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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SEP 09 2015
SC Court of Appeals

Robert E. Hood, Circuit Court Judge

Case Nos. 2013-CP-40-6571 & 2014-CP-40-4165
Appellate Case No. 2015-000195

Ashely S. Griffith, Appellant,
v.
Pathology Service Associates, LLC, Respondent.

**Respondent Pathology Service Associates, LLC's
Motion to Dismiss the Appeals For Lack of Jurisdiction**

Respondent Pathology Service Associates, LLC moves the Court for an order dismissing the appeals from the two related circuit court proceedings for lack of appellate jurisdiction. For the reasons set forth below, the motion should be granted.

S.C. Code Ann. § 14-3-330 governs jurisdiction of appellate courts in South Carolina. *N.C. Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97 (Ct. App. 1986). Plaintiff appeals from two orders: (1) an order in civil action number 2013-CP-40-6571 ("Griffith I") relieving Defendant from default judgment pursuant to Rule 60, SCRCP; and (2) an order in civil action number 2014-CP-40-4165 relieving Defendant from entry of default. The orders are not immediately appealable and the appeals should be dismissed.

An order granting relief under Rule 60(b), SCRCP is not a final order nor does it effectively grant a new trial as no trial has ever taken place. *Pioneer Associates Inc. v. Tigor*.

Title Ins. Co., 300 S.C. 346, 348, 387 S.E.2d 711, 712 (Ct. App. 1989). Because the order in *Griffith I* does not fall within any of the categories of immediately appealable orders set forth in S.C. Code Ann. § 14-3-330, this Court lacks jurisdiction over the appeal from the order granting relief from default judgment. The Court should dismiss the appeal in *Griffith I*.

Similarly, an order granting relief from entry default under Rule 55(c), SCRCP is not immediately appealable. *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (1988) (citing with approval the result in *Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 361 S.E.2d 340 (Ct.App.1987)). Such an order meets none of the requirements set for in S.C. Code Ann. § 14-3-330. The Court should dismiss the appeal in *Griffith II*.

Pursuant to the order of the South Carolina Supreme Court dated August 28, 2015, in Appellate Case No. 2015-001824, a copy of which is attached for reference, a copy of this motion is being served upon Peyre Thomas Lumpkin, Esq., the receiver appointed to assume responsibility for the client files of suspended attorney J. Todd Kincannon, attorney for Plaintiff.

[Signatures Next Page]

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

William C. Wood, Jr.

E-Mail: bill.wood@nelsonmullins.com

Timothy M. McKissock

E-Mail: tim.mckissock@nelsonmullins.com

Erin R. Stuckey

E-Mail: erin.stuckey@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Elizabeth Scott Moise

E-Mail: scott.moise@nelsonmullins.com

151 Meeting Street / Sixth Floor

Post Office Box 1806 (29402-1806)

Charleston, SC 29401-2239

(843) 853-5200

Attorneys for Respondent, Pathology Service Associates,
LLC

Columbia, SC
September 9, 2015

The Supreme Court of South Carolina

In the Matter of J. Todd Kincannon, Respondent.

Appellate Case No. 2015-001824

ORDER

The Office of Disciplinary Counsel asks this Court to issue an order transferring respondent to incapacity inactive status pursuant to Rule 28, RLDE, Rule 413, SCACR, or in the alternative, placing respondent on interim suspension pursuant to Rule 17, RLDE, Rule 413, SCACR. The petition also seeks appointment of the Receiver pursuant to Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients.

IT IS ORDERED that respondent's license to practice law in this state is suspended and respondent is transferred to incapacity inactive status until further order of this Court.

IT IS FURTHER ORDERED that Peyre Thomas Lumpkin, Esquire, Receiver, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Lumpkin may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Lumpkin's office.

Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

s/ Jean H. Toal C.J.

Columbia, South Carolina

August 28, 2015

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SC Court of Appeals

Certificate of Service

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins & Scarborough LLP, attorneys for Respondent Pathology Service Associates LLC, do hereby certify that I have served counsel in this action with a copy of the pleading(s) hereinbelow by all by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **Respondent Pathology Service Associates, LLC's
Motion to Dismiss the Appeals For Lack of Jurisdiction**

Counsel Served: Peyre Thomas Lumpkin, Esq.
Receiver
Office of Commission Counsel
1205 Pendleton Street
Suite 333
Columbia, SC 29201



Jennifer B. Lee
Administrative Assistant

September 9, 2015

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.256.7500
www.nelsonmullins.com

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William C. Wood, Jr.
Tel: 803.255.9534

bill.wood@nelsonmullins.com

SC Court of Appeals

September 9, 2015

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

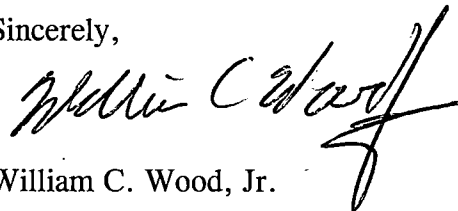
RE: Ashely S. Griffith v. Pathology Service Associates, LLC n/k/a PST Services, Inc.
Case Nos.: 2013-CP-40-6571 & 2014-CP-40-4165
Appellate Case No.: 2015-000195
Our File No.: 37578/01506

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Respondent Pathology Service Associates, LLC's Motion to Dismiss the Appeals for Lack of Jurisdiction in the above-referenced matter. Please file the original and return a clocked-in copy to me via our courier. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, I am hereby serving opposing counsel.

Sincerely,



William C. Wood, Jr.

WCWJR:jlee
Enclosures

cc: Peyre T. Lumpkin, Esquire