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May 19, 2025

VIA EMAIL ONLY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
May 19 2025
SC Court of Appeals

Re: Nathaniel Shell, Appellant-Respondent, v. Law Office of Neil T. Phillips, LLC; and Neil T. Phillips, Respondents-Appellants.
Appellate Case No. 2023-000859

Dear Ms. Kitchings:

I am writing in response to the Court's May 8, 2025, correspondence indicating that the challenged Orders may not be appealable. I represent Respondent. The Appellants challenge the Circuit Court's decision to dismiss Respondent's complaint without prejudice, asserting it should have been dismissed with prejudice under S.C. Code § 15-36-100. However, this appeal is not from a final judgment that affects the substantial rights of the parties or conclusively determines the action. As such, the Order appealed from is **not immediately appealable**, and the appeal should be dismissed for lack of jurisdiction.

Under **Rule 201(a), SCACR**, and S. C. Code Ann. § 14-3-330, an appeal may only be taken from a **final judgment, an appealable interlocutory order, or a final decision of an administrative agency**.

"By its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis." *Morrow v. Fundamental Long—Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015). "An appeal ordinarily may be pursued only after a party has obtained a final judgment." *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). "A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). "An order reserving an issue, or leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory." *Id.* "The determination of whether a trial court's order is immediately appealable is governed by statute." *Morrow*, 412 S.C. at 537, 773 S.E.2d at 145. "An interlocutory order [*2] not governed by a specialized appealability statute is not immediately appealable unless it fits into one of the categories listed in section 14-3-330. . . ." *Thornton v. S. C. Elec. & Gas Corp.*, 391 S.C. 297, 300, 705 S.E.2d 475, 477 (Ct. App. 2011).

Finan v. Vista Wings, LLC, No. 2022-UP-027, 2022 S.C. App. Unpub. LEXIS 39, at *1-2 (Ct. App. Jan. 19, 2022).

The March 28, 2023 Order dismissed Respondent's complaint **without prejudice** for failure to comply with the contemporaneous filing requirement under S.C. Code § 15-36-100. The Order Denying the Motion to Reconsider expressly did not address the merits of the underlying claims and left open the possibility of refileing. Because the dismissal:

-) Did **not adjudicate the merits** of the claims;
-) Did **not prevent Respondent from refileing** a properly supported complaint;
-) Was **not with prejudice** (i.e., not dispositive of any substantial rights),

it **fails to qualify as a final judgment** or an appealable interlocutory order.

In fact, Respondent advised the Trial Court at the hearing that under the Stokes-Craven case, the statute of limitations for a legal malpractice would not begin to run until September of 2022. Counsel also advised that the Respondent was prepared to file an Affidavit of Expert Witness within 2 weeks. (R. 45 l. 23 – R. 46 l. 18). Under these circumstances, it is clear that Respondent would be submitting another Complaint. There was no need to seek leave of the Court to Amend because we were well within the statute of limitations.

Because the merits were never adjudicated and Respondent was not prevented from filing another Complaint, this Court should determine the referenced Orders are not appealable.

Very truly yours,



D. Alan Lazenby
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DAL:

cc: Douglas W. MacKelcan, Esq. (via email only)
Taylor L. Cary, Esq. (via email only)