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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 31 2015

SC Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
J. Ernest Kinard, Jr., Circuit Court Judge

C.A. No. 2014-CP-20-0328

Jordan R. Boyd, Respondent,

v.

Leon Lott, in His Official Capacity as
Sheriff of the Richland County Sheriff's Department . . Appellant.

MOTION TO DISMISS APPEAL

Respondent Jordan R. Boyd moves the Court to dismiss the appeal in this matter without prejudice. The orders being appealed involve the circuit court's denial of Appellant Sheriff Leon Lott's motion to change venue from Fairfield County to Richland County and the circuit court's denial of Appellant's motion to alter or amend the order denying venue change.

An order granting or refusing a change of venue is not an appealable interlocutory order. *Godley v. Uniroyal, Inc.*, 278 S.C. 571, 300 S.E.2d 78 (1983). An order denying a change of venue does not "affect" a substantial right so as to be an appealable interlocutory order under Section 14-3-330(2)(C) of the South Carolina Code. *Breland v. Love Chevrolet Old, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000).

The right to appeal is a jurisdictional matter and this Court must dismiss the appeal if

the order is not immediately appealable. *Levi v. Northern Anderson County EMS*, 409 S.C. 374, 762 S.E.2d 44 (Ct. App. 2014), *cert. denied* Jan. 15, 2015. *Cf. Burkey v. Noce*, 398 S.C. 35, 37, 726 S.E.2d 229, 230 (2012) (dismissing appeal of order denying motion to transfer venue under *forum non conveniens* argument, and pointing out “an order denying a motion to change venue is not immediately appealable”).

Here, Appellant moved to transfer venue under the South Carolina Tort Claims Act, asserting the alleged torts occurred in Richland County. See S.C. Code Ann. § 15-78-100(b) (2005) (“Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred.”).¹ The trial court disagreed, finding first that Appellant failed to produce any supporting evidence for its motion and thus failed to meet his burden of proof. The court added that Respondent provided sufficient evidence in opposition to the motion to establish that the alleged acts or occurrences (defamation) occurred in Fairfield County. The trial court noted it exercised its discretion in denying the motion to transfer venue.

The trial court’s order is correct. But even if it were not, as set forth in the case law above, the Supreme Court has stated recently, repeatedly, and without pause, that an order denying any Rule 12 motion, particularly a motion to transfer venue, is not immediately appealable under Section 14-3-330.

¹ Note that Section 15-78-100(b) does not involve the subject matter jurisdiction of the court. *Jeter v. SC Dept. of Transp.*, 369 S.C. 433, 633 S.E.2d 143 (2006). But even if it did, an order denying a motion to dismiss is not appealable, even if the ground involves an assertion that the lower court lacks subject matter jurisdiction. *Woodard v. Westvaco Corp.*, 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), *overruled on other grounds Sabb v. South Carolina State University*, 350 S.C. 416, 567 S.E.2d 231 (2002).

Accordingly, this Court should hold that the orders under appeal are not immediately appealable interlocutory orders under Section 14-3-330, and should dismiss this appeal without prejudice.

Respectfully submitted,



John S. Nichols

SC Bar No. 4210

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March 31, 2015

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Jordan R. Boyd, Respondent,

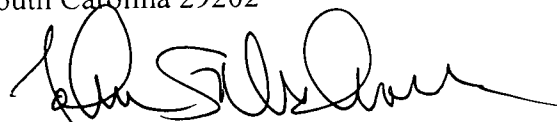
v.

Leon Lott, in His Official Capacity as
Sheriff of the Richland County Sheriff's Department .. Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal on Appellant Leon Lott by depositing a copy of the motion in the United States Mail, postage prepaid, on March 31, 2015, addressed to his attorney of record as follows:

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Attorney for the Respondent

March 31, 2015



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Jordan R. Boyd v. Leon Lott, in his official capacity as
Sheriff of Richland County Sheriff's Department
C.A. No. 2014-CP-20-0328

Dear Ms. Kitchings:

I have been engaged to assist the Respondent, Jordan R. Boyd, in the above-referenced appeal. Please note my appearance.

Also, please find enclosed the original and seven (7) copies of a motion to dismiss the appeal. I have also enclosed a Proof of Service upon counsel for the Appellants. I would appreciate you filing the original and returning the additional filed copy to me via our courier.

Thank you for your attention to these matter. Please let me know if you need anything else.

Sincerely,

John S. Nichols
BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

JSN/ms
Enclosures

cc: Andrew F. Lindemann, Esquire
Robert D. Garfield, Esquire
Gerald E. Reardon, Esquire
Jonathan M. Goode, Esquire