

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

Appellate Case No. 2018-001613
Case No. 18-ALJ-17-0216-CC

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SC Court of Appeals

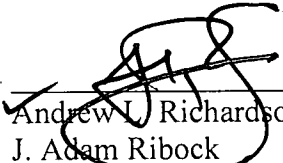
Ex Parte: Representative Chip Huggins, Appellant.

In re: WKSC, LLC d/b/a Savannah's Gentlemen's Club & Steakhouse, Petitioner,
v.

South Carolina Department of Revenue, Respondent.

**REPRESENTATIVE CHIP HUGGINS'
RETURN TO MOTION TO DISMISS APPEAL**

MCANGUS GOUDELOCK & COURIE, L.L.C.



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Attorneys for Representative Chip Huggins

Representative Chip Huggins (“Huggins”) submits this return to WKSC, LLC’s (“Savannah’s Gentleman’s Club” or “Petitioner”) motion to dismiss the appeal pursuant to Rule 240, SCACR.

INTRODUCTION

This case involves an application by Savannah’s Gentleman’s Club for an on-premises beer and wine permit and restaurant liquor by the drink license. Respondent, South Carolina of Revenue, denied both applications. On June 20, 2018, Petitioner filed a Request for Contested Case Hearing with the SC Administrative Law Court (“ALC”). The ALC issued an Administrative Memorandum to Individuals Protesting a License or Permit setting a deadline of August 10, 2018 for any motions to intervene due to the number of individuals who appeared as protestants.

Huggins, through counsel, filed a Motion for Leave to Intervene on August 30, 2018. On September 5, 2018, Judge Lenski denied the Motion for Leave to Intervene finding there was not good cause for the filing of the motion. Thereafter, Huggins filed a Notice of Appeal and Motion Stay the pending hearing before the ALC. On September 7, 2018, Petitioner filed the Motion to Dismiss currently pending before the Court, arguing the ALC’s Order is interlocutory.

ARGUMENT

The ALC’s Order is Immediately Appealable Under S.C. Code Ann. § 14-3-330.

Whether an order issued prior to or during trial is immediately appealable is governed primarily by Section 14-3-330 of the South Carolina Code (1979 & Supp. 2012).” *EnerSys Delaware, Inc. v Hopkins*, 738 S.E.2d 478, 401 S.C. 615 (S.C. 2013). Section 14-3-330 provides appellate jurisdiction over:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought

there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(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;...

S.C. Code Ann. §14-3-330.

"Further, an order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court and a ruling on appeal will avoid unnecessary litigation." *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E.2d 340,341(1991), overruled on other grounds by *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995). "This Court reviews interlocutory orders when they contain other appealable issues." *Ferguson v. Charleston Lincoln Mercury, Inc.*,349 S.C. 558, 565,564 S.E.2d 94, 98 (2002).

Petitioner asks this Court to summarily conclude that the appeal should be dismissed because it derives from a Motion to Intervene. While it is true Huggins will be able to administratively participate in the proceeding, Huggins will not be afforded the rights provided to a named party. Thus, the case law cited by Petitioner does not support such an indiscriminate rule and is otherwise not analogous to the unique nature of this particular dispute. *See Rutledge v. Tunno*, 63 S.C. 205, 207-08, 41 S.E. 308, 309 (1902) (providing an order denying a motion to intervene is immediately appealable).¹

¹ This case was recently cited in an unpublished opinion of the Court of Appeals. *See Ex parte Roe v. L.C. (Ex Parte Carter)*, 2017 S.C. App. Unpub. LEXIS 40 (S.C. Ct. App., Jan. 13, 2017) (rev'd and remanded by *Ex Parte Carter*, 422 S.C. 623, 813 S.E.2d 686 (2018).)

In citing to *McLaughlin v. Strickland*, Petitioner seems to assert Huggins will not be precluded from participating in the ALC hearing on the merits because he is a named protestor.² However, this ignores that Huggins will be unable to have the rights a party would have, including but not limited to, opening and closing statements, cross-examination, entering evidence or have the right to appeal any ruling from the ALC.³ As noted by the Court in *McLaughlin v. Strickland*, “[s]ince the order effectively forecloses [Huggins] from contesting the case on the merits, it affects a substantial right and is appealable.” (internal citations omitted).

Petitioner cites *Duncan v. Gov’t Emples. Ins. Co.*, for the premise that an order granting a party’s request to intervene is not immediately appealable. However, the reliance on *Duncan* by Petitioner is misplaced. In *Duncan*, a guardian ad litem’s request to intervene was granted. *Duncan*, 331 S.C. 484, 449 S.E.2d 580 (1994). The holding in *Duncan* is inapposite from the facts in this particular matter where the Motion to Intervene was denied. As this Court is well aware, the “reverse application” of a holding is not always true. For a basic example, a grant of summary judgment is immediately appealable, but the denial of summary judgment is not. Petitioner’s assertion in the Motion to Dismiss that “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” is wholly inaccurate given the Supreme Court’s long-standing holding in *Rutledge v. Tunno*, that an order denying a motion to intervene is immediately appealable.

² *McLaughlin v. Strickland*, 279 S.C. 513, 309 S.E.2d 787 (Ct. App. 1983) (holding the Family Court’s order denying permission to withdraw document and refusing to permit the late filing of Strickland’s Answer effectively foreclosed Strickland from contesting the case on the merits, and therefore it affected a substantial right and was appealable.).

³ See also *Cobb v. Maccaro*, 310 S.C. 303, 305, 423 S.E.2d 156, 157 (Ct. App. 1992) (“To appeal an order effecting a substantial right, an order must not only involve a right, but it must also “prevent a judgment from which an appeal might be taken.” *Ex parte Johnson*, 63 S.C. 205, 208, 41 S.E. 308, 309 (1902) (this case has been renamed in the West Reporter, See *Rutledge v. Tunno*); See also S.C. Code Ann. § 14-3-330(2)(a) (1976).”)

CONCLUSION

This appeal does not arise from a typical contested case hearing at the ALC.⁴ Given the nature of this dispute, not allowing Huggins to intervene disregards his substantial rights by putting him in a disadvantageous position if he is not allowed to intervene. Therefore, Petitioner's Motion to Dismiss should be denied and the appeal should proceed on the merits in this Court.

WHEREFORE, respectfully, Huggins requests this Court to deny and dismiss Petitioner's Motion to Dismiss.

September 24, 2018

Respectfully submitted,

MCANGUS GOUDELOCK & COURIE, L.L.C.



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Counsel for Representative Chip Huggins

⁴ As noted by Judge Lenski in his Order denying the motion for leave to intervene, this case has the largest number of attendees, including 239 protestants, of any matter before the ALC.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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The Honorable S. Phillip Lenski, Administrative Law Judge

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

v.

South Carolina Department of Revenue,Respondent.

PROOF OF SERVICE

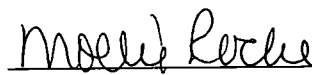
I certify that I have served the Return to the Motion to Dismiss Appeal on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on the 5th day of September, 2018 addressed as follows:

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September 24, 2018



Mollie Roche
Legal Assistant to Andrew L. Richardson, Jr.

Reply To

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
South Carolina Supreme Court
1220 Senate Street
Columbia, South Carolina 29201

RE: WKSC, LLC d/b/a Savannah's Gentlemen's Club & Steakhouse vs.
South Carolina Department of Revenue
Civil Action No.: 18-ALJ-17-0216-CC
MGC File No.: 22014.18001

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of Representative Chip Huggins' Return to Motion to Dismiss Appeal and Representative Chip Huggins' Motion For First Extension Of Time To File And Serve His Return To Petitioner's Motion To Dismiss In the above-captioned case. I would appreciate your returning a clocked-in copy of the same to our courier.

By copy of this letter, I am serving counsel of record with the above-referenced Representative Chip Huggins' Return to Motion to Dismiss Appeal and Memo in Support.

Thanking you in advance for your assistance, I am

Very truly yours,



Andrew L. Richardson, Jr.

ALR/_mr
Enclosures

cc: S. Jahue Moore, Esquire
Kenneth E. Allen, Esquire
Jason P. Luther, Esquire
Patrick A. McCabe, Esquire