THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo

RECEIVED
NOV 07 2016
SC Court of Appeals

---

CASE NO. 2011-CP-21-2555

---

Jeffrey L. Vanderhall . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Respondent.

vs.

Maurice Wilson and Priscilla J. Ford . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Appellants.

---

## MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS THE APPEAL

---

The Summons and Complaint in the above-captioned action were filed on September 27, 2011. On December 13, 2012, Plaintiff's counsel took his client's, Jeffrey Vanderhall's, video deposition for use in discovery and at trial. Thereafter, a settlement was entered into by the parties which included a Settlement Agreement, a Covenant Not to Execute, a Confession of Judgment and an Assignment of any bad faith claims Maurice Wilson and Priscilla Ford had against State Farm Mutual Automobile Insurance Company to Vanderhall. Then, Vanderhall through his counsel filed suit asserting a bad faith claim against State Farm Mutual Automobile Insurance Company, Civil Action No.: 4:14-cv-00518-RMG. Counsel for State Farm took the deposition of Jeffrey Vanderhall. State Farm filed a Motion for Summary Judgment and summary judgment was granted by Judge Gergel on March 30, 2015. Jeffrey Vanderhall appealed Judge Gergel's decision to the Fourth

Circuit Court of Appeals. Judge Gergel's decision was upheld by the Fourth Circuit (Case No. 15-1442 unpublished opinion). After Judge Gergel granted summary judgment effectively dismissing the bad faith claim, but before the Fourth Circuit issued its opinion, Mr. Vanderhall filed in the state court action pursuant to Rule 60(b) *SCRCP* a Conditional Motion to Set Aside the Settlement and Judgment, Appoint a *Guardian ad Litem* and Place on Active Roster. By Order dated June 14, 2016, Judge Thomas A. Russo granted Mr. Vanderhall's Motion to Set Aside the Settlement and Judgment and to appoint a *Guardian ad Litem* finding that Vanderhall was not competent to enter into the settlement. Ford and Wilson filed a Motion to Alter or Amend Judgment pursuant to Rules 52 and 59 of the *SCRCP*. By Order dated September 15, 2016, Judge Russo denied the Motion to Alter or Amend Judgment. This appeal followed.

The Respondent asserts that this appeal should be dismissed because it is interlocutory. "Appeal may be taken, as provided by law, from any final judgment or appealable order." Rule 72, *South Carolina Rules of Civil Procedure*. The right of appeal arises from and is controlled by statutory law. *North Carolina Federal Sav. & Loan Assoc. v. Twin States Development Corp.*, 289 S.C. 480, 347 S.E.2d (1986). In reference to the jurisdiction of the South Carolina Court of Appeals, South Carolina Code Section 14-8-200 states:

> (a) Except as limited by subsection (b) and Section 14-8-260, the court has jurisdiction over ***any*** case in which an appeal is taken from an order, judgment, or decree of the circuit court, family court, a final decision of an agency, a final decision of an administrative law judge, or the final decision of the Workers' Compensation Commission. This jurisdiction is appellate only, and the court shall apply the same scope of review that the Supreme Court would apply in a similar case. The court has the same authority to issue writs of supersedeas, grant stays, and grant petitions for bail as the Supreme Court would have in a similar case. The court, to the extent the Supreme Court may by rule provide for it to do so, has jurisdiction to entertain petitions for writs of certiorari in post-conviction relief matters pursuant to Section 17-27-100. (emphasis added).

Interestingly, the General Assembly chose not to add the word "final" before the phrase "order, judgment, or decree of the circuit court" while adding the phrase "final decision" in reference to decisions made by an agency, administrative law judge and the Workers' Compensation Commission. With statutory construction, the Court must rely on the plain meaning of the statute in question. *Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund*, 363 S.C. 612, 623, 611 S.E.2d 297 (Ct.App.2005). In this case, the General Assembly could have easily put the word "final" in front of "order, judgment, or decree of the circuit court," but the General Assembly chose not to. Therefore, from the plain meaning of the statute, the order of the circuit court that is appealed does not have to be a "final" order.

The Respondent relies on South Carolina Code Section 14-3-330 which controls the appellate jurisdiction of the South Carolina Supreme Court. Even assuming Section 14-3-330 applies to this case filed in the Court of Appeals, this Court should not dismiss the appeal because the circuit court order affects a substantial right of the Appellants in this case and a substantial right of all litigants in future cases. The circuit court order effectively requires all parties agreeing to the settlement of a case to undergo psychiatric evaluations prior to finalizing the settlement to make sure that each litigant has the mental capacity to sign a release or settlement agreement. Also, the order sets precedent that any litigant who does not like a settlement can assert incompetence many years later, get the settlement set aside, and have a trial.

An Order "involving the merits" as that term is used in the statute outlining appellate jurisdiction in law cases is immediately appealable when it finally determines some substantial

matter forming the whole or part of some cause of action or defense. Ex Parte: *Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (S.C. 2006); *Tatnall v. Gardner*, 350 S.C. 135, 564 S.E. 2d 377 (S.C. App. 2002). *Watson v. Underwood,* 407 S.C. 443, 756 S.E.2d 155 (S.C. App. 2014). An Order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court and a ruling on appeal will avoid unnecessary litigation. *Osborne v. Allstate Insurance Co.,* 319 S.C. 479, 462 S.E.2d 291 (S.C. App. 1995). If the court dismisses the motion, hears the appeal, and upholds the settlement, two additional trials will be avoided, the personal injury suit and another bad faith claim. The South Carolina Court of Appeals has heard other cases that emanated from a trial court's order on a motion under Rule 60 of the *SCRCP.* See *Mitchell Supply Company, Inc. v. Daphne*, 297 S.C. 160, 375 S.E.2d 321 (1988) and *Johnson v. Johnson*, 310 S.C. 44, 425 S.E.2d 46 (1992). In fact, the Court of Appeals entertained an appeal from a trial court order vacating a settlement agreement and restoring a case to the trial roster. See *Rocksmith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 419 S.E.2d 841 (1992). Based on the above case law, this appeal should not be dismissed. The Respondent cannot be allowed to bring two lawsuits, testify at two depositions, one of which his own attorney took, settle his personal injury claim and four and a half years later after an adverse ruling in the Federal Court bad faith suit assert that he did not have the mental capacity to enter into the settlement. The Respondent's Motion to Dismiss should be denied.

The Respondent relies heavily on *Pocisk v. Seacoast Construction of Beaufort*, 380 S.C. 584, 671 S.E.2d 98 (2008). The *Pocisk* case is distinguishable from the case at bar. Pocisk and Payne settled a defective construction case. The settlement included Payne confessing judgment for $250,000. After the settlement, St. Paul Travelers, Payne's insurer, brought a declaratory judgment action in Federal Court. The District Court held that the settlement agreement was presumptively

unreasonable and therefore invalid. The District Court concluded that because the settlement agreement was invalid, St. Paul Travelers was not obligated to indemnify Payne for the $250,000 Confession of Judgment that he agreed to in the state court action. Pocisk then filed a Motion in state court to vacate the Consent Judgment pursuant to Rule 60(b) *SCRCP* and restore the action to the trial roster. It does not appear that Payne contested the Motion. The trial court vacated the Consent Judgment and restored the case to the trial docket. Thereafter, Payne filed a Motion to Reconsider which the trial court denied and the appeal followed. These facts are materially different from the case at bar.

The Respondent also relies on the U.S. Supreme Court case of *Digital Equipment Corporation v. Desktop Direct, Inc.*, 11 U.S. 863, 1114 S.Ct. 1992 128 L.Ed 2d 842, (1994). That case interpreted 28 U.S.C. §1291 and applied *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93L.Ed. 1528 (1949). The issue presented in that case was whether an order vacating a dismissal predicated on the parties' settlement agreement is final as a collateral order even without a District Court's resolution of the underlying cause of action. *Id.* 865. In that case, the settlement was set aside on the basis of misrepresentation of material facts during settlement negotiations by one of the parties. The facts, statutes, and case law in *Digital* are not applicable to the case at hand. In *Shields v. Martin-Marietta Corporation*, 303 S.C. 469, 402 S.E.2d 482 (1991) an appeal was taken by the Defendants from the denial of their Motion to Dismiss the case for lack of prosecution. The Supreme Court found that the order allowing the Plaintiff to restore the case to the active docket was not immediately appealable because it did not affect a substantial right. The *Shields*' case is clearly distinguishable from the case at bar. The Respondent also relies on *Peterkin v. Brigman*, 319 S.C. 367, 461 S.E.2d 809 (1995). In *Peterkin*, the trial court refused to enforce an

alleged settlement agreement and an appeal was taken. The trial judge declined to approve the settlement finding that there was no meeting of the minds. The court in *Peterkin* specifically found that under S.C. Code Ann. §14-3-330(c), an order which affects a substantial right and in effect determines an action and prevents a judgment from which an appeal may be taken is immediately appealable.

This Court should dismiss the Respondent's Motion for the reasons set forth above.

Respectfully submitted,

THOMPSON & HENRY, P.A.

Conway, South Carolina

November 3, 2016.

Linda Weeks Gangi, Esq.
Attorney for the Appellant Maurice Wilson
Post Office Box 1740
Conway, South Carolina 29528-1740
Telephone No: (843) 248-5741
Fax No: (843) 248-5112
lgangi@thompsonlaw.com

Florence, South Carolina

November 3, 2016

AIKEN BRIDGES
James M. Saleeby, Jr., Esq.
Attorney for the Appellant Priscilla J. Ford
Post Office Drawer 1931
Florence, SC 29503
843-669-8787 (p)
jms@aikenbridges.com

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

---

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo

RECEIVED
NOV 07 2016
SC Court of Appeals

---

CASE NO. 2011-CP-21-2555

---

Jeffrey L. Vanderhall .................................................. Respondent.

vs.

Maurice Wilson and Priscilla J. Ford ........................................ Appellants.

---

**CERTIFICATE OF SERVICE**

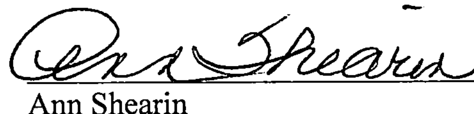
---

I, Ann Shearin, an employee for Thompson & Henry, P.A., attorneys for the Appellant Maurice Wilson in the above-captioned action certify that I have this 3rd day of November, 2016 emailed and mailed a copy of the Memorandum in Opposition to Respondent's Motion to Dismiss the Appeal and Certificate of Service to the undersigned at their address of record, with sufficient postage attached thereto, as follows:

wphatfield@htlawsc.com
William P. Hatfield, Esq.
Hatfield Temple, LLC
Post Office Box 1770
Florence, SC 29503
Attorney for Respondent Vanderhall

attorneyhill@twc.com
Robert N. Hill, Esq.
Law Office of Robert Hill
Post Office Box 1323
Lexington, SC 29071
Attorney for Respondent Vanderhall

jms@aikenbridges.com
James M. Saleeby, Jr., Esq.
Aiken Bridges
Post Office Drawer 1931
Florence, SC 29503
Attorney for Appellant Ford


Ann Shearin

**THOMPSON & HENRY, P.A.**
**ATTORNEYS AT LAW**
**1300 SECOND AVENUE, THIRD FLOOR**
**POST OFFICE BOX 1740**
**CONWAY, SOUTH CAROLINA 29528**

**LINDA WEEKS GANGI**
**lgangi@thompsonlaw.com**

**TELEPHONE**
**(843) 248-5741**
**FAX**
**(843) 248-5112**

November 3, 2016

The Honorable Jenny Abbot Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
NOV 07 2016
SC Court of Appeals

Re: *Jeffrey L. Vanderhall vs. Maurice Wilson and Priscilla J. Ford*
Civil Action No.: 2011-CP-21-2555

Dear Ms. Kitchings:

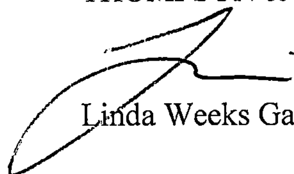
Please find enclosed herewith the originals and seven (7) copies of the Memorandum in Opposition to Respondent's Motion to Dismiss the Appeal and Certificate of Mailing with regard to the above-captioned action. Please file the originals, clock the copies and return a clocked copy of the Memorandum and Certificate of Mailing to me in the enclosed self-addressed stamped envelope.

By copy of this letter, I am serving all counsel of record with a copy of my Memorandum.

With kindest personal regards, I remain

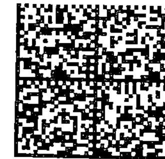
Yours very truly,

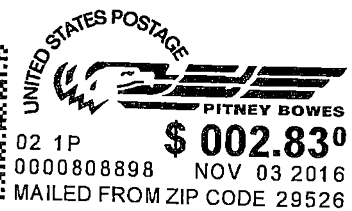
THOMPSON & HENRY, P.A.



Linda Weeks Gangi

LWG/avs
Enclosures
pc: James M. Saleeby, Jr., Esq. - jms@aikenbridges.com
William P. Hatfield, Esq. - wphatfield@htlawsc.com
Robert N. Hill, Esq. - attorneyhill@twc.com






**FIRST CLASS MAIL**

RECEIVED
NOV 07 2016
SC Court of Appeals

**THOMPSON & HENRY, P.A.**
POST OFFICE BOX 1740
CONWAY, SC 29528

TO:

The Honorable Jenny Abbot Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211