



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
Hon. Edward W. Miller, Circuit Court Judge

Appellant Case No. 2018-001481

John Garvin ..... Appellant,

v.

Scott D. Robinson Law Firm, LLC., et al. .... Respondent.

**APPELLANT’S OBJECTION TO RESPONDENT’S  
MOTION TO DISMISS APPEAL**

For the reason set forth below, Appellant, John Garvin, files his Objections to Respondent's Motion to Dismiss the Appeal and would respectfully show unto this court that the Circuit Court’s Order is immediately appealable. As this Court does have appellate jurisdiction over the appeal.

**PROCEDURAL HISTORY**

The Appellant is state prisoner incarcerated at Lieber Correctional Institution in Ridgeville, South Carolina. That is presently serving a twenty-five (25) year sentence for the crime of drug trafficking. Which was imposed on May 23, 2013, by the Spartanburg County Court of General Sessions following his trial. The Appellant has always maintained his innocence and on February 20, 2017, Appellant filed a complaint for legal malpractice against the Respondent’s, Scott D. Robinson Law Firm, LLC, for the Respondent’s failure to render a professional service with the skill, prudence, and diligence that an ordinary and reasonable lawyer would use under similar circumstances.

The Appellant believes that the Respondent, Scott D. Robinson, is responsible in some manner for (1) Civil Conspiracy, (2) Intentional Misrepresentation, (3) Negligent Misrepresentation, (4) Extrinsic Fraud Upon the Court, (5) Negligence, (6) Breach of Fiduciary Duty & Improper

Representation of Conflicting Interests, (7) Negligent & International Infliction of Emotional Distress, as alleged.

On September 15, 2017, Respondent filed its Answer to Appellant's legal malpractice complaint, raising as its fifth defense that "the Plaintiff has incorrectly filed this action in the improper jurisdiction. The proper venue is Spartanburg County. Venue should be move to Spartanburg County in the interest of justice."

On December 7, 2017, a motion hearing was heard before the Honorable Edward W. Miller, Circuit Court Judge, Insomuch as, he granted the Appellant's Motion to Amend, his Motion to Compel, and his Motion to be Exempt from ADR. Thereupon, Scott D. Robinson, Esquire, was then added as a Defendant. On April 17, 2018, Warren C. Powell, Jr., Esquire, was appointed as counsel for the Respondent's, whereupon, a Motion for Change of Venue was also filed. And on April 18, 2018, a Motion for a Protective Order was filed on the Respondent's behalf. On May 31, 2018, the Respondent's Motion to Change Venue was granted, whereas, the Motion for a Protective Order was to be heard in Spartanburg County upon transfer to that court. On July 19, 2018, the Court entered its order changing venue to Spartanburg County. On July 20, 2018, Appellant served a Motion to reconsider or alter/Amend its judgment which was filed in the office of the Clerk of Court for Greenville County on July 24, 2018. On August 7, 2018, Appellant filed a Notice of Appeal. Appellant now files his objections to the Respondent's Motion to Dismiss Appeal.           **STANDARD OF REVIEW**

"An Order striking a portion of a pleading is immediately appealable." See Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 705 S.E.2d 475 (2011). Additionally, immediate appeals under [S.C. Code Ann. § 14-3-330] subsection (2) have been allowed in situations where the substantial right could not be vindicated on appeal after the case. [T]his subsection has [ ] been used when the trial order affect[s] the "mode of trial" because if those orders are not immediately appealed, no appellate review is available to correct any error. See Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 93, 529 S.E.2d 11 (2000).

**I.  
ARGUMENT**

**THIS COURT SHOULD DENY RESPONDENT'S MOTION TO DISMISS APPEAL  
The Court's Granting of Defendant's Proposed Order Affects the "Mode of Trial"**

**A. Section 15-7-30(E)(1) or (2)**

Appellant argues that under section 15-7-30(E)(1) and (2); that the Order granting a change in venue violates the Plaintiff's substantial right to choose where to file a civil action for legal recourse.

The relevant portion of section 15-7-30(E)(1) and (2):

(E) A civil action tried pursuant to this section against a domestic corporation, domestic limited partnership, domestic limited liability company, or domestic limited liability partnership, must be brought and tried in the County in which the:

- (1) Corporation, limited partnership, limited liability company, or limited liability partnership 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.

Appellant argues that S.C. Code Ann. § 15-7-30(E)(1) or (2) gives him the substantial right to file a civil action in the venue of his choice. The Respondent's motion to change venue, denies Appellant of his substantial right to seek legal recourse in the venue of his choosing. The granting of the Respondent's motion to change venue is in violation of S.C. Const. Art. V, § 23 for Change of Venue. In addition, to the Appellant's right to proper judicial review, pursuant to S.C. Const. Art. I, § 22.

Under S.C. Code Ann. § 15-7-30(E)(1) or (2), it gives a Plaintiff who's filing a civil action the substantial right to choose which venue, a civil action is to be filed. In this case the Appellant has properly filed his legal malpractice complaint against the Respondent, by filing his complaint in Greenville County Court of Common Pleas, pursuant to S.C. Code Ann. § 15-7-30(E)(1). The Respondent would motion to change venue to Spartanburg County under S.C. Code Ann. § 15-7-100, alleging that the action was brought in an improper venue, the convenience of witnesses and the ends of justice would be promoted by the change. The Respondent's proposed order was granted despite the fact that it did not present any evidence to substantiate the convenience of its witnesses or the ends of justice.

**B. Section 14-3-330**

Appellant argues that under section 14-3-330(2)(c) the order granting a change in venue is immediately appealable.

The relevant portion of section 14-3-330 states:

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

...  
(2) An order affecting a substantial right made in a action when such order ... (c) strikes out an answer or any part thereof or any pleading in any action ....

Appellant argues the Defendant's proposed order "affected" his substantial right to venue in the County of his choice. Insomuch as, the courts order granting transfer venue mistakenly struck out a portion of his responsive answer.

Whether a Plaintiff is given the option to choose a venue under S.C Code Ann. §15-7-30(E)(1) or (2) is a question of law, not fact. *Blizzard v. Miller*, 306 S.C. 373, 412 S.E.2d 406 (1991)("[T]his Court has held that when the motion to change venue is based on the ground that a particular County is the residence of the defendant, then a question of law is presented").

This court in *P.J. Construction Co., Inc. v. Roller*, 287 S.C. 632, 340 S.E.2d 564 (Ct. App. 1986), heard an appeal from order striking two defenses from the answer. Before proceeding to the merits of the appeal, the court stated: "An Order striking a portion of a pleading is immediately appealable." 287 S.C. at 633, 340 S.E.2d at 565 (citing *Harbert*, 74 S.C. at 16, 53 S.E. at 1002). This court should look to the effect of the interlocutory order to determine its appealability under section 14-3-330(2)(c). Therefore, the questions in this current case is whether the order granting the venue transfer: (1) affected; (2) a substantial right; and (3) struck part of the answer.

**C. "Affecting" a Substantial Right**

The court's order did "affect" the Plaintiff's substantial right to venue in the County of his choosing. An appeal after a final judgment would not adequately protect a plaintiff's interests, because it would be difficult or impossible for a litigant or an appellate court to ascertain whether prejudice resulted from the granting of a motion to change venue. "Proper venue is a substantial

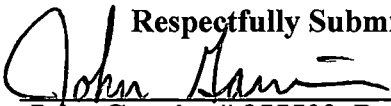
right.” (Quoting *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11 (2000)). This case not only permits, but indeed requires, immediate appeal in the event of denial of a mode of trial to which one is entitled as a matter of right. Now, with regard to the right to a particular mode of trial, an order granting a motion to change venue must be immediately appealed or any later objection in a subsequent appeal will be waived. cf. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000)(Party is required to immediately appeal if denied a mode of trial to which he is entitled as a matter of right, and failure to do so forever bars appellate review of the issue). Failure to immediately appeal such an order forever bars appellate review. See, e.g., *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985).

The Order on appeal here, in effect, strikes a portion of Garvin’s answer and, therefore, is appealable pursuant to S.C. Code Ann. § 14-3-330(2)(c)(2017)(stating the appellate court “shall review upon appeal ... [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”); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011)(“[A]n appellate court should look to the effect of an interlocutory order to determine its appeal ability under section 14-3-330(2)(c).”). *Id.* (“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.”); *Id.* (“whether an order granting a ... motion to strike is appealable under section 14-3-330(2)(c) depends on the effect of the individual order under the facts and circumstances of the case.”). An order granting a motion to change venue as to the convenience of witnesses is directly appealable under S.C. Code Ann. § 14-3-330(2) because it affects the mode of trial, which is a substantial right when the order strikes out part of a responsive pleading. The order directly ‘affect’ the Plaintiff’s substantial right to venue in the County of his choosing, pursuant to S.C. Code Ann. § 15-7-30(E)(1) or (2). In addition, to its being in violation of S.C. Const. Art. V, § 23. This is an error that can’t be corrected on appeal following trial. Because it violates Plaintiff’s right to proper judicial review, pursuant to S.C. Const. Art. I, § 22.

**CONCLUSION**

For the reasons set out above, Appellant respectfully request that this Honorable Court deny the Respondent's Motion to Dismiss Appellant's Appeal.

**DATED:** August 29, 2018  
Ridgeville, South Carolina

Respectfully Submitted,  
  
John Garvin, # 355509, Pro-se.  
Lieber Correctional Institution  
136 Wilborn Avenue  
Ridgeville, S.C. 29472

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**PROOF OF SERVICE**

I, John Garvin, certify that I have serve a **DECLARATION OF INMATE FILING and APPELLANT'S OBJECTION TO RESPONDENT'S MOTION TO DISMISS APPEAL**, on the Court by depositing a copy of it in the Institutional Mailbox to be delivered via United States First Class Postage Certified Mail on August 29, 2018, addressed to the Hon. Jenny A. Kitching, Clerk of the South Carolina Court of Appeals, 1015 Sumter Street, Columbia, S.C. 29201 and also delivered United States First Class Postage mail addressed to Mr. Warren C. Powell, Jr. , Esquire, 1735 St. Julian Place, Suite No. 200, Columbia, S.C. 29260-1110.

DATED: August 29, 2018.

  
John Garvin, # 355509, Pro-se.  
Leber Correctional Institution  
136 Wilborn Avenue  
Ridgeville, S.C. 29472

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**Lieber Correctional Institution**  
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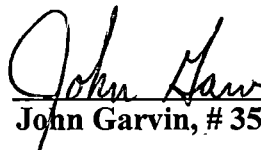
ATTN: Hon. Jenny A. Kitching, Clerk  
The South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, S.C. 29201

**RE: John Garvin v. Scott D. Robinson Law Firm, LLC. , et al.,**  
**Appellant Case No. 2018-001481, Objections to Motion to Dismiss Appeal**

Dear Hon. Kitching:

Enclosed please find for filing a **DECLARATION OF INMATE FILING, and APPELLANT OBJECTIONS TO RESPONDENT'S MOTION TO DISMISS APPEAL**, in the above case. To be filed on the date as given to the institutional internal mailroom, pursuant to Rule-262(a)(2), SCACR and Moses v. State, 420 S.C. 500, 803 S.E.2d 718 (2017).

Dated: August 29, 2018

 Respectfully,  
John Garvin, # 355509, Pro-se.

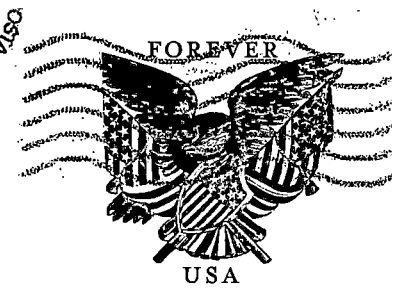
JG/bg  
Enclosure  
cc: Warren C. Powell, Jr., Esquire

John Garvin - # 355509  
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SC Court of Appeals

Attn: Hon. Jenny A. Kitching, Clerk  
The South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, S.C. 29201

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