State of South Carolina
In the Court of Appeals

Appeal from Florence County
in the Court of Common Pleas

Honorable Thomas A. Russo, Circuit Court Judge

Case # 2011-CP-21-2555

Jeffrey L. Vanderhall, ... Respondent

v.

Maurice Wilson and Priscilla Ford, ... Appellants

Motion to Dismiss the Appeal

Wilson and Ford have immediately appealed an order granting Vanderhall relief under Rule 60(b), SCRCP.[1] The appeal must be dismissed because the order is not immediately appealable.

"As a general rule, only final judgments are appealable." *Ex parte Wilson,* 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005). In *Pocisk v. Sea Coast Const. of Beaufort,* 380 S.C. 584, 671 S.E.2d 98 (Ct.App. 2008), this Court addressed whether an order that set aside a consent judgment fell within the S.C. Code

[1]The Rule 60(b) order accompanied the Notice of Appeal.

Ann. § 14-3-330 exceptions to this final judgment rule.

The facts in *Pocisk* and in this case are striking similar. In both cases, the trial court entered a consent judgment after the parties settled before trial, and the plaintiff got an assignment of the defendant's rights to pursue the insurer. In both cases, the plaintiff moved to set aside the consent judgment after a federal district court ruled for the insurer. And in both cases, the defendant immediately appealed the order granting Rule 60(b) relief.

This Court dismissed the appeal: "As the order does not meet the requirements of section 14-3-330(2) and does not fall within any of the other categories set forth in section 14-3-330, the order is not immediately appealable." *Pocisk*, 380 S.C. at 589, 671 S.E.2d at 101.

Pocisk fully answers Wilson's and Ford's anticipated point that the trial court vacated a settlement as well as a judgment. The parties in *Pocisk* likewise settled before trial. The appeal was dismissed from an order that "vacated the consent judgment and restored the case to the trial docket." *Id.* at 587, 671 S.E.2d at 100. Restoring the previously-settled case to the active trial docket did not make the order immediately appealable.

Two South Carolina Supreme Court decisions bolster the point. In one, the court held that an order declining to approve a settlement is not immediately appealable, reasoning that it neither involves the merits nor

prevents later appellate review. *Peterkin v. Brigman,* 319 S.C. 367, 461 S.E.2d 809 (1995). So too here. In this case, the trial court granted relief partly because the settlement and consent judgment lacked court approval. Order at 4-6.

There is no reason to distinguish between an order that declines to approve a settlement and one that sets aside a settlement that lacks approval. Neither order determines anything on the merits, discontinues an action, grants or refuses a new trial, or strikes out an action or defense. Neither order prevents a later appeal from a final judgment.

The next instructive Supreme Court decision held that avoiding a trial is not a "substantial right" that would entitle one to an immediate appeal. *Shields v. Martin Marietta Corp.,* 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991). Relying on *Shields,* this Court held that the loss of a settlement likewise does not affect a substantial right under § 14-3-330. *Pocisk*, 380 S.C. at 588, 671 S.E.2d at 101.

The United States Supreme Court agrees. It too has considered whether an order setting aside a dismissal by consent is reviewable before a final judgment. It unanimously held that it is not, and that a party's interests in enforcing a settlement are not important enough to overcome the normal final judgment rule. *Digital Equip. Corp. v. Desktop Direct, Inc.,* 511 U.S.

863, 877-881, 114 S.Ct. 1992, 2001-2003, 128 L.Ed.2d 842 (1994).

There is lastly no reason to distinguish orders setting aside a consent judgment from those setting aside a default judgment. Orders setting aside a default judgment are not immediately appealable. *Pioneer Assoc., Inc. v. Ticor Tile Ins. Co.,* 300 S.C. 306, 387 S.E.2d 711 (Ct.App. 1989). Section 14-3-330 does not apply any better to one over the other.

Now Wilson and Ford may nevertheless argue that the trial judge in this case got it so wrong, or that the order is so unfair, that this Court just has to step in sooner rather than later. Vanderhall disagrees and will respond to these and any other issues on the merits—at the appropriate time. Here and now, the issue is whether the order appealed satisfies § 14-3-330. Attacks on the merits get the cart before the horse.

And the horse is jurisdictional. Our constitution gives our General Assembly the authority to regulate appellate jurisdiction. S.C. Const. art. V, § 5. The General Assembly did so in S.C. Code Ann. § 14-3-330 when it listed the kinds of orders that the Court may review. Orders granting Rule 60(b) relief are not on the list. This lack of appellate jurisdiction precludes review of the merits, and requires that the appeal be dismissed.

Vanderhall asks that the Court apply *Pocisk* and dismiss the appeal.

Respectfully,

Robert N. Hill
S.C. Bar # 65074
Law Office of Robert Hill
P.O. Box 1323
Lexington, SC 29071
803-520-4370
attorneyhill@twc.com

Attorney for the Respondent
Vanderhall

Certificate of Service

I, Robert Hill, certify that I on October 24, 2016, served the Motion to Dismiss the Appeal by first-class mail, sufficient postage attached, on the following counsel of record:

Linda Weeks Gangi, Esq.
Thompson & Henry, P.A.
P.O. Box 1740
Conway, SC 29528-1740

Attorney for Appellant Wilson

William P. Hatfield, Esq
Hatfield Temple, LLP
P.O. Box 1770
Florence SC 29503-1770

Attorney for the Appellant Vanderhall

James M. Saleeby, Jr., Esq.
Aiken Bridges
P.O. Drawer 1931
Florence, SC 29503

Attorney for Appellant Ford

Robert Hill

LAW OFFICE OF ROBERT HILL

P.O. BOX 1323
LEXINGTON, SOUTH CAROLINA 29071

TELEPHONE
803-520-4370

ROBERT N. HILL
ATTORNEY AT LAW

EMAIL
attorneyhill@twc.com

October 24, 2016

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Jeffrey Vanderhall v. Maurice Wilson
Appellate Case No. 2016-002107

Dear Clerk of Court:

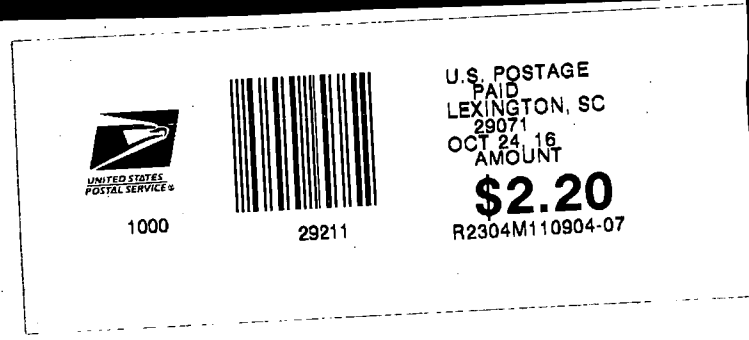
Enclosed is my Notice of Appearance and the original and six copies of a Motion to Dismiss the Appeal. The $25 filing fee is also enclosed.

Please call me if you have any questions.

My best,

Robert Hill

cc: Linda Weeks Gangi, Esq.
James M. Saleeby, Jr., Esq.
William P. Hatfield, Esq.



LAW OFFICE OF ROBERT HILL
P.O. BOX 1323
LEXINGTON, SC 29071

To: Hon. Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211