2023 Order, App'x at 10.) Exhibit A, the replacement order, was never filed by the Clerk of Court despite Judge Manning's instruction. *See* (May 2023 Order, App'x at 10.)

Following the expiration of the thirty-day window in which LifePoint could have appealed the August 2021 Order and Final Judgement and the November 2021 Order denying their Motion to Reconsider, Respondent reinitiated proceedings with the AHLA to begin the process of selecting a new arbitrator and conducting a second arbitration.

B. Motion to Dismiss

On June 10, 2022, over two years after Nelson Mullins made its appearance on behalf of LifePoint in the arbitration proceedings and had continued, through Ms. Stuckey, to litigate the appeal of the Arbitration Award in the lower court, LifePoint filed a motion to dismiss claiming lack of personal jurisdiction (Rule 12(b)(2), SCRCP) and absence of a final order and judgment on the Petition ("Motion to Dismiss"). Following this filing, the AHLA informed the parties it was staying arbitration until resolution of this motion. The parties thereafter submitted briefing to the lower court regarding LifePoint's arguments contained in the motion to dismiss: (1) improper service of the Petition; (2) Ms. Stuckey's lack of actual or implied authority to accept service of

the Petition on behalf of LifePoint; and (3) whether the August 2021 Order on file with the clerk containing the word "proposed" constituted a final order from which LifePoint could appeal. *See* (May 2023 Order, App'x at 10.)

On April 18, 2023, the lower court heard argument from the parties on the Motion to Dismiss. (Id. at 5.) Following the hearing, the parties were informed that the Honorable Daniel Coble was denying the same and he requested Respondent APC prepare a draft order. Counsel for Respondent submitted a proposed order, and LifePoint was afforded an opportunity to submit proposed edits to Respondent's order. Having considered Respondent's submission, as well as the proposed edits submitted by LifePoint, the court issued the May 2023 Order containing the court's determination that,

> [Appellants] voluntarily entered an appearance in this action through the actions of its counsel, Nelson Mullins, who executed a written acceptance of service on behalf of [Appellants], submitted filings in this Court, and argued the appeal from the arbitrator's ruling before this Court. Additionally, the Court is unpersuaded by Appellants' contention that a final order has not been entered on the Petition based on an argument that is tantamount to a scrivener's error.

(Id. at 5-6.) Following receipt of this order, Respondent reinitiated the proceeding in arbitration.

C. Notice of Appeal & Petition for Rehearing

On June 30, 2023, Nelson Mullins - *on behalf of LifePoint*- filed the Notice of Appeal and paid the requisite filing fee. (Notice of Appeal, App'x at 1-3.) Moreover, Ms. Stuckey, who now works for another firm, was served with the Notice of Appeal as *current counsel for LifePoint*. *See* (NOA Proof of Service at 1-2, App. No. 2023-001058, filed June 30, 2023.) Thus, the same firm (Nelson Mullins) and attorney (Ms. Stuckey) that LifePoint claims did not have agency to represent them in the Petition in 2021 before the lower court continue to act on behalf of LifePoint in this appeal.

Following receipt of the Notice of Appeal, the Court requested the parties submit briefing

on the appealability of the orders set forth in the Notice of Appeal. (App'x at 31-32). Notably, in their memorandum to the Court of Appeals, LifePoint for the first time presented argument that the Motion to Dismiss pursuant to Rule 12(b)(2) should be treated and viewed by the Court of Appeals as a Motion to Set Aside the Order under Rule 60(b)(4). (LifePoint Memo, App'x at 39-40). By Order dated August 29, 2023, the Court of Appeals dismissed the Appeal. (App'x at 139.) LifePoint subsequently filed a Petition for Rehearing with the Court of Appeals and again argued the appeal should be treated as the appeal of the denial of a Rule 60(b)(4) motion. (Pet. Rehearing, App'x at 140-149.) The Court of Appeals did not request a response from Respondent and by Order dated March 18, 2024, denied the Petition for Rehearing. (App'x at 167-168.) LifePoint thereafter filed the present Writ for Certiorari ("Writ").

ARGUMENT

The Court should deny the Writ because the orders LifePoint seeks to appeal are not presently appealable, and therefore, dismissal was proper. There are no novel legal issues present, and the Court of Appeals' unanimous ruling is not in conflict with other decisions of the Supreme Court or Court of Appeals. The May 31, 2023, Order denying LifePoint's Motion to Dismiss the arbitration proceedings is an interlocutory order not subject to immediate appeal. *See Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (holding the denial of a motion to dismiss under Rule 12(b)(2), SCRCP, is interlocutory and not directly appealable). Additionally, the Writ should be denied because LifePoint missed the thirty-day window within which to appeal the August 2021, Order and granting APC's Petition to Vacate the Arbitration Award and the November 2021, Order denying Lifepoint's Motion to Reconsider. Rule 203(b)(1), SCACR. Accordingly, Respondent APC respectfully requests the Court deny the Writ.

1. The May 2023 Order is interlocutory and is not immediately appealable; therefore, the Court must dismiss this appeal for lack of appellate jurisdiction.

Under S.C. Code Ann. § 14-3-330, only certain interlocutory orders are immediately appealable: those that involve the merits of the case or affect a substantial right. *Richardson v. Halcyon Real Est. Servs., LLP,* 439 S.C. 419, 425, 887 S.E.2d 153, 156 (Ct. App. 2023) (citing *Burkey v. Noce*, 398 S.C. 35, 37, 726 S.E.2d 229, 230 (Ct. App. 2012)); *see also Tatnall v. Gardner*, 350 S.C. 135, 137, 564 S.E.2d 377, 379 (Ct. App. 2002) ("Absent some 'specialized statute,' this Court is not permitted to hear a case on appeal not comporting with the requirements of [section 14-3-330].") "'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.'" *Richardson*, 439 S.C. at 425, 887 S.E.2d at 156 (quoting *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005)). The provisions of section 14-3-330 should be narrowly construed when determining whether an interlocutory order is immediately appealable, and orders issued before or during trial are generally not immediately appealable. *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

The Court should deny the Writ because the May 2023 Order denying the Motion to Dismiss for lack of personal jurisdiction is an interlocutory order that is not immediately appealable under S.C. Code Ann. § 14-3-330. *Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780. Moreover, examination of the facts in the present case illustrates that the May 2023 Order denying relief under Rule 12(b)(2), SCRCP, and rejecting LifePoint's contention that the scrivener's error in the caption of the August 2021 Order and Final Judgment invalidated its finality is not immediately appealable under section 14-3-330. The May 2023 Order does not conclusively determine the validity of any of LifePoint's counterclaims and defenses in this matter. *See Richardson*, 439 S.C. at 426, 887 S.E.2d at 157 (citing *Watson v. Underwood*, 407 S.C. 443,

458, 756 S.E.2d 155, 163 (Ct. App. 2014)); *see also Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780 (holding that party denied dismissal under Rule 12 "has not arrived at the end of the road,…has forfeited nothing, [and] must simply continue to trial.") Nor does it affect a substantial right of LifePoint. *Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780, n.4 (citing *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 402 S.E.2d 482 (1991) (finding the avoidance of trial did not constitute the impairment of a substantial right when examining the denial of a motion to dismiss for lack of jurisdiction)). Rather, following a rehearing in arbitration and entry of an award, LifePoint will still have the option to appeal the May 2023 Order if they so choose because the underlying case has not been dismissed but for all intents and purposes is stayed pending a rehearing before the AHLA. Thus, it is clear that the May 2023 Order is an interlocutory order that does not finally end the case, and thus, "'no immediate appeal is allowed.'" *Richardson*, 439 S.C. at 425, 887 S.E.2d at 156 (quoting *Hagood*, 362 S.C. at 195, 607 S.E.2d at 709.).

It is an inescapable conclusion that the May 23 Order is not final, nor an appealable interlocutory order because it does not "'finally determine some substantial matter forming the whole or a part of some cause of action or defense....' " *Mid–State Distributors, Inc.*, 310 S.C. at 334, 426 S.E.2d at 780 (quoting *Jefferson v. Gene's Used Cars, Inc.,* 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)). Notably, such result does not change now that LifePoint couches the Motion to Dismiss pursuant to Rule 12(b)(2) as a motion to "in essence set aside" the August and November 2021 Orders under Rule 60(b).[1] Regardless of the title given to the motion, the fact remains that the May 23 Order is not a final order constituting an ultimate decision on the merits.[2] *See also*

[1] Notably, LifePoint argued the August 2021 Order was not a "final" order because of the word "Proposed" in the caption, (May 31, 2023 Order, App'x at 6, 15-16), yet now they posit "substance over form" should be the focus of the Court (Pet. for Writ at 4, 8, 14-16).

[2] Moreover, the reason a Rule 60, SCRCP, motion was not filed was because Judge Manning's 2021 Orders did not end the case, but rather remanded the case to arbitration with instructions for

Charlotte-Mecklenburg Hosp. Authority v. S.C. Dep't of Health & Envir. Serv., 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) ("A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.") This is not a novel issue before the Court, but rather a cut and dry interlocutory order that is not immediately appealable.

2. LifePoint failed to timely appeal the August 2021 Order and Final Judgment and the November 2021 Final Order, thereby depriving the appellate court of jurisdiction.

"A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." Rule 203(a)-(b)(1), SCACR. A timely motion to alter or amend the judgment, however, tolls this thirty-day period until "receipt of written notice of entry of the order granting or denying such motion." Id. "The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) (citing *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207(1985)).

In the present case, the lower court granted Respondent's Petition to vacate the arbitration award and remanded the matter back to AHLA for a rehearing before a different arbitrator. *See* (Aug. 2021 Order, App'x at 25, ¶ 29.) Within ten days of receiving notice that the lower court granted the Petition, LifePoint filed their Motion to Reconsider. *See* (May 2023 Order, App'x at 9.) The parties were notified on November 29, 2021, of the lower court's denial of the Motion to Reconsider. Upon receipt of such notice, LifePoint had thirty days within which to serve APC

a new hearing. LifePoint will have the right to appeal the subsequent arbitration award should they desire.

with a notice of appeal of the final orders. Rule 203(b)(1), SCACR. LifePoint did not appeal either 2021 order within this window of time, and the case was appropriately resubmitted to arbitration before the AHLA. Having failed to appeal these orders within the time afforded by Rule 203(b)(1), the Court does not have jurisdiction to entertain an appeal of these orders, irrespective of the label that LifePoint seeks to apply to its effort to resurrect an appeal of the 2021 orders.

Finally, the Court should reject LifePoint's attempt to get around this failure to timely appeal by arguing that a denial of LifePoint's ability to appeal the orders infringes on their due process rights. The lower court properly determined that Nelson Mullins had apparent authority to accept service of the Petition on behalf of Lifepoint. Specifically, in the May 2023 Order Judge Coble held:

> It is undisputed that Respondents held Nelson Mullins out as its counsel to Petitioner during all relevant times over the course of the contract dispute with Petitioner and during arbitration before the AHLA. Neither Petitioner, nor its counsel, were ever informed by Respondents that Nelson Mullins' representation was solely limited to the arbitration proceedings or that Nelson Mullins ceased representing Respondents upon the issuance of the arbitration award. Despite an opportunity to do so, Respondents have not provided the Court with any documentation between Respondents and Nelson Mullins indicating Nelson Mullins' representation of Respondents did in fact cease following the arbitration award or that Petitioner was ever informed that Nelson Mullins was no longer representing Respondents.
>
> Moreover, absent the conveyance of such information, Rule 4.2, SCRE, prohibits Petitioner's counsel from communicating with Respondents – parties Petitioner and its counsel knew to be represented by Nelson Mullins. Accordingly, Petitioner, through its counsel, was ethically required to, and did, communicate with Nelson Mullins regarding the Petition. Petitioner detrimentally relied upon this representation by not serving Respondents' registered agent and instead accepting Nelson Mullins' acknowledgment of service as sufficient. Under these circumstances, Nelson Mullins was Respondents' apparent agent for purposes of Petitioner's appeal from the arbitrator's ruling and Respondents are thereby bound by Nelson Mullins' actions.

(App'x at 12-13.) Having found Nelson Mullins was LifePoint's agent, the lower court correctly held that it had personal jurisdiction over Lifepoint.

> As is evident from the correspondence surrounding the service of process of the Petition between counsel for Petitioner and Respondents, as well as the acceptance of service on file, Nelson Mullins entered a general appearance on behalf of Respondents in this action without reservation. Nelson Mullins litigated this Petition *for over two years*, causing this Court to expend limited and valuable resources and costing Petitioner significant fees and expenses. Yet, Respondents now claim the Petition should be dismissed because they did not specifically retain Nelson Mullins to represent them in this appeal from the arbitration proceeding. *Importantly*, Respondents do not claim that they discharged Nelson Mullins prior to the Court issuing the August 4, 2019 Order and Final Judgment vacating the arbitrator's ruling. Nor do Respondents contend that they would not have retained Nelson Mullins had they been informed of this appeal.
>
> Because Petitioner and its counsel have dealt with Respondents' attorneys reasonably, in good faith, and without being provided any indication that Nelson Mullins' actions were not authorized, Respondents are estopped from denying that Nelson Mullins was their agent for purposes of this litigation. *Id.* Respondents' sole remedy, if in fact Nelson Mullins' actions were not authorized, is to assert a claim against its attorneys. *Lord Jeff Knitting Co. v. Mills*, 281 S.C. 374, 377, 315 S.E.2d 377, 379 (Ct. App. 1984) ("[I]f the attorney has apparent authority to confess, or consent to, judgment, it is ordinarily binding and conclusive on the client, notwithstanding an actual lack of authority unknown to the court or the opposing party, the sole remedy in such a case being against the attorney."); *Motley v. Williams*, 374 S.C. 107, 112, 647 S.E.2d 244, 247 (Ct. App. 2007) ("Any communication failure or mistake on the part of an attorney is directly attributable to his client"). Respondents' claim that Nelson Mullins lacked authority to accept service of the Petition and enter an appearance in this action on their behalf does not provide a basis to void two years of litigation and vacate this Court's final order.

(Id. at 14-15) (emphasis in original). It is clear from Judge Coble's order – crafted based on the extensive record before him - that LifePoint was not deprived of due process. To the extent the corporate officers of LifePoint take issue with the status updates provided to them during the life cycle of the litigation, that is a matter appropriately directed at Nelson Mullins, their agent, and does not constitute a novel question of law for the Court. Accordingly, the Court of Appeals properly denied LifePoint's appeal, thereby prohibiting LifePoint from reviving the opportunity to appeal the August 2021 Order and Final Judgment granting the Petition to vacate the award and

the November 2021 Order denying LifePoint's Motion to Reconsider.

CONCLUSION

Based on the foregoing, Respondent respectfully requests the Court deny the Writ because (1) the May 2023 Order is an interlocutory order and not immediately appealable and (2) LifePoint's appeal of the August 2021 Order and Final Judgement and November 2021 Order are untimely.

Respectfully submitted,

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