

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2013-001347

RECEIVED

DEC 17 2013

SC Court of Appeals

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Christopher Drye, d/b/a Drye's Auto Crushing.....Respondent,

v.

Mike Gault and Mary T. Gault, d/b/a Gault's Used Cars, Total Inc., Edward Keith Potter
individually and as President of Total Inc.....Defendants,

Of whom,

Mike Gault is.....Appellant.

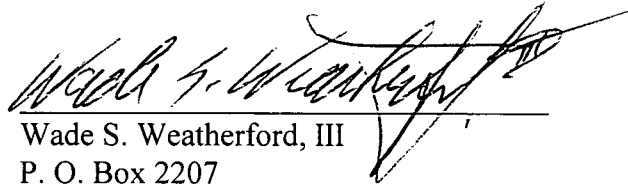
RESPONDENT'S MOTION TO DISMISS THE APPEAL

Respondent moves to dismiss the appeal on the ground the trial judge's order is interlocutory and not immediately appealable.

Respondent also requests that the Court of Appeals hold all time limits in abeyance pending its ruling on this motion.

Respondent requests that the Court of Appeals award Respondent its costs, expenses and reasonable attorney fees.

Respectfully submitted,



Wade S. Weatherford, III

P. O. Box 2207

Gaffney, SC 29342-2207

Phone: (864) 489-1500

Fax: (864) 488-2590

ATTORNEY FOR RESPONDENT

December 13, 2013

MEMORANDUM IN SUPPORT OF MOTION

This case involves the Appeal of an Order of the Circuit Court, holding the Appellant in Contempt of Court for filing false and fraudulent answers to Court Ordered Answers to Interrogatories.

At least two (2) times in the lower court's Order, (Attached as Exhibit A), the court ..."directed that an additional hearing be set..." Page 4 Ln. 6 and ..."a subsequent hearing is ordered." Page 6 Lns. 12 and 13.

South Carolina adheres to the final judgment rule. Accordingly, with certain exceptions, and appeal lies only from a final judgment. Brunson v. American Koyo Bearings, 367 S.C. 161, 623 S.E. 2d 870 (S.C. App. 2005). An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed. Hagood v. Sommerville, 362 S.C. 191, 607 S.E. 2d 707 (S.C. 2005).

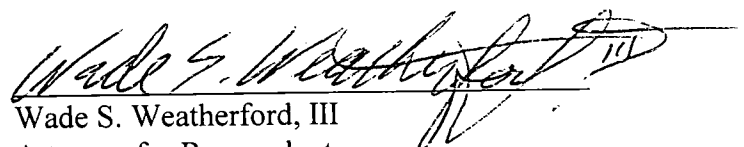
By statute, an appeal from an interlocutory order is permitted only in certain circumstances, including when the order is one "involving the merits ...[or] affecting a substantial right." S.C. Code Ann. § 14-3-330.

Clearly, the lower court's Order in this case, does not involve the merits or affect a substantial right of Appellant.

Therefore, the appeal should be dismissed.

Respectfully submitted,

December 13, 2013


Wade S. Weatherford, III
Attorney for Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

Christopher Drye, d/b/a Drye's Auto
Crushing,)

Plaintiff,)

v.)

Mike Gault and Mary T. Gault, d/b/a
Gault's Used Cars, Total Inc., Edward
Keith Potter individually and as President
of Total Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case No.: 2008-CP-11-1038

ORDER


BRADY W. MCBEE

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FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

This matter came before the Court as a civil contempt matter related to the filing of false and misleading discovery by the defendant Mike Gault. After receiving the testimony of the witnesses and hearing the arguments of counsel, this Court found the defendant, Mike Gault, in willful contempt and ordered a civil sanction of 10 days of incarceration in the local detention center. Based on the information provided during the hearing the Court also directed that an additional hearing be set to determine if the defendant's conduct, beyond the present discovery issue, warranted additional sanctions since the Court was concerned that other assets may have been owned by the defendant, and not disclosed, at the time the discovery response were issued.

The present finding of contempt was made after this Court granted a prior motion filed by the plaintiff's attorney to compel the present responses to discovery. At the time of the prior ruling to require compliance with Rule 37 of the South Carolina Rules of Civil Procedure, the Court expressed its concern about the defendant's conduct, motivation, and inadequate good faith compliance. However, this Court made no finding of contempt and no


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sanctions issued at that time. The Court took the opportunity to address the defendant at the end of the prior hearing so that the defendant was aware of the Court's requirements so that a future hearing, such as the present one, would not be necessary.

At the present hearing, the attorney previously employed by the defendant was called as witness to dispel prior accusations made by his newly hired counsel that the prior attorney was the reason the defendant had failed to comply with the Court's directive. From the prior attorney's testimony it was clear that the information concerning the assets, or lack thereof, came from the defendant. The Court can find no fault with the prior attorney's conduct when the defendant's lawyer did not independently verify the information, or lack thereof, about the defendant's assets.

At the hearing the Court was presented with discovery responses which basically represent the defendant as a pauper. Information was also presented that represented the defendant as not earning sufficient income to even require him to file a federal income tax form. The Court was repeatedly reminded during the hearing that the defendant runs several businesses and operates a racing car venture where vehicles worth thousands of dollars are used; but no substantial, if any, paperwork is maintained to memorialize the operation of the venture.

It was also not contested at the hearing that the defendant failed to disclose in his discovery responses several items which in fact were assets in his possession and owned by him when the discovery responses were filed. Even though the argument was presented that these items were not of great value, these items do appear to be of significant value in relationship to the apparent lack of value of the disclosed assets.

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CHEROKEE COUNTY, S.C.
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BRANDY W. MCBEE

A factor in the finding of willful contempt was this Court's ability to observe the witnesses when they testified as well as the substance of their testimony about their business arrangement. The defendant and his uncle did not present themselves as credible to the Court. After listening to the defendant and his uncle, and viewing their demeanor, this Court, again, does not view them as credible. The manner in which the defendant conducts his business affairs is concerning. It gives the appearance of being conducted in a way that minimizes, if not completely eliminates, the possibility of any accountability by any authorized governmental official or unknowing individual who may do business with the venture. The Court was repeatedly reminded that the racing venture remains very active and the defendant appears to be rather successful having made some impressive finishes. However, given the limited purpose of the present hearing and given the probability or possibility that other assets existed at the time of the filing of the discovery, a subsequent hearing is ordered. Nevertheless, it does appear to the Court that there exists a pattern of business and personal conduct that is meant to prevent a reasonable level of accountability by an outsider. This pattern is reflected in the failure to comply with this Court's prior directive when responding to the discovery requests.

Thus based on the totality of circumstances, the court exercises its discretion to find the defendant in willful contempt. The immediate sanction of 10 days of detention is the result of the fact that no other viable remedy appeared to the court. Neither party offered any other remedy. Also given the representation made by the defendant that he is basically a pauper, the Court is uncertain that any other remedy would be practical other than to issue another judgment or fine which would inevitably end up like the judgment obtained in the underlying litigation—uncollectable.

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IT IS SO ORDERED,



J. Mark Hayes, II
Circuit Judge, Seventh Judicial Circuit

August 2, 2013
Spartanburg, South Carolina

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 AUG 6 AM 11 07
BRANDY W. MCBEE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
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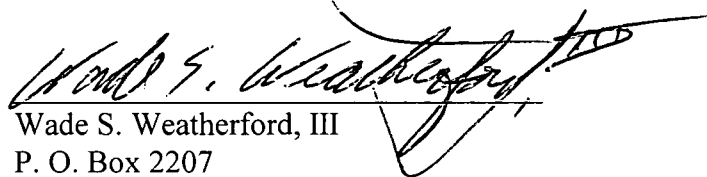
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individually and as President of Total Inc.....Defendants,

Of whom,

Mike Gault is.....Appellant.

PROOF OF SERVICE

I, the undersigned, hereby certify the Motion to Dismiss in above referenced matter was
mailed, postage prepaid, to Appellant's Attorney, D. Alan Lazenby, by sending to P.O. Box
6099, Spartanburg, SC 29304, on December 13, 2013.



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ATTORNEY FOR RESPONDENT

December 13, 2013

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December 13, 2013

The Honorable Jenny Abbot Kitchings
SC Court of Appeals Clerk
P. O. Box 11629
Columbia, SC 29211

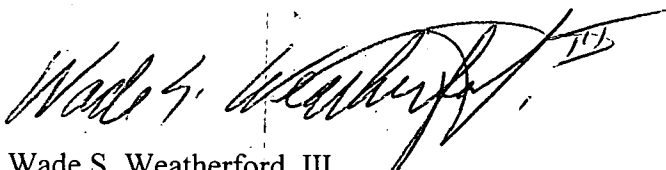
Re: Christopher Drye, d/b/a Drye's Auto Crushing, Respondent v. Mike Gault and
Mary T. Gault, d/b/a Gault's Used Cars, Total, Inc., Edward Keith Potter
individually and as President of Total, Inc., Defendants,
Of Whom Mike Gault is Appellant.
Case No.: 2013-001347

Dear Ms. Kitchings:

Enclosed for filing is an original and six (6) copies of the Motion to Dismiss Appeal. I
also include a Proof of Service certifying service of these documents upon D. Alan Lazenby, Esq.

Also enclosed is my check for \$25.00.

Yours very truly,


Wade S. Weatherford, III

WSW,III:vw

Enclosures

cc: D. Alan Lazenby, Esq. (via US Mail)

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