

The South Carolina Court of Appeals

Travis A. Roddey, Individually and as the Personal
Representative of the Estate of Alice Monique Beckham
Hancock, deceased, Appellant,

v.

Wal-Mart Stores East, L.P., U.S. Security Associates,
Inc., and Derrick L. Jones, Respondents.

Appellate Case No. 2016-002248

ORDER

Appellant has filed a notice of appeal from the circuit court's order barring evidence of Appellant's negligent hiring/training/supervision/entrustment cause of action on the grounds of res judicata. Appellant has also filed a motion to stay the trial scheduled for November 14, 2016, pursuant to Rules 205 and 241 of the South Carolina Appellate Court Rules, arguing that because Appellant has served and filed a notice of appeal, the trial court now lacks jurisdiction to proceed with the trial. Respondents filed a return opposing the motion and also argue that this court should dismiss the appeal because it is interlocutory and without merit. Appellant filed a reply.

First, after careful consideration, Respondents' request to dismiss this appeal is denied. See S.C. Code Ann. § 14-3-330(2)(c) (1976) (providing that "[a]n order affecting a substantial right made in an action when such order . . . strikes out an answer or any part thereof or any pleading in any action" is immediately appealable); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011) ("An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial."). Nothing, however, prevents the parties from addressing the issue of appealability in their briefs.

Second, because the resolution of this appeal will determine whether the negligent hiring cause of action can proceed below, this appeal affects the underlying trial of this case. See Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal."); *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) ("[T]he lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a 'matter[] affected by the appeal' under Rules 205 and 241(a)."). Accordingly, the trial court lacks the power to proceed with the trial while the appeal is pending, and Appellant's motion to stay the trial is granted.



FOR THE COURT

Columbia, South Carolina

cc: The Honorable G. Thomas Cooper
The Honorable Jeff L. Hammond
S. Randall Hood, Esquire
Shawn Boyd Deery, Esquire
Whitney Boykin Harrison, Esquire
Stephanie G. Flynn, Esquire
W. Howard Boyd, Jr., Esquire

FILED

November 9, 2016