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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2025-001849

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

v.

William Barnes and Barnes Law Firm, LLC, ..... Appellants,

v.

Parker Law Group,..... Third-Party Defendant.

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**RESPONDENT'S REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS**

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ATTORNEYS FOR RESPONDENT

Appellants William Barnes and Barnes Law Firm, LLC, wish to circumvent decades of precedent holding that an order staying an action and compelling arbitration is not immediately appealable by arguing that the circuit court's order compelling arbitration in this case affects a substantial right, i.e., the mode of trial, by depriving them of a jury trial. Appellants' argument is flawed because it fails to recognize that by staying instead of dismissing the case, the order not only does not deprive Appellants of any right to a jury trial or ability to appeal the order, but also it does not determine or discontinue the action. Thus, the order does not satisfy the requirements of S.C. Code Ann. § 14-3-330(2) and is not immediately appealable.

## I. The circuit court's order does not in effect determine the action and prevent a judgment from which an appeal might be taken or discontinue the action.

The Court, like the Supreme Court,

> [I]s constituted a court for the correction of errors of law in law cases, and the only method of exercising its power of review is by appeal; hence in the exercise of that power it is obliged to exercise in a limited way its appellate jurisdiction. The Constitution provides that the correction of errors of law shall be conducted under "such regulations as the General Assembly may by law prescribe"; and the General Assembly by section 11, subd. D, of the Code 1912, has prescribed the method of appeal.

*Sandel v. State*, 128 S.C. 178, 122 S.E. 571 (1922).

Section 11, subd. D of the 1912 Code is currently codified at S.C. Code Ann. § 14-3-330(2) and defines the Court's appellate jurisdiction when correcting errors of law. It proscribes the immediate appeal of interlocutory orders in a case such as this, even if the order affects a "substantial right", when the order does not "in effect determine[] the action and prevent a judgment from which an appeal might be taken or discontinue[] the action." S.C. Code Ann. § 14-3-330(2). Even if the Court were to buy Appellants' erroneous reasoning that the interlocutory order at issue in this case is immediately appealable solely because it impacts a substantial right (the mode of trial), the reasoning still violates the plain text of the appellate jurisdiction statute

because the order is not final and does not in any reasonable way determine the underlying action. Immediate review of the order at this procedural juncture would implicate the separation of powers doctrine and infringe upon the General Assembly's constitutional duty to prescribe the appellate jurisdiction of this Court.

South Carolina courts have long recognized that for the subject orders to be immediately appealable, they must satisfy two prongs of section 14-3-330(2). While the first prong requires that an order affect a substantial right, the second prong requires that an order "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." S.C. Code Ann. § 14-3-330(2).

> To bring the case within this second subdivision of Section 11, it must appear to be an order affecting a substantial right, made in an action, when such order in effect determines the action, and prevents a judgment from which an appeal might be taken, and when such order grants or refuses a new trial. It must therefore appear that the order in question is such as to prevent a judgment in an action. The present order is not of that character. At most if affects the security of the plaintiff for the satisfaction of any judgment he may obtain, but does not preclude him from proceeding to judgment against the defendant.

*Allen v. Partlow*, 3 S.C. 417, 418 (1872) (emphasis added). "For the order to be appealable, it must not only affect a substantial right, but it must also in effect determine the action and prevent a judgment from which an appeal could be taken. . . ." *Garlington v. Copeland*, 25 S.C. 41, 43 (1886). The second prong of section 14-3-330(2) is not superfluous; it is mandatory.

Here, it is clear that the subject order does not in any way determine Respondent's action or discontinue it. The order specifically provides that it is staying the action and not dismissing it. In *Widener v. Fort Mill Ford*, 381 S.C. 522, 674 S.E.2d 172 (Ct. App. 2009), the Court reviewed an order dismissing an action and compelling arbitration and determined that it was immediately appealable. In doing so, the Court relied on the United State Supreme Court's decision in *Green Tree Financial Corp.-Alabama v. Randolph*, 531 U.S. 79, 121 S. Ct. 513, 148 L. Ed. 2d 373 (2000).

In *Randolph*, the Supreme Court held an order dismissing an action with prejudice and compelling arbitration was final and immediately appealable. *Id.* at 86-87. However, as noted by this Court, the *Randolph* Court observed in doing so that "[h]ad the District Court entered a stay instead of a dismissal in this case, that order would not be appealable." *Widener*, 381 S.C. at 524, 674 S.E.2d at 173 (quoting *Randolph*, 531 U.S. at 87 n.2). Likewise, under South Carolina law, an order compelling arbitration and staying the case is not immediately appealable. *See Steinmetz v. Am. Media Servs., LLC*, 393 S.C. 72, 75, 709 S.E.2d 708, 709 (Ct. App. 2011) ("In an arbitration case, the only appeals that may be taken are from an order of the circuit court enumerated in section 15-48-200.").

The order does not discontinue or determine the action, and it does not prevent a judgment from which an appeal could be taken. If the parties were to complete arbitration and an arbitrator were to issue an award, Appellants could seek an order from the circuit court vacating the award on the ground of exceeding the arbitrator's powers, which would be appealable. S.C. Code Ann. § 15-48-200(a)(3); S.C. Code Ann. § 15-48-130(a)(3). The circuit court would resume jurisdiction over the case, and any order confirming the award would be a final order subject to appeal. *Steinmetz v. Am. Media Servs., LLC*, 393 S.C. 72, 74, 709 S.E.2d 708, 709 (Ct. App. 2011). Because the order compelling arbitration and staying the action is interlocutory and not immediately appealable, under S.C. Code Ann. § 14-3-330(1) Appellants would retain the right to appeal it alongside the order confirming the arbitration award. Because the order does not prevent a judgment from which an appeal might be taken, it is not immediately appealable under S.C. Code Ann. § 14-3-330(2).

Appellants argue that because the order compels arbitration, it "in effect, struck the jury trial demands made by PMPED in the complaint and by the Appellants/Defendants in their

answer/counter-claim" and is therefore immediately appealable. Under this rationale, virtually every order compelling arbitration would be immediately appealable, regardless of whether it in effect determines or discontinues the action or prevents a final judgment. Such an interpretation of 14-3-330(2) would render its second prong superfluous, would open virtually all orders compelling arbitration to immediate appeal, and would constitute legal error. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("In that vein, we must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.").

Appellants cite *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000), and *Cobb v. S.C. Dep't of Transp.*, 365 S.C. 360, 618 S.E.2d 299 (2005), to support that the order compelling arbitration affects the mode of trial and is thus immediately appealable. *Flagstar*, *Cobb*, and the line of cases cited in those decisions are wholly distinguishable from orders compelling arbitration and do not dictate that the order in this case should be immediately reviewed by the Court. For starters, the order does not affect the *mode* of trial. It does not decide how the case should be tried, whether the trial should be bifurcated, or that the parties are not entitled to a jury trial if the stay on the action was to be lifted. The order is silent as to the parties' rights to a jury trial and certainly does not strike the jury trial demands made by the parties.

More importantly, under the rationale of *Flagstar*, Appellants are not prevented from advancing on appeal that the circuit court erred in compelling arbitration, and the circuit court can be corrected at that time. *See Flagstar*, 341 S.C. at 72, 533 S.E.2d at 333 (finding that an order bifurcating discovery and trial was not immediately appealable in part because the party opposing bifurcation could make its arguments on appeal and have any errors corrected). Additionally,

issues regarding the mode of trial must be raised in the trial court at the first instance. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993). While Appellants in this case initially argued to the circuit court that Respondent had waived its rights to arbitration, there does not appear to have been any argument advanced to the circuit court that compelling arbitration would affect the mode of trial or deprive Appellants of their right to a jury trial prior to Appellants' motion for reconsideration. Since this issue does not appear to have been argued to the circuit court prior to the order, it is not preserved for review and cannot justify immediate appeal.

## II. Ignoring section 14-3-330(2)'s requirements that an interlocutory order must in effect determine the action and prevent a judgment from which an appeal might be taken or discontinue the action would violate the separation of powers doctrine.

By having the Court essentially ignore the second prong of section 14-3-330(2), Appellants would have this Court venture into forbidden territory. The Constitution of South Carolina describes the appellate jurisdiction of the Supreme Court over legal claims as follows: "[t]he Supreme Court shall constitute a court for the correction of errors at law under such regulations as the General Assembly may prescribe." S.C. Const. Art. V § 5 (emphasis added). The General Assembly has, beyond question, the duty and authority to define the Court's appellate jurisdiction to correct errors of law.

The General Assembly has mandated that the Court does not have appellate jurisdiction to review some interlocutory trial court rulings until the appeal of a final judgment. S.C. Code Ann. § 14-3-330 defines the appellate jurisdiction of this Court as well as the South Carolina Supreme Court, and only permits the immediate appeal of an order affecting a substantial right when that order in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, grants or refuses a new trial or strikes out an answer or any part thereof or any pleading in any action. S.C. Code Ann. § 14-3-330(2). Reviewing an interlocutory order

purportedly affecting a substantial right that does not determine or discontinue an action would judicially expand the Court's appellate jurisdiction beyond the outer limits defined by the General Assembly.

Article I, section 8 of the Constitution of South Carolina provides that "[i]n the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." The separation of powers mandate encompasses Article V, which preserves for the General Assembly the power to define the Court's appellate jurisdiction in law cases. *See State ex rel. McLeod v. McInnis*, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982).

> One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government. It prevents the concentration of power in the hands of too few, and provides a system of checks and balances. The legislative department makes the laws; the executive department carries the laws into effect; and the judicial department interprets and declares the laws. History reveals that there has been much litigation at the national level and at the state level because of conflicts which have arisen relative to the usurpation of power by one of the three branches of government.

*Id.* at 312-13, 295 S.E.2d at 636.

Appellants' arguments as to why the immediate appeal of the order is permitted by section 14-3-330(2) are problematic because they encourage the Court to usurp the General Assembly's authority to define the Court's appellate jurisdiction. It would be one thing if Appellants had meaningfully sought to convince the Court that the second prong of section 14-3-330(2) had been met, and that Respondent's action had been determined or discontinued by the order. However, Appellants have not done so, and have only argued in conclusory fashion that the order affects the mode of trial. The Court's interpretation of the second prong of section 14-3-330(2) should be strictly construed, as narrowly as possible, to avoid confrontation with the separation of powers

mandate. Because the order stays the action, it does not discontinue it and is not a final determination of its merits, and the order is therefore not subject to immediate review by the Court.

## CONCLUSION

For the reasons set forth above, Respondent requests that the Court grant its motion to dismiss.

Respectfully submitted,

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**PROOF OF SERVICE**

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The undersigned certifies that a copy of the foregoing Respondent's Reply in Further Support of Motion to Dismiss has been served upon the following counsel of record by emailing a copy of the same this 20th day of November , 2025:

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