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Jun 11 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2019-002081
Case No. 2018-CP-18-1960

Carl Michael Funny, Respondent,

v.

Waffle House, Inc. and Christopher Heithaus, Appellants.

**REPLY TO RESPONDENT’S RETURN
TO APPELLANTS’ PETITION FOR REHEARING**

The Appellants Waffle House, Inc. and Christopher Heithaus have appealed from an order of the Circuit Court that awards sanctions in the form of attorney’s fees and costs against the Appellants in the amount of \$784.74. This Court, acting through a single judge, has *sua sponte* dismissed the appeal in error.¹ That sanctions

¹ Rule 240(j) provides that “[a]ny review of an order issued by an individual judge or justice shall be by petition for rehearing.”

order is subject to an immediate appeal for the reasons that the Appellants outlined in their Petition for Rehearing.

The Respondent has now filed a return to the Petition for Rehearing in which he focuses specifically on the merits of the sanctions order on appeal. The merits, however, are not properly the subject of the Petition for Rehearing -- the appeal was not dismissed on the merits. In other words, the merits have no bearing on whether appellate jurisdiction does or does not exist.

The second part of the Respondent's return actually provides support for the Appellants' position that the sanctions order is immediately appealable. The Respondent actually describes the order on appeal as "a civil contempt order" (Return, p. 5) and later again as "a civil contempt order against a party to the litigation." (Return, p. 6). The Respondent then cites to federal case law only to make the argument that a civil contempt order against a party is not immediately appealable. It is, however, not necessary to delve in the federal case law he cites. That is because, federal law notwithstanding, South Carolina case law already establishes that "a contempt order ... is a final order that is immediately appealable." *Hooper v. Rockwell*, 334 S.C. 281, 513 S.E.2d 358, 364 (1999). In *Hooper*, the Supreme Court cited favorably to this Court's decision in *Jarrell v. Petoseed Co.*, 331 S.C. 207, 210, 500 S.E.2d 793 (Ct. App. 1998), which held that a civil compensatory contempt order involves the merits and is deemed to be immediately appealable.

Therefore, to the extent that the sanctions order is a “civil contempt order,” as argued by the Respondent, or a monetary sanctions order akin to a contempt order, it should be deemed immediately appealable. As the Appellants have explained, a sanctions order directing that a specific sum of monetary sanctions be paid and requiring immediate payment (as opposed to payment after final judgment) should be deemed a final order subject to immediate appeal. The Appellants also has shown that there is no reasonable basis to draw a distinction between civil contempt monetary sanctions and non-contempt monetary sanctions where one form of sanctions is immediately appealable and the other is not. The Respondent did not address that issue presumably because the Respondent agrees that the order on appeal is a “civil contempt order.” However, this remains a distinction without a difference. An order requiring monetary sanctions, whether by the contempt power or by some other source of judicial authority, should be deemed an appealable order. There is no rational basis for distinguishing between the two orders where a final monetary amount is set by the lower court.

Certainly, the Petition for Rehearing and the return filed by the Respondent demonstrate at the very least that this case should proceed to full briefing and adjudication given the novel issues raised. The Appellants respectfully submit that the *sua sponte* dismissal should be reversed, and the case should be allowed to proceed through briefing and argument.

Respectfully submitted,

LINDEMANN, DAVIS & HUGHES, P.A.

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CERTIFICATE OF SERVICE

Pursuant to Section (g)(3) of the Supreme Court's Order Re: Operation of the Trial Courts During the Coronavirus Emergency (As Amended May 29, 2020), the undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Appellants, does hereby certify that service of the **Reply to Respondent's Return to Appellants' Petition for Rehearing** was made upon all counsel of record by email only this the 11th day of June 2020:

Joshua E. Slavin, Esquire
The Law Offices of Joshua E. Slavin, LLC
Email: josh@attorneycarolina.com

s/ Andrew F. Lindeman