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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge

Case No. 2024-CP-25-00409
Court of Appeals Appellate Case No. 2025-001849

Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.,

Respondent,

v.

William Barnes and Barnes Law Firm, LLC,

Appellants.

v.

Parker Law Group, LLP,

Third-Party Defendant.

RETURN TO MOTION TO DISMISS

This matter is on appeal from an order styled as ORDER GRANTING PLAINTIFF'S MOTION TO STAY CASE AND COMPEL ARBITRATION. Appellants William Barnes and Barnes Law Firm, LLC submit this Return to the Respondent's motion to dismiss this pending appeal as interlocutory under S.C. Code Ann. §15-48-200(a). Appellants maintain that the interlocutory appeal is allowable and mandatory under S.C. Code Ann. § 14-3-330(2) because the order affects the mode of trial by depriving them of a jury trial to which they are entitled under Rule 38, SCRCP.

Pertinent Procedural History[1]

To briefly restate the key facts, Respondent filed a complaint – with a jury trial demand – on December 16, 2024[2], presenting causes of action arising out of a dispute over attorney fees earned before, during, and after William Barnes' departure from Respondent Peters, Murdaugh, Parker, Eltzroth & Detrick ("PMPED") as well as a dispute over Mr. Barnes' payment to PMPED for legal expenses, and a partnership distribution paid to Mr. Barnes in December 2021. The Appellants answered and counter-claimed, also demanding a jury trial.[3] After a five-month period of discovery, Respondent filed a motion to compel arbitration which was granted. On September 10, 2015, the Appellants served and filed a Notice of Appeal of the following orders:

> 1. Order granting Plaintiffs motion to stay case and compel arbitration, issued July 17, 2025;
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> 2. Form 4 Order Granting Plaintiffs motion to stay case and compel arbitration, issued July 11, 2025;
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> 3. Form 4 Order denying motion to reconsider and directing Plaintiff to prepare a formal order, issued August 29, 2025; and
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> 4. Order (erroneously styled "Proposed Order") denying Defendants' Rule 59(e) motion, issued September 10, 2025.

Of note, on September 12, 2025, the Appellants filed a motion in the Supreme Court pursuant to Rule 204(b), SCACR, requesting that the appeal be transferred for direct appellate review on the ground that the appeal involves an issue of significant public interest and/or a legal

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[1]Appellants herein incorporate the statement of facts in their Motion to Certify and Reply thereto filed in the Supreme Court. The Motion to Certify already is on file in this Court. The Reply is attached as Exhibit A.

[2] The complaint is attached to the Respondent's Motion to Dismiss.

[3] The answer is also attached to the Respondent's Motion to Dismiss.

principle of major importance. The Respondent raised an appealability argument in its return opposing the motion to certify.[4] That motion is still pending in the Supreme Court.

The Respondent filed a motion to dismiss this appeal on October 13, 2025, in this Court making the same argument that the order(s) are not immediately appealable.

Review of Appealability Issues

"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); *see also* Stone v. Thompson, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019)("the question of whether an order is immediately appealable is determined on a case-by-case basis."). In considering the appealability of an interlocutory order, the Court reviews the order for the legal effect, not how the motion was characterized: "Our review of trial court orders is not constrained by how the order is styled." Morrow, 773 S.E.2d at 147.

While the order on appeal is styled as an order granting a motion to compel arbitration, the actual effect of the order is to affect the mode of trial and deprive the Appellants of a jury trial as demanded by both parties in their pleadings. In this posture, an immediate appeal was not merely permissible, but imperative because failure to take an immediate appeal would be deemed a waiver and preclude review of the jury trial demand on appeal from a final judgment.

The Orders are Immediately Appealable under § 14-330(a)(2).

In its motion to dismiss, PMPED argues that an order granting a motion to compel arbitration is not immediately appealable under the holding of Heffner v. Destiny, Inc., 321 S.C. 536, 538, 471 S.E.2d 135, 136 (1995). Appellants maintain that, as argued in the Reply to the

[4] The Return is attached hereto as Exhibit B.

Motion to Certify[5], the orders on appeal are immediately appealable under a line of established case law regarding the appealability of an order that affects the mode of trial and, thereby, affects a party's substantial rights under S.C. Code Ann. § 14-3-330(2). Appellants specifically addressed appealability in the Notice of Appeal, citing to § 14-3-330(2) and established precedent law supporting the immediate appealability of the orders. Respondent does not address any of that case law in its motion to dismiss.

Pursuant to § 14–3–330(a)(2), appellate courts have jurisdiction to immediately review certain interlocutory orders, including:

> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, ….

It is well settled that an order that affects a mode of trial is immediately appealable under §(a)(2) as an order affecting a substantial right, and likewise, it is well settled that failure to take an immediate appeal of such an order renders that order unreviewable on appeal from a final order/judgment:

> Pursuant to § 14–3–330(2), this Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable. *Lester v. Dawson* 327 S.C. 263, 491 S.E.2d 240 (1997); *C & S Real Estate Services, Inc., v. Massengale* 290 S.C. 299, 350 S.E.2d 191 (1986); *Creed v. Stokes* 285 S.C. 542, 331 S.E.2d 351 (1985); *First Union National Bank of South Carolina v. Soden,* 333 S.C. 554, 511 S.E.2d 372 (Ct.App.1998); *Preferred Sav. Bank, Inc. v. Elkholy* 303 S.C. 95, 399 S.E.2d 19 (Ct.App.1990). These cases not only permit, but indeed require, immediate appeal in the event of denial of a mode of trial to which one is entitled as a matter of right. Failure to immediately appeal such an order forever bars appellate review. See, e.g., *Creed v. Stokes, supra.*

[5] The arguments in the Reply are incorporated as if restated herein. (Reply pp. 7).

Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000). *See also* Cobb v. S.C. Dep't of Transp., 365 S.C. 360, 363, 618 S.E.2d 299, 300 (2005) ("If an order deprives a party of a mode of trial to which that party is entitled as a matter of right, the order is immediately appealable and failure to do so forever bars appellate review."); Foggie v. CSX Transp., Inc., 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993) ("Issues regarding mode of trial must be raised in the trial court at the first opportunity, and the order of the trial judge is immediately appealable. The failure to timely appeal the interlocutory order of the trial court effects a waiver of appeal rights."). Under this line of precedent establishing an issue preservation mandate, the Appellants were required to file this appeal to preserve their right to challenge the denial of the jury trial.

The Respondent's argument for dismissal relies upon the provisions of § 15-48-200(a), and Heffner v. Destiny, Inc., supra. Section 15-48-200(a) specifically provides for an interlocutory appeal of an order denying an application to compel arbitration made under § 15-48-20. In Heffner, the Supreme Court held that an order that compelled arbitration was not immediately appealable because it is not included in the list of appealable orders in subsection 15-48-200(a). The Court also stated that the specific provision of §15-48-200 prevailed over the general appealability provisions of § 14–3–330. However, the order in this case is distinguishable from the order in Heffner. In Heffner, there is no indication that the order on appeal was anything other than a typical order compelling arbitration. In contrast, in this case the order does not merely compel arbitration but, instead, actually strikes the parties' mutual jury trial demands and, thereby, affects the mode of trial and deprives a party of a right to a jury trial. The order in this case is not a typical order granting a motion to compel arbitration.

In a typical arbitration situation, the plaintiff will file a complaint with a jury trial demand, and a defendant will assert arbitration as a defense. However, in this case, the Plaintiff/Respondent

made a valid Rule 38, SCRCP, jury trial demand, and then the Defendants/Appellants also made a jury trial demand. In granting the motion to compel, the lower court denied Appellants' requests for enforcement of the two jury trial demands and, in effect, struck the jury trial demands made by PMPED in the complaint and by the Appellants/Defendants in their answer/counter-claim. In this circumstance, the Appellants were required to immediately appeal the lower court's orders that invalidated the jury trial demands in order to preserve their right to appellate review. *See* Mortg. Elec. Sys., Inc. v. White, 384 S.C. 606, 612, 682 S.E.2d 498, 501 (Ct. App. 2009) (holding that an appellant waived an appeal where they "made a demand for a jury trial in three pleadings," including an answer but did not immediately appeal a ruling denying a jury trial).

CONCLUSION

For the reasons set forth above, Appellants respectfully request that the Court deny the Motion to Dismiss.

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