

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
James C. Campbell, Sumter County 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.

**APPELLANT’S RETURN TO RESPONDENT’S
MOTION TO DISMISS APPEAL AND TO EXPEDITE RULING**

Pursuant to Rule 240(e), SCACR, Appellants Carolina Cutting Coring, LLC and Sean Michael Shaffer, Jr., respectfully submit this Return to Respondent’s Motion to Dismiss Appeal and to Expedite Ruling (“Motion”).

Respondent appears to make the followings arguments in her Motion: 1) the Order of Reference is not an appealable intermediate or interlocutory order pursuant to S.C. Code Ann. § 14-3-330 (2017); and 2) due to the fact that Appellants filed a motion for reconsideration pursuant to Rule 59, SCRCR, and that motion has not been heard yet, this appeal is not proper. The Respondent’s Motion lacks merit and should be dismissed.

RELEVANT FACTS

The following facts are undisputed. On April 22, 2024, Respondent filed a Summons and Complaint related to a motor vehicle accident that occurred on September 29, 2022, and demanded a jury trial. On June 12, 2024, the Clerk of Court for Sumter County signed an Order of Entry of Default and an Order of Referral to Special Referee. This Order of Reference was submitted directly to the Clerk of Court by the Respondent's counsel. On June 13, 2024, the undersigned made a notice of appearance in the case for Appellants and filed a Motion to Set Aside the Default and a Motion to Reconsider and Vacate the Order of Referral to Special Referee under SCRCP 59(e). On June 20, 2024, Appellants filed a Supplemental 59(e) Motion to Vacate the Order of Reference to Special Referee. This case is pending in Sumter County, which has a sitting Master-In-Equity and had one at the time the case was referred to the Special Referee.

ARGUMENT

a. Appealability of an Order of Reference

An Order of Reference is immediately appealable because it affects the mode of trial. The South Carolina Supreme Court “has held that orders affecting the mode of trial affect substantial rights under S.C. Code Ann. § 14–3–330(2) (1977) and must, therefore, be appealed immediately.” *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997). “Moreover, the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue.” *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997). See *Edwards v. Timmons*, 297 S.C. 314, 377 S.E.2d 97 (1988) (where appellant did not appeal the order referring matter to master in equity, she could not complain after final order that she was deprived of her right to a trial by jury).

It is clear that the law in South Carolina is that Orders of Reference must be immediately appealed or that right to appeal will be waived.

Respondent counters this case law by arguing in her Motion that because Appellants are in default they have lost their rights to appeal the Order of Reference. A defaulting party is “deemed to have admitted the truth of the plaintiff’s allegations and to have conceded liability.” *Roche v. Young Bros., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). A defaulting party does not lose all its rights to litigate a case. There is no case law to support Respondent’s position that because Appellants are in default they have lost their “substantial right” to challenge the mode of trial. The case cited in Respondent’s Motion, *Compare Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985), simply does not support Respondent’s argument.

b. Rule 53, SCRCP, does not allow Clerk of Courts to appoint Special Referees

In her Motion, Respondent attempts to argue the merits of the case by addressing whether Rule 53, SCRCP, allows a clerk of court to appoint special referees. Appellants argue this is a matter properly addressed in the Appeal briefings and should not be a basis for the Motion to Dismiss. However, Appellants will address this argument out of an abundance of caution.

Rule 53, SCRCP and S.C. Code Ann. § 14-11-60 must be read together to determine the proper procedures to refer cases. Respondent neglects to mention in her Motion that Rule 53(a) states “(a) Master and Special Referee Defined. The term “master” means the master-in-equity for the county. **The term “special referee” means a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. § 14-11-60.**” (emphasis added). This language clearly requires special referees to be appointed in the manner that does not conflict with the requirements of S.C. Code Ann. § 14-11-60.

S.C. Code Ann. § 14-11-60 states:

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.

Respondent argues in her Motion that the South Carolina General Assembly intended to change or modify the language in S.C. Code Ann. § 14-11-60 by amending Rule 53 in 1999. However, there is no evidence to support this argument. As Respondent points out, Rule 53 was substantially revised in 1999. However, there is no indication that the legislature intended to increase the judicial rights of clerk of courts to **appoint** special referees. In fact, the clear language of the current version of Rule 53 specifically demonstrates that the General Assembly intended to incorporate the language and requirements of S.C. Code Ann. § 14-11-60 into the rule.

“If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning.” *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003). The clear and unambiguous language of S.C. Code Ann. § 14-11-60 states that the only grounds to appoint a special referee are: 1) “[i]n case of a vacancy in the office of master-in-equity, or 2) in case of the disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown...” Additionally, the appointment of that Special Referee must be done only by “the presiding circuit court judge, upon agreement of the parties...” Appellants would concede that if one of the parties is in default, their consent is not needed. However, in that case, the non-defaulting party would still need to move before a circuit court judge to have a special referee appointed.

Rule 53(b), SCRCF, states “[in] an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court.” Respondent’s position is that this language gives judicial authority to clerk of courts to refer cases directly to special referees that they can choose in **any** action where the parties consent; in a default case; or an action for foreclosure. However, before a case is referred, it must be determined if a master-in-equity **or** a special referee is the correct individual to have the case referred to. Due to the fact that Rule 53(a) incorporates the language of S.C. Code Ann. § 14-11-60, it would be improper for any case to be referred to a special referee in any county where there is a sitting master-in-equity, unless there has been a determination by a circuit court judge that a “disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown.” Appellants concede that circuit court judges have wide discretion for the reasons why a case would be referred to a special referee in a county with a sitting master-in-equity, but that determination should be made by a duly elected circuit court judge.

Additionally, while Rule 53 allows either a circuit judge or the clerk of court to refer a case to a Special Referee, it does not grant a clerk of court the power to **create** the special referee to whom the case is then referred. Section 14-11-60 alone governs the appointment of a special referee, and provides that only “the presiding circuit court judge . . . may appoint a special referee.” S.C. Code Ann. § 14-11-60. Any interpretation of Rule 53 that would allow the clerk of court to appoint a special referee, as opposed to merely referring a case to an existing special referee properly appointed by a presiding circuit court judge, is in direct conflict with the statutory requirements detailed in S.C. Code Ann. § 14-11-60. Additionally, regardless of whether the Order of Reference is issued prior to a party making an appearance in the case, an Order of Reference

issued by a clerk of court referring a matter to a special referee of Plaintiff's choosing violates Defendant's due process rights. This action by the clerk of court deprives Defendants of a hearing before a neutral and detached judicial officer.

In her Motion, Respondent cites this Court's unpublished case of *Rickenbaker v. Schumacher Homes of SC*, 2021-UP-243 (S.C. Ct. App. filed June 30, 2021) to support her position. In the *Rickenbaker* case, an Order of Reference was referred to a Special Referee in a County that had a sitting Master-In-Equity. However, in the *Rickenbaker* case, the Order of Reference to the Special Referee was signed by the Chief Administrative Judge and not the Clerk of Court. Therefore, this case supports Appellants' position that only a Circuit Court Judge has the authority to refer cases to Special Referees under S.C. Code § 14-11-60.

c. Plaintiff has failed to waive its jury demand

Appellants additionally argue that Respondent failed to waive its jury demand in the Complaint prior to the Order of Reference being filed. For this fact alone, the Order of Reference should be vacated. Appellants do not dispute that under Rule 38(d), SCRPC, Respondent has the right to waive her jury demand unilaterally. However, Respondent never waived her jury trial demand. Respondent incorrectly argues that by requesting the Order of Reference be signed, that sufficiently constitutes a waiver of her jury trial demand. Such an argument lacks merits. Rule 38(b) requires a party to demand a jury trial "in writing." The purpose of requiring the jury demand to be in writing is so all parties to the case can be notified and such notification may effect how Defendants choose to litigate a matter. It would be illogical to allow that same party who was required to demand a jury trial in writing to then waive that demand in a different way. Respondent

should be required to affirmatively, and in writing, waive its jury demand prior to the mode of trial changing from a jury case to a non-jury case.

d. Pending 59(e) Motions

Respondent argues that due to the fact there is a pending 59(e) motion to the order of reference, this appeal is untimely. However, there is no rule or statute that prevents an appellant from filing an appeal prior to the 59(e) motion being heard. Respondent neglects to mention in her Motion that following the Appellants filing their 59(e) motions, Respondent refused to allow the 59(e) motions to be heard in the circuit court which issued the Order of Reference. Instead, Respondent's attorney attempted to set a hearing within days before the Special Referee in an attempt to quickly have a default judgment entered, and thus putting a heavy financial burden on the Appellant prior to a single proper judicial review of the reference.

CONCLUSION

Respondent accuses Appellants of filing this appeal solely to delay the proceedings. However, in fact, this appeal was filed to prevent Respondent's attorney from rushing to have a default judgment entered by an improperly appointed Special Referee and under the radar of any judicial review.

Respondent's view of the special referee system in South Carolina appears to be that if a party is in default, Rule 53 allows the Plaintiff's attorney to appoint his own Special Referee anywhere in the state without any judicial oversight. Respondent simply needs to present a proposed Order of Reference to the Clerk of Court with his handpicked Special Referee, who may

be unqualified to serve as a judge. Such a position is contrary to the clear and unambiguous language of SCRCP Rule 53 and S.C. Code § 14-11-60.

While it is true that the special referee system allows any member of the South Carolina Bar to serve as a special referee, SCRCP Rule 53 and S.C. Code § 14-11-60 are designed to provide safeguards that protect parties by making sure cases are either referred to sitting masters-in-equity who have been appointed by the Governor with the consent of the General Assembly, or to special referees appointed by duly elected circuit court judges.

In enacting S.C. Code Ann. § 14-11-60, the General Assembly created a system that when a case calls for the appointment of a special referee, that decision of who will serve as the special referee is made by a circuit court judge. Circuit court judges have the appropriate legal experience and judicial screening background to assure that the appointment of a particular special referee has required legal experience and qualifications to hear the particular case being referred.

For these reasons, Respondent's Motion to Dismiss should be denied and the Appellants' appeal should be allowed to be fully briefed and ruled on.

Respectfully Submitted,

**TURNER, PADGET, GRAHAM
& LANEY, P.A.**

s/ Charles S. Gwynne Jr.

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July 10, 2024

THE STATE OF SOUTH CAROLINA
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v.

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PROOF OF SERVICE

The undersigned, attorney of record for the Appellants, certifies that on **July 10, 2024**, a copy of the **Appellants’ Return to Respondent’s Motion to Dismiss Appeal and to Expedite Ruling** was served on Attorneys for Respondents, via Electronic Mail as follows:

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Respectfully Submitted,

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July 10, 2024

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Jul 10 2024

SC Court of Appeals

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July 10, 2024

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Christol Morton v. Carolina Cutting Coring, LLC and Sean Michael Shaffer, Jr.
C/A No.: 2024-CP-43-00703
TP File No.: 58000.110
Appellate Case No. 2024-001073

Dear Ms. Kitchings:

Enclosed for filing please find Appellant's Return to Respondent's Motion to Dismiss Appeal and to Expedite Ruling and proof of service. Please feel free to contact me if you have any questions.

Sincerely,

TURNER PADGETT GRAHAM AND LANEY P.A.

s/ Charles S. Gwynne Jr.

Charles S. Gwynne Jr.

CSG
Enclosures as stated

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