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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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. 2025-000159

Ronald L. Jones.....Petitioner,

v.

Gary A. Jones, Sr., Becky J.
Jones, Ima Lee Jones and Shel-
ley Allsbrooks.....Respondents.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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Petitioner's Reply to Respondents' Return to the Petition for Writ of Certiorari follows.

ARGUMENT

The Court of Appeal's Order of October 23, 2024, dismissing Petitioner's Appeal as being interlocutory, *inter alia*, conflicts with prior decisions of this Court. e.g., Hagood v. Sommerville, 607 SE 2d 707 (2005), (a Supreme Court case, which held that a Lower Court decision which affects a substantial right is immediately appealable when an order strikes out an answer or any part thereof or any pleading in any action). Hagood at, 195.

S.C. Code Ann. § 14-3-330(2).

Petitioner's Appeal is allowed by S.C. Code Section 14-3-330(2), "Appellate jurisdiction in law cases." (1976, as amended). S.C. Code Section 14-3-330 (2) reads in pertinent part as follows, "(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". Because the Lower Court's Orders have deprived Petitioner of a substantial right and the Lower Court's Orders strike part of Petitioner's pleading, S.C. Code Section 14-3-330(2), applies and the South Carolina Court of Appeals should have allowed Petitioner's Appeal to proceed. The *nexus* of Petitioner's Appeal is not simply the rubric of Petitioner's Motion to Amend. Petitioner is appealing because (i) the Orders deprive the Petitioner of a substantial right and (ii) strike a part of Petitioner's pleading, thus allowing an immediate Appeal under the Statute.

Judicial Estoppel.

In order to convince the South Carolina Court of Appeals, in Petitioner’s previous Appellate Case Number 2021-001150, that Petitioner’s then Appeal was not immediately appealable, Respondents’ Appellate counsel argued, that Petitioner had not lost any substantial right. (See, “Respondents’ Reply to Appellant’s Return to Motion to Dismiss”, dated February 18, 2022, on page “5”). However, Respondents’ Lower Court’s counsel thereafter improperly reversed course and Respondents’ Lower Court’s counsel argued that the Lower Court should strike “two important factual admissions- paragraphs “12” and “30”, from Petitioner’s proposed Complaint, (hereinafter as, “two important factual paragraphs”), (See, January 29, 2024, Hearing Transcript p. 6 LL. 8-13). (Also see, July 29, 2024, Reconsideration Hearing Transcript p. 4, L. 24 – p. 5 L.10).

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). (July 29, 2024, Reconsideration Hearing Transcript p. 4, L. 24 – p. 5 L.10). The Lower Court agreed with Respondents’ argument and Petitioner lost a substantial right in that the “two important factual admissions- paragraphs “12” and “30”, were struck from the Petitioner’s proposed Complaint in the Lower Court’s Order of April 9, 2024.

Petitioner Deprived of a Substantial Right.

The Lower Court accepted Respondents' Lower Court's counsel's improper arguments as evidenced in the Order under Appeal, the Lower Court's Order dated April 9, 2024¹, wherein Petitioner was not allowed to further utilize the Petitioner's "two important factual paragraphs", which were foundational in Petitioner's proposed Complaint. Factually, and contrary to Respondents' Appellate counsel's argument in their Return to Petitioner's Writ of Certiorari, the "two important factual paragraphs" were struck by the Lower Court¹.

Respondents' counsel uses red herring argument in Respondents' Return to Petitioner's Petition to avoid (i) this Court's recognition that Respondents' Appellate counsel took one position before the South Carolina Court of Appeals and Respondent's lower counsel thereafter took a different and conflicting position, before the Lower Court, in violation of the Doctrine of Judicial Estoppel and (ii) this Court's recognition that the Lower Court's Order under Appeal **deprived Petitioner of a substantial right** by striking part of Petitioner's Complaint, which would have been viable, had the Lower Court and the South Carolina Court of Appeals ruled correctly.

Respondents' Return Misstates Facts.

On page "5" of Respondents' Return, Respondents' counsel makes the remarkable argument that, "...the circuit court's order [of April 9, 2024] does not prevent an appeal of Petitioner's complained issue following a final judgment in this matter." If Petitioner had not appealed the Lower Court's Order of April 9, 2024, Petitioner would have been precluded from later appealing the Lower Court's **striking** the "two important factual paragraphs", because of the following from the April 9, 2024 Order, "...the Plaintiff is precluded from repleading matters already stricken." (See, paragraph "12"). Therefore, the

¹ In paragraph "12"

Court's holding would have been the Law of the Case and Petitioner would have been precluded from appealing that issue following a final judgment in this matter, as Respondents' improperly allege in their Return.

CONCLUSION

Based on the foregoing (i) applicable case law (ii) applicable statute and (iii) the facts of this case, Petitioner's Appeal is not interlocutory. Therefore, this Court should grant Petitioner's Petition and Remand this matter, and for such other and further relief this Court deems just and appropriate.

[Signature Page Follows]

Respectfully Submitted,

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