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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Capers Barr, III, Special Referee

Case No. 2021-000185

Judith A. Brown, as Personal Representative for the Estate of Mildred C. Knight,
and Norman R. "Bobby" Knight, III,.. Appellants,

v.

Chloe Knight Tonney,.. Respondent.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

This matter is before the court on the Respondent Chloe Knight Tonney's ("Tonney") Motion to Dismiss the Appellants' appeal from the Order dated October 16, 2021, Denying Motion to Amend Complaint and the Order dated January 14, 2021, Denying the Motion to Alter or Amend and the Order, entered by the Special Referee for Charleston County, Capers G. Barr, III.

FACTUAL/PROCEDURAL BACKGROUND

Appellants filed the underlying case on June 7, 2019. At issue is title to property which has been in Tonney's name since 1979 (the "Property"). The case was referred to Capers G. Barr, III, as Special Referee on July 24, 2020. Appellants filed a Motion to Amend the Complaint on July 16, 2019, seeking to add causes of action for loss of consortium and conspiracy.

Tonney filed her opposition to Amend the Complaint on August 13, 2020. The parties then appeared in a hearing before the Special Referee on August 26, 2020, on the Motion to Amend the Complaint, and thereafter each submitted briefs to the Special Referee. The Special Referee denied the Motion to Amend the Complaint on October 16, 2020. Appellants then filed a Motion to Alter or Amend Order, requesting that the Order Denying the Motion to Amend the Complaint be amended, on October 26, 2020. Tonney filed her opposition on November 23, 2020, and the Special Referee denied Appellant's Motion to Alter or Amend Order on January 14, 2021. Appellants filed their Notice of Appeal with this Court on February 17, 2021.¹

ARGUMENT

The Orders denying Appellant's Motion to Amend are interlocutory and therefore not immediately appealable. As a general rule, "only final judgments are appealable." *Tillman v. Tillman*, 420 S.C. 246, 248, 801 S.E.2d 757, 759 (S.C. App. 2017) (citing *Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (S.C. App. 2004)).

A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution. An order reserving an issue, or leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory.

Tillman, 420 S.C. at 249 (internal citations omitted).

¹Appellants failed to comply with the requirements of Rule 203 of the South Carolina Appellate Court Rules when filing their Notice of Appeal. The Rule states that the "notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. S.C. R. App. P. 203(d)(1)(B). While Appellants filed the Notice of Appeal with the Appellate Court, they failed to file it with the clerk of the lower court. Appellants have since filed a Motion to Request Permission to File Appellant's Notice of Appeal on Lower Court Clerk of Court with Proof of Service Outside of Filing Deadline, seeking to remedy this mistake.

Courts have repeatedly ruled that denials of motions to amend are interlocutory and not immediately appealable. *Id.* at 251; *Baldwin Const. Co. Inc. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146 (S.C. 2004). When a motion to amend is denied, “then Appellant retains the right, after the lawsuit ends, to appeal the denial.” *Tillman*, 420 S.C. at 250 (internal citations omitted). Under these circumstances, the “petitioners have not arrived at the end of the road and will be able to appeal the decision after the trial is finished.” *Baldwin*, 357 S.C. at 230 (internal citations omitted). Therefore, the Orders denying the Motions to Amend the Complaint in the instant case are interlocutory and not ripe for appeal. These Orders do not affect the parties’ rights in the pending action. Appellants have not “arrived at the end of the road” and a final determination has not yet been made. *Id.* Lower court actions still remain to resolve the rights of the parties before an appeal may be taken. Appellants may appeal the Orders once a final judgment is made, but their appeal at this time is improper. Further, no provision in S.C. Code § 14-3-330, which allows certain exceptions for immediate appeals of interlocutory orders, applies to the circumstances of this case.

CONCLUSION

Because this appeal is from an interlocutory order and not a final judgment, the appeal should be dismissed. The parties’ rights in the underlying case are not affected by the Orders denying the Appellants’ Motion to Amend. Consequently, based on the foregoing reasons, Tonney respectfully requests that this Honorable Court dismiss Appellants’ appeal.

Respectfully submitted,

Law Offices of Charles S. Altman, LLC.

/s/ Charles S. Altman

Charles S. Altman (SC Bar No. 351)

caltman@caltmanlaw.com

Elizabeth McKelvy (SC Bar No. 104815)

emckelvy@caltmanlaw.com

575 King Street, Suite A

Charleston, South Carolina 29403

Tel.:843-853-9907

Fax: 843-572-7702

Attorney for Respondent

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