

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2012-CP-07-4139
APPELLATE CASE NO. 2015-002618

Patricia Doller, Respondent,

v.

Lohr Plumbing, Inc. Appellants.

MEMORANDUM REGARDING APPEALIBILITY

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By letter dated January 12, 2016, the Court advised the parties that it expected a memorandum addressing the issue of appealability of an order awarding a new trial under the Thirteenth Juror Doctrine.

FACTS

Following a trial and adverse verdict, Doller moved for a new trial on several grounds, one of which was the thirteenth juror doctrine. After a hearing on the motion, the trial Court granted the motion and ordered a new trial under the Thirteenth Juror Doctrine. This appeal followed.

ARGUMENT

Rule 2.1, SCACR, allow appeals from any “final judgment, appealable order or decision.” S.C.Code Ann. § 14-3-330(2)(b) (1976) states in part that the [Appellate Court] “shall review upon appeal . . . (2) An order affecting a substantial right made in an action when such order . . . (b) grants or refuses a new trial. . . .” The question then becomes whether a new trial granted on the Thirteenth Juror Doctrine affects a substantial right.

While there is ample case law of South Carolina appellate courts reviewing a grant of a new trial under the Thirteenth Juror Doctrine, the query has always been whether there was evidence to support the judge. In reviewing a new trial granted under the Thirteenth Juror Doctrine, the appellate court’s “review of a trial court's grant of a new trial is limited to consideration of whether evidence exists to support the trial court's order.” Lane v. Gilbert Constr. Co., 383 S.C. 590, 597, 681 S.E.2d 879, 883 (2009). While that inquiry may be helpful if the order is appealable, under § 14-3-330(2)(b) the inquiry should first be into whether either party lost a substantial right.


A party has a substantial right to have an impartial jury decide the disputed questions of fact. Lancaster v. Fielder, 305 S.C. 418, 409 S.E.2d 375 (1991); S.C.Code Ann. § 15-7-100(2) (1976). When the trial court exercises its discretion to grant a new trial under the Thirteenth Juror Doctrine it sits essentially as a thirteenth juror and “hangs” the jury. Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265 (1990). In that circumstance, the trial judge acts in the same capacity as any other juror. Accordingly, when the trial court grants a new trial as a thirteenth juror, neither party loses its right to have an impartial jury determine the disputed questions of fact. Instead, the impartial judge corrects an error made by the jury, for whatever reason, in deciding the matter.

Upon finding that no party had lost such a right, the inquiry should be ended. Because case law teaches us that when the judge grants a new trial under the Thirteenth Juror Doctrine he is acting “as the thirteenth juror,” no party can have lost a substantial right, and the order granting the new trial under that doctrine should not be appealable.

CONCLUSION

The grant of a new trial under the Thirteenth Juror Doctrine should not be appealable.

Respectfully submitted,


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February 8, 2016.

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PROOF OF SERVICE

I certify that I have served Appellant's counsel, Stacey P. Canaday, Esquire with a copy of Respondent's *Memorandum Regarding Appealability* by mailing a copy, postage paid, to:

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February 8, 2016

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February 8, 2016

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HAND DELIVERED

The Honorable Jenny Abbott Kithings
Clerk of Court
South Carolina Court of Appeals
John C. Calhoun Building
1015 Sumter Street
Columbia, SC 29201

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SC Court of Appeals

RE: Patricia Doller v. Lohr Plumbing, Inc.
Appellate Case No. 2015-002618

Dear Ms. Kithings:

Enclosed please find an original and one copy of the Respondent's Memorandum Addressing Appealability, along with the Proof of Service in the above matter. Kindly return the filed copy in the envelope provided.

With my kindest regards, I am

Sincerely,



Brian P. Robinson

BPR/os

CC: Stacey P. Canaday, Esquire
A. Parker Barnes, Jr., Esquire