



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

January 24, 2014

The Honorable Winnifa Brown-Clark
Clerk of Court
PO Box 9000
Orangeburg SC 29115-9000

REMITTITUR

Re: Eddie Williams v. Michael Lee Clemons - Appellate Case No. 2011-202847
AND Junell Johnson v. Michael Lee Clemons - Appellate Case No. 2011-202866
Lower Court Case No. 2007CP3800574 and 2007CP3800573

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,



CLERK



cc: H. Woodrow Gooding, Esquire
Paul A. Dominick, Esquire
Amy Miller Snyder, Esquire
Stephen Peterson Groves, Sr., Esquire
Bradish J. Waring, Esquire
James P. Walsh, Esquire
John S. Nichols, Esquire
Mark Brandon Tinsley, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

! Eddie Williams, as Conservator for Catina W. Nelson,
Respondent,

v.

Michael Lee Clemons, Petitioner.

Appellate Case No. 2011-202847

Junell W. Johnson, as Personal Representative of the
Estate of Woodrow C. Nelson, Respondent,

v.

Michael Lee Clemons, Petitioner.

Appellate Case No. 2011-202866

Appeal From Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge

Memorandum Opinion No. 2014-MO-002
Heard November 19, 2013 – Filed January 8, 2014

AFFIRMED

Stephen P. Groves, Sr., Bradish J. Waring, and Paul A.

Dominick, all of Nexsen Pruet, LLC, of Charleston, and James P. Walsh and Amy Miller Snyder, both of Clarkson, Walsh, Terrell, & Coulter, P.A., of Greenville, for Petitioner.

John S. Nichols, of Bluestein, Nichols, Thompson & Delgado, LLC, of Columbia, and H. Woodrow Gooding and Mark B. Tinsley, both of Gooding & Gooding, P.A., of Allendale, for Respondents.

PER CURIAM: This Court granted certiorari to review the court of appeals' decisions dismissing Petitioner's appeals on the ground that consent judgments are not appealable. Petitioner argues an acceptance of an offer of judgment does not prevent appellate review of that judgment or of intermediate orders underlying that judgment. We disagree and affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: *Belton v. State*, 339 S.C. 71, 74 n.4, 529 S.E.2d 4, 5 n.4 (2000) (stating that "[a] case resolved by acceptance of an offer of judgment is considered 'settled'"); *Shelton v. Bressant*, 312 S.C. 183, 184, 439 S.E.2d 833, 834 (1993) (stating that absent fraud or mistake, where an attorney of record for a party agrees to settle a case, the party cannot later rescind the settlement); *S.C. State Highway Dep't v. McKeown Food Store No. 9*, 254 S.C. 180, 183, 174 S.E.2d 342, 343–44 (1970) (finding where a case has been "settled," the settlement ends the litigation and renders moot an appeal of an intermediate order concerning pretrial procedures); *Johnson v. Johnson*, 310 S.C. 44, 46, 425 S.E.2d 46, 48 (Ct. App. 1992) (stating that generally, where a judgment or order is entered by consent, it is binding and conclusive and cannot be attacked by the parties by direct appeal); *see also Chewning v. Ford Motor Co.*, 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003) (recognizing that "important benefits are achieved by the preservation of final judgments").

AFFIRMED.

TOAL, CJ., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

EXHIBIT "B"

The South Carolina Court of Appeals

Eddie Williams, as Conservator for
Catina W. Nelson,

Respondent,

v.

Michael Lee Clemons,

Appellant.

The Honorable Diane Schafer Goodstein
Orangeburg County
Trial Court Case No. 2007-CP-38-00574

ORDER

Respondent moves to dismiss the appeal, arguing Appellant is attempting to appeal from two confessions of judgment into which he voluntarily entered and which, therefore, are not immediately appealable. Appellant maintains the confessions of judgment are final orders and therefore two prior orders from 2008 and 2009, which denied a motion to dismiss and enforce settlement agreements and a motion to reconsider, were interlocutory and not immediately appealable, are now also properly before this court. For the reasons set forth below, we dismiss the appeal.

First, a party may not appeal from the confessions of judgment he voluntarily executed. "Ordinarily, where a judgment or order is entered by consent, it is binding and conclusive and cannot be attacked by the parties either by direct appeal or in a collateral proceeding." Johnson v. Johnson, 310 S.C. 44, 46, 425 S.E.2d 46, 48 (Ct. App. 1992) (quoting Jones & Parker v. Webb, 8 S.C. 202 (1876)). However, a consent order may be challenged under certain

250

circumstances. See id. at 46-47, 425 S.E.2d at 48 (recognizing rescission "by mutual consent in a subsequent court action" and a court's vacation of one consent order pursuant to Rule 60(b)(5), SCRCP, after vacation of a prior consent order upon which the order at issue was based); Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 20-21, 594 S.E.2d 478, 483 (2004) (acknowledging consent order may be set aside pursuant to Rule 60(b)(3), SCRCP, for extrinsic fraud and affirming trial court's denial of relief for intrinsic fraud). Our supreme court has held a confession of judgment may be vacated or modified if void or insufficient in form. See Linda Mc Co., Inc. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010) (explaining a finding of voidness pursuant to Rule 60(b)(4), SCRCP, requires either a failure of due process or a lack of subject matter or personal jurisdiction).

Appellant's argument does not fit any of the recognized exceptions. Although he seems to argue his situation compares to the consent orders described in Johnson, no order in this case has been vacated, and the record does not indicate his confessions of judgment were predicated upon the trial court's refusal to dismiss the case against him or enforce the prior settlement agreement. Consequently, appeal from the confessions of judgment is improper.

Next, the 2008 and 2009 orders Appellant challenges are unappealable as well. Appellant misapprehends the law. Section 14-3-330 of the South Carolina Code (1976 & Supp. 2010) permits appellate review of "any intermediate order or decree necessarily affecting the [final] judgment not before appealed from." He claims the trial court's denials of his motions to dismiss and enforce a settlement agreement and to reconsider "necessarily affected" his decision to consent to judgment. The trial court's denials of Appellant's attempts to end the case without a trial did not render it necessary for him to consent to judgment.

None of the orders Appellant has identified is appealable. Accordingly, we dismiss this appeal.

AND IT IS SO ORDERED.

James M. Curston A.J.

Columbia, South Carolina

cc: James P. Walsh, Esquire
Stephen P. Groves, Sr., Esquire
Bradish J. Waring, Esquire
Paul A. Dominick, Esquire
H. Woodrow Gooding, Esquire
Mark B. Tinsley, Esquire
John S. Nichols, Esquire

FILED
7/1/11

252

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Eddie Williams, as Conservator for Catina W. Nelson,
Respondent,

v.

Michael Lee Clemons, Petitioner.

Appellate Case No. 2011-202847

✓ Junell W. Johnson, as Personal Representative of the
Estate of Woodrow C. Nelson, Respondent,

v.

Michael Lee Clemons, Petitioner.

Appellate Case No. 2011-202866

Appeal From Orangeburg County
Diane Schafer Goodstein, Circuit Court Judge

Memorandum Opinion No. 2014-MO-002
Heard November 19, 2013 – Filed January 8, 2014

AFFIRMED

Stephen P. Groves, Sr., Bradish J. Waring, and Paul A.

Dominick, all of Nexsen Pruet, LLC, of Charleston, and James P. Walsh and Amy Miller Snyder, both of Clarkson, Walsh, Terrell, & Coulter, P.A., of Greenville, for Petitioner.

John S. Nichols, of Bluestein, Nichols, Thompson & Delgado, LLC, of Columbia, and H. Woodrow Gooding and Mark B. Tinsley, both of Gooding & Gooding, P.A., of Allendale, for Respondents.

PER CURIAM: This Court granted certiorari to review the court of appeals' decisions dismissing Petitioner's appeals on the ground that consent judgments are not appealable. Petitioner argues an acceptance of an offer of judgment does not prevent appellate review of that judgment or of intermediate orders underlying that judgment. We disagree and affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: *Belton v. State*, 339 S.C. 71, 74 n.4, 529 S.E.2d 4, 5 n.4 (2000) (stating that "[a] case resolved by acceptance of an offer of judgment is considered 'settled'"); *Shelton v. Bressant*, 312 S.C. 183, 184, 439 S.E.2d 833, 834 (1993) (stating that absent fraud or mistake, where an attorney of record for a party agrees to settle a case, the party cannot later rescind the settlement); *S.C. State Highway Dep't v. McKeown Food Store No. 9*, 254 S.C. 180, 183, 174 S.E.2d 342, 343–44 (1970) (finding where a case has been "settled," the settlement ends the litigation and renders moot an appeal of an intermediate order concerning pretrial procedures); *Johnson v. Johnson*, 310 S.C. 44, 46, 425 S.E.2d 46, 48 (Ct. App. 1992) (stating that generally, where a judgment or order is entered by consent, it is binding and conclusive and cannot be attacked by the parties by direct appeal); *see also Chewning v. Ford Motor Co.*, 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003) (recognizing that "important benefits are achieved by the preservation of final judgments").

AFFIRMED.

TOAL, CJ., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

The South Carolina Court of Appeals

Junell W. Johnson, as Personal
Representative of the Estate of
Woodrow C. Nelson,

Respondent,

v.

Michael Lee Clemons,

Appellant.

The Honorable Diane Schafer Goodstein
Orangeburg County
Trial Court Case No. 2007-CP-38-00573

ORDER

Respondent moves to dismiss the appeal, arguing Appellant is attempting to appeal from two confessions of judgment into which he voluntarily entered and which, therefore, are not immediately appealable. Appellant maintains the confessions of judgment are final orders and therefore two prior orders from 2008 and 2009, which denied a motion to dismiss and enforce settlement agreements and a motion to reconsider, were interlocutory and not immediately appealable, are now also properly before this court. For the reasons set forth below, we dismiss the appeal.

First, a party may not appeal from the confessions of judgment he voluntarily executed. "Ordinarily, where a judgment or order is entered by consent, it is binding and conclusive and cannot be attacked by the parties either by direct appeal or in a collateral proceeding." Johnson v. Johnson, 310 S.C. 44, 46, 425 S.E.2d 46, 48 (Ct. App. 1992) (quoting Jones & Parker v.

Webb, 8 S.C. 202 (1876)). However, a consent order may be challenged under certain circumstances. See id. at 46-47, 425 S.E.2d at 48 (recognizing rescission "by mutual consent in a subsequent court action" and a court's vacation of one consent order pursuant to Rule 60(b)(5), SCRCp, after vacation of a prior consent order upon which the order at issue was based); Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 20-21, 594 S.E.2d 478, 483 (2004) (acknowledging consent order may be set aside pursuant to Rule 60(b)(3), SCRCp, for extrinsic fraud and affirming trial court's denial of relief for intrinsic fraud). Our supreme court has held a confession of judgment may be vacated or modified if void or insufficient in form. See Linda Mc Co., Inc. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010) (explaining a finding of voidness pursuant to Rule 60(b)(4), SCRCp, requires either a failure of due process or a lack of subject matter or personal jurisdiction).

Appellant's argument does not fit any of the recognized exceptions. Although he seems to argue his situation compares to the consent orders described in Johnson, no order in this case has been vacated, and the record does not indicate his confessions of judgment were predicated upon the trial court's refusal to dismiss the case against him or enforce the prior settlement agreement. Consequently, appeal from the confessions of judgment is improper.

Next, the 2008 and 2009 orders Appellant challenges are unappealable as well. Appellant misapprehends the law. Section 14-3-330 of the South Carolina Code (1976 & Supp. 2010) permits appellate review of "any intermediate order or decree necessarily affecting the [final] judgment not before appealed from." He claims the trial court's denials of his motions to dismiss and enforce a settlement agreement and to reconsider "necessarily affected" his decision to consent to judgment. The trial court's denials of Appellant's attempts to end the case without a trial did not render it necessary for him to consent to judgment.

248

None of the orders Appellant has identified is appealable. Accordingly, we dismiss this appeal.

AND IT IS SO ORDERED.

Joseph W. Curston A.J.

Columbia, South Carolina

cc: James P. Walsh, Esquire
Stephen P. Groves, Esquire
Bradish J. Waring, Esquire
Paul A. Dominick, Esquire
H. Woodrow Gooding, Esquire
Mark B. Tinsley, Esquire
John S. Nichols, Esquire

FILED
7/1/11

249