

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

RECEIVED

JAN 24 2019

SC Court of Appeals

Appellate Case No. 2018-002270
Case No. 2014-CP-26-07790

Richard Ciampanella,Respondent,

v.

City of Myrtle Beach,Appellant.

**APPELLANT’S RETURN TO RESPONDENT’S
MOTION TO DISMISS**

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Pursuant to Rule 240 of the South Carolina Appellate Court Rules (SCACR), the Appellant files this Return in opposition to Respondent Richard Ciampanella’s Motion to Dismiss.

FACTS/PROCEDURAL HISTORY

This personal injury action arises out of Respondent’s alleged fall on a beach walkover in Myrtle Beach, South Carolina on August 19, 2014. The case was tried before the Honorable Thomas Russo the week of January 23, 2017. Following the close of Respondent’s case, Judge Russo directed a verdict in favor of Appellant City of Myrtle Beach. On February 3, 2017, Respondent filed a Motion for New Trial and to Alter or Amend Judgment Pursuant to SCRC P 59. Judge Russo entered an Order partially granting and partially denying a new trial on September

25, 2018. Appellant's Motion for Reconsideration was denied and this appeal followed on December 21, 2018.

Respondent's Motion to Dismiss and supporting memorandum were filed January 9, 2019. Respondent alleges the trial court's grant of a new trial is not immediately appealable.

ARGUMENT

A party's right to appeal is governed by South Carolina Code Ann. § 14-3-330, which provides in relevant part: The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases and shall review upon appeal An order affecting a substantial right made in an action when such order . . . grants or refuses a new trial . . . South Carolina Code Ann. § 14-3-330(2)(b). In South Carolina, it is well-established that an order that grants or refuses a new trial affects a substantial right and is immediately appealable. Mid-State Distributions, Inc. v. Century Importers, Inc., 310 S.C. 330, 335 n.4, 426 S.E.2d 777, 780 n.4 (1993); see also South Carolina State Highway Dep't v. Clarkson, 267 S.C. 121, 226 S.E.2d 696 (1976).

In Clarkson, the trial court granted the landowner's motion for new trial following a verdict in a condemnation action awarding no damages. The State appealed the Order granting a new trial. The Supreme Court rejected the argument advanced by the landowner, like the Respondent's argument here, that an order granting a new trial is not appealable. In reaching this decision, the Supreme Court recognized an earlier line of cases suggesting the appealability of an order granting or denying a new trial depended upon the type of error committed by the trial court. The Clarkson Court clarified that the previous cases were not addressing the appealability of the new trial order but were instead speaking of the Court's scope of review. 267 S.C. at 126-27, 226 S.E.2d at 676 ("While the statement in our decisions, that an order granting a new trial upon the facts is not appealable, is not correct in the sense that the appeal will not lie, it is correct in the sense that such an order based upon conflicting testimony will not be disturbed on appeal.").

The Court of Appeals has since acknowledged the holding in Clarkson and explained that “the case law does not preclude an appeal from an order granting or denying a new trial, but simply severely limits the scope of appellate review in such cases.” Pinckney v. Winn-Dixie Stores, Inc., 311 S.C. 1, 6, 426 S.E.2d 327, 330 (Ct. App. 1992).

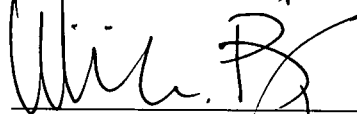
Respondent relies on cases that predate Clarkson. However, in light of the Supreme Court’s clarifying decision in Clarkson, which was re-affirmed in Pinckney, the Order of Judge Russo granting a new trial is immediately appealable. Respondent’s Motion to Dismiss should be denied.

CONCLUSION

Based upon the foregoing, Appellant respectfully requests this Court deny Respondent’s Motion to Dismiss.

Respectfully submitted,
COLLINS & LACY, P.C.

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January 22, 2019

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PROOF OF SERVICE

I certify that I have served Appellant’s Return to Respondent’s Motion to Dismiss by mailing a copy of same to Respondent’s attorneys of record in the United States mail, with sufficient postage affixed thereto on the date indicated below.

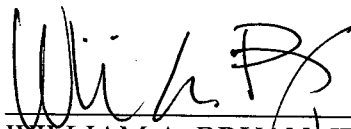
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[SIGNATURE PAGE TO FOLLOW]

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**Appellant's Return to
Respondent's Motion to Dismiss**

Murrells Inlet, South Carolina
January 22, 2019



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January 22, 2019

The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Richard Ciamparella v. City of Myrtle Beach
Appellate Case No. 2018-002270
Lower Court No. 2014-CP-26-7790
C&L No. 000456-01017

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SC Court of Appeals

Dear Madam Clerk:

Enclosed for filing is the original and seven (7) copies of Appellant's Return to Respondent's Motion to Dismiss. I have also enclosed a proof of service of this document upon counsel for Respondent.

I am providing a copy of the enclosed to opposing counsel by copy of this letter via U.S. Mail and e-mail. Thank you for your attention to this matter. If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards,

Sincerely,

William A. Bryan, Jr.

WABJr/cmp

Enclosures

CC (via U.S. Mail and e-mail):

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