

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No.: 2019-CP-21--00777

Appellate Case No.: 2019-002114

RECEIVED
FEB 12 2020
SC Court of Appeals

Dr. Gregory A. May,.....Respondent,

v.

Advanced Cardiology Consultants, P.A., Dr. Lew A. Rowe,
and Theresa Rowe,..... Appellants.

**RESPONDENT’S REPLY TO APPELLANTS’ RETURN IN
OPPOSITION TO RESPONDENT’S MOTION TO DISMISS**

The Respondent, Dr. Gregory A. May, by and through the undersigned counsel hereby replies to Appellants’ Return in Opposition to Respondent’s Motion to Dismiss. “The right of appeal arises from and is controlled by statutory law.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). “An appeal ordinarily may be pursued only after a party has obtained a final judgment.” *Id.* (citing S.C. Code § 14-3-330(1)); see also, Rule 201(a), SCACR and Rule 72, SCRCPC. The note to Rule 72 is instructive “This Rule 72 parallels, in part, S.C. Code § 14-3-330, but is designed to reduce appeals from interlocutory or intermediate orders in an

action. It accords with the modern decisions of the Supreme Court narrowing “dilatory appeals” from such interlocutory orders as grant or deny motions addressed to the pleadings, motions at trial, and the like. All such questions are left to the appeal from final judgment or order of dismissal.”

In addressing § 14-3-330(1) “the phrase ‘involving the merits’ is narrowly construed... . An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties’ rights.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 7, 630 S.E.2d at 467-68. See also *Watson v. Underwood*, 407 S.C. 443, 765 S.E.2d 155 (S.C. App. 2014). An appeal pursuant to § 14-3-330(1) would not be appropriate at this point in this litigation since there are a number of further acts that must be done by the trial court prior to a determination of the parties’ rights, specifically a trial on the three (3) remaining causes of action for which the trial court has denied the Appellants’ motion for summary judgment.


Likewise, the Appellants cannot rely on the provisions of § 14-3-330(2). *Watson v. Underwood* is instructive on this point finding the provisions of § 14-3-330(2) “have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.” citing *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005). “The basic policy behind denying immediate review of pre-trial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.,2d 11, 13 (2000). The *Watson* court continued “An order affects a substantial right and is immediately appealable when it ‘(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.” *Hagood*, 362 S.C. at 195, 607 S.E.2d at 709. “Usually, an order that does not finally end a case or prevent a final judgment from which a party could appeal is not immediately appealable. A judgment that determines what law is applicable but leaves questions of fact unsettled is not a final judgment.” *Good v. Hartford Accident & Indemnity Co.*, 201 S.C. 32, 41, 21 S.E.2d 209, 212 (1942). “An order is not immediately appealable when appellants ‘have not arrived at the end of the road’ and would be able to appeal the decision after the trial was finished.” *Baldwin Construction Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004).

In this action, Judge Nettles’s Order does not finally determine the action, does not discontinue the action, nor prevents a judgment from which an appeal can be taken. The Order does not grant or refuse a new trial. The Order does not strike an answer or pleading as found in the cases which Appellants’ cite referencing Rule 12(b)(6).

Based on the foregoing, the Respondent respectfully renews his request that the Court issue an order dismissing the appeal as an untimely, interlocutory appeal, and confirming that this Court does not have appellate jurisdiction to hear this particular matter until it has been finally ended at the trial court level.

February 10, 2020



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PROOF OF SERVICE

I certify that I have served the foregoing **Respondent's Reply to Appellants' Return In Opposition to Respondent's Motion to Dismiss** on the Appellants through their attorneys of record, Allan R. Holmes and Rebecca J. Wolfe, by depositing a copy of same in the United States Mail, postage prepaid, to Post Office Box 938, Charleston, South Carolina 29402 on February 10, 2020.



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SC Court of Appeals

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

RE: Dr. Gregory A. May v. Advanced Cardiology, et al
Appellate Case No.: 2019-002114
Our File No.: 16325.17418

Dear Ms. Kitching:

Enclosed for filing is an original and one copy of the **Respondent's Reply to Appellants' Return in Opposition to Respondent's Motion to Dismiss** in the above captioned case. Please time stamp the enclosed copy and return to us in the enclosed self-addressed stamped envelope provided for your convenience.

By copy of this letter, we are serving a copy of the above-stated pleadings on Allan R. Holmes and Rebecca J. Wolfe, attorneys for Appellants.

Yours very truly,



Mark W. Buyck, III
Email: mb3@willcoxlaw.com

MWB, III/tph
Enclosures
Cc: Allan R. Holmes, Esquire
Rebecca J. Wolfe, Esquire

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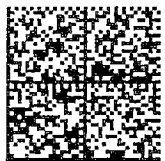
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