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Oct 02 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge
Case No.: 2022-CP-26-06296

Appellate Case No. 2024-000786

Anna Coggeshall; Bryan Coggeshall; and Katherine CoggeshallRespondents

v.

William Bertram von Herrmann and The Von Herrmann Law Firm. Appellants.

Appellants' Reply to Respondents' Return to Petition for Rehearing

Appellants petitioned this Court to rehear its Order dismissing the appeal as interlocutory. The Court permitted Respondents a Return to that Petition. Given some of the statements in that Return, Appellants file this Reply out of an abundance of caution.

Argument

Respondents' Return makes two arguments. First, that the Petition should be denied because the appeal is interlocutory and does not fit neatly within the categories of section 14-3-330 of the South Carolina Code. Second, Respondents argue that this Court should not issue an advisory opinion. The content of those arguments, however, are unclear and confuse the issues that are before this Court, which supports granting the Petition.

I. Respondents' argument that the appeal is interlocutory confuses a material difference between an evidentiary privilege and a defense to liability.

Respondents' arguments to convince this Court that the appeal is interlocutory rest on a flawed basis. Respondents recite the basic law on how a denial of a motion to dismiss does not affect a substantial right. But then Respondents mischaracterize the circuit court's ruling, referring to it as a ruling on the common-law attorney-client privilege and what its practical effect would be. ("Instead, the Horry County court simply determined that the common-law attorney-client privilege did not apply to absolutely shield Mr. von Herrmann from any potential liability"); ("[The Order] simply precludes Mr. von Herrmann from relying on a common-law privilege as an end-run around potential liability."); ("The practical effect of the trial court's evidentiary ruling is that Mr. von Herrmann must provide pretrial discovery concerning his receipt and use of the electronic communications").

Attorney-client *privilege* is not at issue. The issue is the common law *defense* of attorney immunity under *Gaar*, and the fact that the circuit court ruled Appellants "cannot assert the defense going forward." **See Exs. B & C to Return to MTD.** As Respondents recognize, "a trial court's interlocutory order affects a substantial right only if it 'discontinue[s] an action, prevent[s] an appeal, grant[s] or refuse[s] a new trial, or strike[s] out an action or defense.'" **Resp. Ret. at 8** (quoting *Edwards*, 369 S.C. at 94, 631 S.E.2d at 530). If this Court is bound to examine the effect of the order and not its label, pursuant to *Thorton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 303, 705 S.E.2d 475, 479 (Ct. App. 2011), then the effect of the circuit court's order purports to prevent Appellants from asserting a defense to liability. That language effectively strikes the defense. The circuit court may be wrong in that it ruled in the context of denying a motion to dismiss, but a swing and a miss is still a strike.

Respondents' arguments are unavailing, and only serve to confuse the issues and indicate that this Court should take the opportunity to rule on the issue or provide clarity to the parties.

II. Appellants are not requesting an advisory opinion.

Respondents argue that Appellants' request for clarity in this Court's Order is inviting this Court to issue an advisory opinion. That is incorrect. Courts will not issue advisory opinions on issues where no meaningful relief can be granted. *Matter of Angela Suzanne C.*, 286 S.C. 186, 189, 332 S.E.2d 542, 543 (Ct. App. 1985). Stated differently, a court will not rule on academic or moot issues, or make a ruling where there is no actual controversy. *Jones v. Dillon-Marion Hum. Res. Dev. Comm'n*, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982).

Appellants ask this Court to clarify how its ruling impacts litigation in this case moving forward. To support its Order, the Court cites authorities indicating a denial of a motion to dismiss decides nothing about a case, is interlocutory, and the parties are free to raise the issues at a later stage in litigation. Within the portion of the circuit court's order denying the motion to dismiss, it ruled that Appellants cannot assert a defense moving forward. If it is true that a denial of a motion to dismiss decides nothing and the parties are free to raise the issues later, then Appellants are free to raise the defense of attorney immunity later in this litigation. Appellants expect Respondents will contest that, which is why a clearer ruling would be beneficial in this litigation. This request for clarity is on an issue where the parties disagree—attorney immunity. It is not an invitation for this Court to opine on an academic, hypothetical, or moot question. The parties will continue to argue about it in this litigation and a clearer ruling would be meaningful.

In sum, this Court should grant Appellants' Petition for Rehearing and address whether attorney-immunity is available as a defense to a claim under the South Carolina Homeland Security Act. At the very least, this Court should grant the Petition to clarify whether the parties can

continue to litigate the issue on remand, when the circuit court ruled Appellants “cannot assert the defense going forward.”

COPELAND, STAIR, VALZ & LOVELL, LLP

October 2, 2024.

s/Skyler C. Wilson

Douglas W. MacKelcan

S.C. Bar No.: 76332

Skyler C. Wilson

S.C. Bar No.: 102865

40 Calhoun Street, Suite 400

Charleston, SC 29401

dmackelcan@csvl.law

swilson@csvl.law

Phone: (843) 727-0307

Attorneys for Appellants

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PROOF OF SERVICE

I certify that I have served *Appellants' Reply to Respondents' Return to Petition for Rehearing* upon the parties below by electronic mail, addressed as follows:

Richard G. Whiting, Esq.
1515 Lady Street
Columbia, SC 29201
Dick.whiting@whitinglawsc.com
Counsel for Respondents

Steven M. Abrams, Esq.
Abrams Cyber Law & Forensics, LLC
P.O. Box 305
Sullivans Island, SC 29482
steve@abramsforensics.com
Counsel for Respondents

Kenneth R. Moss, Esq.
Wright, Worley, Pope, Ekster Moss, PLLC
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
kennethmoss@wwpemplaw.com
Counsel for Respondents

Robert E. Lee, Esq.
Robert E. Lee, LLC
P.O. Box 1096
Marion, SC 29571
rel@rellawfirm.com
Counsel for Respondents

This 2nd day of October, 2024.

COPELAND, STAIR, VALZ & LOVELL, LLP

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
swilson@csvl.law
Phone: (843) 727-0307

s/Skyler C. Wilson
Douglas W. MacKelcan
S.C. Bar No.: 76332
Skyler C. Wilson
S.C. Bar No.: 102865
Attorneys for Appellants

From: [Rewt, Teri J.](#)
To: Dick.whiting@whitinglawsc.com; steve@abramsforensics.com; [Kenneth R. Moss](#); [Robert E. Lee](#)
Cc: [Mackelcan, Douglas W.](#); [Wilson, Skyler C.](#); [Moran, Rosie](#)
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[Appellants' Reply to Respondents' Return to Petition for Rehearing.pdf](#)

Good afternoon Counselors,

The attached Reply in this case will be filed with the Appellate Clerk this afternoon, and we will cc you on that email.

Best regards,



Teri Rewt

Legal Assistant II

d: 843.329-8346 | f: 843.727.2995

trewt@csvg.law | www.csvl.law

40 Calhoun Street, Suite 400, Charleston, SC 29401