

87555

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

RECEIVED
AUG 14 2018
SC Court of Appeals

Appellate Case No. 2018-001481

John Garvin.....Appellant,

v.

Scott D. Robinson Law Firm, LLC

Scott D. Robinson,Respondents.

**RESPONDENTS' MOTION TO DISMISS
FOR LACK OF APPELLATE JURISDICTION**

Warren C. Powell, Jr.
Email: wpowell@brunerpowell.com
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place
Columbia, SC 29204
Phone: (803) 252-7693

*Attorneys for Respondents
Scott D. Robinson Law Firm, LLC and Scott D.
Robinson*

Scott D. Robinson Law Firm, LLC and Scott D. Robinson (“Respondents”), by and through their counsel, file this Motion to Dismiss requesting that the Court dismiss the appeal filed by John Garvin (“Appellant”) as this Court lacks appellate jurisdiction over the appeal because the Circuit Court’s Order challenged is not immediately appealable.

I. BACKGROUND

On February 20, 2017 Appellant as the plaintiff *pro se* filed this legal malpractice action against Respondents in the Circuit Court of Common Pleas, Greenville County. The legal malpractice action arises from an underlying case filed in the Circuit Court of General Sessions, Spartanburg County, resulting in Appellant’s May 23, 2013 conviction for drug trafficking (heroin) and a sentence to a term of imprisonment for twenty-five (25) years.

On May 31, 2018 the circuit court granted Respondents’ motion for change of venue from Greenville County to Spartanburg County based on S.C. Code Ann. §15-7-100(A) (Supp. 2005) which provides in pertinent part, “The court may change the place of trial if: ... (3) the convenience of witnesses and the ends of justice would be promoted by the change.”

On July 19, 2018, the Court entered its order (“Order”) (Order, attached hereto as Exhibit 1) changing venue to Spartanburg County.

On July 20, 2018, Appellant served a motion for reconsideration which was filed in the office of the Clerk of Court for Greenville County on July 24, 2018. The Court has not held a hearing on the motion for reconsideration or ruled upon the same. This appeal followed.

II. ARGUMENT

This Court lacks appellate jurisdiction over the appeal and should dismiss it as interlocutory.

“The right to appeal arises from and is controlled by statutory law.” *North Carolina Fed. Sav. and Loan Ass’n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986). In the absence of a specific statute or rule granting a party the right to appeal, none of which are present here, S.C. Code Ann. §14-3-330 (1976) generally governs the situations in which the right to appeal exists. *See Woodard v. Westvaco Corp.*, 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995) (overruled on other grounds by *Sabb v. South Carolina State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002)).

Under § 14-3-330, a party may appeal four different types of orders: (1) “final order[s] in special proceedings,” (2) “interlocutory orders continuing, modifying or refusing injunctions” or refusing the appointment of a receiver (3) “intermediate judgments, orders or decrees involving the merits,” and (4) “orders affecting substantial rights when such orders in effect determine the action and prevent a judgment from which an appeal may be taken or when the orders discontinue the action.” *Crout v. South Carolina Nat’l Bank*, 278 S.C. 120, 124, 293 S.E.2d 422, 424 (1982). The Supreme Court has narrowly construed § 14-3-330 “to serve the underlying policy favoring judicial economy by avoiding piecemeal appeals.” *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015) (internal quotation marks omitted); *see also Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 302, 705 S.E.2d 475, 478 (2011).

Here, the Order does not fall within any of the four categories of appealable orders under § 14-3-330:

First, this case is a civil action and does not involve any “special proceeding.” Moreover, the Order is not a “final order” for purposes of § 14-3-330(3) because it does not “finally dispose of the whole-subject matter . . . of the . . . action, leaving nothing to be done but to enforce . . . what has been determined.” *Kriti Ripley, LLC v. Emerald Invs., LLC*, 404 S.C. 367, 379, 746

S.E.2d 26, 32 (2013) (internal quotation marks omitted). Instead, the Order is an interlocutory order. *See, Godley v. Uniroyal, Inc.*, 278 S.C. 57, 57, 300 S.E. 2d 78, 78 (1983) (“It is generally held that an order granting or refusing a change of venue is interlocutory and therefore not immediately appealable.”) and *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993) (“If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory.”). Accordingly, the Order is not appealable under § 14-3-330(3).

Second, the Order does not “continue, modify, or refuse an injunction,” nor does it deny the appointment of a receiver for purposes of § 14-3-330(4). Thus, the Order is not appealable under § 14-3-330(4).

Third, the Order does not “involv[e] the merits” of the dispute for purposes of § 14-3-330(1) because it does not “finally determine some substantial matter forming the whole or a part of some cause of action or defense.” *Knowles v. Standard Sav. & Loan Asso.*, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979) (holding that class certification orders do not “involv[e] the merits” for purposes of § 14-3-330(1)). Indeed, the Order pertains to the change of venue which plainly does not involve the underlying merits of an alleged malpractice action at issue here. *See State v. Wilson*, 387 S.C. 597, 601, 693 S.E.2d 923, 925 (2010) (holding that order disqualifying solicitor in criminal matter did not “involv[e] the merits” for purposes of § 14-3-330(1)); *see also Crout*, 278 S.C. at 124, 293 S.E.2d at 424 (holding that denial of motion for continuance does not “involv[e] the merits” for purposes of § 14-3-330(1)). As such, the Order is not appealable under § 14-3-330(1).

Fourth, the Order does not “affect [] a substantial right” that “determines the action and prevents a judgment from which an appeal may be taken” for purposes of § 14-3-330(2)(a).¹ In evaluating this issue, it is important to emphasize that the Order did not deny Appellant a substantial right as the malpractice action was filed in Greenville county where Respondents reside and /or have their principal place of business and Respondents were the moving party to change venue for the convenience of the witnesses likely to testify at trial. Any substantial right to a trial in Greenville County belongs to Respondents rather than Appellant.

It is well settled law in South Carolina that an appeal of an order to change venue is an interlocutory order. As such, The Court of Appeals does not have jurisdiction of the same. *See, Godley; Lewis v. Atkinson Implement Co., Inc.* 280 S.C. 571, 571, 311 S.E.2d 80, 80 (Ct. App. 1983) (“The order denying appellant a change of venue is interlocutory and not appealable irrespective of whether Atkinson Implement was a sham defendant or not.”); *Sanders v. Amoco Oil Co.* (283 S.C. 195, 195, 320 S.E.2d 334, 334 (Ct. App. 1984) (“Respondents’ motion was based on the convenience of the witnesses and the ends of justice would be served by changing venue the trial’s court’s order is interlocutory and not immediately appealable.”); and (*Breland v. Love Chevrolet Olds, Inc.* (339 S.C. 89, 94, 529 S.E. 2d 11, 14 (2000) (“Even though proper venue is a substantial right, we have previously found the avoidance of a trial is not a sufficient reason to justify immediate appellate review.”).

The South Carolina Supreme Court’s decision in *Breland* reiterated a policy reason behind holding that a change of venue order is an interlocutory order. Despite the fact that the trial court’s order in *Breland* denied the appellants the right to be tried in the county of their residence, (which

¹ Plainly, §§ 14-3-330(b) and (c) are not implicated here. The Order does not grant or refuse a new trial or strike an Answer or part thereof.

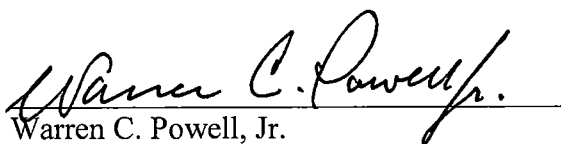
is not the case in the appeal before this Honorable Court), the Court stated, “Even though a venue decision will not be revisited by the trial court before the end of the case, we believe avoiding piecemeal litigation is the best policy to follow.” *Id.*, 339 S.C. at 94, 529 S.E. 2d at 13.

Accordingly, the Order is not appealable under §14-3-330(2).

III. CONCLUSION

For the foregoing reasons, this Court lacks jurisdiction over the appeal and, therefore, the Court should dismiss the appeal.

Respectfully submitted,



Warren C. Powell, Jr.
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place
Columbia, SC 29204
Phone: (803) 252-7693
ATTORNEYS FOR DEFENDANTS

August 14, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

RECEIVED

AUG 14 2018

SC Court of Appeals

Appellate Case No. 2018-001481

John Garvin.....Appellant,

v.

Scott D. Robinson Law Firm, LLC

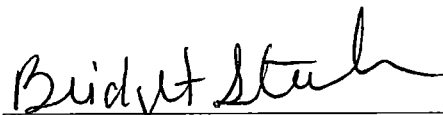
Scott D. Robinson,Respondents.

PROOF OF SERVICE

I Bridget Steele, an employee of Bruner, Powell, Wall & Mullins, LLC, hereby certifies that on August 14, 2018, the foregoing **RESPONDENTS' MOTION TO DISMISS FOR LACK OF APPELLATE JURISDICTION** was served on Appellate Pro Se via U.S. mail addressed as follows:

Mr. John Garvin
SCDC No. 355509
Lieber Correctional
Institution
PO Box 205
Ridgeville SC 29472

Office of General Counsel
SC Dept of Corrections
PO Box 21787
Columbia SC 29221-1787



Bridget S. Steele



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 John Garvin,)
)
 Plaintiff,)
)
 v.)
)
 Scott D. Robinson Law Firm, LLC,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT
 Civil Action No. 2017-CP-23-1127

**ORDER GRANTING DEFENDANT'S
 MOTION FOR CHANGE OF VENUE
 AND ORDER ON DEFENDANT'S
 MOTION FOR PROTECTIVE ORDER**

The hearing on Defendant's motions for change of venue and protective order in the above-captioned action came before this Court in Greenville, South Carolina on May 31, 2018. Plaintiff, *pro se* appeared and Defendant was represented by Warren C. Powell, Jr., Esquire. Three matters were brought before this Court for consideration. First, Defendant's motion to change venue to Spartanburg County. Second, Defendant's motion for protective order seeking protection from responding to discovery until such time as venue is moved. Third, a housekeeping matter concerning Plaintiff's Complaint.

I. MOTION TO CHANGE VENUE

1. Facts:

A. Plaintiff's allegations made in the Complaint material to venue motion:

a. After Plaintiff's being arrested in Spartanburg County on or about August 20, 2012 pursuant to arrest warrants numbered N158303 and N158322, Attorney Scott D. Robinson was appointed by the Spartanburg County General Sessions Court to represent Plaintiff (Complaint Paragraph 8);

b. Mr. Robinson conducted the initial interview with Plaintiff at the Spartanburg County Detention Center (Complaint Paragraph 8);

c. On December 6, 2012, Plaintiff was indicted by the Spartanburg County General Sessions Court for trafficking heroin, first indictment concerned the sale, manufacture ... delivery, or bringing into this state more than four grams of heroin, a Schedule I controlled substance, all of the above concerning or related to a transaction on July 7, 2012 occurring in Spartanburg County;

d. The second indictment concerned the sale, manufacture ... delivery, or bringing into this state more than fourteen grams of heroin, a Schedule I controlled substance, all of the above concerning or related to a transaction on July 17, 2012 occurring in Spartanburg County (Complaint Paragraph 10; Indictments);

e. On May 23, 2013, Plaintiff alleges he was convicted of drug trafficking from a plotted conspiracy, said conviction occurring in the Court of General Sessions for Spartanburg County, Seventh Judicial Circuit (Complaint Paragraph 13);

f. Plaintiff alleges that Spartanburg County Assistant Solicitor James E. Hunter and Mr. Robinson, "violated plaintiff's civil right Under the United States Constitutional laws of South Carolina by conspiring to convict him of drug trafficking." (Complaint Paragraph 17);

g. Plaintiff contends that the judgment against him was obtained by fraud, practiced by Defendant and Spartanburg County Assistant Solicitor, James E. Hunter (Complaint Paragraph 47); and

h. Plaintiff alleges that the arrest warrants were falsified by Spartanburg County Sheriff's Department Officer Ken Hancock (Complaint Paragraph 9).

B. Facts drawn from supplemental evidence:

a. The sale of the subject heroin in the criminal action took place in Spartanburg County (Affidavit supporting arrest warrants);

b. James E. Hunter, Spartanburg County Assistant Solicitor, prosecuted the action in General Sessions Court and Mr. Robinson defended Mr. Garvin in that trial (Complaint, Court records, arrest warrants, indictments, documents attached to Plaintiff's discovery requests);

c. The heroin at issue in the underlying criminal trial was transported into Spartanburg County;

d. The sale of heroin on July 7, 2012 and July 17, 2012 took place in Spartanburg County;

e. Plaintiff was arrested in Spartanburg County on or about July 17, 2012;

f. Plaintiff was indicted in Spartanburg County on December 6, 2012;

g. Plaintiff was tried and convicted in Spartanburg County General Sessions Court on May 22, 2013.

h. Plaintiff did not offer any evidence that any material event(s) giving rise to the alleged claims took place in or were connected with Greenville County.

C. Material witnesses:

Among the material witnesses in this case are public employees paid by either the State of South Carolina or Spartanburg County, or both (Complaint, Documents referred to hereinabove).

D. Defendant is a limited liability company with its only office located in Greenville, South Carolina.

E. Defendant has not participated in discovery since this case was filed and instead filed his motion for protective order pending resolution of the venue motion.

Law/Discussion

The South Carolina venue statute was changed in 2005 with venue in suits against domestic limited liability companies governed by §15-7-30(E), which provides in material part as follows:

“(E) a civil action tried pursuant to this section against a ... domestic limited liability company ... must be brought and tried in the county in which the:
(1) corporation, limited liability company ... has its principal place of business at the time the cause of action arose; or
(2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

Also material to Defendant’s motion to change venue is S.C. Code Ann. §15-7-100(a) (1976) which provides in material part:

(A) The Court may change the place of trial if

.....

(3) **The convenience of witnesses and the ends of justice would be promoted by the change.** (Emphasis added)

The Supreme Court addressed this Code section in *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 609 S.E.2d 286 (2005) and, in reversing the trial court’s denial of the motion for change of venue, stated:

A trial judge may change the place of trial “**when the convenience of witnesses and the ends of justice would be promoted by the change.**” S.C. Code Ann. §15-7-10(3) (1976). Unlike the determination of residency, which is a question of law, **it is within the trial judge’s discretion to determine whether to grant a motion to change venue based on the convenience of the witnesses and the ends of justice.** *Varnadoe v. Hicks*, 264 S.C. 216, 219, 213 S.E.2d 736, 737 (1975). (Emphasis added.)

Whaley, 363 S.C. at 476, 609 S.E.2d at 296.

The Supreme Court went on to state that,

Moreover, we hold that the ends of justice were not promoted by having this case tried in Hampton County. *See Varnadoe v. Hicks*, 264 S.C. 216, 213 S.E.2d 736 (1975) (**convenience of the witnesses is a factor the court may consider in deciding whether a change of venue would promote the ends of justice**); *Holden v. Beach*, 228 S.C. 234, 89 S.E.2d 433 (1955) (the

ends of justice are promoted by having a jury from the same area as the witnesses evaluate witness credibility). (Emphasis added.)

Whaley, 363 S.C. at 478, 609 S.E.2d at 297

Plaintiff argued that because Defendant's motion and/or memorandum in support of its motion to change venue were not supported by affidavits, Defendant did not comply with the South Carolina Code of Laws and the South Carolina Constitution. This Court finds both arguments to be without merit as the S.C. Code and Constitution require affidavits be filed when a change of venue is sought on the ground that a fair and impartial trial cannot be had in the county in which the action was filed. *See*, S.C. Code Ann. §15-11-100 (1976) and Section 23 of the South Carolina Constitution. Defendant's motion is not made on such grounds.

This Court finds that the most substantial part of the alleged act or omission giving rise to this action occurred in Spartanburg County. Greenville County has no connection with the action other than the fact that Defendant has its office in Greenville County. In addition, this Court finds and concludes that employees of the Spartanburg County Sheriff's Department and the Solicitor's Office for the Seventh Judicial Circuit, Spartanburg County, will likely be material witnesses at the trial of this action. Plaintiff has offered no fact or event giving rise to the alleged cause of action which occurred in Greenville County. Under such circumstances to require public employees to unnecessarily travel from Spartanburg County to Greenville County to testify at trial would not promote the ends of justice. Accordingly, this Court orders that the venue of this action is hereby moved to Spartanburg County.

II. DEFENDANT'S MOTION FOR PROTECTIVE ORDER

This Court orders that Defendant's Motion for Protective Order will be heard by the Seventh Judicial Circuit Court of Common Pleas, Spartanburg County after this action is moved.

III. PLAINTIFF'S MOTION TO AMEND COMPLAINT ADDING SCOTT ROBINSON AS A PARTY INDIVIDUALLY

This Court granted Plaintiff's motion to amend his Complaint in its Order of December 18, 2017. However, defense counsel has brought to the attention of this Court that Plaintiff has not in fact amended his Complaint and has offered to consent to the amendment and, inasmuch as the only proposed change in the Complaint was to make Mr. Robinson a party individually, defense counsel has agreed to add Mr. Robinson's name to the caption on all future filings including Defendants' answer to the amendment naming Mr. Robinson as a party, said amended answer to be filed within 30 days after the Spartanburg County Clerk receives the Order changing venue. This process will save Plaintiff, *pro se* the trouble of having to prepare and serve his amended complaint. Furthermore, this Court finds that Plaintiff will be free to initiate discovery afresh against Scott Robinson individually once he is made a party by the filing of Defendants' Amended Answer.

IT IS SO ORDERED.

The Honorable Edward W. Miller
Circuit Court Judge
Thirteenth Judicial Circuit

Greenville, South Carolina
_____, 2018



Greenville Common Pleas

Case Caption: John Garvin vs. Scott D Robinson Law Firm LLC

Case Number: 2017CP2301127

Type: Order/Other

So Ordered

s/ Edward W. Miller

Electronically signed on 2018-07-19 09:24:22 page 7 of 7

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE 803-252-7693
FAX 803-254-5719
WWW.BRUNERPOWELL.COM

WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
E. WADE MULLINS III, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

JAMES L. BRUNER, P.A. (RETIRED)
BRIAN P. ROBINSON, P.A.**

ANN F. ALLISON
CAITLIN C. HEYWARD
CHELSEA J. CLARK
STEVEN R. SPREEUWERS

* ALSO ADMITTED IN DISTRICT OF COLUMBIA
** OF COUNSEL

AUTHOR'S E-MAIL: WPOWELL@BRUNERPOWELL.COM

August 14, 2018

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: John Garvin v. Scott D. Robinson Law Firm, LLC
Civil Action No. 2018-001481
Our File No 3-3008.100

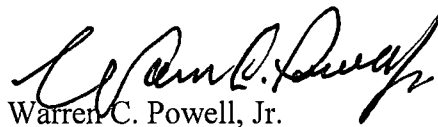
RECEIVED
AUG 14 2018
SC Court of Appeals

Dear Ms. Kitchens:

I enclose for filing in your office the original and eight copies of the **Respondents' Motion to Dismiss for Lack of Appellate Jurisdiction** and a **Proof of Service**. After filing, please return the copies to me bearing your "Filed" stamp to our courier. By copy of this letter, I am serving the Appellant a copy of these documents as well.

With kind regards,

Sincerely,



Warren C. Powell, Jr.

WCPjr/bs

Enclosure

CC: Mr. John Garvin
Office of General Counsel