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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely

APPELLATE CASE NO. 2025-000318

Peter Bouharoun, Opus Petrus, LLC.....Appellants,

v.

Bouharoun Package Store, Inc., Patricia BouharounRespondents,

INITIAL REPLY BRIEF

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ARGUMENT

I. THE APPEALED ORDER IS NOT INTERLOCUTORY BECAUSE SUPPRESSION OF THE FACTUAL EVIDENCE OF THE CONTENTS OF RESPONDENT'S WILL EFFECTIVELY DECIDES THE MERITS OF THIS ACTION.

“Except as limited by subsection (b) and Section 14-8-260, the [Court of Appeals] has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit court . . .” S.C. Code § 14-8-200. “An interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right.” Burkey v. Noce, 398 S.C. 35, 37, 726 S.E.2d 229, 230 (Ct. App. 2012).

An order which involves the merits is one that “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.” Mid-State Distributions v. Century Imps., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). “If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory.” Id. at 335, 426 S.E.2d at 780. (citing Adickes v. Allison & Bratton, 21 S.C. 245 (1884)). “If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment.” Id. (citing Good v. Hartford Accident and Indemnity Co., 201 S.C. 32, 21 S.E.2d 209 (1942)).

Here, the appealed order goes beyond determining the applicable law because it suppresses discovery of a central fact in the case, effectively deciding the merits of the case prior to trial. As Respondent has argued in multiple motions in this case, Appellant cannot prove his case unless he can discover the contents of Respondent’s estate planning documents. (Def. Mot. to Dismiss p. 4) (“Peter has never seen Ms. Bouharoun’s Current Will, nor does he know what it provides beyond rank speculation.”).

Finally, there is no statutory bar to the Court of Appeal having jurisdiction to decide this appeal as suggested by Respondent, (Resp. Br. 3). S.C. Code Section 14-8-200 grants the Court of Appeals jurisdiction over any case in which an appeal is taken from any order issued by the circuit court. Other than appeals that must be transferred to the Supreme Court, the statute does not limit this Court's jurisdiction to correct errors of law by the circuit court, regardless of the type of order.

Therefore, this Court has jurisdiction to decide this appeal.

II. THE COURT ERRED IN FINDING THAT RESPONDENT'S EXECUTED ESTATE PLANNING DOCUMENTS ARE PROTECTED FROM DISCLOSURE BY THE ATTORNEY-CLIENT PRIVILEGE DURING HER LIFETIME.

The crux of this appeal is whether the contents of Respondent's estate planning documents are a fact or a communication with Respondent's attorney.

[The] protection of the privilege extends only to communications and not to facts. A fact is one thing and a communication concerning that fact is an entirely different thing. The client cannot be compelled to answer the question, 'What did you say or write to the attorney?' but may not refuse to disclose any relevant fact within his knowledge merely because he incorporated a statement of such fact into his communication to his attorney.

Upjohn v. United States, 449 U.S. 383, 395-96 (1981) (quoting Philadelphia v. Westinghouse Electric Corp., 205 F. Supp. 830, 831 (E.D. Pa. 1962)).

Fact. A thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence; an actual happening in time space or an event mental or physical; that which has taken place. . . . A fact is either a state of things, that is, an existence, or a motion, that is, an event. The quality of being actual; actual existence or occurrence.

Black's Law Dictionary 531-32 (5th ed. 1979) (citation omitted).

Essentially, a fact is something that can either be proven true or false. “The light was red” is a fact. “The defendant is five feet tall” is a fact. The contents of Respondent’s executed estate planning are another fact. They are a thing in existence.

The parties do not disagree that Respondent’s communications with her attorney that led to the drafting of her estate planning documents are protected by the attorney-client privilege to the extent those communications were not shared with third parties. Further, the parties do not disagree that unexecuted drafts of these documents could be considered attorney-client privileged communications. However, the contents of Respondent’s estate planning documents are a fact. Respondent has admitted that the contents of those documents are relevant to this case because they either prove or disprove whether Respondent breached her agreement with Appellant.

Therefore, Respondent is attempting to use the attorney-client privilege to obfuscate facts; not to withhold privileged communications with her attorney.

CONCLUSION

For the foregoing reasons as well as the arguments presented in the Brief of Appellant, Appellants respectfully request that this Court reverse the circuit court’s discovery order and find that Mother’s executed estate planning documents, including her last will and testament, are not protected by the attorney-client privilege.

Respectfully submitted,

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Dated: August 18, 2025

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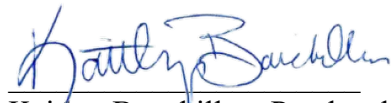
v.

Bouharoun Package Store, Inc., Patricia Bouharoun.....Respondents.

PROOF OF SERVICE

I hereby certify that I have served the *Initial Reply Brief* on Respondents' counsel of record on this the 18th day of August 2025 by electronic AIS e-mail only as follows:

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