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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC, Respondents

v.

Julia B. Brooker, Appellant

MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

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Pursuant to Rule 240, SCACR, Respondents Beacham O. Brooker, Ellen B. Corontzes, and BBB&C Family, LLC hereby move this Court to dismiss this appeal because it is an appeal of an order granting a stay, which is not immediately appealable. *Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006) (“The sole issue we need address is whether an order granting a stay is immediately appealable. We hold that it is not.”). Contrary to Appellant’s argument, the order from which appellate review is sought is not an order denying a motion to compel arbitration. At no time, even on a Rule 59(e) motion, did the circuit court rule on a motion to compel arbitration. Rather, it simply granted Respondents’ motion to stay the arbitration demand. Because no order that is immediately appealable is before this Court, this appeal should be dismissed.

FACTUAL AND PROCEDURAL HISTORY

Appellant Julia Brooker (“Appellant” or “Julia”) is the sister of Respondents Beacham O. Brooker Jr. (“Beach”) and Ellen Corontzes (“Ellen”). Their mother Janet Brooker (“Settlor” or “Janet”) died in April of 2015. Prior to her death, she, her family, and estate planner realized that her estate would place a tremendous tax burden on her children based on the substantially increased value of Lockheed Martin stock owned by Janet. Consequently, Janet entered a new estate plan, a part of which involved aggressive gift giving through a trust, which is the subject of a probate lawsuit that has now been appealed, and the other part of the estate plan involved creating an LLC to hold property, which Janet previously owned. The LLC is called BBB&C Family, LLC – a party to this action.

I. The Probate Matter and Resulting Appeal

The probate matter involved an equalization distribution clause (See Order Calculating Equalization Distribution of Lifetime Gifts, attached as Exhibit A.) Once Janet realized the substantial tax bill her estate would face, she engaged in aggressive gift giving, which included

gifting to the spouses of her children. However, Julia is not married, and therefore, she had no spouse to whom Janet could gift. Therefore, Janet added an equalization distribution provision to her trust to ensure that Julia would be made whole for the gift giving to the spouses. Julia disagrees with this characterization because she claims her mother wanted to make her whole for all gifts her mother gave to all spouses and grandchildren, but that distinction is of no moment for this dispute. The sum and substance is that the probate matter involves an equalization distribution and Julia feels that she is not being treated equally under the trust, just as she feels she is not being treated equally under the other estate device, the LLC.

The probate matter was tried, and the probate court ruled partially in favor of Julia's interpretation of the equalization distribution and concluded that she should be compensated for all gifts to all grandchildren and spouses from the beginning of time. (Exhibit A.) This issue is on appeal in the probate matter. (Notices of Intent to Appeal, dated July 1, 2019, August 8, 2019, and November 5, 2019, attached hereto as Exhibit B.) Beach and Ellen contend the calculation of the equalization distribution began once their mother agreed to and signed the trust, creating the equalization distribution. Julia contends the calculation of the equalization distribution was supposed to start when Janet first started giving gifts to any of her children or grandchildren. Regardless, it is indisputable that the probate appeal involves whether the three children are being treated equally under the estate plan. The parties are on the cusp of having the probate appeal heard, as the appeal is fully briefed.

II. The Arbitration Demand and Motion to Stay

During the appeal of the probate matter, on March 17, 2020, Julia submitted an arbitration demand. (Arbitration Demand attached as Exhibit C.) In response, Beach, Ellen, and the LLC filed a Petition and Motion to Stay Arbitration Demand ("Motion to Stay") on April 21, 2020.

(Motion to Stay attached as Exhibit D.) In return, on April 24, 2020, Julia's filed a Motion to Dismiss Petition, Motion to Compel Arbitration and Motion for Attorney Fees. (Motion to Dismiss attached as Exhibit E.) On April 29, 2020, Beach, Ellen, and the LLC filed an Amended Motion to Stay because they inadvertently filed a prior draft of the motion, instead of the final draft. (Amended Motion to Stay attached as Exhibit F.) The Amended Motion to Stay was accompanied by a memorandum of law in support of the Amended Motion and opposition to Julia's motions. (Memorandum of Law attached as Exhibit G). In response, Julia filed Respondent's Renewed Motion to Dismiss Petition and Amended Motion to Stay, Motion to Compel Arbitration and Motion for Attorney's Fees and Expenses ("Julia's Renewed Motions") on May 1, 2020. (Renewed Motions attached as Exhibit H.)

On June 24, 2020, a hearing before the Honorable Casey Manning was held on Beach, Ellen, and the LLC's Amended Motion to Stay Arbitration Demand and Julia's Renewed Motions.

On July 17, 2020, Judge Manning issued his Order Granting Petitioner's Motion to Stay ("Order"). (Order attached as Exhibit I.) Nowhere in the Order is there any reference to a motion to compel arbitration, much less, a ruling on or denial of the motion to compel arbitration. Rather, the circuit court stated as follows: "Accordingly, for the reasons set forth herein, the court grants the Petition for Stay and orders the arbitration demand be stayed pending the disposition of the probate appeal." (Order at 3.)

In response to the Order, Julia filed Respondent's Motion Pursuant to Rules 52(b) and 59(a), SCRCF, to Alter or Amend Order Granting Petitioners' Motion to Stay ("Motion for Reconsideration") on July 27, 2020. (Motion to Reconsider attached as Exhibit J.) However, Julia waited until August 18, 2020 to send a courtesy copy of the Motion for Reconsideration to Judge Manning. *See* Rule 59(g), SCRCF. On August 24, 2020, Judge Manning issued his Order

Denying Respondent’s Motion Pursuant to Rules 52(b) and 59(a), to Alter or Amend Order Granting Petitioners’ Motion to Stay (“Reconsideration Order”). (Reconsideration Order attached as Exhibit K.) Again, there is no mention of a motion to compel arbitration or a denial of the same. Rather, the circuit court found the arguments in the Motion for Reconsideration “are not convincing and are not new” and that the Reconsideration Motion was not timely sent to him, providing a separate ground for denial. (Reconsideration Order at 1.) The circuit court concluded “[f]or the above reasons, I DENY the Respondent’s Motion Pursuant to Rules 52(b) and 59(a), SCRCP, to Alter or Amend Order Granting Petitioners’ Motion to Stay.” (*Id.* at 2.) Later that day on August 24, 2020, Julia filed a Notice of Appeal in this matter.

ARGUMENT

The sole ruling issued both in the Order and the Reconsideration Order is that a stay is warranted. In no manner did the circuit court rule that Julia’s motion to compel arbitration was denied. Moreover, Julia never asked the circuit court to do so in her Motion for Reconsideration. Arguably, her motion is still extant so that when the probate appeals reach their finality, the circuit court can then grant the motion to compel arbitration. But as of now, the sole ruling and relief granted by the circuit court is the issuance of a stay, which is not an immediately appealable order under well-established South Carolina law. *See, e.g., Edwards v. Suncom*, 369 S.C. 91, 94-95, 631 S.E.2d 529, 530-31 (2006) (“The order here does not discontinue the proceeding. It merely temporarily stays the matter pending a ruling by the FCC. Accordingly, we find an order granting a stay is not immediately appealable.”); *Carolina Water Serv., Inc. v. Lexington Cnty. Joint Mun. Water & Sewer Comm’n*, 373 S.C. 96, 98, 644 S.E.2d 681, 682 (2007) (noting *Edwards* held an order granting stay is not immediately appealable); *Serv. Corp. of S.C. v. Bahama Sands Dev., LLC*, No. 2011-UP-300, 2011 WL 11734673, at *2 (S.C. Ct. App. June 14, 2011) (finding that

similar to an order granting a stay, an order denying a motion to stay “did not involve the merits, affect a substantial right, or prevent a judgment from which an appeal may later be taken.”).

CONCLUSION

An order granting a motion to stay is not immediately appealable under South Carolina law. The circuit court did not rule on Julia’s motion to compel arbitration, despite being invited to reconsider its order granting the motion to stay. For the reasons above, this Court should dismiss the appeal.

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s/Bess J. DuRant

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