

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No: 2014-002029

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Judge Doyet A. Early, III, Circuit Court Judge

Case No. 2008-CP-40-6656

John R. Rakowsky, Respondent

v.

Irene Santacroce, Appellant
Estate of Doris Holt, Appellant
Rodney Lail, Appellant

and

James B. Spencer, Appellant, *Pro Se*

**RESPONSE IN OPPOSITION TO MOTION
TO DISMISS THE APPEAL FILED ON
SEPTEMBER 13, 2014**

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SC Court of Appeals

INTRODUCTION

NOW COMES THE APPELLANTS, Irene Santacroce, Rodney Lail, and the Estate of Doris Holt through the undersigned counsel who will first submit pertinent facts in opposition to Ms. Ballard's Motion to Dismiss the appeal filed on September 19, 2014, she filed with this Court on February 12, 2015. This appeal regarded Judge Early's ruling of June 23, 2014, which was supposed to be voided on July 4, 2014 and was not, and was then supposedly reinstated on July 10, 2014.

FACTUAL BACKGROUND

Judge Early was approached on several different occasions by the plaintiffs with the fact the June 23, 2014 ruling was generated on an *ex-parte* basis by Judge Early and Desa Ballard. Judge Early eventually responded by email on July 4, 2014, stating he was going to void (*emphasis added*) the ruling (**See Exhibit B attached hereto**). However, this was never done despite Judge Early's assurances.

Judge Early subsequently issued what he entitled the "Final Order" in this case prior to the completion of the Federal Court litigation. This contradicting the June 13, 2014 ruling (**See page 12, point E of June 23, 2014, ruling**) in which he stated that he would not issue a final Order until the Federal Court process was completed regarding the legality of the disputed settlement. As of the date of this filing, February 23, 2015, the Federal Court process is still ongoing. See Case No: **14-1678**, in the United States Fourth Circuit Court of Appeals.

The Order issued on December 23, 2014, was appealed on February 3, 2015. The December 23, 2014, "Final Order" affectedly relegated the September 19, 2014 pending appeal as being redundant as the issues will be raised in the appeal of the "Final Order" by the Appellants.

Second, the Appellants have no objections to this Honorable Court's apparent combining of the pending interlocutory appeal filed September 19, 2015 with the appeal of the final Order filed on February 3, 2015. The correspondence from the Court of February 10, 2014 and opposing counsels now reference both appeals as **Appellate Case No: 2014-002029**.

Furthermore, this grouping of cases by the court makes the filing by Andrew Lindemann opposing the request for *in forma pauperis* regarding the second appeal filed February 3, 2015 appeal moot. The Courts merging of appeals into one action, Case No. **2014-002029**, was cited by John Lindemann in his response in opposition to the filing of a Appellants Motion for In Forma Pauperis filed with the Court on February 12, 2015. The merging of these two cases by the Court has the impact of conserving this Honorable Courts time and allowing all claims under appeal to be heard in one proceeding without prejudicing any party.

GENERAL OVERVIEW

Case No. 2008-CP-40-6656, the case on appeal, was filed by the Appellee/Plaintiff as an Interpleader action on September 12, 2008. The Appellee

refused to produce records on the funds produced for litigation which he was required to maintain under Court Rule 417, and under Court Rule 407 1.8(g) (Local Federal Rule 83.1.08) regarding the division of proceeds from an aggregate settlement. Such required records would have precluded the need for any Interpleader action. However, during the pendency of this litigation the Appellee has taken all measures to neither admit nor deny the existence of such records and continually refused to produce the required documents, which has been the topic of the majority of the resulting litigation in one form or another over the seven-year period of litigation.

In the motion to dismiss, the Appellee has selecting documents out of context to paint a distorted picture in an attempt to have the appeal dismissed to avoid answering anticipated issues being raised in an Appellants' Formal Brief on appeal. The Appellants object (*emphasis added*) to the Appellees attempt to litigate anticipated matters to be raised on appeal in the Appellees Motions to Dismiss.

Appellants, will however, hold the Appellee to the distortions filed with the Motions to Dismiss to limit response to the Appellants' formal brief on Appeal to the germane issues that Appellants intend to raise. Such issues will include the evidencing *ex-parte* communications. These *ex-parte* communications included putting in writing to the presiding judge that Ms. Ballard's office was submitting information to the judge to base his decision on, information that was not to be

seen by the plaintiffs in the underlying case. Appellee did this while simultaneously issuing documents to the plaintiffs that were supposed to be identical to what was submitted to the presiding judge, but were not. The resulting Order by Judge Seals was appealed on November 22, 2011. The South Carolina Court of Appeals ruled that the appeal was interlocutory and the issue could only be raised after the terminal Order was issued in the underlying case, Case No. 2008-CP-40-6656. The terminal Order in this case was issued on December 23, 2014.

DISCUSSION

On page three of the Ms. Ballard's motion to dismiss she discounts the issue of an *ex-parte* order by claiming none of the emails to the judge was on the record on this subject. The Appellants repeatedly objected to Ms. Ballard and Judge Early conducting this litigation off the record and repeatedly filed objections with attachments of the email litigation to attempt to put everything possible on the Court record (**See Exhibit F attached hereto**).

However, the Judge chose over the continuing protests of the Appellants to conduct litigation by email.

The court reconfirmed the June 23, 2014 ruling in the final Order issued, on December 23, 2014, despite the July 4, 2014 communication informing the Appellants the June 23, 2014 would be voided. In the first paragraph of the Final Order Judge Early stated, "By prior Order dated June 23, 2014, filed June 27, 2014,

the Court directed the distribution of the remaining litigation funds, which concluded one aspect of the litigation presented by this interpleader action.” Judge Early effectively amended his June 23, 2014, ex-parte order, he claimed he voided on July 4, 2014, that he claimed he reinstated on July 10, 2014.

This case was never bifurcated and furthermore the “final Order” in this case directly contradicts the ruling of the court on June 23, 2014 as documented herein. Judge Early by issuing his “Final Order” he amended his June 23, 2014 order. Appealing the dispositive Order of December 23, 2014, clearly opens the door to addressing issues with prior rulings in this case both written and oral. Furthermore, the interlocutory appeal still pending is moot given the appeal by the Appellants of the dispositive Order issued on December 23, 2014.

Therefore, the Appellants issues on the rulings are appropriately raised by the appeal of the “Final Order” of this case issued on December 23, 2014 as this has become the truly “Final Order” on all issues.

ARGUMENT AND LEGAL BASIS

Ms. Ballard’s motion to dismiss the September 19, 2014 appeal is based on irrelevant and issues that are not germane.

Response regarding the Timeliness of the Appeal

First, she raises the date of July 10, 2014 being an inaccurate date of the Order

being appealed on September 19, 2014. However, this is one of numerous dates related to the Order being appealed first issued on an ex-parte basis on June 23, 2014, that Judge Early claimed he voided on July 4, 2014. The July 10, 2014 date does in fact reference the Order being appealed. There are multiple dates tied to this Order due to the wrongful *ex-parte* actions Ms. Ballard participated in with the presiding judge, a purported voiding of the Order that never happened, and the transmission of the Order in question unsigned. **Please see attached Exhibit B.**

Further, Judge Early amended the ruling issued on June 23, 2014, voided on July 4, 2014, issued again on July 10, 2014, et al., when he issued his dispositive “Final Order” on December 23, 2014. A dispositive Order which the Appellants appealed on February 3, 2015. In this regard, Desa Ballard’s citations regarding the dismissal of the Appeal made on September 19, 2014 are irrelevant, as the interlocutory appeal was made redundant when the dispositive Order was unexpectedly issued by Judge Early. Therefore, the Motion to Dismiss based on lack of timeliness should be dismissed forthwith.

Response regarding the Lack of Standing

Appellee claiming the Appellants has no standing to make the September 19, 2014 appeal is without basis. Appellants have suffered damages related to the failure of the Appellees to follow the oral orders of Judge Barber issued on May 7, 2012 regarding the issue of counter claims and of Judge Early overruling the standing Oral

Orders of Judge Barber which cannot be overruled by a judge on the same level. These Oral Orders will be included in the brief in support of the Appellants appeal of the terminal Order filed on February 3, 2015. This baseless allegation is appropriate for the response to the Formal Brief instead of being litigated at this time.

Furthermore, in an attempt to discredit one of the Appellants, James Spencer, who she admits is not a party to the interlocutory appeal on September 19, 2014, the subject of her Motion to Dismiss, Ms. Ballard and the Appellee submit what are patently untruthful statements to the Court of Appeals. On page four of her motion to dismiss, in apparent support to the lack of standing, Ms. Ballard claims James Spencer withheld his name he was formerly known by, Robert Holt, from Appellee John Rakowsky, his former lawyer during the federal proceeding he represented James Spencer. Appellee knew from the documents Appellee personally filed in the Federal Case in which he represented Mr. Spencer, documents which clearly identifies Mr. Spencer by both his common law name and his former name.

This includes, but is not limited to the medical reports filed by the Appellee for damage claims, the NCIC listings filed with the court, the sworn testimony of convicted felon Steve Hartness who threatened to murder James Spencer testimony all identified James Spencer by both his common law and former name. This all occurred while Appellee participated as counsel of record.

Documents filed with Federal District Judge Houck, the initial presiding Judge in the Federal Case, caused the issuance of a protective order because of the threats on the life of James Spencer formerly known as Robert Holt all of which is on the court record of that case and all of which occurred while Appellee was counsel of record. James Spencer acknowledged time after time on the court record the threats against his and his mother's life led to the name change under recommendation of counsel and both Desa Ballard and John Rakowsky knew this. Ms. Ballard and her client use this untruth to raise a decade's old expired disputed civil judgment. None of which is relevant to this case at bar nor the Appellees' Motion to Dismiss. It is truly an indication of the bankrupt nature of the baseless claims in the Motion to Dismiss, this use of untruths should be a basis by themselves to strike the Appellees' Motion to Dismiss. Appellants have contemporaneously filed a notice Rule 11(b) for Sanctions in this regard, unless Ms. Ballard withdraws these baseless and untruthful claims. Furthermore, this blatantly false statement contained in the Appellees' Motion to Dismiss, under Rule 269, SCACR, certainly permits by way of sanction, a Motion to Dismiss which contains indisputably false statements. Appellants cite Case No: 4:02-cv-01859 RBH and reference the filings listed herein documenting the indisputably false nature of the statements by Ms. Ballard and Appellee. Appellants request the Sanction of dismissal be applied under this Rule to both Appellees Motions to Dismiss, simultaneously filed on February

12, 2015.

Response regarding Mootness as a basis for the Motion to Dismiss

This has nothing to do with the Appellants Appeal filed on September 19, 2014. Appellant Spencer's choice of appeal date has no bearing on the September 19, 2014 appeal by these Appellants. Appellants allege this is more filler than substance related to an appeal that is clearly interlocutory and does not involve the Appellant, James Spencer, to whom this entire section is addressed.

Furthermore, inexplicably the Appellee presents in their Motion to Dismiss a Federal Court order, ECF No. 510 as Exhibit A. This Exhibit has no bearing on this interlocutory appeal and appears to be more filler.

CONCLUSION

The Court has apparently merged this interlocutory appeal pending which was filed on September 19, 2014, into the Appellants Appeal of the terminal Order unexpectedly issued by Judge Early on December 23, 2014, which amended his ruling on June 23, 2014 and other dates voiding and then representing this Order as discussed herein.

THEREFORE, since it appears the Appeal filed, September 19, 2014, which was interlocutory was merged by the Court into the Appeal of the terminal Order filed on February 3, 2015, and for other reasons stated herein, this Motion to Dismiss, taken in the best light is moot and furthermore is baseless. The Appellants,

pray the Appellees Motion to Dismiss be dismissed forthwith for the reasons stated herein.

This February 23, 2015,

By:

A handwritten signature in black ink, appearing to read "Michael G. Sribnick, M.D., J.D., LLC". The signature is written in a cursive, somewhat stylized font.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 23, 2015, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail or by courier.

Documents Served: **RESPONSE IN OPPOSITION TO MOTION
TO DISMISS THE APPEAL FILED ON
SEPTEMBER 19, 2014**

Parties Served:

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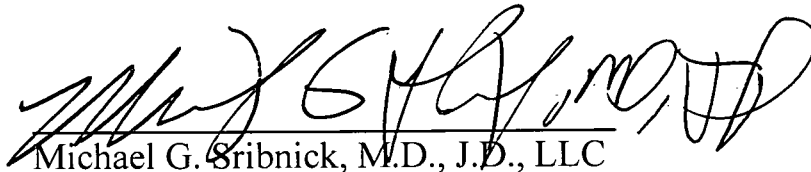
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SC Court of Appeals

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