

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

Michael G. Nettles, Circuit Judge

Appellate Case No. 2024-001234

In Re: Lorraine Schueler,.....Appellant.

Noah Veon, on behalf of himself and all others similarly situated,.....Respondent,

v.

Richard James Schueler a/k/a Richard Heart,.....Defendant.

RETURN TO MOTION TO TRANSFER OR CERTIFY  
FROM THE COURT OF APPEALS

Respondent hereby submits this return to the Appellant’s motion “to certify this action for review before determination by the Court of Appeals.” (Motion to Transfer or Certify p. 2.) No such certification should occur; rather, the Court of Appeals should treat this appeal as it does others in which it is plain that no immediately appealable ruling has been issued – by dismissing the appeal.

Dismissal of this appeal seems to be something which the Appellant (“Lorraine Schueler,” the Defendant’s mother) fears greatly. *Why?* The appealed ruling – that Lorraine Schueler will have to sit for a deposition and allow the Respondent to examine some documents – inflicts nothing upon her. What is appealed here renders no judgment against Lorraine Schueler (or anyone), issues no sanctions, holds no one in

contempt, does not dismiss any claims or rule on any defenses, does not strike out any pleadings, does not affect the mode of trial, does not affect any substantial right, and does not address the merits of the case. The underlying case is still going on, and no judgment on any claim or defense has been issued in it.

What is appealed here is a discovery ruling, and this Court has consistently held such orders “are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right.” Grosshuesch v Cramer, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008); accord Hamm v. S.C. Pub. Serv. Comm’n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994). Lorraine Schueler is not aggrieved in the appellate law sense under Rule 201, SCACR, and she is not “aggrieved” in any broader sense by Judge Nettles’ decision. She has simply been ordered to comply with the subpoena directed to her, which subpoena in no way invades her rights.

There is no crisis here. There is no injustice for this Court to step in to correct. Nothing the trial court has done, and nothing the Respondent has done, has worked any injury upon Lorraine Schueler. The examination of documents does not injure her. The taking of her testimony does not injure her.

Lorraine Schueler is not a party to this case, and, thus, Judge Nettles’ ruling below does not pass upon any defense or claim raised by any actual party to this case. It rejects her non-party bid to get the case dismissed, but denials of motions to dismiss, which do not decide anything about the merits of the case nor preclude any defense, are not immediately appealable. McLendon v. S.C. Dept. of Hwys. & Pub. Transp.,

313 S.C. 525, 526, 443 S.E.2d 539, 540 (1994); Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 336, 426 S.E.2d 777, 781 (1993).

There are times in which “[an] order that is not directly appealable may be considered if there is an appealable issue before the court.” Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005). An appellate court may choose to hear such an issue where the ordinarily unappealable issue is significantly connected with an appealable issue that is properly before the court. Brown v. County of Berkeley, 366 S.C. 354, 362 n. 5, 622 S.E.2d 533, 538 n. 5 (2005). Here, though, the only issues that are before the court are not appealable. There can be no companion review of these unappealable issues, because there is no appealable issue for them to the companions *of*. Id.

Lorraine Schueler’s invocation of Davis v. Parkview Apts., 409 S.C. 266, 762 S.E.2d 535 (2014), is puzzling. Davis does not assist her position; rather, it illustrates that no appealable decision has yet been rendered in this case.

Davis was the appeal of an order that, as a contempt sanction, dismissed a case for the plaintiffs’ repeated failures to comply with several earlier discovery orders. Id. at 279. On appeal, no cognizable challenge to the earlier discovery orders was raised. Id. at 281 n. 15. “While the parties certainly mention the Privilege Order and Discovery Order and the various intermediate orders on which they are based in their brief, Appellants only raise general issues with those orders. Without specific objections to each item of discovery deemed discoverable by the circuit judge, the specific discovery findings are unreviewable on appeal.” Id. Those earlier discovery orders were, thus, unappealed and the law of the case. Id. at 281.

Throughout the course of the litigation, the circuit court issued numerous discovery rulings. The Record makes clear that Appellants considered an appeal of one or more of those orders, at one time even seeking review of the Privilege Order in the court of appeals, which was held to be interlocutory. However, to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding. See, e.g., Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881–82 (1986) (“An order directing a party to participate in discovery is interlocutory and not directly appealable.... Instead of appealing immediately, a non-party has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply.”) (internal citations omitted). Appellants did not follow that route here. Rather, they continued along in the litigation, attempting to divert the implementation of the court’s rulings by providing incomplete responses and causing delay through other tactics while they decided whether or not to surrender to the possibility of being held in contempt of court. However, during this time, Appellants continued to accept the circuit court's formulation of discovery. Right or wrong, these decisions form the law of the case, and Appellants are bound by them now. ML- Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997). Only after Respondents filed a motion for sanctions, and Appellants were found to be in contempt of court as part of those sanctions, did they appeal. While this was a final order for purposes of appellate review, as it ordered dismissal of the case, the merits of the underlying discovery orders are not before this Court on appeal. Thus, despite Appellants' vehement objections to the Privilege Order and Discovery Order, the only reviewable question before this Court is whether the sanctions were properly awarded.

Davis, 409 S.C. at 280-81.

In Davis, the earlier discovery orders were the law of the case because the attempt to appeal them failed, for lack of a specific challenge. Id. at 281 n. 15. They

were the law of the case because, at the time when they were capable of being appealed, i.e., once the trial court dismissed the case as a contempt sanction, no actually cognizable appeal was made of them. Id. at 280-81, 281 n. 15. The fact that the appellants did not attempt to appeal those interlocutory rulings at the time they were issued is *not* what made them the law of the case; they were the law of the case because they were *not* appealed *along with* the contempt dismissal order when the time came to do so. Id. Davis does not exhort litigants to lodge immediate appeals of discovery orders.

In the instant case, there may or may not be some order issued down the road with regard to this non-party witness' refusal to comply with Judge Nettles' discovery order. If such an order is issued, it may or may not contain an immediately appealable decision. That bridge has yet to be crossed.

This Court should deny this motion, which asks for yet another extraordinary step to be taken. This Court should allow the Court of Appeals to complete its review of whether an appeal of the appealed orders can lie at this time. Respondent expects that review will, properly, result in dismissal of this appeal of orders that issue a garden-variety decision to compel a third party to respond to a subpoena.

WHEREFORE Respondent prays for an order denying the motion for this Court to certify this appeal and transfer it from the Court of Appeals.

Respectfully submitted,

/s/ Andrew S. Radeker

Andrew S. Radeker  
S.C. Bar No. 73743  
Radeker Law, P.A.  
Post Office Box 6903  
Columbia, South Carolina 29260  
(803) 500-0891  
drew@radekerlaw.com

*and*

/s/ Graham L. Newman

Graham L. Newman  
S.C. Bar No. 72845  
William S. Detwiler  
S.C. Bar No. 106673  
Chappell, Chappell & Newman  
Post Office Box 61170  
Columbia, South Carolina 29260  
(803) 233-7050  
graham@chappell.law  
will@chappell.law  
Attorneys for Respondent

September 3, 2024

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**SC Court of Appeals**

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PROOF OF SERVICE

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I certify that I have served the foregoing return on the date given below by emailing it to opposing counsel in this appeal at the address(es) noted below.

John S. Nichols, Esq., at john@bluesteinattorneys.com  
G. Murrell Smith, Jr., Esq., at murrell@smithrobinsonlaw.com  
Frederick N. Hanna, Jr., Esq., at fred.hanna@smithrobinsonlaw.com

Respectfully submitted,

/s/ Andrew S. Radeker  
Andrew S. Radeker  
S.C. Bar No. 73743  
Attorney for Respondent

September 3, 2024