

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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JUL 08 2015

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Tanya A. Gee, Circuit Court Judge

Case No. 2014-CP-40-7565
Appellate Case No.: 2015-001170

Tanza Kohn.....Appellant,

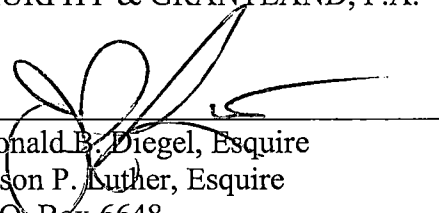
v.

David Christopher Kirby and Christina Inman Banks..... Respondents.

MEMORANDUM ADDRESSING ISSUE OF APPEALABILITY

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



Ronald B. Diegel, Esquire
Jason P. Luther, Esquire
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for Respondent Christina Inman
Banks

July 6, 2015

FACTUAL AND PROCEDURAL BACKGROUND

This is an appeal from an order of the Honorable Tanya A. Gee, Circuit Judge of the Fifth Judicial Circuit, dated April 20, 2015, which granted Respondent Christina Inman Banks's Motion to Bifurcate.

The Appellant, Tanza Kohn, filed her Complaint on December 9, 2014, alleging injuries she sustained as a result of two motor vehicle accidents that occurred on June 4, 2014 in Lexington County, South Carolina, involving Respondent Banks; and October 9, 2014, in Richland County, South Carolina, involving Respondent David Christopher Kirby. In her Complaint, the Appellant alleges an injury to her back, which she believes was caused by one or both of the accidents.

After filing an Answer, Respondent Banks then filed a Motion to Bifurcate the claims against the separate defendants on the grounds that the two accidents were unrelated and could not be permissibly joined under Rule 20(a), SCRPC, and therefore the claims should be treated as two separate lawsuits. After a hearing on April 15, 2015, Judge Gee granted the Motion and entered an Order Granting Severance, in which she severed the claims into two separate actions, finding that the two claims involved different car accidents on different dates and in different counties and could not be joined in one action under Rule 20(a), SCRPC. The Appellant filed a Motion to Reconsider, which was denied by a Form 4 order dated May 20, 2015. Appellant subsequently filed a Notice of Appeal on May 27, 2015.

By letter from the Deputy Clerk dated June 25, 2015, this honorable Court requested that the parties file memoranda addressing whether the orders challenged on appeal are immediately appealable.

ARGUMENT

1. The Trial Court's Order Granting Bifurcation is Not Immediately Appealable.

The right of appeal arises from and is controlled by statutory law. Hagood v. Sommerville, 362 S.C. 191, 194–95, 607 S.E.2d 707, 708 (2005). Ordinarily, a party may pursue an appeal only after a final judgment. Id. (citing S.C. Code Ann. § 14-3-330(1) (1976); Rule 72, SCRCP; Rule 201(a), SCACR). The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330 (1976 & Supp. 2003). Pursuant to Section 14-3-330, appellate courts have jurisdiction to immediately review the following:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; *provided*, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330. “The provisions of Section 14-3-330 . . . have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.” Hagood, at 196, 607 S.E.2d at 709.

This appeal does not fall within any of the recognized exceptions provided under Section 14-3-330(1), (3), or (4). It is not an appeal from an intermediate judgment on the merits, nor is it an appeal from a final order or judgment. It is also not an appeal from an interlocutory order involving an injunction or the appointment of a receiver.

Respondent anticipates that the Appellant will argue this order affects a substantial right to a particular mode of trial and therefore is immediately appealable under subsection (2) of 14-3-330. This argument fails for several reasons. First, an order affects a substantial right and is immediately appealable when it “(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]” *Id.* (citing Section 14-3-330(2)). None of those situations apply here. The trial court’s order granting severance does not determine the action or prevent a judgment from which an appeal can be taken, it does not grant or refuse a new trial, and it does not strike out any part of any pleading.

Second, the South Carolina Supreme Court has previously held that an order granting bifurcation and separate trials of issues “**is not immediately appealable**, either permissibly or mandatorily, pursuant to S.C. Code Ann. § 14-3-330(2) (1976).” *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 73, 533 S.E.2d 331, 334 (2000); see also *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000) (holding that trial court order denying bifurcation of the issues of liability and damages in a personal injury case is not immediately appealable).

In *Flagstar Corp.*, the Supreme Court rejected the argument that an order granting bifurcation is immediately appealable because it deprives the appellant of the mode of trial

to which it is entitled as a matter of right. Importantly, “[a]n order granting bifurcation of issues for trial simply does not strike to the heart of this Court’s traditional analysis of claims of denial of a mode of trial.” Id. at 72, 533 S.E.2d 331 at 333. The Supreme Court explained: “That analysis [of whether it denies a mode of trial] proceeds by determining whether or not a party is erroneously denied a trial by jury in a law case, or is erroneously required to proceed before a jury in an equity case.” Id.

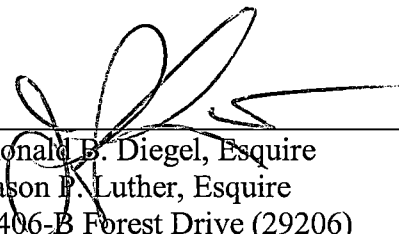
The same is true in this appeal. Here, the Appellant seeks review of the trial court’s order granting bifurcation of the claims against separate defendants arising out of separate automobile accidents that occurred on separate dates in separate counties. However, no party has been denied the right to a trial by jury. Instead, the trial court has simply found that the Appellant must proceed with separate jury trials against the different defendants due to the fact that the claims against each defendant are separate and unique and were impermissibly joined under Rule 20, SCRPC. Moreover, following those trials, the Appellant is free to advance on appeal that the trial judge abused her discretion in ordering bifurcation; any such abuse of discretion can be corrected at that time. Id.

CONCLUSION

Accordingly, because this appeal does not follow a final judgment and does not fall within any of the statutorily recognized exceptions to the final judgment rule governed by S.C. Code Ann. § 14-3-330, Respondent respectfully requests that this Court dismiss this appeal.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



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Columbia, South Carolina
July 6, 2015

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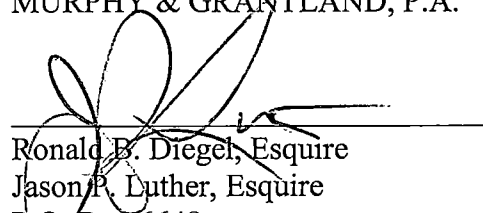
David Christopher Kirby and Christina Inman Banks..... Respondents.

PROOF OF SERVICE

I certify that I have served the Memorandum Addressing Issues of Appealability upon Tanza Kohn, via regular mail, on July 6, 2015, to her attorney of record, Robert F. Goings, Esq. of the Goings Law Firm, Post Office Box 436, Columbia, SC 29202.

Respectfully submitted,

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SC Court of Appeals

Honorable Jenny Abbott Kitchings, Clerk
1220 Senate Street
Post Office Box 11629 (29211)
Columbia, SC 29201

Re: Tanza Kohn vs. David Christopher Kirby and Christina Inman Banks
Civil Action No.: 2014-CP-40-7565
Appellate Case No.: 2015-001170
Claim No.: 23585618-6; ALIS #: 2015-00996
Date of Loss: June 4, 2014
Our File No.: 3250-0821

Dear Ms. Kitchings:

Enclosed please find the original and one copy of a Memorandum Addressing Issue of Appealability with regard to the above-referenced matter. Please file the original with your office and return a filed copy to me in the pre-addressed envelope provided for your convenience.

By copy of this letter, I am serving Plaintiff's counsel with a copy of same. If you have any questions or need any further information from me, please do not hesitate to call.

With kind regards, I am

Sincerely,

Jason P. Luther

JPL/anh

Enclosures

Cc: Robert F. Goings, Esquire
James B. Lybrand, Esquire
Robert L. Brown, Esquire

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