

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Carmen T. Mullen, Circuit Court Judge

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Appellate Case No. 2026-001061

In the Matter of: George Francia Niesar (Decedent).

Gerald Viglione Niesar, Individually ad as Personal Representative of the

Estate of George Francis Niesar, ..... Appellant,

v.

Christine Nemeth, ..... Respondent.

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**RETURN TO NOTICE OF APPEAL WITH MEMORANDUM OF LAW INCLUDED**

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Issue: Are the two (2) orders appealed by the Appellant “dilatory appeals” under SCRCP 72 and S.C. Code Ann § 14-3-330?

The Law: “An appeal ordinarily may be pursued only after a party has obtained a final judgment.” State v. Wilson, 387 S.C. 597, 693 S.E.2d 923, 924 (2010).

An appeal ordinarily may be pursued only after a party has obtained a final judgment. The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330. Absent a specialized statute, an order must fall into one of several categories set forth in Section 14-3-330 in order to be immediately appealable.

An order “involves the merits,” as that term is used in Section 14-3-330 and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense. The phrase “involving the merits” is narrowly construed in modern precedent. An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties rights. Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006). Hagood v. Summerville, 362 S.C. 191, 194-5, 607 S.E.2d 707, 708 (2005).

“Rule 72 specifies which intermediate or interlocutory orders are appealable prior to final judgment. . . . Rule 72 was adopted to reduce appeals from interlocutory or immediate orders, consistent with modern decisions narrowing appeals from such orders.” Thynes v. Lloyd, 294 S.C. 152, 154, 363 S.E.2d 122, 123 (ct. App. 1987). Ateyeh v. United Omaha Life Ins. Co., 293 S.C. 436, 438, 361 S.E.2d 340, 341 (Ct. App. 1987).

Rule 72(4) “permits appeal from an interlocutory order when the order is one ‘granting or refusing a motion to dismiss an action upon the ground that the court lacks jurisdiction over the subject matter.’” Botany Bay Marina, Inc. v. Townsend, 296 S.C. 330, 332, 372 S.E.2d 584, 585 (1988). Botany is a narrow decision concerning neighboring property owners who missed the statute of limitations to appeal a zoning decision. “Respondents appeal was untimely because the Board of Adjustments Rules of Procedure provided that appeals must be filed within fifteen days.” Unlike Botany, the learned trial court has not determined it has no jurisdiction, it has merely dismissed two of Plaintiff’s causes of action while exercising continuing jurisdiction of Plaintiff’s remaining causes of action. In other words, Plaintiff’s “action” has not been dismissed so Appellant cannot appeal a purely interlocutory order.

Conclusion of Law: The two (2) orders appealed by appellant are “dilatory appeals” under SCRCP 72, because the orders are interlocutory or intermediate orders, not final orders, S.C. Code Ann. § 14-3-330. “All such questions are left to the appeal from final judgment or order of dismissal” -Notes to SC Rules of Civil Procedure 72.

s/ Russ Keep

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**May 12 2026**

**SC Court of Appeals**

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**PROOF OF SERVICE**

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I, Russ Keep, attorney for the Respondent, Christine Nemeth, certify that I have served the Respondent’s Return to Notice of Appeal With Memorandum of Law Included on all counsel of record in this action, as set forth below under Supreme Court Order dated April 24, 2024.

PLEADING(S):        Respondent’s Return to Notice of Appeal  
                              With Memorandum of Law Included

Counsel Served:     **Via Electronic Mail**  
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