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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219

Francine SteinemanPlaintiff,

v.

Eric Steineman, Sarah Smith, and Charles Griffin Defendants,

Meridian Security Insurance Company, an automobile insurer alleged to
provide uninsured motorist coverage applicable to the accident from this
matter arises is Appellant,

and

Francine Steineman isRespondent.

MOTION TO DISMISS

Respondent hereby moves the Court for an Order dismissing Appellant Meridian Security Insurance Company’s (“Meridian’s”) appeal on the basis that the appealed orders are interlocutory and not immediately appealable as outlined in this Court’s decision in *5Star Life Insurance Co. v. Peck Performance*, Op. No. 5837 (S.C. Ct. App. filed July 21, 2021) (Howard Adv. Sh. No. 25 at 9) or, alternatively, that the appeal is untimely for the reasons set forth in this Court’s decision in *Coward Hund Construction Co. v. Ball Corp.*, 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999).

Respondent reserves all other arguments in opposition to this appeal.

Interlocutory Appeal

The appealed orders ruled:

- March 8, 2021 Order – Defendants Smith and Griffin are in default. Meridian did not make an appearance in this action within 30 days of being served as uninsured motorist (“UM”) and underinsured motorist (“UIM”) carrier.
- June 10, 2021 Order (Form 4) – Denies Meridian’s Motion to Alter or Amend the March 8, 2021 Order. Denies Meridian’s Motion for Relief from Default.
- August 6, 2021 Order (Form 4) – Denies Meridian’s Motion for Reconsideration. Formal Order to follow.
- August 13, 2021 Order – Denies Meridian’s Motion for Reconsideration, concluding:
 - “With respect to the March 8, 2021 Order, this is Meridian’s second Rule 59(e) motion. The Court denied Meridian’s Motion to Alter or Amend the March 8, 2021 Order. The current motion is not appropriate because it does not challenge something that was altered from the original judgment. It is therefore not properly before the Court and is denied on this basis.” (Order, pp. 4-5).
 - Meridian did not make an appearance in this action within 30 days of being served as UM and UIM carrier.
 - Meridian did not demonstrate good cause to set aside the entry of default.

At this point, the Circuit Court has not held a default damages hearing, nor has it entered judgment against Defendants Smith or Griffin (the alleged uninsured and underinsured motorists) or against Meridian. In that regard, this matter is in the same procedural posture as the action in *5Star*, wherein this Court noted:

A default judgment can only be entered once damages have been determined either following a damages hearing or without a hearing if the claimant seeks “a liquidated amount, a sum certain[,] or a sum which can by computation be made certain.” Rule 55(b). Until damages are entered, there is no default judgment. *See Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App. 1987) (“[Under Rule 55(b),] a court is unable to enter judgment until damages are determined. The entry of default is an official recognition of the failure to appear or otherwise respond, but is not a judgment by default.”)....

[T]he court’s order is not a final judgment because damages have not been entered against *5Star*. ... *see also Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017) (“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.” (citation omitted)). Therefore, we dismiss the appeal and remand to allow the trial court to conduct a damages hearing.

5Star Life Insurance Co. v. Peck Performance, Op. No. 5837 (Howard Adv. Sh. No. 25 at 11).

Accordingly, the Court should dismiss the present appeal and remand it to the Circuit Court to conduct a damages hearing and enter final judgment.

Untimely Appeal

If this appeal is not interlocutory, it is untimely.

In its March 8, 2021 Order, the Circuit Court found that neither Defendant Smith, Defendant Griffin, nor Meridian had made an appearance in this action within 30 days of service and concluded that Defendants Smith and Griffin were in default.

In response to that Order, Meridian filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRPC, dated March 11, 2021 (copy attached) in which it asked the Circuit Court “to grant Defendant Griffin and Defendant Smith relief from default and/or to allow Meridian to file responsive pleadings and defend this matter on the merits in the name of Defendant Smith and Defendant Griffin.” As noted above, the Circuit Court denied this motion on June 10, 2021.

Meridian did not appeal the June 10, 2021 Order but filed a Motion for Reconsideration pursuant to Rule 59(e), SCRPC,¹ dated June 21, 2021 (copy attached) contending the Circuit Court “misunderstood the facts related to the procedural history of this lawsuit and/or misconstrued the law applicable to this matter.” The motion challenged the court’s findings regarding the timeliness of Meridian’s response to this action and ruling that Defendants Smith and Griffin were in default.

¹ Meridian also cited Rules 55(c) and 54(b), SCRPC. While these rules were implicated in the motion, Meridian’s Motion for Reconsideration was made pursuant to Rule 59(e), SCRPC, which authorizes a motion to alter or amend; the motion is the same even if the movant labels it as a motion for reconsideration. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004).

The similarity of the relief sought by the two Rule 59(e) motions should be evident. Moreover, as the Circuit Court readily appreciated, the Motion for Reconsideration not only sought the same relief as the earlier Motion to Alter or Amend but did not challenge any alteration of the original judgment in response to the Motion to Alter or Amend (because there was none). Consequently, the Circuit Court denied the Motion for Reconsideration as procedurally improper.

Importantly, in the present context, Meridian’s filing of its second Rule 59(e) motion – the Motion for Reconsideration – did not extend the time for appeal of the Circuit Court’s Order dated March 8, 2021.² *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004). (“An appeal may be barred due to untimely service of the notice of appeal when a party – instead of serving a notice of appeal – files a successive Rule 59(e) motion, where the trial judge’s ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment.”).

Thus, Meridian’s time to appeal from the March 8, 2021 Order began on June 10, 2021, when the Circuit Court denied its Motion to Alter or Amend. Its deadline to perfect the appeal thus became July 12, 2021, considering July 10, 2021 was a Saturday. Rules 203(b)(1) & 263(a), SCACR. Meridian did not file the present appeal until September 10, 2021. As such, it was untimely and mandates dismissal of the present appeal. *See, e.g., Wells Fargo Bank, N.A. v. Fallon Props. S.C.*, 422 S.C. 211, 810 S.E.2d 856 (2018).

CONCLUSION

For the foregoing reasons, Respondent respectfully requests the Court of Appeals to dismiss this appeal.

² All other Orders from which Meridian has appealed relate back to the March 8, 2021 Order.

Respectfully submitted,

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Attorneys for Respondent

September 20, 2021
Charleston, South Carolina

**Meridian Security Insurance
Company's Notice and
Motion to Alter or Amend
filed March 11, 2021
C.A. No. 2020-CP-46-02219**

2. The Court erred by allowing evidence of service upon Meridian to be made part of the record and by including service upon Meridian as part of its Order.

3. The Court erred in finding that S.C. Code Ann. §38-77-150 required Meridian, as the uninsured motorist carrier, to appear within thirty (30) days after service of process.

WHEREFORE, Meridian respectfully requests that this Court alter or amend its March 8, 2021 Order to allow the Court to rule upon Meridian's March 5, 2021 Motion and enter an order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure altering or amending the March 8, 2021 Order as detailed above.

Meridian specifically reserves the right to add additional grounds and supplement this motion in the future. This motion is based upon the pleadings, any memorandum submitted in support of the same, affidavits filed or to be filed, the pleadings and other filings in this case, the applicable case and statutory law, and any such matters as the Court may deem just and proper.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

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March 11, 2021
Greenville, SC

*Attorneys for Meridian Security Insurance
Company, as the alleged uninsured motorist carrier*

**Meridian Security Insurance
Company's Motion for
Reconsideration
filed June 21, 2021
C.A. No. 2020-CP-46-02219**

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE 16TH JUDICIAL CIRCUIT
COUNTY OF YORK)	
)	C.A. NO.: 2020-CP-46-02219
Francine Steineman,)	
)	
)	MERIDIAN SECURITY INSURANCE
)	COMPANY’S MOTION FOR
)	RECONSIDERATION
)	
vs.)	
)	
Eric Steineman, Sarah Smith, and Charles)	
Griffin,)	
)	
)	
Defendants.)	
)	

TO: Plaintiff Francine Steineman, and her attorney, Stephen G. Vicari, II of Stewart Law Offices, LLC

PLEASE TAKE NOTICE, that ten (10) days after the service hereof, or at such time and place as the Court may deem appropriate, counsel for Meridian Security Insurance Company, as the alleged uninsured motorist carrier (hereafter “Meridian”), for itself and on behalf of Sarah Smith and Charles Griffin, by and through its undersigned counsel, will move the Court, pursuant to S.C. Code Ann. §38-77-150, and Rules 59(e), 55(c) and 54(b) of the *South Carolina Rules of Civil Procedure*, for reconsideration and/or clarification of its Order of June 10, 2021, denying Meridian’s previously filed motion for relief from default and motion to alter or amend the order of default.

The grounds for the motion are that the previously entered Order lacks sufficient specificity for Meridian and/or the individual defendants to understand the legal and factual basis for denial of the motions. Alternatively, the Court misunderstood the facts related to the procedural history of this lawsuit and/or misconstrued the law applicable to this matter, including:

1. The legal effect of the filing of the Amended Complaint on the individual defendants;

2. The statutory right of Meridian to appear and defend the complaints against the individual defendants;
3. The actual date of service of the Amended Summons and Complaint on Meridian as the provider of uninsured motorist coverage for the accident;
4. Meridian's timely filed notice of appearance on behalf of itself and the individual defendants;
5. The plaintiff's improper motion to strike the appearance of Meridian as the uninsured motorist carrier in this matter;
6. The Court's improper finding in its March 8, 2021, Order that Meridian had not timely appeared on behalf of the individual defendants prior to the expiration of the time to appear; and
7. The Court's improper finding that the alleged default of the individual defendants is binding on Meridian as the uninsured motorist carrier in this matter.

Meridian submits the pleadings in this matter, all previously filed motions and exhibits and such memorandum of law as may be submitted prior to the hearing of this motion in support hereof.

By: s/T. David Rheney

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**Attorneys for Meridian Security Insurance
Company**

Date: June 21, 2021
Greenville, South Carolina

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Meridian Security Insurance Company, an automobile insurer alleged to
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matter arises is Appellant,

and

Francine Steineman isRespondent.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal upon the Appellant Meridian
Security Insurance Company by mailing same via E-mail addressed to counsel of record

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