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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, Administrative Law Judge

Case No. 18-ALJ-17-0216-CC

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SEP 07 2018
SC Court of Appeals

WKSC, LLC d/b/a Savannah's Gentlemen's Club & Steakhouse,Petitioner,

v.

South Carolina Department of Revenue,Respondent.

MOTION TO DISMISS APPEAL AND
INCORPORATED MEMORANDUM OF LAW

The Honorable Chip Huggins has attempted to appeal the Administrative Law Court's Order Denying Intervention filed on September 5, 2018 in the above-referenced matter. As set forth below, this motion should be granted because Appellant Huggins cannot maintain an appeal on the Order as it is interlocutory. The appeal should be dismissed and the Administrative Court action be allowed to proceed to the Merits hearing.

PROCEDURAL HISTORY

This matter is originally before the Administrative Law Court for a contested case hearing. The Petitioner WKSC, LLC, d/b/a Savannah's Gentleman's Club & Steakhouse applied for an on-premises beer and wine permit and restaurant liquor by the drink license. The

applications for both were denied by Respondent South Carolina Department of Revenue.

Petitioner sought a contested case hearing with the ALC on June 20, 2018. The Court issued an Order and Notice of Hearing on July 19, 2018, which established the date of the contested merits hearings and the procedure of the court to be followed by all interested parties.

Due to the large number of protestants involved with Petitioner's application, and anticipating a procedural drain upon the Court and its staff, an Administrative Memorandum to Individuals Protesting a License or Permit was issued. The memorandum contained, in no uncertain language, the deadline of August 10, 2018 for the filing of Motions to Intervene. The Memorandum was transmitted electronically to all named parties and protestants on July 19, 2018.

Appellant Huggins filed, through counsel, a Motion for Leave to Intervene on August 30, 2018, twenty days past the deadline established by the Court. Appellant, who was already a protestant and thus received the Memorandum establishing deadlines, claimed he met all necessary elements for intervention. Appellant attempted to establish good cause for the untimely filing of his motion.

A telephone conference was held on September 4, 2018 with counsel for all parties and the Appellant. Appellant's counsel restated all grounds for intervention and again attempted to establish good cause for the failure to file the Motion for Leave to Intervene in a timely manner. Counsel for Appellant asserted numerous reasons for the delay, including a difficulty in paying for representation and, as Appellant is a lay person, unfamiliarity with the proceedings. Counsel further represented the allowance of intervention would not delay the proceedings, as counsel was prepared to proceed on the scheduled hearing date.

The Court filed an Order denying Appellant's Motion to Intervene on September 5,

finding Appellant had failed to establish good cause for the untimely filing of the motion. On September 6, Appellant filed a Notice of Appeal regarding the Order denying the Motion to Intervene.

ARGUMENT

I. THIS COURT SHOULD GRANT THE MOTION TO DISMISS THE APPEAL BECAUSE THE APPEAL IS AN IMPROPER INTERLOCUTORY APPEAL.

This appeal is an improper interlocutory appeal under S.C. Code Ann. § 14-3-330. An interlocutory appeal is only proper when it falls within the categories of appealable judgments listed in § 14-3-330. *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995). The relevant exceptions are enumerated in § 14-3-330(1)-(2). The first section involves orders that “involve the merits.” An order that involves the merits is one which “must finally determine some substantial matter forming the whole or a part of some cause of action or defense.” *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993). The order Appellant seeks to appeal clearly does not involve any substantial matter which forms the whole of the action. The action relates solely to Petitioner’s applications for alcohol permits. The appeal does not stand under S.C. Code Ann. § 14-3-330(1).

The second section allows appeals from orders that affect a “Substantial Right.” This right has historically been defined as affecting the “mode of trial,” as if the orders are not immediately appealed, appellate review after the final order could not review or fix any error made. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000). Appellant’s issue does not fit this mold either. There is no prejudice against Appellant waiting for a final order to present his issues. This case is distinguishable from *McLaughlin v. Strickland*. In

McLaughlin, the Court held that if an order prevents a party from contesting a case on the merits, it is immediately appealable. 279 S.C. 513, 309 S.E.2d 787 (Ct. App. 1983). The denial of the Motion to Intervene does not preclude Appellant from participating in the hearing on the merits. Appellant is already a named protestor, and, as such, has the right to present his opinion and arguments at the hearing. Appellant simply seeks greater rights than he is currently afforded via an improperly filed motion.

Furthermore, the Supreme Court of South Carolina has decided this issue in a somewhat analogous case. In *Duncan v. Government Employees Ins. Co.*, the Court ruled that an order granting a party's request to intervene is not immediately appealable. 331 S.C. 484, 449 S.E.2d 580 (1994).

While the appeal at hand involves the denial of intervention, the Supreme Court clearly determined in *Duncan* that an order involving a motion for intervention does not classify as an appealable order under § 14-3-330.

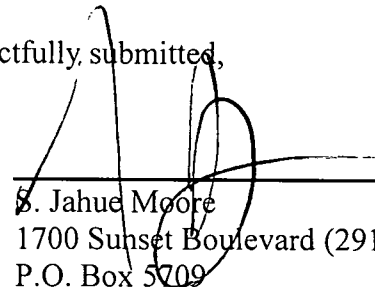
CONCLUSION

For the above-stated reasoning, this Court should grant the Motion to Dismiss Appeal as the appeal is an improper interlocutory appeal....

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Respectfully submitted,

By:



S. Jahue Moore
1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
jake@mttlaw.com

Kenneth E. Allen
1201 Main Street, Suite 1980
Columbia, SC 29201
(803) 748-1335

Attorneys for Petitioner

West Columbia, South Carolina
September 7, 2018

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PROOF OF SERVICE

I, S. Jahue Moore, attorney for Petitioner, certify that I have served the Motion to Dismiss Appeal on counsel of record for Respondent and Movant in this action by depositing a copy of same in the US Mail, postage prepaid, on September 7, 2018 to:

Andrew L. Richardson, Jr.
Post Office Box 12519, Capitol Station
Columbia, SC 29211-2519

Jason P. Luther, Esq.
Patrick A. McCabe, Esq.
South Carolina Department of Revenue
P.O. Box 12265
Columbia, SC 29211-9979

S. Jahue Moore

West Columbia, South Carolina
September 7, 2018