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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr.
Circuit Court Judge

Civil Action No. 2020-CP-43-00734

Appellate Case No. 2024-001532

Ronald L. Jones, Appellant,

v.

Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones, and Shelley Allsbrooks, Respondents.

MEMORANDUM ON APPEALABILITY[1]

This is the second time Appellant Ronald L. Jones ("Appellant") has sought to improperly appeal an interlocutory order of the circuit court. Appellant rekindles his efforts to transmogrify this litigation into the "stop-and-start enterprise" that has been repeatedly denounced by our appellate courts. *See State v. Ledford*, 422 S.C. 244, 249, 810 S.E.2d 868, 870 (2018). Again, just like the first appeal, pursuant to Rule 240 of the South Carolina Appellate Court Rules and the Court's recent request on the issue of appealability, Respondents Gary A. Jones, Sr., Becky J.

[1] Respondents had previously drafted this as a Motion to Dismiss but had not filed this Motion prior to receiving the September 24, 2024 correspondence from the Court requesting the parties to brief the issue of appealability. This Memorandum addresses the appealability question raised by the Court and also requests the Court to dismiss the appeal.

Jones, Ima Lee Jones, and Shelley Allsbrooks (collectively, "Respondents"), by and through the undersigned counsel, respectfully move for dismissal so that this case may proceed on the merits.

BACKGROUND

This case involves a family land dispute. On May 4, 2020, Appellant filed this lawsuit against Respondents Gary A. Jones, Sr., Becky J. Jones, and Ima Lee Jones, claiming Appellant was entitled to relief pursuant to an oral gift and the doctrine of promissory estoppel. On June 10, 2020, Appellant filed his First Amended Complaint, adding a cause of action for civil conspiracy directed at Respondents Gary A. Jones, Sr. and Becky J. Jones. The parties subsequently engaged in discovery, including the deposition of Respondent Shelley Allsbrooks on March 16, 2021. Appellant filed his Second Amended Complaint on April 22, 2021, adding Respondent Allsbrooks as a defendant to his claim for civil conspiracy. On May 6, 2021, Respondents filed an Answer to Appellant's Second Amended Complaint and a Motion to Strike certain improper factual allegations that had been raised in the Second Amended Complaint. The circuit court granted Respondents' Motion to Strike, and Appellant appealed. This Court granted Respondents' Motion to Dismiss, holding the circuit court's order was not immediately appealable (COA App. Case No. 2021-001150), the Court denied Appellant's request for rehearing (*Id.*), and the South Carolina Supreme Court denied certiorari (Sup. Ct. App. Case No. 2022-000865). Respondents were awarded costs by this Court to be paid by Appellant.[2]

Following the issuance of remittitur to the circuit court, Appellant filed another Motion to Amend his Complaint. Appellant sought leave to submit a fourth iteration of his Complaint to add a cause of action for unjust enrichment. Appellant also included, the "almost exact allegations"

[2] As of the date of this filing, Appellant has not paid the costs awarded to Respondents in the first appeal.

that were previously stricken by the circuit court in its September 22, 2021 Order. On April 9, 2024, the circuit court denied Appellant's motion. The circuit court reasoned *inter alia*: (1) Appellant's attempt to add the unjust enrichment cause of action was not timely and (2) Appellant's attempt to again include previously stricken allegations was improper. Appellant moved for reconsideration, and the circuit court denied same on September 10, 2024. That same day, Appellant filed his Notice of Appeal. An amended Notice of Appeal was filed on September 11, 2024.

Respondents now file this Memorandum requesting dismissal because Appellant's attempt to appeal the underlying order denying his Motion to Amend is not immediately appealable.

ARGUMENT

A review of the circuit court's underlying order denying Appellant's Motion to Amend, the governing appealability statute, and many years of precedent from our appellate courts makes certain that Appellant has no foundation to support any argument that this Court should review this interlocutory appeal. To be sure, the circuit court's order denying Appellant's Motion to Amend his Complaint is not immediately appealable, and Appellant's attempt to appeal the same is, quite frankly, another improper attempt to frustrate the ordinary pretrial procedures below. Therefore, this Court should refuse to expand the narrow construction of section 14-3-330 of the South Carolina Code and should dismiss Appellant's appeal, thereby allowing the proper pre-trial procedures to proceed accordingly without any additional disruption or delay.

A party's right to appeal arises from and is governed by statute. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Traditionally, an appeal may be pursued only after the entry of final judgment. *Id.* "A final judgment is one that ends the action and leaves the

court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). "An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005).

"The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section 14-3-330 of the South Carolina Code]." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 6, 630 S.E.2d at 467. "Absent a specialized statute, an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable." *Id.* Section 14-3-330 is "construed narrowly" with the goal of avoiding "circuitous litigation and needless appeals." *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. To be sure, "[p]iecemeal appeals" are disfavored in South Carolina. *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

No specialized statute permits Appellant's present appeal; therefore, to be immediately appealable, the circuit court's order must fit neatly into one of the categories set forth in section 14-3-330. *See id.* at 195, 607 S.E.2d at 708. Section 14-3-330 provides for appellate jurisdiction over:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the

> action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
>
> (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
>
> (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330; *see also Cobb v. Maccaro*, 310 S.C. 303, 305, 423 S.E.2d 156, 157 (Ct. App. 1992) ("Only interlocutory orders which (1) involve the merits; (2) affect a substantial right; or (3) involve certain orders regarding injunctions and appointments of receivers, can be appealed.").

Here—under the well-established approach to analyzing the appealability of interlocutory orders—the circuit court's order is not immediately appealable. The effect of the circuit court's order is clear. The circuit court denied Appellant's Motion to Amend his Complaint. That is all. The circuit court's order *did not* dismiss Appellant's case; the circuit court's order *did not* dispense of any of Appellant's causes of action; the circuit court's order *did not* constitute a final judgment; the circuit court's order *does not* prevent an appeal of Appellant's complained issue following a final judgment in this matter.

Our appellate courts have consistently held that an interlocutory appeal of an order addressing a motion to amend pleadings is improper. *See, e.g.*, *Tatnall v. Gardner,* 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002) (holding a circuit court's order denying defendant's motion to amend her answer to assert third-party claims was not immediately appealable because the order "neither determine[d] a substantial matter 'forming the whole or part of some cause of action,' nor prevents 'a judgment from being rendered in the action' from which [defendant] could then seek review"); *Collins v. Sigmon,* 299 S.C. 464, 466, 385 S.E.2d 835, 836 (1989) ("An order

permitting amendment of pleadings is interlocutory and generally is not appealable until final judgment."); *S. Sales & Mktg. Grp., Inc. v. AMCO Const. Co.*, No. 2006-UP-278, 2006 WL 7286061, at *2–4 (S.C. Ct. App. June 13, 2006); *Brown v. Tonney*, No. 2021-000185, 2022 WL 853436, at *1 (S.C. Ct. App. Mar. 23, 2022) (dismissing an appeal of a special referee's order denying a motion to amend complaint).

Baldwin Construction Company v. Graham, 357 S.C. 227, 593 S.E.2d 146 (2004) is particularly instructive as to the issue of appealability. In *Baldwin*, the defendant filed a motion to amend to permit the filing of an amended answer, set-offs, and counterclaims. *Id.* at 228, 593 S.E.2d at 146. The circuit court denied the motion to amend, finding the relief requested would be "unduly prejudicial." The South Carolina Supreme Court held the appeal of the denial of the motion to amend was not immediately appealable because the defendant would still be able to appeal the decision after the conclusion of trial. *Id.* at 230, 593 S.E.2d at 147-48. Our Supreme Court explained, "the judge did not strike a pleading but refused to allow its filing. [The defendants] have not 'arrived at the end of the road' and will be able to appeal the decision after the trial is finished." *Id.*

The same can be said in the instant case. Appellant is appealing the denial of his Motion to Amend his Complaint. The matter is not immediately appealable, and there is nothing that would prohibit Appellant from appealing this decision after the conclusion of trial. Like the circuit court in *Baldwin*, the circuit court did not strike a cause of action or a pleading, it simply refused to allow its filing.

CONCLUSION

Based on the foregoing, Respondents respectfully request that the Court dismiss this interlocutory appeal because the issue raised is not immediately appealable.

Respectfully submitted,

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