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THE STATE OF SOUTH CAROLINA

MAR 31 2021

In The Court of Appeals

SC Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

Capers G. Barr, III, Special Referee

Appellate Case No. 2021-000185

Case No. 2019-CP-10-03042

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.

APPELLANTS' RETURN TO RESPONDENT'S MOTION TO DISMISS

PERTINENT FACTS

Appellants moved to amend the original complaint pursuant to SCRCP 15(a) and 15(c). The objective of the amendments was to include two additional causes of action: conspiracy and loss of consortium. The loss of consortium claim was offered as an amendment by the Decedent, Mildred C. Knight, pro se, and withdrawn by her acting pro se at a hearing in April, 2008 in response to motions filed by Respondent counsel. The conspiracy cause was offered in 2019 for the first time with the consortium amendment. The present action was commenced in June, 2019 and consolidated with the original action that started in 2005. The Special Referee denied the motion to amend the June 2019 complaint.

ARGUMENT

S.C. Code 14-3-330-(2) declares that “the Supreme Court shall have jurisdiction for corrections of errors of law in law cases, and shall review upon appeal: . . . (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action . . .” “It may be concluded that whenever a substantial right of the party to an action material to obtaining judgment in such action is denied, a right of appeal lies to the Supreme Court. Blakely & Copeland v. Frazier, 11 S.C. 122 (1878). “Whatever can be regarded as affecting the necessary means of obtaining a judgment, must be regarded as affecting the judgement itself. *Id.* at 11 S.C. 135. See, Neeltec Enters., Inc. v. Long, 397 S.C. 563, 725 S.E.2d 926 (2012) (an interlocutory order which affects a substantial right, and either in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under sec. 14-3-330(2)(a)). “However, by its nature, the question of whether an order is immediately appealable is determined on a case-by-case basis.” Stone v. Thompson, 426 S.C. 291, 295 826 S.E. 2d 868, 870 (2019), citing Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 537-538, 773 S.E. 2d 144, 146 (2015).

Failure to include Appellants’ claims substantially alters how this matter would proceed at trial. Notwithstanding the reference to the Special Referee for a non-jury proceeding, the manner of disposing the single ground left for resolution effectively abandons legitimate issues, i.e. conspiracy and loss of consortium that are legally contextual and relevant to the Plaintiffs’ claim. These matters need to be resolved at the same time, if allowed. “An order ‘involves the merits’ when it finally determines some substantial matter forming the whole or a part of some cause of action or defense . . .” Jefferson by Johnson v.

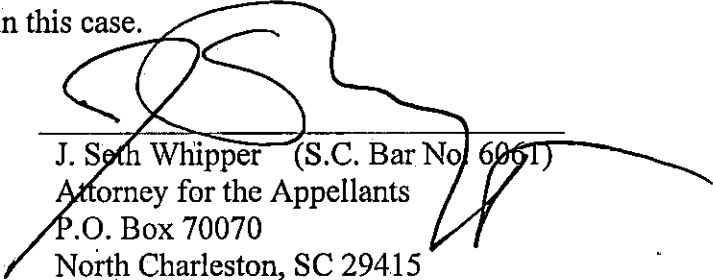
Gene's Used Cars, Inc., 295 S.C.317, 368 S.E. 2d 456(1988). The manner of proceeding in the case at hand does not invoke the formal 'mode of trial' analysis but the impact is similar because Appellants cannot litigate the issues that exist in this action. This case is still in pretrial preparation with discovery outstanding. The denial of the motion to amend prevents reaching the merits of this conflict and forecloses substantial rights of the Appellants.

Please note that the treatment of the facts are now guided by the jurisprudence of the South Carolina Rules and the Federal Rules of Civil Procedure Rules 15(a) and 15(c). The issue of appealability should be resolved as expressed in Sibley & Co. v. Young & Napier, Id.

CONCLUSION

Primarily, the issue of review of intermediate orders in law cases are controlled by S.C. Code 14-3-330, and the nature of the issue requires a determination on a case-by-case basis. Stone v. Thompson, 426 S.C. 291, 826 S.E. 2d 868 (2019). The stakes are high, the interests are substantial, major issues are prevalent, and the two stricken causes of action would provide due process for a just resolution in this case.

March 30, 2021



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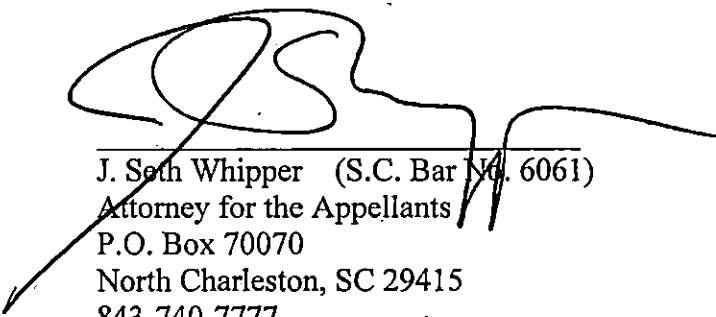
v.

Chloe Knight Tonney, Respondent,

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **APPELLANTS' RETURN TO RESPONDENT'S MOTION TO DISMISS** has been served upon opposing counsel and the clerk of court, The Honorable Jenny Abbott Kitchings on the 29th day of March, 2021 and deposited in the U.S. Postal Service on March 29, 2021.

MARCH 29, 2021



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March 29, 2021

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

**Re: 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. Appellate Case No. 2021-000185**

**APPELLANTS' RETURN TO RESPONDENT'S MOTION TO DISMISS - For Filing
PROOF OF SERVICE - For Filing**

Dear Ms. Kitchings:

Please find enclosed for filing, the Appellants' Return to Respondent's Motion to Dismiss. I am enclosing the original and (7) copies of the same for conforming. I am providing a self-addressed, stamped envelope for your use in returning the conformed copy.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esq.

JSW:cfw

Enclosures

cc: Charles S. Altman, Esq.
Norman R. "Bobby" Knight, III (w/o encl.)

CHARLESTON SC 294
MON 29 MAR 2007 PM

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South Carolina Court of Appeals
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