

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2018-000142

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AUG 20 2018
SC Court of Appeals

Ronald J. Ferguson,

Appellant,

vs.

John D. Hatcher, Rachel Shaluly, James F. Gilbert,
Molly A. Miller, and Michael Stehney, individually
and as members of the Architectural Committee of
Mill Creek Estates,

Respondents.

INITIAL BRIEF OF RESPONDENTS

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TABLE OF AUTHORITIES

Rule 12(b)(7) of the South Carolina Rules of Civil Procedure

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure

Rule 13 of the South Carolina Rules of Civil Procedure

Hagood vs. Sommerville, 362 SC 191, 194, 607 SE2d 707, 708 (2005)

Ex parte Wilson, 367 SC 7, 12, 625 SE2d 205, 208 (2005)

ISSUES

- I. Judge Miller's Order is correct and should be affirmed.
 - A. The appeal should be dismissed because it is interlocutory.
 - B. Judge Miller was correct in consolidating the cases under 2013-CP-23-01810 and to dismiss 2013-CP-23-05102.

STATEMENT OF THE CASE

In 2013, Appellant brought this action against the original developer of a subdivision called Mill Creek. The Respondents filed a Motion to Intervene in December 2014 and was granted permission to intervene. The Appellant appealed that Order. The Court of Appeals dismissed that appeal because it was interlocutory. The Defendants/Interveners subsequently filed a Motion to Dismiss pursuant to Rule 12(b)(7) and 12(b)(8). Judge Miller granted the Defendants/Interveners 12(b)(8) Motion and consolidated it with the prior case dealing with the same issues. The Appellant appealed that Order.

The appeal was originally filed as a Petition for Original Jurisdiction of the South Carolina Supreme Court seeking a Writ of Mandamus.

STATEMENT OF THE FACTS

The Appellant brought this action against only the developer of Mill Creek subdivision to change or nullify the Restrictive Covenants for that subdivision (See Complaint in Case Number 2013-CP-23-05102). The Appellant did not join any of the property owners that owned houses or real estate in the subdivision. Judge Verdin entered a default judgment against Mill Creek, LP.

In April of 2013, five months before the above Complaint, the Interveners filed an action against Ron Ferguson (not the Appellant) for a violation of the Restrictive Covenants for Mill Creek (See Complaint in Case Number 2013-CP-23-01810). The Appellant, Ronald J. Ferguson, was subsequently joined as a party to this action at his request.

The issues raised in the Interveners' action against the Fergusons deal with the same Restrictive Covenants as the Appellant's claims.

I. Judge Miller's Order is correct and should be affirmed.

While Judge Miller technically "dismissed the case", he actually did not since it was joined with the other action referenced above because it involved the same issues; the Restrictive Covenants of a subdivision known as Mill Creek Estates. (Judge Miller's Order)

So while Judge Miller's Order dismisses the action, it does not dismiss the Appellant's right to have his causes of action heard by the Court in case number 2013-CP-23-01810. In fact, the Court gave him leave of thirty (30) days to file any amended pleadings or Counterclaims and add any parties he wanted in that case. (Judge Miller's Order) Therefore while the action

2013-CP-23-05102 was dismissed, the Appellant's rights to maintain all of his causes of action in that case have been preserved.

- A. **An action that has not been completely absolved by a final judgment is interlocutory.** Exparte Wilson, 367 SC 7, 12, 625 SE2d 205, 208 (2005); Hagood vs. Sommerville, 362 SC 191, 194, 607 SE2d 707, 708 (2005). An appeal can be pursued only after final judgment. Hagood vs. Sommerville, 362 SC 191, 194, 607 SE2d 707, 708 (2005).

This appeal is interlocutory since the Appellant still has the right to pursue the matter just under a different case number. This Appellant has already been told by this Court of Appeals on a number of occasions that interlocutory matters cannot be appealed. (Appellant's Orders in Case Number 2015-000593 and in Case Number 2013-002360). This was not a final judgment.

The Appellant knows what an interlocutory appeal is. The Appellant has been told that interlocutory appeals are not allowed. (Court of Appeals decisions in 2015-000593 and 2013-002360) He is again seeking interlocutory appeal of the issues raised in 2013-CP-23-05102 and is again seeking an interlocutory appeal. He is attempting to appeal the "dismissal" of 2013-CP-23-05102 when in fact it was combined with the other case pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure because the prior action involved the same issues and the same parties.

Accordingly, the Respondents request, again, that this appeal be dismissed. The Appellant has filed five (5) different appeals on these two cases and delayed justice for five (5) years. The Interveners have been unable to get this matter heard on the merits because of the

numerous appeals that the Appellant continues to file. The appeals need to end, and the matter be heard on the merits. That is the reason interlocutory appeals cannot be heard. It just goes to show in this case that it has delayed justice for five (5) years.

B. Judge Miller was correct in consolidating the cases under 2013-CP-23-01810 and to dismiss 2013-CP-23-05102.

Judge Miller was correct in ruling on the Motion. As you can see by the two Complaints, the same issues and the same parties are involved. Ronald J. Ferguson was subsequently joined, at his request, to Case Number 2013-CP-23-01810. Case Number 2013-CP-23-01810 raised the issue of the Restrictive Covenants. Case Number 2013-CP-23-05102 is an action brought by just one of the property owners requesting that the Restrictive Covenants be nullified. However, it is clear in dealing with the validity of Restrictive Covenants, all property owners would need to be joined. Furthermore, the Court cannot maintain different actions involving the same issue of the Restrictive Covenants. Finally, Appellant has tried to make a "end run" by asking the Court to nullify Restrictive Covenants by bringing an action against only the original developer who has no standing whatsoever.

The Respondents believe that Rule 12(b)(8) of the South Carolina Rules of Civil Procedure, specifically addresses this matter and dictate the outcome rendered by Judge Miller. Rule 12(b)(8) provides that a Motion to Dismiss may be brought when "another action is pending between the same parties for the same claim". Rule 12(b)(8) of the South Carolina Rules of Civil Procedure. Again, the Respondents brought the original action (2013-CP-23-01810) dealing with the Restrictive Covenants and any issue regarding those was probably a

compulsory Counterclaim. See Rule 13 of the South Carolina Rules of Civil Procedure.

However, one of the Defendants decided to bring a separate action against the developer and none of the property owners. The parties are improper. The manner in which he brought the action was improper since the matter should have been brought as a Counterclaim in Case Number 2013-CP-23-01810 instead of a separate lawsuit. Rule 12(b)(8) specifically addresses that issue and says that the action should be combined into one action.

The Appellant was specifically told and Judge Miller ordered that he is "granted an additional thirty (30) days to file any amended pleadings or Counterclaims to add additional causes of action or parties" in Case Number 2013-CP-23-01810. (Judge Miller's Order) The Appellant would still be able to address the default judgment against the developer for whatever that is worth in addition to raising claims against the Interveners or anyone else he wants to. The Respondents still believe the case should have been dismissed in its entirety pursuant to Rule 12(b)(7) for failure to join the necessary parties, but Judge Miller did not do that.

If there is still a pending motion the Appellant has regarding any issue in this case, he is perfectly free to ask for a motion hearing in Case Number 2013-CP-23-01810. All of his rights have been preserved, and he has not lost anything.

CONCLUSION

The Respondents request that the appeal be dismissed and that the Court determine that Judge Miller's Order was correct and proper. The Appellant has lost none of the rights he

is claiming but it is merely under a different case number. The appeal should be dismissed because it is interlocutory. This Appellant has been told on at least two occasions that the Court of Appeals will not address interlocutory appeals.

The Appellant should not be allowed to continue to delay the Interveners rights to continue their case. It was filed in March of 2013 and due to numerous appeals to the Court of Appeals of South Carolina, two removals to Federal Court and an appeal to the 4th Circuit, this Appellant is not only frustrating the opportunity for justice but allowing the Courts to deny it. The Respondents respectfully request that the appeal be dismissed.

Respectfully submitted.



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August 16, 2018

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CERTIFICATE OF SERVICE

The undersigned employee of Rodney M. Brown, P.A., counsel for John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly A. Miller and Michael Stehney, individually and as members of the Architectural committee of Mill Creek Estates, does hereby certify that service of the Initial Brief of Respondents and Designation of Matters to Be Included in the Record on Appeal was made upon Appellant by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this 16th day of August, 2018.

Ronald J Ferguson
103 Mill Creek Road
Piedmont SC 29673


Annette M. Lay

RODNEY M. BROWN PA
ATTORNEY AT LAW

August 16, 2018

South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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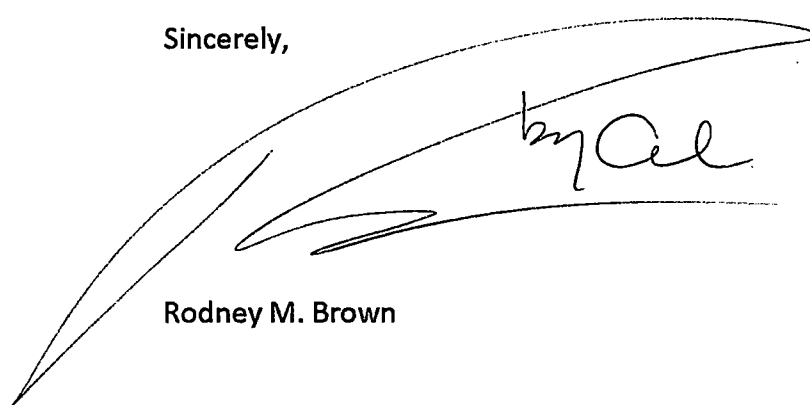
RE: Ronald J. Ferguson vs. Mill Creek, LP
Appellate Case No. 2018-000142

Dear Sir or Madam:

Enclosed herein please find my Initial Brief of Respondents and Designation of Matters to Be Included in the Record on Appeal on the above-referenced case. I am providing a copy of these documents to the Appellant by copy of the Certificate of Service enclosed herein.

If you should have any questions, please do not hesitate to contact me.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Rodney M. Brown'.

Rodney M. Brown

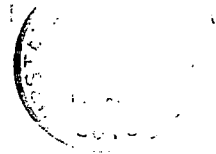
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Enclosures

cc: Ronald J. Ferguson

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