

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Circuit Court Case No. 2023-CP-07-2252
Appellate Case No. 2024-001116

EK REAL ESTATE SERVICES OF NY, LLC,.....Respondent,

v.

YVONNE L. DELOACH,.....Appellant.

MEMORANDUM OF LAW

By letter to counsel dated July 9, 2024, this Court requested memoranda from the parties addressing the appealability of the orders challenged on appeal. Because the orders under appeal are not appealable intermediate or interlocutory orders pursuant to S.C. Code. Ann. § 14-3-330 (2017), this improper appeal should be dismissed.

RELEVANT PROCEDURAL FACTS

The following procedural facts are undisputed. On October 11, 2023, Respondent filed an Application for Ejectment in the Beaufort County Magistrate’s Court. Appellant filed an Answer and Counterclaim on October 24, 2023. Appellant separately filed a “Motion to Transfer to Circuit Court or Dismiss for Lack of Jurisdiction” on the same date.

A hearing was held on Respondent’s Application for Ejectment in the Beaufort County Magistrate’s Court the following day, October 25, 2023. Respondent argued that under *Rivers v.*

Smith, 440 S.C. 183, 889 S.E.2d 254 (Ct. App. 2023), Appellant’s failure to comply with the procedure required to raise a defense of questionable title that is set out in S.C. Code Ann. § 22-3-1110 *et seq.* left the Magistrate with jurisdiction to rule on Respondent’s Application for Ejectment. Respondent further argued that transfer to the Circuit Court was improper in any event, because if the Magistrate concluded that Appellant had complied with the statutory procedure required to raise a defense of questionable title, then the effect of Appellant’s compliance was to discontinue the action, as a matter of law, under S.C. Code Ann. § 22-3-1130. Respondent would then have the option to file a new “action for the same cause in the circuit court” pursuant to S.C. Code Ann. § 22-3-1170, but could not be compelled to do so by transfer. Following the October 25, 2023 hearing, the Magistrate took the matter under advisement.

The Magistrate issued no ruling on Respondent’s Application or Appellant’s Motion, but instead entered a Certificate of Transmittal to the Court of Common Pleas on November 29, 2023. Pursuant to S.C. Code Ann. § 22-3-1170, Respondent filed a Complaint in the Court of Common Pleas for eviction, as well as a separate “Motion to Remand to Magistrate’s Court for Improper Jurisdiction,” on December 19, 2023. On the same date, Appellant filed an Affidavit of Default and a Motion for Entry of Default in the Court of Common Pleas with respect to the counterclaims asserted in her responsive pleading filed in Magistrate’s Court. Appellant thereafter filed a motion to strike, or in the alternative dismiss, Respondent’s Complaint on January 9, 2024.

Judge Murphy heard argument on all pending motions on March 5, 2024. While the pending motions were under advisement, Respondent filed a Notice of Dismissal pursuant to Rule 41(a)(1)(A), SCRCF, on April 8, 2024. On April 25, 2024, the trial court entered the Form 4 Order now under appeal, which recognized the Notice of Dismissal as having rendered the

pending motions moot (the “**April 25 Order**”). The April 25 Order specifies that it does not end the case.

Appellant filed a Motion for Reconsideration of the April 25 Order under Rules 59(e) and 60(b), SCRPC, on May 2, 2024. On June 13, 2024, the trial court entered the written order now under appeal granting Appellant’s Motion for Reconsideration, and upon such reconsideration, further granting Respondent’s Motion to Remand the action to Magistrate’s Court (the “**June 13 Order**”).

Following remand, Respondent filed a Motion to Dismiss Appellant’s asserted counterclaims in the Beaufort County Magistrate’s Court on June 17, 2024. On July 3, 2024, Appellant filed and served her Notice of Appeal from the April 25 Order and the June 13 Order.

DISCUSSION

Because neither the April 25 Order nor the June 13 Order is a final judgment, and because neither of these interlocutory orders is immediately appealable under S.C. Code. Ann. § 14-3-330, this appeal should be dismissed.

“As a general rule, only final judgments are appealable.” *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (citation omitted). “Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final.” *Id.* (citing *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993)). Here, following entry of the April 25 Order and the June 13 Order, this case remains pending in the Beaufort County Magistrate Court, with none of the rights of these parties having been determined as to any claim or defense raised in the courts below. The April 25 Order expressly states that it does not end the case, and the June 13 Order remanded the

case for further proceedings before the Magistrate. The orders under appeal are therefore not final judgments, but are interlocutory orders.

“Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within [S.C. Code. Ann.] § 14–3–330.” *Id.* at 13, 625 S.E.2d at 208 (citing *Baldwin Const. Co., Inc. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004)). Subsections (1) through (4) of S.C. Code. Ann. § 14-3-330 provide for immediate appeal from four identified categories of non-final judgments. The orders under appeal fall within none of these four categories.

“Intermediate orders involving the merits may be immediately appealed pursuant to § 14–3–330(1).” *Id.* “An order which involves the merits is one that ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense.’” *Id.* (quoting *Mid–State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780). Here, the April 25 Order and the June 13 Order do not involve the merits of this action because neither order includes a final determination on any issue related to Respondent’s eviction action or Appellant’s asserted counterclaims and affirmative defenses. Collectively, these orders determine only that the case should be remanded to the Magistrate, where Respondent can continue to pursue its eviction claim and Appellant “can further pursue the title dispute pursuant to Article 11 and *Rivers v. Smith*.” June 13 Order at p. 4. The orders under appeal are not immediately appealable under § 14–3–330(1).

“Interlocutory orders affecting a substantial right may be immediately appealed pursuant to § 14–3–330(2).” *Id.* “Orders affecting a substantial right ‘discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.’” *Id.* (quoting *Mid–State Distribs., Inc.*, 310 S.C. at 335 n. 4, 426 S.E.2d at 780 n. 4)). The April 25 Order and the June 13

Order do none of these. This action was not discontinued, but remained pending in the Beaufort County Magistrate's Court when the Notice of Appeal was filed. Appellant also retains her right to take appeal from these orders (and any other intermediate order(s)) at the proper time following entry of a final judgment. No trial has been held, and no claim or defense has been struck or adjudicated.

While Appellant may assert that the June 13 Order effectively relieves Respondent from default as to Appellant's counterclaims in the eviction action, no such default was entered by the courts below. Even if default had been entered, however, Appellant has no "substantial right" to maintain that status. This Court has previously held that an order setting aside a default judgment is not immediately appealable because it does not fall within any exception enumerated in S.C. Code. Ann. § 14-3-330. *Pioneer Assocs., Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 348, 387 S.E.2d 711, 712 (Ct. App. 1989) (emphasis added). Because the scope of § 14-3-330 does not encompass an order setting aside a default judgment, it also does not provide an avenue for the immediate appeal of an order that effectively precludes the mere entry of default. Appellant retains her counterclaims before the Magistrate, and may pursue them there. *See* June 13 Order at p. 4. The April 25 Order and the June 13 Order do not affect a substantial right, and are not immediately appealable under § 14-3-330(2).

Section 14-3-330(3) authorizes immediate appeal from "[a] final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment." This action is not a special proceeding, no judgment has been entered, and as addressed above, no substantial right is affected by the April 25 Order or the June 13 Order. The orders under appeal are not immediately appealable under § 14-3-330(3).

Finally, § 14-3-330(4) provides for immediate appeal from certain interlocutory orders entered in the Court of Common Pleas concerning injunctions or the appointment of a receiver. The April 25 Order and the June 13 Order do not address either an injunction or the appointment of a receiver, and are thus not immediately appealable under § 14-3-330(4).

CONCLUSION

Appellant filed this Notice of Appeal solely to delay proceedings below. The orders Appellant attempts to appeal are not appealable intermediate or interlocutory orders under S.C. Code. Ann. § 14-3-330, and this appeal should accordingly be dismissed.

Respectfully submitted,

/s/ Matthew A. L. Anderson

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July 19, 2024

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PROOF OF SERVICE

I certify that I have served the foregoing Memorandum of Law upon Appellant Yvonne L. Deloach by electronic mail on July 19, 2024, addressed to her attorney of record as follows:

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July 19, 2024

/s/ Lindsay Bray

Lindsay Bray
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