

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Hon. Bentley Price, Circuit Court Judge

Case No. 2017-CP-10-5426
App. Case No. 2020-001132

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SC Court of Appeals

Family Services, Inc. as Conservator for Muriel W.
Clarkin, Appellant,

v.

Bridget Inman, Muriel C. Kennedy, and Patricia Clarkin Smith,
Respondents,

and

Bruce A. Berlinsky, Intervenor.

FINAL BRIEF OF RESPONDENT SMITH

July 2, 2021

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STATEMENT OF ISSUES ON APPEAL

- I. IS THE TRIAL COURT'S ORDER, WHICH GRANTED RESPONDENT SMITH'S MOTION TO INTERVENE, INTERLOCUTORY IN NATURE AND THUS, NON-APPEALABLE?**

STATEMENT OF THE CASE

This is an action filed by Appellant, Family Services, Inc, to collect on a debt owed by Respondent Bridget Inman to Muriel W. Clarkin (Complaint)(R.pp. 244-255). In 2006, Respondent Inman asked Muriel W. Clarkin for the sum of money with which to buy a house (Complaint)(R.p. 247). In order for Muriel W. Clarkin to loan that sum to Respondent Inman, Muriel W. Clarkin borrowed money from Wachovia Bank in the total amount of \$135,000.00 as a Home Equity Line of Credit (Complaint)(R.p.248). In exchange for the loan amount, Muriel W. Clarkin signed a Promissory Note and Mortgage which placed a lien upon her own property located at 602 Atlantic Street, Mount Pleasant, SC 29464 (Complaint)(R.p.248).

Respondent Inman borrowed the money from Muriel W. Clarkin and Respondent Inman purchased a house located at 316 Elrod Drive, Goose Creek, South Carolina (Complaint)(R.p.248).

In 2014, the property located at 602 Atlantic Street, Mount Pleasant, SC was deeded to Respondent Smith by Muriel W. Clarkin (Respondent Smith's Memorandum in Support of Motion to Intervene)(R.p.445). Respondent Smith has been paying the monthly mortgage amount on the property so that Wachovia Bank does not foreclose on Muriel W. Clarkin's mortgage loan and take Respondent Smith's property. (Respondent Smith's Memorandum in Support of Motion to Intervene)(R.pp.469-470).

In 2015, Appellant was court-appointed as Conservator for Muriel W. Clarkin (Complaint)(R.p.247). In 2017, Respondent Inman sold her property located at 316 Elrod Drive, Goose Creek, SC (Complaint)(R.p.250). Respondent Inman did not repay the borrowed money to Muriel W. Clarkin at the time Respondent Inman sold her house (Complaint)(R.p. 250). In 2017, Appellant, as Conservator for Muriel W. Clarkin, filed a lawsuit seeking a return of the borrowed monies from Respondent Inman, plus additional costs, including mortgage interest and finance charges (Complaint)(R.p. 244-255).

Even though Respondent Smith has been the owner of the mortgaged property, 602 Atlantic Street, Mount Pleasant, SC 29464, since 2014, Appellant did not name Respondent Smith as an interested party in this action (Complaint)(R.p.247). Appellant was fully aware that Respondent Smith was the current owner of the mortgaged property because within Appellant's Complaint are several "factual allegations" against Respondent Smith with regard to mortgage payments made for 602 Atlantic Street, Mount Pleasant, SC (Complaint)(R.pp. 249-250).

In 2019, Respondent Smith filed a Motion to Intervene in this matter based upon the fact that Respondent Smith is an interested party to this action and has the legal right to intervene in this case (Respondent Smith's Motion to Intervene)(R.p.172) to wit:

SCRCP 24(b)(2) provides that "anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and (s)he is so situated that the disposition of the action may as a practical matter impair or impede her/his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

(Respondent Smith's Motion to Intervene)(R.p.172) (Respondent Smith's Memorandum in Support of Motion to Intervene)(R.p. 446).

Respondent Smith is an interested party relating to the subject matter because she owns the mortgaged property located to 602 Atlantic Street, Mount Pleasant, South Carolina and the Wachovia mortgage loan borrowed by Muriel W. Clarkin remains a lien against the property until this debt is paid in full by way of settlement or final judgment in this matter. (Respondent Smith's Memorandum in Support of Motion to Intervene)(R.p.447).

Hon. Bentley Price agreed with Respondent Smith's arguments and ruled in favor of Respondent Smith. Judge Price issued a Form 4 Order Granting Respondent Smith's Motion to Intervene (Order dated July 9, 2020)(R.p.19). Appellant subsequently filed a Motion for Reconsideration and this Motion was denied by the Court (Order dated July 30, 2020)(R.p.22).

STANDARD OF REVIEW

The S.C. Court of Appeals may only hear a case where a trial court's determination is a final judgment or an appealable order, see SCRCP Rule 72. The determination of whether a trial court's order is immediately appealable is governed by statute. See S.C. Code 14-3-330, *et seq.*

ARGUMENT

I. THE TRIAL COURT'S ORDER, WHICH GRANTED RESPONDENT SMITH'S MOTION TO INTERVENE, IS INTERLOCUTORY IN NATURE AND NON-APPEALABLE.

Appellant argues that the trial court erred in its' Order that granted Respondent's Smith's Motion to Intervene and Appellant has filed an Appeal with the S.C. Court of Appeals.

An appeal ordinarily may be pursued only after a party has obtained a final judgment." Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (citing Mid-State Distribs., Inc. v. Century Imps., Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993)). "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." Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005).

In this case, Respondent's Motion to Intervene is interlocutory in nature because it leaves a further act to be done by the trial court, i.e. determining the rights of Appellant and Respondents with regard to liability and damages in this matter. Judge Price's Order Granting Respondent Smith's Motion to Intervene is not a final judgment (Order dated July 9, 2020)(R.p.19).

Absent some specialized statute, the immediate appealability of an interlocutory order depends on whether the order falls within section 14-3-330 of the South Carolina Code (1977). Under Section 14-3-330(1), this court may review any intermediate order that involves the merits of the action. "An order involving the merits must finally determine some substantial matter forming the whole or a part of some cause of action or defense in the case in which the order is entitled." Duncan v. Gov't Emps. Ins.

Co., 331 S.C. 484, 485, 449 S.E.2d 580, 580 (1994) (quoting Knowles v. Standard Sav. & Loan Ass'n, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979)).

In this case, Judge Price's Order Granting Respondent Smith's Motion to Intervene does not rule on the merits, nor does the Order involve a substantial right or prevent a judgment from which an appeal can be taken (Order)(R.p.19). A review of Respondent Smith's Motion to Intervene indicates that Respondent Smith seeks only to be added as a party to the lawsuit. Judge Price's Order simply granted Respondent's Smith Motion to Intervene (Order)(R.p.19).

It is important to note that the Court of Appeals has specifically ruled that a trial court's decision granting a Motion to Intervene, and an Order Granting a Motion to Intervene does NOT affect a substantial right (*emphasis added*). Dorn v. Cohen, 418 S.C. 126, 791 S.E.2d 313 (S.C. App. 2016).

CONCLUSION

Appellant's arguments regarding Judge Price's Order Granting Respondent Smith's Motion to Intervene is not appealable at this time. The trial court's Order is interlocutory in nature, does not decide a substantial right, does not rule on the merits of the case and is not a final judgment. For all of the foregoing reasons, Appellant's appeal should be dismissed.

CERTIFICATION

I hereby certify that Respondent Smith's Final Brief complies with SCACR 211(b).

Dated: July 2, 2021
Mount Pleasant

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