

RECEIVED

Jul 01 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

James C. Campbell, Clerk of Court

Circuit Court Case No. 2024-CP-43-00703
Appellate Case No. 2024-001073

Christol Morton,.....Respondent,

v.

Carolina Cutting Coring, LLC and Sean Michael Shaffer, Jr.,..... Appellants.

**MOTION TO DISMISS APPEAL
AND TO EXPEDITE RULING**

Pursuant to Rule 240, SCACR, Respondent Christol Morton moves the Court to dismiss the appeal in this matter. The order under appeal is not an appealable intermediate or interlocutory order pursuant to S.C. Code Ann. § 14-3-330 (2017). Furthermore, on June 24, 2024, Appellants made a motion pursuant to Rule 59, SCRCP, directed at the order on appeal, and there has been no final ruling on that motion. The Court should expedite a ruling on this Motion and dismiss this improper appeal.

DISCUSSION

Both Appellants are in default. As such, they waived any right to a jury trial. *Gossett v. Gilliam*, 317 S.C. 82, 87, 452 S.E.2d 6, 9 (Ct. App. 1994) (“Where a party is in default, the right to a jury trial is waived pursuant to Rule 38(d), SCRCP.”). Thus, a jury trial is not a mode of trial

to which they are entitled as a matter of right. *Compare Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (party must appeal interlocutory order that deprives party of a mode of trial to which the party is entitled as a matter of right).

Under the current version of Rule 53(b), SCRCP, “In...a default case..., some or all of the causes of action in a case may be referred to a ... special referee by order of ... the clerk of court.” At one time Rule 53 provided “[t]he court in which any action is pending may appoint a special master for that action; *but where practicable the master appointed by statute for that county, or for that court, or for the particular type of action involved shall act.*” (Emphasis added). However, the Court removed that language in the 1999 rewrite of Rule 53, which the legislature accepted¹, and a 2002 Amendment replaced the first two sentences of Rule 53(b) to reaffirm the Clerk of Court may refer matters in default. *Re: Amendments to the SCRCP*, Order (S.C. Sup. Ct. filed June 18, 2002). *See also Re: Orders of Reference in Foreclosure Cases*, Order (S.C. Sup. Ct. filed July 15, 2010) (ordering clerks of court to sign orders of reference in, among other matters, default cases).

¹ See S.C. Const. art. V, Section 4A (“All rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court must be submitted by the Supreme Court to the Judiciary Committee of each House of the General Assembly during a regular session, but not later than the first day of February during each session. Such rules or amendments shall become effective ninety calendar days after submission unless disapproved by concurrent resolution of the General Assembly, with the concurrence of three-fifths of the members of each House present and voting.”).

There is a presumption that the Court (and hence the legislature, to whom the Court submitted the rule amendment²) meant something by this amendment to Rule 53, SCRPC. *See, e.g., Key Corporate Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 60, 644 S.E.2d 675, 678 (2007) (“an amendment which materially changes the terminology of a statute...raises a presumption that a departure from the original law was intended”); *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003) (“In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.”). In this case, the Court removed the operative language and thus its preclusive effect for appointing a special referee in a county that has a standing Master in Equity.

It is true that S.C. Code Ann. § 14-11-60 (1989) provides:

In case of a vacancy in the office of master-in-equity or in case of the disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity. The special referee must be compensated by the parties involved in the action.

Section 14-11-60, however, does not conflict with Rule 53(b). Instead, the statute provides guidance as to what to do in those situations where there is no available master in equity due to a vacancy or other stated reason. That is, the statute does not preclude the appointment of a special referee in any appropriate case regardless of whether there is a sitting master in that county. Instead, the statute is designed to deal with the “empty office” situation only. By its terms that

² The Court should presume the General Assembly knew the existing law when it approved the amendments to Rule 53. *Williams v. Government Employees Ins. Co.*, 409 S.C. 586, 602, 762 S.E.2d 705, 714 (2014) (“The General Assembly is presumed to know the law...”).

first clause in the statute is not an exclusive requirement for appointment a special referee.³ Rule 53(b) is wholly consistent with Section 14-11-60.

Even so, insofar as there may be a conflict between the statute and the Rule (and there is no such conflict), the legislature enacted the statute as part of the 1902 Code of Laws, the statute remained unchanged until 1979, and the legislature last amended the statute in 1989. These actions predate the amendments to Rule 53(b) in its current form, which the Supreme Court submitted to the General Assembly for its approval. *E.g.*, *Williams v. Town of Hilton Head Island, S.C.*, 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993) (“[T]he Last Legislative Expression Rule requires that in instances where it is not possible to harmonize two sections of a statute, the later legislation supersedes the earlier enactment.”).

³ This Court recently addressed this situation in an unpublished opinion. *Rickenbaker v. Schumacher Homes of SC*, 2021-UP-243 (S.C. Ct. App. filed June 30, 2021). Although the opinion has no precedential value, Rule 268(d)(2), SCACR, the Court’s analysis is persuasive:

[S]ection 15-31-150 of the South Carolina Code (Supp. 2020) provides that section 14-11-60 of the South Carolina Code (2017) does not preclude a circuit court from appointing a special referee, and Rule 53(b) explicitly states that a special referee may be appointed by order of the circuit court in default cases. *See* § 15-31-150 (“The provisions of §§ 14-2-50, 14-11-10 to 14-11-90; 14-11-310; 15-31-10 to 15-31-80; 15-39-380 to 15-39-400, and 15-39-490 shall not be construed as preventing a circuit court from appointing a special referee in the manner as provided in § 15-31-140.[2] ... Special referees shall have the same authority as masters-in-equity and shall be accountable to the appointing court.”). Thus, the special referee had subject matter jurisdiction over the hearing and the power to conduct the hearing in the same manner as a circuit court. *See Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993) (“When a case is referred to a [special referee], Rule 53(c)[, SCRC], gives the [special referee] the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers.”).

In addition, Appellants' pending Rule 59 motion stays the time to appeal under Rule 203, SCACR. It therefore creates a situation where there is not yet a final order to appeal, since the court could grant the Appellants' motion. There is no provision of Section 14-3-330 which would permit this type of interlocutory or intermediate appeal.

Finally, as for whether Plaintiff's demand for a jury trial in the Complaint precluded a reference even where Defendants are in default, the express language of Rule 38(d), SCRCR, belies that argument. The Rule provides "A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, *except where an opposing party is in default under Rule 55(a).*" (Emphasis added). By seeking a reference of this default matter, Plaintiff waived her right to a jury trial; Defendants' consent was not required. Accordingly, Appellants' arguments in support of their Rule 59 Motion are not legally correct.

CONCLUSION

Appellants filed this Notice of Appeal solely to delay proceedings below. The Court should grant this Motion and dismiss this appeal. Respondent further requests that the Court expedite a ruling on this Motion to Dismiss.

Respectfully submitted,

/s/ John S. Nichols

John S. Nichols
SC Bar No. 4210
Bluestein Thompson Sullivan, LLC
PO Box 7965
Columbia, SC 29202
(803) 779-7599
john@bluesteinattorneys.com

Brendan J. Green
SC Bar No. 104648
Richardson Thomas, LLC
1513 Hampton Street
Columbia, SC 29201
(803) 281-8150
brendan@richardsonthomas.com

Shaquana Monique Cuttino
SC Bar No. 104370
The Cuttino Law Firm, LLC
1511 Gregg Street
Columbia, SC 20201
(803) 542-7455
thecuttinolawfirm@gmail.com

Counsel for Respondent

July 1, 2024

RECEIVED

Jul 01 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

James C. Campbell, Clerk of Court

Circuit Court Case No. 2024-CP-43-00703
Appellate Case No. 2024-001073

Christol Morton,.....Respondent,

v.

Carolina Cutting Coring, LLC and Sean Michael Shaffer, Jr.,..... Appellants.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss and for Expedited Ruling upon Appellants Carolina Cutting Coring, LLC and Sean Michael Shaffer, Jr. by electronic mail on July 1, 2024, addressed to their attorney of record as follows:

Charles S. Gwynne, Jr.
Post Office Box 1473
Columbia, SC 29202
cgwynne@turnerpadget.com

July 1, 2024

Meredith Brown
Legal Assistant to John S. Nichols, Esq

Meredith Brown

From: Meredith Brown
Sent: Monday, July 1, 2024 4:59 PM
To: cgwynne@turnerpadget.com
Cc: John Nichols
Subject: Christol Morton v Carolina Cutting Coring and Sean Michael Shaffer, Jr Case No: 2024-001073
Attachments: 2024.07.01-Motion to Dismiss and to Expedite Ruling.pdf

Mr. Gwynne,

Please find enclosed the Motion to Dismiss and for Expedited Ruling upon Appellants Carolina Cutting Coring, LLC and Sean Michael Shaffer, Jr.

Thank you,
Meredith Brown

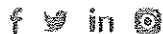


MEREDITH BROWN OFFICE MANAGER

1614 TAYLOR STREET | PO BOX 7965
COLUMBIA, SOUTH CAROLINA 29202
O: 803.779.7599 F: 803.771.8097

MEREDITH@BLUESTEINATTORNEYS.COM

BLUESTEINATTORNEYS.COM



NOTICE: This e-mail is confidential and may contain information which is legally privileged or otherwise exempt from disclosure. If you received this message in error, please notify the sender and delete this message from your device.

July 1, 2024

The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED**Jul 01 2024****SC Court of Appeals**

RE: *Christol Morton, Respondent, v. Carolina Cutting Coring, LLC, and Sean Michael Shaffer, Jr., Appellants*
Case No. 2024-CP-43-00703
Appellate Case No. 2024-001073

Dear Ms. Kitchings:

I am assisting Respondent's Counsel in the above matter. Please note my appearance for the record.

Enclosed for filing is Respondent's Motion to Dismiss and to Expedite Ruling in the above case. I have also enclosed proof of service of this Motion upon Appellants. Pursuant to paragraph (c) of *Re: Methods of Electronic Filing and Service under Rule 262, SCACR*, Order (S.C. Sup. Ct. filed April 24, 2024), we shall deliver a check for the filing fee to you within five days of this filing.

Thank you for your attention to this matter. Please let me know if you need anything further.

With kind personal regards,

Sincerely,

/s/ John S. Nichols

John S. Nichols
SC Bar No. 4210
Bluestein Thompson Sullivan, LLC
PO Box 7965
Columbia, SC 29202
(803) 779-7599
john@bluesteinattorneys.com

cc:

Brendan J. Green, Esq.

Shaquana Monique Cuttino, Esq.

Charles S. Gwynne, Jr., Esq.