

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

APPEAL FROM HORRY COUNTY
Court of Common Pleas

THE HONORABLE LARRY B. HYMAN
FIFTEENTH JUDICIAL CIRCUIT

71065

Case No.: 2013-CP-26-00694

Garth Holmes d/b/a Creekside MHP Management,Respondent,

vs.

AJG Group, LLCAppellant.

MOTION TO DISMISS and OBJECTION TO STAY

The Respondent, Garth Holmes d/b/a Creekside MHP Management, hereby moves to dismiss the Appeal of the Appellant, AJG Group, LLC pursuant to its' Notice of Appeal dated December 6, 2013 and objects to the stay requested by counsel for AJP Group, LLC in the January 13, 2014 Motion to be Relieved as Counsel on Appeal.

The grounds for this motion are that:

- (1) Appellant has failed to timely order a transcript of the proceedings pursuant to Rule 207, SCACR;
- (2) Appellant appeals from an interlocutory order which is not immediately appealable;
- (3) Appellant lacks standing to appeal from Order and Writ of Ejectment and the appeal is rendered moot.

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SC COURT OF APPEALS

PROCEDURAL AND FACTUAL HISTORY

This case commenced as a proceeding in magistrate's court to eject Appellant from a mobile home park due to the expiration of the lease term. Appellant was the owner of mobile homes located in a mobile home park operated by Respondent. Appellant asserted numerous counterclaims to the ejectments and the case was removed to Circuit Court. At some point during the proceeding, Appellant has sold the mobile homes to third-parties and notified the Parties on December 4, 2013. (See Exhibits A and B).

Appellant appeals from an order resolving numerous discovery related disputes, and denying a motion to reconsider the Order and Writ of Ejectment issued August 30, 2013, as well as granting a stay to the ejectment upon the posting of a bond and undertaking.

At the time Appellant filed the Notice of Appeal on December 6, 2013, Appellant was represented by counsel. Counsel for Appellant moved to be relieved as counsel on appeal and for a stay of appellate proceedings on January 13, 2013. In response to the motion to be relieved and for a stay on appeal, Respondent files this Motion to Dismiss and Objection to Stay.

DISCUSSION

1. Appellant has failed to timely order a transcript of the proceedings pursuant to Rule 207, SCACR

Appellant's Notice of Appeal should be dismissed because Appellant has failed to timely order a transcript of the proceedings pursuant to Rule 207, SCACR.

In civil matters, an attorney has a duty to serve and file a notice of appeal and to continue to represent the client until relieved by order of the appellate court. In Re: *Warder*, 316 S.C. 249, 449 S.E.2d 489 (1994). The adverse party has the right to treat the attorney as authorized until such order is obtained. *Culbertson v. Clemens*, 322 S.C. 20, 471 S.E.2d 163 (1996).

In appeals from the court of common pleas, the transcript of the proceeding must be ordered within ten (10) days after the date of the service of the notice of appeal. Rule 207(a), SCACR. Appellant filed and served its' Notice of Appeal on December 6, 2013. More than ten (10) have passed since the filing and service of the Notice of Appeal on December 6, 2013 and Appellant has not ordered and/or provided Respondent copies of correspondence with the court reporter ordering the transcript. See Rule 207(a), SCACR. The ten (10) days provided to order the transcript expired prior to counsel for AJP Group, LLC moving to be relieved as counsel on appeal.

As a result, the Respondent moves to dismiss the appeal on the grounds that Appellant has failed to comply with the requirements for Rule 207, SCACR, and objects to the stay requested by counsel for Appellant in the January 13, 2013 motion to be relieved.

2. Appellant appeals from an interlocutory order which is not immediately appealable.

The holdings in the order appealed from by AJP Group, LLC involving the grant of the motion to amend and the discovery matters are interlocutory, which are not immediately appealable. (See **December 2, 2013 Order on Motions, Paragraphs A, B, and E**). See, e.g. *Patterson v. Spector Broadcasting Corp.*, 287 S.C. 249, 335 S.E.2d 803 (1985) (an order compelling discovery is not immediately appealable); *Briggs v.*

Richardson, 273 S.C. 376, 256 S.E.2d 544 (1979) (an order allowing amendment of the pleadings is not immediately appealable); Tatnall v. Gardner, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002) (“Pursuant to section 14-3-330(2), this Court may not review an order that ‘does not prevent a judgment from being rendered in the action, and [from which the] appellant can seek review ... in any appeal from [the] final judgment.’”); Neville v. Neville, 278 S.C. 411, 411, 297 S.E.2d 423, 423 (1982) (“We are of the opinion that the interests of justice will be served best if appeals from pendente lite orders are held in abeyance until the final order is entered in the family court.”).

As a result, to the extent Appellant appeals from those interlocutory rulings, the Notice of Appeal should be dismissed.

3. Appellant lacks standing to appeal and the appeal is rendered moot.

Appellant’s actions since the Order and Writ of Ejectment on August 30, 2013 and filing of the Notice of Appeal have divested Appellant standing and rendered the appeal moot because Appellant (a) sold the mobile homes, (b) failed to post bond, and (c) failed to appeal a subsequent Writ of Ejectment issued and served on December 13, 2013.

a) Appellant sold the mobile homes on the lots subject to the Order and Writ of Ejectment to third-parties (See attached Exhibit A and Exhibit B);

Although a party may have an interest giving him a right of appeal, if that interest is divested pending the appeal, the appeal will be dismissed. Johnson v. Brandon Corp., 221 S.C. 160, 69 S.E.2d 594 (1952). Appellant has sold the mobile homes on the lots subject to the Order and Writ of Ejectment and “self evicted”, and thus divested itself

from standing to pursue the appeal. As a result, Appellant's Notice of Appeal should be dismissed.

- b) Appellant failed to post the bond required by December 3, 2012 Order and Section 27-37-130 of the South Carolina Code, and Section 27-37-130 requires dismissal;**

Pursuant to Section 27-37-130 of the South Carolina Code, an appeal bond is required to stay ejectment on appeal. "An appeal in an ejectment case will not stay ejectment unless at the time of appealing the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the magistrate and conditioned for the payment of all costs and damages which the landlord may sustain thereby. In the event the tenant shall fail to file the bond herein required within five days after service of the notice of appeal such appeal shall be dismissed by the trial magistrate." Id.

In the present case, Appellant failed to post the any appeal bond, and the appeal should be dismissed.

- c) Appellant failed to timely appeal from the Writ of Ejectment issued and served December 13, 2013 (See attached Writ of Ejectment Exhibit C).**

The Order from which Appellant appeals, provides for the issuance of a Writ of Ejectment in the event Appellant failed to post the appeal bond and undertaking pursuant to Section 27-37-40 of the South Carolina Code. After Appellant failed to post any appeal bond, the Honorable Larry B. Hyman issued a subsequent Writ of Ejectment on December 13, 2013. Appellant failed to timely appeal from the Writ of Ejectment issued and served on December 13, 2013.

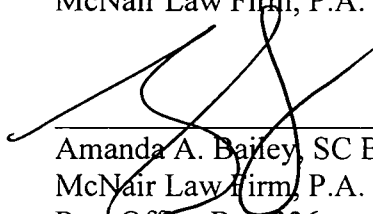
As a result, Appellant's appeal regarding the ejectment and bond should be dismissed as moot.

CONCLUSION

As a result of the arguments herein, the Appellants Notice of Appeal should be dismissed, and the requested stay as a result of the Motion to Relieved as Counsel should be denied.

Respectfully submitted,

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January 22, 2014
Myrtle Beach, South Carolina