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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
James C. Campbell, Sumter County Clerk of Court

Circuit Court Case No.: 2024-CP-43-00703
Appellate Case No. 2024-001073

Christol Morton.....Respondent,

v.

Carolina Cutting Coring, LLC and Sean Michael Shaffer, Jr..... Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

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I. THE ARGUMENTS IN THE INITIAL BRIEF OF APPELLANTS ARE NOT CONCLUSORY.

Respondent argues that Appellants' arguments should be deemed abandoned because the arguments are conclusory and the Appellants' brief does not contain sufficient citation to proper authority. This argument fails because Appellants did provide proper citation to controlling authority in making its arguments. Appellants' main arguments in this appeal are that 1) the subject Order of Reference is immediately appealable and 2) the Court should enforce the clear, plan, and unambiguous language of Rule 53(a), SCRCP and S.C. Code Ann. § 14-11-60, and in applying the language, the Court should vacate the Order of Reference. The fact that Appellants were able to make its arguments without the need to cite dozens of cases, does not make Appellants' arguments conclusory.

Respondent first alleges that Appellants' argument that "it is clear that the case law in South Carolina is that Orders of Reference must be immediately appealable or that right to appeal will be waived," is a conclusory statement. In support of this statement, Appellants cited two cases and a statute. Specifically, S.C. Code Ann. § 14–3–330(2) (1977), *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997), and *Edwards v. Timmons*, 297 S.C. 314, 377 S.E.2d 97 (1988). Respondent claims that these two cases do not support Appellants' argument because Appellant "failed to include critical language from those cases." (Resp. Brief p. 5). Respondent then proceeds to provide her opinion of what these cases stand for, focusing on the default status of the parties in those cases as being relevant and controlling. It appears Respondent is arguing that these cases stand for the rule that only a party not in default has the right to appeal an Order of Reference, because a party in default has no right to a jury trial. Appellant disagrees with that interpretation of the cases. If there is case law in South Carolina

that directly held that a party in default has no right to immediately appeal an Order of Reference, it is assumed Respondent would have cited that case. Neither the *Lester* nor the *Edwards* case stand for Respondent's position. The fact that Respondent disagrees with Appellants' interpretation of case law, does not mean that Appellants' arguments are conclusory.

Secondly, Respondent alleges that Appellants made a conclusory argument in its position that a party in default has a right to challenge the mode of trial. In its initial brief, Appellants cite the *Roche v. Young Bros., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998) case to show that the only rights a defaulting party is "…deemed to have admitted [is] the truth of the plaintiff's allegations and to have conceded liability." *Id*. The *Roche* cases does not stand for the principle that a defaulting party loses its right to challenge the mode of trial, in which an order of reference is improperly referred to a special referee. The sole issue in the *Roche* case, was whether the consent of a defaulting party is needed before a circuit court judge has the authority to refer a case. The *Roche* case does not hold that the defaulting party cannot challenge an order of reference that was improperly referred. These are two very different issues. It is also significant to note that the *Roche* case was decided before the current version of Ruel 53, SCRCP, so any analysis of this issue should be looked at based on the current version of that rule.

Third, Respondent argues that in Appellants asking the court to follow the clear language of Rule 53(a), SCRCP and S.C. Code Ann. § 14-11-60, it is making conclusory arguments. Such a position lacks merit. Appellants main point in this appeal is that the language of Rule 53(a), SCRCP and S.C. Code Ann. § 14-11-60 is clear that in any county in South Carolina with a sitting master-in-equity, a case can only be referred to a special referee by a circuit court judge, and only under certain conditions. Respondent can disagree with that position, but Appellants

are not required to cite any case law to support its positions that the Court should enforce a rule and statute as written. *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 24, 579 S.E.2d 334, 337 (Ct. App. 2003) case. ("If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning.")

Finally, Respondents argue that Appellants have made a conclusory statement when it argued that Respondent was required to affirmatively waive in writing it demand for a jury trial. Appellants will address the merits of this argument below, but similar to the arguments raised above, the Appellants argument on this point is not conclusory because of the plan reading of Rule 38 and 39, SCRCP.

II. THE EXISTENCE OF A PENDING 59(e) MOTION DOES NOT RENDER THIS APPEAL PREMATURE

Respondent argues that because the Appellants had filed two pending 59(e) motions to the Order of Reference, Appellants are not allowed to file its appeal before those motions are heard. The case law cited by Respondent in its brief do not stand for this position. As the moving party, Appellants are entitled to seek an appeal prior to a hearing on its own 59(e) motions in order to prevent prejudice to the Appellants.

Appellant filed its Notice of Appeal prior to a hearing on its Rule 59(e) motions due to the fact that Respondent's counsel held the position that the special referee, and not the circuit court, had jurisdiction to hear the pending 59(e) motions. As shown in a June 19, 2024, email exchange between counsel and the Special Referee's office, Respondent's counsel refused to acknowledge that the Circuit Court was the proper court to hear the 59(e) motions and instead coordinated with the Special Referee's office to have all pending motions heard before the

Special Referee. (June 19, 2024 email exchange). Only now is Respondent changing her position in order to argue that Appellant's appeal should be dismissed.

Also, in the June 19, 2024, email exchange, Respondent's position, before the Special Referee, was that Appellants were not even entitled to make a 59(e) motion to the order of reference. (June 19, 2024 email exchange). Again, only now is Respondent changing her position in order to argue that Appellant's appeal should be dismissed.

III. THE CLERK OF COURT'S ORDER OF REFERENCE IS IMMEDIATELY APPEALABLE

Respondent argues that Appellants have no right to appeal the Order of Reference because a defaulting party does not have the right to a jury trial, and a party can only appeal orders that effect a right they are entitled to. Respondents cite no valid cases to support this position. The "*Compare Creed v. Stakes"*[1] case cited by the Respondent does not stand for the position that the Respondent argues. The *Creed* case dealt with a party who lost its right to appeal due to the time to appeal having passed. *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985). In this case the Appellants timely filed its appeal challenging the order of reference and order of default. Under Respondents position, a defaulting party would lose its right to appeal a clearly improperly referred case. Such a position would violate a defaulting parties due process rights.

Respondent also argues that she was not required to waive her jury demand in writing before the Clerk of Court signed the Order of reference. Respondent argues that a party can waive its jury demand by implication, such as by filing a motion for an order of reference. The

[1] This case is improperly cited by the Respondents. The correct citation is *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985)

case law cited by Respondent does not supports this position.

In the *Shaw* case, the Court of Appeals held that the Plaintiff's properly demanded a jury trial in its original complaint and was entitled to a jury trial, even though in their amended complaint Plaintiff did not include the word "jury." *Shaw v. Atl. Coast Life Ins. Co.*, 322 S.C. 139, 141, 470 S.E.2d 382, 384 (Ct. App. 1996). In the *Shaw* case, the Court held that "[o]nce a jury trial is properly demanded it may only be waived based on the provisions of Rule 39(a), SCRCP." *Id*.

The current version of Rule 39(a), SCRCP, states:

> When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the calendar and the clerk's filebook as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

Rule 39(a) requires some affirmative action to be taken by the parties to waive its jury demand, whether the Defendant is in default or not in default. In this case Respondent did not waive it jury demand in its Motion to Refer the case or orally in court. Therefore, the jury trial demand has not been waived. Respondent's position is that it can waive its jury demand informally or by impaction, but the rules and case law cited above indicates that is not correct.

IV. THE CLERK OF COURT'S ORDER OF REFERENCE IS NOT VALID

Respondent argues that S.C. Code Ann. § 14-11-60 only deals with "situations where there is no available master in equity as the result of vacancy, disqualification, or disability." (Resp. Brief p. 14). This argument is not valid.

Respondents first claim that because a prior version of Rule 53, SCRCP, seems to have allowed the appointment of a "special master" even in counties with a sitting master-in-equity, that intent was carried over to the new version in Rule 53. That argument is a conclusory argument and not supported by any authority. In fact, a reading of the pre and post 1999 versions of Rule 53, SCRCP, indicates an intent by the Supreme Court and General Assembly to limit and restrict cases that were being sent to "special masters."

For example, it is important to note that in Respondent's entire Initial Brief, she neglects to address the fact that Rule 53(a) was amended in 1999 to state "(a) Master and Special Referee Defined. The term "master" means the master-in-equity for the county. **The term "special referee" means a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. § 14-11-60**." (emphasis added). This change intentionally incorporated S.C. Code Ann. § 14-11-60 into Rule 53, SCRCP. This language clearly requires that whenever the word "special referee" is mentioned in Rule 53, the requirements of S.C. Code Ann. § 14-11-60 must be complied with. That clear and unmistakable language states that a clerk of court cannot sign an order of reference to a special referee if there is a sitting master-in-equity in their county.

There is no conflict between Rule 53 and S.C. Code Ann. § 14-11-60, and based on the clear language of Rule 53(a), the first sentence of S.C. Code Ann. § 14-11-60 is an exclusive requirement for the appointment of a special referee in a county with a sitting master-in-equity.

Respondent cites this Court's unpublished case of *Rickenbaker v. Schumacher Homes of SC*, 2021-UP-243 (S.C. Ct. App. filed June 30, 2021) to support her position. In the Rickenbaker case, an order of reference was referred to a special referee in a county that had a sitting master-in-equity. However, in the Rickenbaker case, the order of reference to the special referee was signed by the chief administrative judge and not the clerk of court. Therefore, this case supports Appellants' position that only a circuit court Judge has the authority to refer cases to special referees under S.C. Code § 14-11-60.

Respondent also argues that by Plaintiff's attorney submitting a purposed order of reference to a clerk of court, it is the clerk of court who is selecting the special referee and the Plaintiffs attorney is just "suggesting" the special referee. Appellant's position is that clerks of court in counties with a sitting master-in-equity have no authority to refer cases to special referees. However, Appellant will address this point raised by Respondent. As a practical matter it is not possible for the clerk of court to reject Plaintiffs attorney's chosen special referee because there is no mechanism for the clerk of court to hold a hearing to determine why the case is not being referred to the dully appointed master-in-equity in his county.

Respondent counsel's June 19, 2024, email clearly shows how the special referee system is ripe for abuse. In that email, Plaintiff's attorney described his case as a "train…moving down the tracks" with the goal to quickly obtain a money judgment from his handpicked special referee before a dully elected or appointed judge has a chance to review the case. Just because a party goes into default, a Plaintiff's attorney should not be allowed to appoint their handpicked special referee, in a completely different county than where the case is pending, to hear a case with the goal to make it financially burdensome on the defaulting party to challenge that appointment.

The Special Referee system is designed to supplement the court system in counties where there is no sitting master-in-equity or, in other counties where the sitting master-in equity's office is currently vacated, or the master-in-equity has a disqualification or disability, or for any other reason for which cause can be shown to a circuit court judge. In those cases, pending in a county with a sitting master-in-equity, under Rule 53(a), SCRCP and S.C. Code Ann. § 14-11-60, the determination regarding which attorney should serve as special referee needs to be made by a circuit court judge.

CONCLUSION

For the above stated reason, Appellants seek an order from the court vacating the Order of Reference, returning the case to the Circuit Court, and requiring Respondent to file a motion with the Circuit Court if she wishes to refer the case to a Special Referee.

Respectfully Submitted,

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PROOF OF SERVICE

The undersigned, attorney of record for the Appellants, certifies that on **November 4, 2024**, a copy of the **Initial Reply Brief of Appellants** was served on Attorneys for Respondents, via Electronic Mail as follows:

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