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Mar 23 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Debra R. McCaslin, Circuit Court Judge

Case No: 2018-CP-32-02102

Iraj Mazloom,.....Appellant,

v.

Kimberly Hodge Melton, Michelle
Diann Smart, and Bethan Burgess Paetow, Respondents.

MOTION TO DISMISS APPEAL

Respondent Kimberly Hodge Melton (“Melton”) hereby moves to dismiss the appeal in the above-reverenced matter pursuant to Rules 240 and 260(a) SCACR. The Order Granting Defendant Kimberly Hodge Melton’s Motion to Set Aside Entry of Default, filed February 22, 2021 (“February 22, 2021 Order”), and the Order Denying Plaintiff’s Motion to Reconsider, filed March 1, 2021, are not “final judgment[s], appealable order[s] or decision[s].” Rule 201(a), SCACR. As a result, this appeal must be dismissed as premature and interlocutory.

As is reflected in the February 22, 2021 Order, Appellant initiated this claim arising from a five-vehicle accident by filing a Complaint in the Lexington County Court of Common Pleas on July 31, 2019. Although Melton was served with the Summons and

Complaint on August 11, 2019, she did not understand that any claims were being brought against her and, consequently, failed to timely answer the Complaint. On October 2, 2019, Appellant moved for entry of default against Melton, which was granted by the Lexington County Clerk of Court on June 16, 2020. On December 16, 2020, a damages hearing was scheduled for February 16, 2021. Upon receiving notice of the damages hearing, Melton filed a motion to set aside the default, an answer and a motion to enlarge the time in which to answer, which Appellant opposed.

After considering the parties' pleadings and hearing argument, the Circuit Court granted Melton's motion to set aside the entry of default, finding, among other things, that Melton had demonstrated good cause, presented a meritorious defense, and that Appellant "would not be unfairly prejudiced by the vacation of the defaulted [sic] entered against Defendant Melton," and restoring Melton to "active status in this litigation." As a result of the Circuit Court's Orders presently on appeal, this matter will proceed to mediation and, if necessary, to trial without any delay caused by the Orders setting aside the order of default.

Pursuant to well-established precedent, "an order setting aside or refusing to set aside an entry of default is not appealable until after final judgment." *E.g., Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 473, 361 S.E.2d 340 (Ct. App. 1987); *see also Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (1988) (noting that *Ateyeh* incorrectly relied on Rule 72, SCRCF, but "reached the correct result" that "the grant or denial of a Rule 55(c) motion is not directly appealable under S.C. Code Ann. 14-3-330"). Indeed, "[t]he determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by statute." *Posick v. Sea Coast Constr.*, 380 S.C. 584, 587, 671 S.E.2d 98, 100 (Ct. App. 2008). Pursuant to Section 14-3-

330, South Carolina appellate courts have jurisdiction to review, “[a]ny intermediate judgment, order or decree in a law case *involving the merits* in actions commenced in the court of common pleas ... and *final judgments* in such actions,” and from “[a]n order affecting a *substantial right* ...”¹ S.C. Code Ann. § 14-3-330 (1) & (2) (emphasis added). Because an order granting or denying a motion to set aside entry of default is not a final judgment and does not involve the merits or affect a substantial right, it is not immediately appealable. *See, e.g., Thynes v. Lloyd*, 294 S.C. 152, 154, 363 S.E.2d 122, 123 (Ct. App. 1987) (grant or denial of a motion to set aside an entry of default, where no judgment has been entered, is not a final order); *see also Dibble v. Schade*, 308 S.C. 88, 93, 417 S.E.2d 104, 107 (Ct. App. 1992) (an order setting aside a default judgment is not a final judgment and, therefore, is not immediately appealable), *citing Pioneer Assoc., Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 348, 387 S.E.2d 711, 712 (Ct. App. 1989) (same).

The fact that “the law favors the resolution of disputes based upon all parties having their day in court,” *McClurg v. Deaton*, 380 S.C. 563, 580, 671 S.E.2d 87, 96 (Ct. App. 2008), Hearn, C.J., *dissent*; *see also Colleton Prep. Acad., Inc. v. Hoover Universal*, 616 F.3d 413, 417 (4th Cir. 2010) (noting courts’ “strong preference that as a general matter, defaults be avoided and that claims and defenses be disposed of on their merits), affirms that avoidance of trial is not a substantial right. Appellant can appeal these orders, if and when a final judgment is entered after trial. S.C. Code Ann. § 14-3-330 (1). At present, however, his appeal is premature and must be dismissed.

¹ An order affects a substantial right where 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.” S.C. Code Ann. § 14-3-330 (2). The Orders on appeal do none of these things.

This motion conforms with Rules 240 and Rule 267, SCACR.

March 23, 2021

MCANGUS, GOUDELOCK & COURIE LLC



Helen F. Hiser, S.C. Bar No. 76124
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
helen.hiser@mgclaw.com

Monica B. Towle, S.C. Bar No. 102197
1320 Main Street, 10th Floor
P.O. Box 12519
Columbia, SC 29211-2519
(803) 779-2300
monica.towle@mgclaw.com

*Attorneys for Respondent Kimberly
Hodge Melton*

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Kimberly Hodge Melton, Michelle
Diann Smart, and Bethan Burgess Paetow, Respondents.

PROOF OF SERVICE

I certify that on the 23rd day of March 2021, I served Respondent Kimberly Hodge Melton's **Motion to Dismiss Appeal** on Appellant Iraj Mazloom and other parties to this appeal by emailing it and depositing a copy of it in the United States Mail, postage prepaid, addressed to the attorneys of record as follows:

Chris Cunningham, Esq.
MCWHIRTER, BELLINGER & ASSOCIATES, P.A.
119 East Main Street
Lexington, South Carolina 29072
chris@mcwhirterlaw.com

Attorneys for Appellant

Elizabeth G. Wilkerson, Esq.
CLAWSON AND STAUBES, LLC
1612 Marion Street, Suite 200
Columbia, South Carolina 29201
ewilkerson@clawsonandstaubes.com

Attorneys for Respondent Bethany Paetow

William H. Bowman, III, Esq.
ROGERS TOWNSEND AND THOMAS, PC
P.O. Box 100200
Columbia, South Carolina 29202
Bo.bowman@rogerstownsend.com

Attorneys for Respondent Michelle Smart

[SIGNATURE ON FOLLOWING PAGE]

/s/ Haylee Mitchell

Haylee Mitchell

Legal Assistant to Helen F. Hiser

MCANGUS GOUDELOCK AND COURIE

P.O. Box 650007

Mount Pleasant, South Carolina 29465

(843) 576-2900

Attorneys for Respondent Kimberly

Hodge Melton



Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

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SC Court of Appeals

Via S.C. Courts E-Filing & U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Iraj Mazloom vs. Kimberly Hodge Melton, Michelle Diann Smart and
Bethany Burgess Paetow
Civil Action No.: 2019CP3203055 (Lexington)
Date of Incident: January 9, 2018
Carrier Claim No.: H2J8827
MGC File No.: 20527.21075
Appeal No.: 2021-

Dear Ms. Kitchings:

Enclosed please find the original of Respondent Kimberly Hodge Melton's Motion to Dismiss Appeal, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email and U.S. Mail.

We are sending our firm's check in the amount of \$50 for filing the Motion via U.S. Mail under cover of this letter.

If you have any questions, please do not hesitate to contact me.

Sincerely,
McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

cc: Chris Cunningham, Esq. (via Email & U.S. Mail)
Elizabeth G. Wilkerson, Esq. (via Email & U.S. Mail)
William H. Bowman, III, Esq. (via Email & U.S. Mail)