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May 21 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Clifton B. Newman, Circuit Court Judge

Case no. 2021-000461

Ex Parte Lashelle Burnette,Appellant,

Ex Parte James Monroe Elliott, Sr.,
as personal representative of the
estate of Tamesha Singletary,Respondent,

v.

In re Petition for approval of wrongful
death claim settlement for the estate of
Tamesha Singletary, by and through its
personal representative, James Monroe
Elliott, Sr.

REPLY

Appellant submitted a return opposing Respondent’s motion to dismiss. In reply, Respondent submits Appellant fails to demonstrate she has standing to pursue this appeal. Appellant’s return confirms this fact by dodging the standing issue, opting instead to put forth a different question on appeal than the one decided by the trial court. The appeal should be dismissed.

RESPONDENT’S ARGUMENT IN REPLY:

Appellant’s true aim is to foil Respondent’s settlement. She is upset that the insurance carrier decided to offer the limits of its coverage to Respondent. But this is not the forum for her grievance with Progressive. If she has been done wrong than her pending state court action against Progressive’s insureds is the appropriate forum to determine what rights she might have against Progressive. This appeal does not involve what rights or duties may have been created by the unaccepted Tender Letter.¹ The sole issue here is whether the trial court was wrong to find Appellant lacked standing to intervene in Respondent’s petition for settlement approval. Appellant’s lack of any showing of standing in her return weighs strongly in favor of dismissal. A “fully developed record” will not elucidate a new basis for standing that Appellant has thus far overlooked. Indeed, the record before this Court is the same as before the trial court with the exception of the hearing transcript.

I. APPELLANT LACKS STANDING.

Appellant’s return makes no attempt to show she is a real party in interest or that she is aggrieved under Rule 201(b), SCACR. She argues that the question goes to the merits of her appeal and, thus, she “should be afforded full briefing on a fully developed record.”² Appellant’s lack of argument is telling. And contrary to her suggestion, she is not entitled to full briefing where she cannot demonstrate the constitutional minimum of standing. It is this Court’s “duty to reject an appeal that is prosecuted by a party who is not aggrieved in a legal sense by the judgment of the trial court.” *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (S.C. 1970).

¹ It is unclear how the Tender Letter creates any rights or duties to anyone when it clearly is conditioned upon an agreement between the claimants and releases of the insureds, and neither of those conditions was met.

² App.’s Memo. in supp. of Return at 3.

Appellant fails to identify the “denial of some personal or property right” as required by Rule 201(b), SCACR. *See Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) (defining “aggrieved” as used in Rule 201(b), SCACR). Appellant has no right to interfere with, or receive funds from, the settlement between Progressive and Respondent.

Appellant’s failure to advance any basis for standing in her return weighs against “full briefing” here. Given the opportunity to set forth some basis for standing, Appellant balks. “Full briefing” is not going to help Appellant find some basis for standing that she has yet to put forth. Her unsupported plea for continuation of this appeal lays bare her true intent – to use the appeals process as a means to delay the settlement. Appellant’s entreaty for a more “fully developed record” belies that the record before the Court on Respondent’s motion is the same as the record on appeal with the exception of the motion hearing transcript. If Appellant cannot now demonstrate any basis for standing in response to Respondent’s motion, why would one expect that to change?

II. APPELLANT’S ATTEMPT TO CHANGE THE ISSUE ON APPEAL.

Rather than set forth any basis for standing, Appellant claims her appeal raises a novel point of law. Not so. Moreover, whether the Tender Letter conferred rights or duties on either Progressive or Appellant is not the subject of this appeal. That question was not before the trial court. The only question before the trial court was whether Appellant could intervene and object in Respondent’s action to approve a wrongful death settlement.

First, Appellant suggests the Tender Letter and “all material terms” was accepted by the parties. This is untrue. As is clear from the Tender Letter it was explicitly conditioned upon an “exchange of releases of all claims against” the insureds and an agreement between Respondent and Appellant “as to how th[e] funds should be divided between” them. *See App.’s Memo. in*

supp. of Return at Ex. 1. No release was ever executed. No agreement was ever reached. The Tender Letter was clearly *not* accepted by all parties.


Second, whether Progressive’s retraction of the tender offer after the parties could not agree on an allocation and Progressive’s subsequent offer of the full limits to Respondent was a breach of some duty Progressive owed Appellant is not the issue before the court. Whether Progressive’s conduct was a breach of a duty Progressive owed to its insureds with respect to Appellant’s claims is also not the issue before the court. This is an appeal of the denial of a motion to intervene in a settlement approval petition. The “novel” question Appellant asserts could not be resolved by this appeal as it was not before the lower court. If there is any duty on the part of Progressive it is to its insureds, not Appellant. Whether Progressive breached some duty to its insureds with respect to Appellant and the tender offer is not legally ripe until such time as Appellant secures a judgment against Progressive’s insureds. Only then would the reasonableness of Progressive’s conduct towards its insureds in failing to protect them from Appellant’s claim become a legally cognizable issue. That is why the appropriate forum for Appellant to adjudicate her rights is in her lawsuit against Progressive’s insureds that is currently pending in the circuit court.

CONCLUSION

For these reasons, Respondent respectfully requests that this appeal be dismissed due to Appellant’s lack of standing.

Respectfully submitted,

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PROOF OF SERVICE


I certify that I have served Respondent's Reply on Appellant Lashelle Burnette by delivering a copy of said motion via electronic mail on May 21, 2021, addressed to her attorney as follows:

W. Hugh McAngus, Jr.
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Signature page below.

May 21, 2021

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