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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

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 Shel-
ley Allsbrooks.....Respondents.

PETITION FOR REHEARING

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TABLE OF AUTHORITIES

STATUTES

S.C. Code Ann. Section 14-3-330(2), (1976, as amended).....3, 5

INTRODUCTION

Petitioner filed his Notice of Appeal (Amended), with this Court on September 11, 2024. This Court thereafter notified Petitioner on September 24, 2024, that counsel for the parties were required to file a memorandum on the issue of appealability. After the Petitioner submitted his Memorandum and Respondents submitted their Memorandum, this Court issued its Order dismissing Petitioner’s Appeal on October 23, 2024, and received by Petitioner’s counsel on October 23, 2024. Petitioner’s timely Petition for Rehearing follows:

ARGUMENT

Petitioner respectfully submits that this Court misapprehended or overlooked the following in its Orders (April 9, 2024 and September 11, 2024 – Denying Reconsideration).

I. Section 14-3-330 - Respondents have admitted in their Memorandum on Appealability that 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].”, (page “4” of Respondents’ Memorandum), (*Appendix p. 32*).

SECTION 14-3-330. Appellate jurisdiction in law cases. “(2) An order affecting a substantial right made in an action when such order ..., ... (c) strikes out an answer or any part thereof or any pleading in any action;” is immediately appealable, (emphasis supplied).

Substantial Right Lost.

The Lower Court's Order of April 9, 2024, (*Appendix pp. 3-4*), affected a **substantial right** of Petitioner, because the Lower Court refused to allow Petitioner to include paragraphs "12" and "30" in Petitioner's proposed Complaint (Third Amended).

Specifically, the Lower Court's Order of April 9, 2024, stated in paragraph, "12.The Plaintiff's Appeal [Appellate Case Number 2021-001150] was dismissed¹ and **the Plaintiff is precluded from repleading matters previously stricken.**", (emphasis supplied), (*Appendix p. 4*). Petitioner has lost a substantial right in that he was not permitted to include pertinent paragraphs in his Complaint (Third Amended) to support his Motion to Amend.

Order Strikes Out Part of Pleading.

Furthermore, the Lower Court's Order of April 9, 2024, **strikes out² part of Petitioner's pleading** (namely, part of the proposed Complaint (Third Amended), attached to Petitioner's Motion to Amend), (*Appendix pp. 15-22*).

An important part of Petitioner's Complaint (Third Amended), paragraphs "12" and "30" were specifically struck by the Lower Court's Order of April 9, 2024 on pages "3 and 4", (*Appendix pp. 3-4*).

¹ The Lower Court's Order's of April 9, 2024, reference is Petitioner's previous Appeal (Appellate Case Number 2021-001150), as being, "dismissed" on pages "3-4", is misleading, Petitioner's previous Appeal was dismissed as being "interlocutory" and there was no finding on the merits in that Appellate decision which would preclude Petitioner's future use of the paragraphs, (*Appendix pp. 3-4*).

² **The Lower Court's Order strikes** paragraphs "12" and "30" from Petitioner's Complaint (Third Amended).

Obviously, based on the above, Petitioner lost a substantial right and part of his Pleading was struck. Therefore, the requirements of S.C. Code Section 14-3-330(2), (1976, as amended), are met and those issues are immediately appealable as Petitioner alleged in his Memorandum on Appealability, (*Appendix pp. 23-28*).

II. Judicial Estoppel - Respondents' counsel argued in Petitioner's previous Appellate Case Number 2021-001150, that Petitioner had not lost any substantial right "Respondents' Reply to Appellant's Return to Motion to Dismiss", dated February 18, 2022, on page "5" (*Appendix p. 37*). Accordingly, Respondents' Lower Court's counsel was prevented by Judicial Estoppel from arguing before the Lower Court that Petitioner was not permitted to make further use of the "two important factual admissions- paragraphs "12" and "30"", (January 29, 2024, Hearing Transcript p. 6 LL. 8-13), (*Appendix p. 7*). (July 29, 2024, Reconsideration Hearing Transcript p. 4, L. 24 – p. 5 L.10), (*Appendix pp. 9-10*). The Lower Court agreed with Respondents' argument and the "two important factual admissions- paragraphs "12" and "30"", were struck in the Lower Court's Order of April 9, 2024.

CONCLUSION

Based on the foregoing (i) the Doctrine of Judicial Estoppel (ii) the applicable statute and (iii) the facts of this case, the Petitioner's Appeal is not interlocutory. Therefore, this Court should grant a Rehearing and Reconsideration of this matter and enter its Order allowing the Petitioner's Appeal to proceed.

[Signature Page Follows]

Respectfully Submitted,

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