

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

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SC Court of Appeals

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.

PETITION FOR REHEARING

This matter is on appeal from an order styled as ORDER GRANTING PLAINTIFF'S MOTION TO STAY CASE AND COMPEL ARBITRATION. The Court dismissed the appeal by order dated December 23, 2025, on the grounds that an order compelling arbitration is not immediately appealable. Pursuant to Rule 221, SCACR, the Appellants William Barnes and Barnes Law Firm, LLC, respectfully petition for rehearing, and point to the following issues which have been overlooked or misapprehended by the Court.

The Court has overlooked and/or misapprehended that 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 v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 538, 773 S.E.2d 144, 147 (2015). More particularly, the Court has overlooked and/or misapprehended that, 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. When neither party denied the other party’s jury trial demand, those demands became binding admissions. Motors Ins. Corp. v. State by & ex rel. Dep’t of Highways & Pub. Transp., 313 S.C. 279, 281, 437 S.E.2d 555, 556-57 (Ct. App. 1993) (citing Rule 8(d), SCRCP) (“Allegations made in a complaint that are not denied in the answer are deemed admitted.”). In addition to admitting a jury trial demand, Plaintiff did not withdraw its demand pursuant to Rule 38, SCRCP. That the Plaintiff—who now seeks arbitration—demanded a jury trial as to all claims changes the nature of the order granting arbitration in this case. It is not a typical order but, instead, an order that deprived the parties’ of their Constitutional rights to a jury trial.

The Court has overlooked and/or misapprehended the provisions of § 14-3-330(a)(2), and pertinent precedent, that give this Court jurisdiction to immediately review certain interlocutory orders, including an order, such as here, that affects a substantial right to a mode of trial. Bateman v. Rouse, 358 S.C. 667, 674, 596 S.E.2d 386, 389 (Ct. App. 2004) (“Orders of the trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights under section 14-3-330(2) of the South Carolina Code.”). Correspondingly, the Court has overlooked and/or misapprehended the well-settled case law holding that failure to take an immediate appeal of such an order renders that order unreviewable on appeal from a final order/judgment. Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000); *see also* 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); Cobb v. S.C. Dep't of Transp., 365 S.C. 360, 363, 618 S.E.2d 299, 300 (2005); Foggie v. CSX Transp., Inc., 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993). 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 demands.

Lastly, the Court overlooked or misapprehended that a non-party to the Arbitration Agreement, Barnes Law Firm, LLC, has been sued, has demanded a jury trial, and is being denied that fundamental right by the order on appeal. Barnes Law Firm is entitled to immediate appellate review of the order and, in fact, must take an immediate appeal to avoid waiving this mode of trial. Because that portion of the order must be immediately appeal, this Court may address the remaining issues to avoid unnecessary litigation. See Morris v. Anderson Cnty., 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002) (stating an appellate court “may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation”).

CONCLUSION

For the reasons set forth above and previously presented in the Return to the Motion to Dismiss, this 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 as a matter of right under Rule 38, SCRPC. Wherefore, Appellants respectfully request that the Court reconsider the dismissal, grant this Petition, and allow the appeal to proceed.

/s/ James B. Hood

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