

State of South Carolina  
In the Court of Appeals

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SC Court of Appeals

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Appeal from Florence County  
In the Court of Common Pleas

Honorable Thomas A. Russo, Circuit Court Judge

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Case # 2011-CP-21-2555

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Jeffrey L. Vanderhall, ..... Respondent

v.

Maurice Wilson and Priscilla Ford, ..... Appellants

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**Reply in Support of Motion to Dismiss the Appeal**

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Section 14-3-330, S.C. Code Ann., governs whether an order is appealable and requires that this appeal be dismissed.

**I. § 14-3-330 governs, not § 14-8-200.**

A respected treatise describes the scope of § 14-3-330, noting: “[T]he Court of Appeals uses the same standards as the Supreme Court in determining whether an order or judgment is appealable.” Jean Hoefler Toal, Amelia Waring Walker, & Margaret E. Baker, *Appellate Practice in South*

Carolina 141 (3d ed. S.C. Bar 2016). Wilson and Ford disagree. They argue that § 14-3-330 does not apply and that this Court may immediately review all interlocutory orders that a circuit court or family court enters—all interlocutory orders—because § 14-8-200 gives this Court more power to hear interlocutory appeals than § 14-3-330 gives the Supreme Court. If they are right, parties may appeal all interlocutory orders from a circuit court or family court as a matter of right. *See* Rule 201(a), SCACR (granting parties the right to appeal an “appealable order.”); Rule 72, SCRCP (same).

Wilson and Ford cite no court giving § 14-8-200 this breathtaking reading. The contrary case law on § 14-3-330 is legion. The Supreme Court has repeatedly reversed this Court for failing to dismiss appeals from circuit court orders that do not satisfy § 14-3-330. *See, e.g., Baldwin Const. Co., Inc. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004); *Woodward v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995), *overruled on other grounds Sabb v. South Carolina State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002). This Court regularly dismisses appeals from circuit court and family court orders that do not satisfy § 14-3-330. *See* Appellate Practice in South Carolina, at 146-166, 169-176 (citing decisions).

This abundant authority honors the final judgment rule, a “fundamental rule of appellate procedure” which “serves the laudatory goal of preventing

piecemeal review of matters that are merely steps toward a final judgment.”

*Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 355-356 (Ct.App. 2004).

Given this laudatory goal, “exceptions should be recognized cautiously.” *Id.* at 216, 607 S.E.2d at 356.

Nothing about Wilson’s and Ford’s view is cautious. If they are right, parties can appeal any and all circuit court orders and any and all family court orders, no matter how interlocutory, as a matter of right. Yet they do even not try to explain why the General Assembly would jettison the final judgment rule or give this intermediate court much greater appellate jurisdiction than the Supreme Court enjoys. The most they say is that a clause in § 14-8-200(a) does not say “final” in describing circuit court and family court orders.

The missing word in the single clause does not bear the weight that Wilson and Ford gives it. Read as a whole, § 14-8-200 deals primarily with the Supreme Court’s exclusive jurisdiction. Different statutes deal with an order’s appealability. One provides: “An appeal may be taken to the Supreme Court or the Court of Appeals in the cases mentioned in Sections 14-3-320 and 14-3-330.” S.C. Code Ann. § 18-9-10. Another grants appellate jurisdiction if § 14-3-330 is not satisfied, but only if the appeal is from a certain type of arbitration order. S.C. Code Ann. § 15-48-200(a).

Wilson and Ford render these statutes surplusage. Section 18-9-10 did not need to include “the Court of Appeals” in saying which appeals “may be taken” if a party could already appeal any and all orders from a circuit court or family court. Section 15-48-200(a) did not need to create special jurisdiction to immediately review certain circuit court orders if a party could already immediately appeal all circuit court orders. To give these statutes meaning, § 18-9-10 includes this Court so that it, like the Supreme Court, is bound by the final judgment rule unless a § 14-3-330 exception or other specialized exception applies.

Wilson and Ford also run into S.C. Code Ann. § 14-8-210, the statute subjecting this Court to Supreme Court review. Imagine just for a second that this Court hears an interlocutory appeal that § 14-3-330 forbids and issues an opinion on the merits. The Supreme Court could not review it. Section 14-3-330, by its terms, limits what the Supreme Court may do. The greater appellate jurisdiction that Wilson and Ford bestow on this Court gives this Court the final say. The Supreme Court is no longer supreme.

A better reading is that § 18-9-10 governs whether an appeal “may be taken” in the first place and instructs this Court to apply the same standards on an order’s appealability that the Supreme Court must apply. If the order is appealable, § 14-8-200 kicks in to determine whether the Supreme Court’s

jurisdiction over the appealable order is exclusive. If not, this Court handles the appeal subject to the Supreme Court's § 14-8-210 review.

This gives all the various statutes effect, is faithful to the abundant case law on § 14-3-330, maintains the floodgate limiting which piecemeal appeals parties may bring, and preserves the Supreme Court's authority.

## II. § 14-3-330 is not satisfied.

Wilson's and Ford's attempt to avoid § 14-3-330 is understandable. This Court's application of § 14-3-330 in *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 671 S.E.2d 98 (Ct.App. 2008), is dead on point. As recounted before, *Pocisk* held that a Rule 60(b) order setting aside a consent judgment and settlement agreement does not fall within § 14-3-330. *Id.* at 589, 671 S.E.2d at 101. The order that Wilson and Ford appealed granted Vanderhall identical Rule 60(b) relief.

Wilson and Ford respond with pre-*Pocisk* decisions from this Court that do not address appealability, including decisions that *Pocisk* cited and declined to follow. *Id.* at 589 n. 3, 671 S.E.2d at 101 n. 3 (declining the follow the Rule 60(b) cases that Wilson and Ford cite). The Supreme Court has reversed this Court for making § 14-3-330 decisions based on cases that do not address § 14-3-330. *Woodward*, 319 S.C. at 242, 460 S.E.2d at 393.

Wilson and Ford also strive to distinguish *Pocisk* and the other decisions that Vanderhall cited, arguing that the trial courts in those cases entered their orders for different reasons. But why the trial court entered the order goes to the merits. We are not at the merits. We are at the preliminary, jurisdictional stage over whether the order satisfies § 14-3-330.

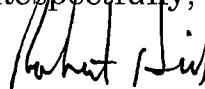
Whether an order satisfies § 14-3-330 turns on the type or kind of order entered, not why it was entered. On that score, Wilson and Ford do not attempt to explain how Vanderhall's Rule 60(b) order involves the merits of the claims or defenses more, or affects a substantial right more, than the order in *Pocisk* or the order refusing to approve a settlement in *Peterkin v. Brigman*, 319 S.C. 367, 461 S.E.2d 809 (1995).

Lastly, Wilson and Ford do not suggest that Vanderhall's Rule 60(b) relief prevents an appeal after a final judgment. They can appeal and attack the Rule 60(b) order all they want then. Until then, this Court lacks jurisdiction.

### **Conclusion**

This Court should apply *Pocisk* and dismiss the appeal.

Respectfully,



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**Certificate of Service**

I, Robert Hill, certify that I on November 7, 2016, served the Reply in Support of the Motion to Dismiss the Appeal by first-class mail, sufficient postage attached, on the following counsel of record:

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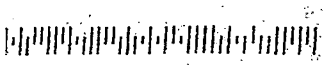
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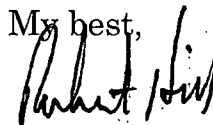
Re: Jeffrey Vanderhall v. Maurice Wilson  
Appellate Case No. 2016-002107

Dear Clerk of Court:

Enclosed is the original and six copies of the Reply in Support of Motion to Dismiss the Appeal.

Please call me if you have any questions.

My best,



Robert Hill

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