

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2017-002407

**RECEIVED**  
DEC 04 2017  
SC Court of Appeals

Todd Bullman, as Personal  
Representative of the Estate of  
Caitlin Bullman.....Respondent,

v.

Charlotte-Mecklenburg Authority d/b/a  
Carolina Physician Network, LLC d/b/a  
Piedmont Gyn OB, LLC, Dr. Priya B.  
Pillai, MN, Dr. William S. Revell,  
Charlotte-Mecklenburg Authority d/b/a  
Carolina Medical Center-Pineville.....Appellants.

**Respondent's Motion to Dismiss**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent Todd Bullman, as Personal Representative of the Estate of Caitlin Bullman, requests this Court dismiss this appeal. As discussed herein, the trial court's denial of the motion to dismiss is interlocutory and the grounds appealed are not recognized exceptions for immediate appellate review. Thus, this appeal is not properly before the Court. Accordingly, the appeal should be dismissed, and this matter should be returned to the trial court to proceed with litigation. See Rule 221, SCACR.

By way of background, this medical malpractice action arises from Appellants' alleged failures in testing, investigating, and appropriately diagnosing Ms. Bullman's signs of infection, which ultimately led to her death. In response to the Complaint, Appellants moved to dismiss this matter pursuant to Rule 12 of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction, failure to state a claim, insufficient service of process, and improper venue. Following a hearing, the trial court denied Appellants' motion to dismiss. Appellants therein after filed a notice of appeal.

### **Argument**

The trial court's order denying Appellants' motion to dismiss is not immediately appealable because the issues on appeal are interlocutory and fail to qualify as a recognized exception to allow for review at this stage of litigation. For these reasons, this appeal should be dismissed.

Section 14-3-330 of the South Carolina Code sets forth which judgments and orders are appealable. The statute provides, in pertinent part:

The Supreme Court shall have appellate jurisdiction for correction of error of law in law cases, and shall review upon appeal:

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

§ 14-3-330(2) (emphasis added). Our courts have interpreted this language to mean that only final judgments and certain interlocutory orders are appealable. S.C. Code § 14-3-330(2). Thus, when a final judgment has not been rendered, as in this case, the inquiry becomes whether an interlocutory order is immediately appealable. Practically, an interlocutory order is not immediately appealable unless the ruling affects a substantial right. *Burkey v. Noce*, 398 S.C. 35,

37, 726 S.E.2d 229, 230 (Ct. App. 2012); *see also Ex parte Johnson*, 63 S.C. 205, 41 S.E. 308 (1901).

Appellate courts, generally, do not allow immediate appellate review of the denial of Rule 12(b), SCRCP motions because of their interlocutory nature, pursuant to § 14-3-330(2). *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 95, 529 S.E.2d 11, 14 (2000). It is well-settled that an order denying a motion to dismiss for personal jurisdiction and failure to state a claim are not immediately appealable. *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (ruling the denial of a Rule 12(b)(2), SCRCP motion for personal jurisdiction was not immediately appealable); *Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995) (ruling the denial of a Rule 12(b)(6), SCRCP motion was not immediately appealable). Also, our courts have noted that service of process is not immediately appealable. *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008) (citing *Anglin Stone v. Curtis*, 146 N.C.App. 608, 553 S.E.2d 244 (2001) for the proposition that service of process is not immediately appealable within the Rule 60 context).

Further, an order denying a motion to dismiss for venue is not immediately appealable. *Breland*, 339 S.C. at 95, 529 S.E.2d at 14 (2000). In *Breland*, the Supreme Court held an order denying a motion to transfer venue failed to meet any of § 14-3-330(2)'s subparts, and thus was not immediately appealable. As to (a), the Court explained that even though venue may involve a "substantial right," it does not "in effect determine[] the action," nor does it "prevent[] a judgment from which an appeal might be taken." *Id.* The order also does not "discontinue[] the action[.]" As to (b), the Court held an order denying a motion to dismiss for venue does not grant or refuse a new trial, so it fails under § 14-3-330(2)(b). And as to (c), the Court found denying a motion on venue does not meet the requirements of § 14-3-330(2)(c) because it does not "strike[] out an

answer or any part thereof or any pleading in any action[.]”. In sum, an order denying a motion to dismiss for improper venue is not immediately appealable.

Notably, the *Breland* holding mirrors the well-settled policy of South Carolina appellate courts that interlocutory orders are best addressed at the end of litigation. *Id.* (“Requiring a defendant to wait until after trial to appeal the issue of proper venue is the most appropriate course to take where any error in that decision will not prejudice the defendant any more than other interlocutory orders which, if in error, would require a new trial.”). This policy helps avoid “piecemeal litigation” and promotes judicial economy. *Id.*; see *Whaley v. CSX Transportation, Inc.*, 362 S.C. 456, 609 S.E.2d 286 (2005) (providing an example in which venue was properly addressed on appeal after a trial in which the Supreme Court ordered a new trial on the basis that the lower court erred in its ruling on venue).

Here, there can be no question that the appeal of the trial court’s order is not properly before the Court and must be dismissed. Precedent establishes that these issues are interlocutory and should not be reviewed at this time.

While Appellants will likely argue that substantial rights are affected if this matter is not addressed our appellate courts have continually echoed that personal jurisdiction and venue should not be addressed at this time. Specifically, it is believed that Appellants will argue: (1) due process warrants the review of personal jurisdiction at this time because Courts have previously done so and (2) Appellants are public officers and their substantial rights are affected. Both of these arguments must fail. First, there is no authority to suggest that our appellate courts have created an exception to the statute to allow for immediate review based on due process grounds from a motion to dismiss for personal jurisdiction. While our Supreme Court has addressed this issue a handful of times, a review demonstrate that no exception has been made on appealability and there

is no suggestion that the issue of appealability was raised to the Court. *See e.g., Southern Plastics Co. v. Southern Commerce Bank*, 310 S.C. 256, 423 S.E.2d 128 (1992); *Clark v. Key*, 304 S.C. 497, 405 S.E.2d 599 (1991). Rather, the Court embraced the well-settled principle that “[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked.” *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991) (brackets and internal quotation marks omitted).

Second, both potential arguments involve the merit of the appeal not the appealability. Addressing the merits of either due process or Appellants’ status as public officers would be an error of law.

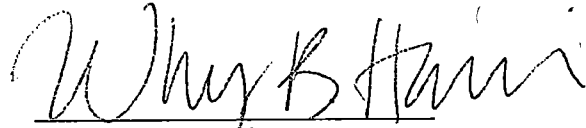
Additionally, any contention that medical cases are treated differently for appealability is unsupported by law. Giving such a preference is in direct contradiction to appellate practice in this State and the Court’s limited authority to address certain matters based on the Legislature’s intent. *See generally*, Article V, §§ 5 & 9 of the South Carolina Constitution; S.C. Code Ann. § 14-8-200; S.C. Code Ann. § 14-8-200; *Ex parte Johnson*, 63 S.C. 205, 41 S.E. 308 (1901)

Respondent’s interests are best served by having this appeal dismissed because of its interlocutory nature and the matter being returned to the trial court to proceed with litigation. For these reasons, Appellants’ appeal should be dismissed.

*Signature Page to Follow*

Respectfully submitted,

December 4, 2017  
Columbia, SC



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Carolina Medical Center-Pineville.....Appellants.

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**Proof of Service**

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The undersigned hereby certifies that on December 4, 2017, she served counsel for Appellants with *Respondent's Motion to Dismiss and counsel's Notice of Appearance* by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

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Respectfully submitted,

*Whitney B. Harrison*

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December 4, 2017

The Honorable Jenny Kitchings  
Clerk of South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

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SC Court of Appeals

Re: *Todd Bullman v. Charlotte-Mecklenburg Authority*  
Appellate Case No. 2017-002407

Dear Ms. Kitchings:

I am writing to notify the Court of my appearance in this matter and filing a Motion to Dismiss this appeal because it is interlocutory and not properly before the Court. Enclosed please find the original and seven (7) copies of the motion and a self-addressed envelope, along with my notice of appearance. Please return a clocked copy of the motion and notice of appearance. If you have any questions or concerns, please do not hesitate to contact me.

With kind regards, I am

  
Whitney B. Harrison

Enclosure

Cc: Robert Phillips, Esquire  
Daniel Luginbill, Esquire  
Scott S. Addison, Esquire  
Tricia Derr, Esquire