

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master in Equity

Case No. 2014-CP-42-03846
Appellate Case No. 2019-001762

Paula Rose

Respondent,

v.

Homer Rose

Appellant.

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SC Court of Appeals

MEMO IN OPPOSITION TO IMMEDIATE APPEALABILITY

INTRODUCTION

The denial of a motion to dismiss is not immediately appealable absent special circumstances. There are no such special circumstances in this case. Rather, this is a matter of a very wealthy wife abuser who is seeking, by any means necessary, to avoid paying a five-year-old civil judgment for damages stemming from a physical assault on the Respondent.

ANALYSIS AND CITATION OF AUTHORITY

South Carolina adheres to the final judgment rule. Accordingly, with certain exceptions, an appeal lies only from a final judgment. Hagood v. Sommerville, 362 S.C. 191, 194–195, 607 S.E.2d 707, 708 (2005); S.C. Code Ann. § 14–3–330(1) (1976 and Supp.2004); Rule 72, SCRCP; Rule 201(a), SCACR. By statute, an appeal from an interlocutory order is only permitted in certain

circumstances, such as an order “involving the merits ... [or] affecting a substantial right.” S.C. Code Ann. § 14-3-330(1) and (2). The South Carolina Supreme Court has ruled several times, most recently in 2016, that “the denial of a motion to dismiss is ordinarily not immediately appealable.” Kubic v. MERSCORP Holdings, Inc., 416 S.C. 161, 785 S.E.2d 595 (2016).

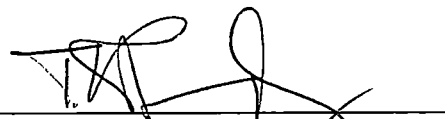
The lower court’s Order does not involve the merits. This is an action for supplemental proceedings on a judgment entered against the Appellant in February of 2015. Since 2015, Appellant has sought review of the merits by the Court of Appeals and Supreme Court; both of which ruled against him. Specifically, this Court ruled against Appellant on the merits on November 9, 2016. Rose v. Rose, 2016 WL 6609638 (unpublished). On February 15, 2017 Appellant filed a Petition for Certiorari requesting that the South Carolina Supreme Court overturn this Court Appellant lost again. Now, the Appellant (through the same legal counsel) is seeking to re-argue these same merits by using a Family Court Order entered prior to the Petition for Cert. This is improper. By signing that Petition for Certiorari, Appellant’s legal counsel (the same counsel now appearing before this Court) pledged under Rule 11 S.C.R.C.P. that there was “good ground to support [the Petition].” SCRCP 11. If the Appellant actually believed that the Family Court Order released the Circuit Court Judgment, there would have been no need to file a subsequent Petition for Certiorari seeking to have the Circuit Court Judgment set aside. Moreover, at no time did Appellant or his counsel ever inform the Supreme Court in any way that the issue was moot or that the Court need not rule on the Petition for Cert.; but rather waited for the Court to issue its ruling. Certainly, there was ample time to do so as over six months elapsed after the entry of the February 15, 2017 Family Court Order before the Supreme Court denied Cert. on September 8, 2017. This current appeal is nothing more than Appellant’s thinly-veiled attempt to re-litigate the merits for the purpose of avoiding the domestic abuse judgment entered against him.

This appeal does not affect a substantial right that determines the action or prevents a judgment from which an appeal might be taken. The lower court correctly ruled that the South Carolina Family Court has no jurisdiction over Circuit Court matters. Meehan v. Meehan, 407 S.C. 471, 476, 756 S.E.2d 398, 401 (Ct. App. 2014) (“The family court has exclusive jurisdiction to hear and determine actions for separate support and maintenance, legal separation, other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions related to the real and personal property of the marriage.”); S.C. Code Section 20-3-630(B) (noting the limited jurisdiction of the family court); Gilley v. Gilley, 327 S.C. 8, 11, 488 S.E.2d 310, 312 (1997) (holding family court had no jurisdiction over husband and wife’s prior circuit court action and any such non-martial property claims must be asserted in circuit court). This lower court ruling simply allowed the matter to go forward into supplemental proceedings. As noted in the foregoing paragraph, there is nothing left to be determined on the merits. The judgment is owed and must be paid from the Appellant’s \$3.8 million in net worth to which he has previously stipulated in the lower court.

CONCLUSION

The lower court’s Order does not involve the merits and does not affect a substantial right that prevents a judgment from which an appeal can be taken. The merits have been addressed repeatedly by the trial and appellate Courts of this state over the past five years. Appellant’s vast wealth is not a license for physical abuse of his wife or for procedural abuse of the appellate courts of this state. Accordingly, Respondent respectfully requests that the Court dismiss this appeal.

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November 18, 2019

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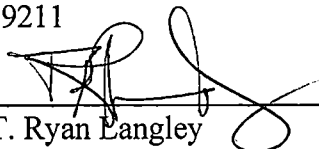
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CERTIFICATE OF SERVICE

I certify that on this the 18th day of November, 2019 I served the Respondent's Memo in Opposition to Immediate Appealability on the Appellant and the Clerk of Court by placing a copy in the U.S. Mail, first class postage prepaid, addressed as follows:

J Falkner Wilkes
114 Whitsett St.
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Jenny Abbott Kitchings, Clerk
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Dated: November 18, 2019
Spartanburg, South Carolina

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LICENSED IN SOUTH CAROLINA, NORTH CAROLINA, AND GEORGIA

November 18, 2019

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Columbia, SC 29201

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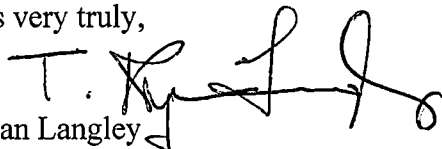
RE: **Paula Rose vs. Charles Homer Rose, III**
Appellate Case No. 2019-001762

Dear Ms. Kitchings:

Please find enclosed the requested memo addressing the immediate appealability (or lack thereof) in the above-referenced matter. By copy of this letter, I am serving a copy on opposing counsel. Proof of Service is also enclosed.

If anything further is required from me, please let me know.

Yours very truly,


T. Ryan Langley

TRL/tp
Enclosures

cc: J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601



First Class Mail

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