

RECEIVED

Oct 11 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2022-CP-37-00447
Appellate Case No. 2024-001576

Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers
Crisp, Amy Cawthon,

Appellants,

v.

Oconee County, Globe, A South Carolina Limited Partnership, Farnes, A South Carolina
Limited Partnership,

Respondents.

RETURN TO MOTION TO DISMISS APPEAL

Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers
Crisp, and Amy Cawthon (“Appellants”) file this Return to Respondents’ Motion to Dismiss
Appeal. Appellants appeal the trial court’s final order disposing of Appellants’ request for a
declaratory judgment. Respondents’ request for attorneys’ fees is ancillary to that decision and is
unaffected by this appeal. Therefore, Respondents’ motion should be denied so that the parties
can brief the merits of this action.

The Rules of Civil Procedure and the Appellate Court Rules make clear that a request for
attorneys’ fees does not impact a party’s right to appeal a final judgment. Under Rule 54 of the

Rules of Civil Procedure, a party should file a motion for costs—including attorneys’ fees¹—“within [ten] days of the receipt of written notice of the entry of final judgment.” Rule 54(d), SCRCF. Under the Appellate Court Rules, “service of a notice of appeal . . . acts to automatically stay *matters decided in* the order, judgment, decree or decision on appeal,” but “[t]he lower court . . . retains jurisdiction over *matters not affected by* the appeal.” Rule 241(a), SCACR (emphasis added). However, if a party appeals a judgment, the trial court “may delay the taxation of costs *until the appeal is completed.*” Rule 54(d), SCRCF (emphasis added). Read together, these rules make sense only if a party can appeal the merits of a final judgment notwithstanding a pending motion for attorneys’ fees.

Case law does not support Respondents’ position either. In *Wheatley v. Wheatley*, a husband appealed from a family court order that, in addition to attorneys’ fees, failed to resolve “the amount of [his wife’s] equitable interest in [his] business.” 287 S.C. 446, 448, 339 S.E.2d 149, 150 (Ct. App. 1985) (per curiam). Indeed, in a supplementary order, the family court stated that its ruling was “interlocutory only on the issue of the [wife’s] equitable interest” in the business. *Id.* at 448 n.1, 339 S.E.2d at 150 n.1. The court of appeals dismissed the appeal not merely because there was a pending request for attorneys’ fees, but so that the family court could decide the issue of attorneys’ fees *and* the wife’s equitable interest in her husband’s business. *Id.* at 448, 339 S.E.2d at 150.

Moreover, *Wheatley* occurred in the context of a divorce action, where attorneys’ fees are part of the court’s equitable considerations and are often included in the final order. *See* S.C. Code Ann. § 63-3-530(A)(2) (granting the family court jurisdiction over divorce actions, including the “settlement of all legal and equitable rights of the parties in the actions in and to the real and

¹ *See* Rule 54(e)(1), SCRCF (including “reasonable attorneys fees” in the definition of costs).

personal property of the marriage and attorney’s fees”); *id.* § 20-3-130(H) (stating that the family court may order a party to pay attorneys’ fees in a divorce action); *Klein v. Barrett*, 427 S.C. 74, 87–88, 828 S.E.2d 773, 780 (Ct. App. 2019) (discussing the factors to consider when deciding whether to award attorneys’ fees and affirming the award of fees in the family court’s final order); *cf. Bolding v. Bolding*, 283 S.C. 501, 501–02, 323 S.E.2d 535, 535–36 (Ct. App. 1984) (per curiam) (noting that the family court awarded a party attorneys’ fees but did not rule on the equitable division of the parties’ real property and, therefore, the family court’s decision was not an appealable final order).

In contrast, where a request for attorneys’ fees is made *after* a final judgment, courts properly treat it as a related, but ancillary, matter. *See, e.g., McDowell v. S.C. Dep’t of Soc. Servs.*, 300 S.C. 24, 26, 28, 386 S.E.2d 280, 281–82 (Ct. App. 1989) (holding that a petition for attorneys’ fees—under a statute that allows a party to request fees within 30 days after a “final disposition”—“is not a separate action but is incidental to the original action” (citing S.C. Code Ann. §§ 15-77-300, -310)); *cf. Mountain Valley Pipeline, LLC v. 8.37 Acres of Land*, 101 F.4th 350, 360 (4th Cir. 2024) (noting that the Fourth Circuit “ha[s] held that a district court retains jurisdiction to decide an attorney’s fees motion if the issue of attorney’s fees is separate from the merits of the appeal” (emphasis removed)), *reh’g denied*, 2024 U.S. App. LEXIS 14176 (4th Cir. June 11, 2024).

In this case, Respondents’ request for attorneys’ fees is collateral to, and unaffected by, the instant appeal. *See Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 23, 594 S.E.2d 478, 484–85 (2004) (rejecting a party’s argument that the trial court lacked jurisdiction to award attorneys’ fees and noting that the request was not subject to the notice of appeal). Therefore, Respondents’ motion should be dismissed and this appeal allowed to proceed.

Once the lower court rules on Respondents' motion for attorneys' fees and costs, if either party decides to appeal that decision, that party can move to have that appeal combined with this action and Appellants would consent to such motion. *See Raby Constr.*, 358 S.C. at 14, 16, 594 S.E.2d at 480–81 (noting that the court combined two appeals for review because they grew out of the same action where a party first appealed the denial of a Rule 60(b) motion and later appealed an award of attorneys' fees); *cf. Wheatley*, 287 S.C. at 448–49, 339 S.E.2d at 150 (instructing the parties that after the family court issued a final order, they could also appeal the lower court's previous orders).

s/ David L. Paavola

David L. Paavola, SC Bar No.: 100714
Mark A. Bible, Jr. SC Bar No.: 101624
KENISON, DUDLEY & CRAWFORD, LLC
1122 Barnwell Street, Suite B
Columbia, South Carolina 29201
Tele: (864) 242-4899
Email: paavola@conlaw.com
bible@conlaw.com

Attorney for Appellants

October 11, 2024

RECEIVED

Oct 11 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2022-CP-37-00447
Appellate Case No. 2024-001576

Frances J. Ratliff, Edward J. Ratliff, Jr., James L. Ratliff, Lucretia B. Morgan, Sherri Akers
Crisp, and Amy Cawthon,

Appellants,

v.

Oconee County, Globe, A South Carolina Limited Partnership, Farnes, A South Carolina
Limited Partnership,

Respondents,

PROOF OF SERVICE

I certify that the Appellants' Return to Motion to Dismiss has been served on James W. Logan, Jr., counsel for Respondent Oconee County, by email sent to his primary e-mail address listed in the Attorney Information System, logan@loganandjolly.com and on Larry C. Brandt and Andrew K. Holliday, counsel for Respondents, Globe, a South Carolina Limited Partnership, and Farnes, a South Carolina Limited Partnership, by email sent to their primary e-mail addresses listed in the Attorney Information System, larry@larrybrandtlaw.com and andrew@drwmlaw.com, on October 11, 2024. See attached email.

s/ David L. Paavola

David L. Paavola, SC Bar No.: 100714
Mark A. Bible, Jr. SC Bar No.: 101624
KENISON, DUDLEY & CRAWFORD, LLC
1122 Barnwell Street, Suite B
Columbia, South Carolina 29201
(864) 242-4899

Email: paavola@conlaw.com
bible@conlaw.com

Attorney for Appellants

October 11, 2024


Ratliff, et al, v. Oconee County, et al Re Appellants' Return to Respondents' Motion to Dismiss

From Angelia Shaw <shaw@conlaw.com>

Date Fri 10/11/2024 5:32 PM

To Andrew Holliday <andrew@drwmlaw.com>; Jim Logan <logan@loganandjolly.com>;
larry@larrybrandtlaw.com <larry@larrybrandtlaw.com>

Cc David Paavola <paavola@conlaw.com>; Mark Bible <bible@conlaw.com>

 1 attachments (114 KB)

20241011_Return to Motion to Dismiss Appeal_FINAL.pdf;

Counsel:

Attached please find Appellants' Return to Respondents' Motion to Dismiss for service in accordance with Rule 262, SCACR. Our Return will be filed in the Court of Appeals shortly.

Sincerely,



Angelia Shaw

Paralegal

KENISON, DUDLEY & CRAWFORD, LLC

1122 Barnwell St., Suite B.

Columbia, SC 29201

Email: shaw@conlaw.com

Main: (864) 242-4899

Direct: (803) 400-8342

Website: www.conlaw.com

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Kenison, Dudley & Crawford, LLC by replying to this email and delete the original and reply emails. Thank you.