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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Charleston County
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2025-000286

William Haynes as Personal Representative of the Estate of Elizabeth Varner,

Respondent,

v.

Fundamental Services LLC, Fundamental Clinical and Operational Services LLC, and Jerrolyn
Montgomery-Small,

Appellants.

**RESPONDENT'S REPLY TO APPELLANTS'
RETURN TO RESPONDENT'S MOTION TO DISMISS APPELLANTS'
NOTICE OF APPEAL**

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COMES NOW Respondent, William Haynes as Personal Representative of the Estate of Elizabeth Varner, by and through undersigned counsel, pursuant to Rule 240(f) SCACR, and files this Reply to Appellants' Return to Respondent's Motion to Dismiss Appellant's Notice of Appeal, showing this Court as follows:

The crux of Appellants' argument seems to be their Motion to Compel Arbitration was filed in response to the denial of their Motion for Summary Judgment. Appellants seem to basically prove Respondent's position that the Motion to Compel was nothing more than a successive motion to reconsider the denial of summary judgment. Regardless of how Appellants try to differentiate the two motions, what they cannot get around, and thus the reason why the Notice of Appeal must be dismissed, is the arguments in their respective motions are identical and they are attempting an end-around the interlocutory nature of the denial of summary judgment. No matter how many times Appellants say the motions are different, the arguments and the exhibits in support of both motions rely on the premise the Arbitration Order issued in another matter applies to the underlying lawsuit, *William Haynes, as Personal Representative of the Estate of Elizabeth Varner v. Fundamental Administrative Services, Fundamental Clinical and Operational Services, and Jerrolyn Montgomery-Small*s, CAFN: 2021CP1002744 ("Case 2744"). **See Exhibits H and O to Resp.'s Mot. to Dismiss Not. of Appeal.** The Circuit Court rejected this argument, first in the denial of their Motion for Summary Judgment, thus establishing the law of the case, and then in the denial of their successive motion to reconsider styled as a Motion to Compel Arbitration.

The Honorable Jennifer B. McCoy saw Appellants' argument for what it was – a reconsideration of the denial for summary judgment. She hit the proverbial nail on the head when she said, "Okay. All right. I mean, I get that in a way -- it puts me in this odd position of sort of reconsidering another Judge's ruling, which I can't – I can't do either, but I understand -- I think I

understand your position. It's tough. It's a tough one.” See **Exhibit R to Resp.’s Mot. to Dismiss Not. of Appeal, p. 16: 3-7.**

Appellants are now playing semantics when arguing nothing in their Motion for Summary Judgment asked the Circuit Court to compel arbitration as contained in their Motion to Compel Arbitration. The relief sought in both motions is identical – the Arbitration Order issued in a separate case is applicable to Case 2744. Their arguments in both motions, as provided to this Court in Respondent’s Motion to Dismiss, were the same: the claims in Case 2744 against Appellant Montgomery-Small involving corporate negligence were subject to arbitration. They made this argument in their Motion for Summary Judgment and rehashed it in their Motion to Compel Arbitration. It was rejected in their summary judgment motion and rejected again when they filed their mislabeled Motion to Compel Arbitration. If the Arbitration Order applied to Case 2744, then it would have been dispositive at the summary judgment stage of litigation. That argument was rejected by the Circuit Court when summary judgment was denied. Their argument the Arbitration Order now applies to the allegations of Case 2744 as argued in their Motion to Compel is an artfully crafted motion to reconsider designed to appeal an interlocutory order.

In support of the arguments made in their Return, Appellants also state the Arbitrator found in favor of Appellant Montgomery-Small regarding the corporate negligence claims in Case 2744. Appellants made the same arguments in both the Motion for Summary Judgment and the mislabeled Motion to Compel Arbitration. However, this is a misstatement of the Arbitrator’s Order. The Arbitrator did not make any conclusions of law or fact regarding the corporate negligence claims in Case 2744. The Arbitrator’s Order specifically stated, “I find the Plaintiff failed to prove by the preponderance of the evidence that defendant Montgomery-Small deviated from the standard of care in her care of or investigation of the fall.” **Exhibit K to Appellants’**

Return to Mot. to Dismiss Not. of Appeal. Nothing in the Arbitrator's Order addressed the allegations contained in Case 2744. The reason is simple: those allegations were not subject to arbitration.

The Circuit Court recognized this fact when denying Appellants' Motion for Summary Judgment and again when denying their disguised motion to reconsider styled as a Motion to Compel Arbitration. Appellants should not be allowed to argue in summary judgment the Arbitration Order applies, have that argument denied, make the same argument in a subsequent motion styled as a Motion to Compel Arbitration, have that denied, and thereby create an appeal. Appellants' attempts to create an appellate issue by styling a motion to reconsider as a Motion to Compel Arbitration, after the same arguments were heard and denied in their Motion for Summary Judgment, ignores the law of the case, circumvents the interlocutory nature of the denial for summary judgment, and serves as a waste of judicial resources.

For the reasons contained in Respondent's Motion to Dismiss Appellant's Notice of Appeal, Respondent respectfully request this Court to GRANT the Motion to Dismiss because 1) Appellants Notice of Appeal is interlocutory in that they are essentially appealing a denial of their Motion for Summary Judgment; 2) Appellants' Motion to Compel Arbitration, which is the basis of their Notice of Appeal, is nothing more than a successive motion to reconsider the denial of summary judgment; 3) Appellants' Motion to Compel Arbitration ignores the law of the case doctrine that prevents the re-litigation of issues previously decided; and 4) The Circuit Court properly recognized Appellants' Motion to Compel Arbitration as an attempt to reconsider another Circuit Court Judge's decision on the same set of facts that formed the basis of their Motion for Summary Judgment.

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Respectfully submitted,

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Dated: May 15, 2025