

THE STATE OF SOUTH CAROLINA
In The Supreme Court

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS
APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2021-000159

EX PARTE:

Hampton B. Luzak, Petitioner,

In re: IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton B. Luzak, Petitioner,

v.

Merrill B. Light, Merrill U. Barringer as Personal Representative of the Estate of Paul Brandon Barringer II, J. Randolph Light, Jr., Merrill B. Light as putative trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998, and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable Trust, Respondents

--and--

Hampton B. Luzak, Petitioner,

v.

Merrill U. Barringer, Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
Orders Dated August 19, 2021 and May 4, 2021

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Pursuant to Rule 242, SCACR, Ms. Hampton Luzak (hereafter “Ms. Luzak”) petitions this Honorable Court requesting an order granting Certiorari to review the decisions of the Court of Appeals issued in this action on August 19, 2021 and May 4, 2021, copies of which are attached hereto and incorporated herein.

CERTIFICATE OF COUNSEL

Counsel for Ms. Luzak certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 19, 2021.

QUESTIONS PRESENTED

1. Did the Court of Appeals err by failing to appreciate the substance of the Trial Court’s Bifurcation Order in implicating the mode of trial and sequencing of the trial of the various causes of action?
2. Did the Court of Appeals err by failing to recognize that the Bifurcation Order excised two equitable causes of action from the consolidated cases and ordered that they be tried first to the prejudice of Ms. Luzak’s right to a jury trial on other causes of action, thereby either eliminating Ms. Luzak’s right to a jury trial of her legal causes of action or severely impairing that right?
3. Did the Court of Appeals err in concluding that the Bifurcation Order was not immediately appealable?

STATEMENT OF THE CASE

I. BRIEF FACTUAL OVERVIEW.

Ms. Luzak is a daughter of Paul Barringer (“Decedent”), deceased. These consolidated cases arise from the manipulation and control of the Decedent by certain members of his family (“individual Respondents”), while the Decedent was vulnerable and suffering from dementia diagnosed in 2011. Specifically, the individual Respondents manipulated the Decedent into purportedly taking certain actions, including executing various estate planning and business documents when he lacked capacity or was otherwise compromised. The result of the scheme of

manipulation was that one or more of the Respondents has garnered control of a very lucrative family business, while simultaneously depriving Ms. Luzak of the inheritance that her father always wanted her to have and deprived her father from having his intentions honored.

This action consists of two (2) cases that were consolidated for the purposes of discovery and trial. Ms. Luzak initially filed the case of *Hampton B. Luzak v. Merrill B. Light et al.*, 2016-CP-07-1919, in 2016. Ms. Luzak later filed the case of *Hampton B. Luzak v. Merrill U. Barringer*, 2019-CP-07-1253 and -1294 in 2019. These two cases were consolidated by the entry of the Consent Order of Plaintiff's Motion for Consolidation of Actions entered on December 3, 2019.

In the case of *Luzak v. Merrill B. Light, et al.*, 2016-CP-07-1919, Ms. Luzak alleges multiple *legal* causes of action against the individual Respondents for undue influence, lack of capacity, mistake, fraud, intentional interference with inheritance, civil conspiracy, breach of fiduciary duty, and the like, along with associated equitable relief.

In the other consolidated case of *Luzak v. Merrill U. Barringer*, 2019-CP-07-1253 and -1294, Ms. Luzak asserts similar causes of action against her mother (wife of the Decedent) for her mother's participation in and/or aiding in the manipulation of Ms. Luzak's father in favor of their other daughter, Merrill Light. In this action, Ms. Luzak asserts causes of action against her mother for intentional interference with inheritance and gifts, constructive trust and injunction, enforcement of contract not to revoke (and injunction), attorney's fees, and civil conspiracy.

These consolidated cases are oriented on multiple legal causes of action with some equitable relief sought that is incidental to the legal claims, and they arise from a common, universal set of facts and were consolidated to be tried together.

II. PROCEDURAL OVERVIEW.

The *relevant* procedural history is succinct. On October 23, 2020, Respondents filed a joint Motion to Bifurcate seeking an Order of the Trial Court bifurcating what the Respondents referred

to as Ms. Luzak's "Contract-Based Claims" from Ms. Luzak's remaining claims and further requesting that these so-called Contract-Based Claims be tried first.

On December 30, 2020, the Trial Court filed its "Order Granting Defendants' Motion to Bifurcate" (Bifurcation Order). The Trial Court subsequently entered a Form 4 Order denying Ms. Luzak's Motion to Reconsider Order to Bifurcate on January 14, 2021. It is these Orders that are under the present appeal.

The Bifurcation Order provided that a separate trial would be held first on the Second and Third Causes of Action asserted by Ms. Luzak against Merrill U. Barringer set forth in *Hampton Luzak v. Merrill Barringer* in 2019-CP-07-01253 and -1294 prior to the trial of the remaining causes of action in the consolidated cases. The Plaintiff sought equitable relief in those two particular causes of action for the imposition of a constructive trust and injunction.

Ms. Luzak filed and served her Notice of Appeal on February 12, 2021 appealing the Bifurcation Order and the Order denying Ms. Luzak's Motion for Reconsideration.

On February 22, 2021 the Court of Appeals asked the parties to submit memoranda addressing the immediate appealability of the Bifurcation Order. Those memoranda were submitted, and the Court of Appeals filed its Order on May 4, 2021 dismissing the appeal on the stated grounds that the "underlying Orders are not immediately appealable under section 14-3-330 of the South Carolina Code (2017)." The full body of that Order simply read:

After careful consideration of the parties' filings, this appeal is dismissed because the underlying orders are not immediately appealable under section 14-3-330 of the South Carolina Code (2017). See *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 73, 533 S.E.2d 331, 333-34 (2000)("In short, trial of all issues in the case in a single proceeding is not a mode of trial to which the parties are entitled as a matter of right. Any abuse of discretion on the part of the trial court in severing issues for trial may be appealed after the trial, and after full development of the evidence.")

Ms. Luzak filed and served her Petition for Rehearing of that Order on May 18, 2021. In the interim, the original trial judge, to whom the cases were assigned when designated complex, had

recused herself, and the Chief Administrative Judge in the Fourteenth Circuit Court had taken the matter over. On July 28, 2021, the Court of Appeals requested a response from Respondents to the Petition for Rehearing, and the Court of Appeals denied the Petition on August 19, 2021. The full body of that Order read:

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and, hence, there is not basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

ARGUMENT 1

THE COURT OF APPEALS FAILED TO APPRECIATE THE SUBSTANCE OF THE TRIAL COURT'S BIFURCATION ORDER IN IMPLICATING THE MODE OF TRIAL AND SEQUENCING OF THE TRIAL OF THE VARIOUS CAUSES OF ACTION. (Question Presented 1).

The Court of Appeals erroneously concluded in its initial Order dismissing the appeal on May 4, 2021 that the Trial Court's Order was simply an Order bifurcating the trial. It erred in failing to review the *substance* of the Bifurcation Order and understand that it implicated the mode of trial, which is not only immediately appealable but also must be immediately appealed or cause those rights to be lost, with that error being compounded by the Court of Appeals' failure to grasp that it further provided for the improper sequencing of the trial of legal and equitable causes of action. It further erred when it denied Ms. Luzak's Petition for Rehearing in that regard. The Bifurcation Order failed to preserve Ms. Luzak's right to a jury trial on the factual issues that were critical to the court's later determination of equitable remedies based on the factual findings of the jury.

At initial blush, the Bifurcation Order may appear not to be immediately appealable, and Ms. Luzak appreciates that any Order labelled "Order Granting Defendants' Motion to Bifurcate" prompts such an initial reaction. Apparently, that was the reaction of the Court of Appeals when it summarily dismissed Ms. Luzak's Appeal without engaging in the analysis into the true substance

of the Bifurcation Order and without then engaging in any analysis of the issues presented by Ms. Luzak, especially of the mode of trial and sequencing of the trial of the causes of action.

The Court of Appeals' decision is contrary to established law set forth by this Court. It is the content of the Order and its effect that govern the appealability of the Order, not the label attached to the caption of the Order. "The label given to the order is not determinative of its immediate appealability." *Spalt v. S.C. Dep't of Motor Vehicles*, 423 S.C. 576, 584, 816 S.E.2d 579, 583 (2018); see also *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539-540, 773 S.E.2d 144, 147 (2015) ("Our review of trial court orders is not constrained by how the order is styled. ... We are therefore free to evaluate the trial court's order as what it is – not merely what it appears to be – and hold that it is one which is immediately appealable.") (Internal citations omitted).

Typically, orders to bifurcate are not immediately appealable, but the label of the instant Order is misleading because the substance of the Bifurcation Order extends far beyond merely having two trials and directly implicates the mode of trial, which is, in fact, immediately appealable. All of the claims in each arise from a common factual thread that weaves all of the causes of action together: The Decedent embarked upon an estate plan decades ago to treat his children equally with respect to their inheritances, especially as to his legacy company. One of the children, the son Victor, was given his "inheritance" in advance, leaving the two daughters, Hampton Luzak (Ms. Luzak) and the Respondent Merrill Light to have equal voting stock in the company. Upon the Decedent's onset of dementia and his inability to protect himself and his estate plan, if not earlier, the Respondent Merrill Light and her mother, Respondent Merrill Barringer, and Respondent Randy Light engaged in concerted acts and conspiracies to deprive Ms. Luzak of her share of the inheritance that the estate planning of the Decedent was to provide her. These facts permeate all causes of action, regardless of the remedy sought and regardless of how the cause of action is framed, and findings on certain

facts pertaining to this scheme without the case being heard as a whole by a jury can substantially impair Ms. Luzak's right to have all of the facts heard and determined together and result in inconsistent and prejudicial findings, especially if certain facts are first found by the court sitting in equity.

The effect of the Bifurcation Order was to bifurcate the trial and to try the equitable causes of action before the legal causes of action, with the findings in the first equity trial prejudicing the right of Ms. Luzak to a jury trial on her legal causes of action. It is the bifurcation and sequencing of the trials of the causes of action that implicate the mode of trial and make the Bifurcation Order immediately appealable. That is also addressed in the following Arguments.

This Court has noted that when an action involves both legal and equitable issues, the legal issues are to be determined first, and the findings of fact are "binding on the sitting judge" as he decides the equitable issues. *Johnson v. South Carolina National Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987). Because the legal and equitable issues in the instant consolidated cases were common to all cases (as determined by the orders of consolidation), bifurcation to try equitable issues first, without a jury, would deprive Ms. Luzak of her right to a jury trial on factual issues in the bifurcated trial. Moreover, bifurcating the issues created a risk of inconsistent verdicts between the issues tried in the first trial and those tried in the second trial, where a jury would make the factual findings.

The reaction to the Bifurcation Order, including the Court of Appeals', would have been completely different if the Bifurcation Order had instead been styled "Order for Mode of Trial and Sequencing the Trial of Causes of Action." *That* label would have been more reflective of the substance of the Trial Court's Order.

In short, the Court of Appeals failed to appreciate the substance of the Bifurcation Order and

the substantive and procedural effect of that Order and to analyze the appealability of that Order when it summarily dismissed the appeal.

ARGUMENT 2

THE COURT OF APPEALS FAILED TO RECOGNIZE THAT THE BIFURCATION ORDER EXCISED TWO EQUITABLE CAUSES OF ACTION FROM THE CONSOLIDATED CASES AND ORDERED THAT THEY BE TRIED FIRST TO THE PREJUDICE OF MS. LUZAK'S RIGHT TO A JURY TRIAL ON OTHER CAUSES OF ACTION, THEREBY EITHER ELIMINATING MS. LUZAK'S RIGHT TO A JURY TRIAL OF HER LEGAL CAUSES OF ACTION OR SEVERELY IMPAIRING THAT RIGHT. (Question Presented 2)

The Trial Court's Bifurcation Order carved out two equitable causes of action for trial first, leaving the legal causes of action to be tried later. Those two equitable causes of action are for a mandatory injunction and for the imposition of a constructive trust, as ancillary relief associated with the legal causes of action asserted by the Plaintiff. The remaining causes of action are essentially legal claims for undue influence, lack of capacity, mistake, as well as torts of fraud, conversion, breach of fiduciary duty, intentional interference with inheritance, and conspiracy. Ms. Luzak is entitled to a jury trial on them, but the Bifurcation Order relegates them to a later clean-up trial with findings on the equitable causes of action prejudicing Ms. Luzak's right to a jury determination on the common facts. A common factual thread of undue influence and manipulation of the patriarch of the family, Paul Barringer (Decedent), by his daughter, Merrill Light and others while he suffered from dementia, weaves all of the causes of action together, including a determination of the validity of numerous wills and trusts. and isolating two equitable causes of action for the initial trial deprives Ms. Luzak of the right to a jury trial or dramatically prejudices her rights to a jury determination of the facts. Therefore, the substance of the Bifurcation Order implicates mode of trial and is immediately appealable.

The Orders dismissing the appeal and denying the Petition for Rehearing failed to appreciate

that the substance of the Bifurcation Order compounded the error in failing to follow well-established sequencing rules regarding the order in which bifurcated trials under these circumstances must proceed. That implicates the mode of trial which, in turn, implicates a substantial right, triggering the well-established rule that such Orders must be immediately appealed, or be forever waived. *See Bateman v. Rouse*, 358 S.C. 667, 674, 596 S.E.2d 386, 389-390 (Ct. App. 2004) (“Orders of the trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights, ... and are immediately appealable. The failure to immediately appeal an Order affecting the mode of trial constitutes a waiver of the right to appeal these issues.”).

The Orders of the Court of Appeals dismissing the appeal and denying the Petition for Rehearing are contrary to law established by the Supreme Court. Sequencing rules mandate that when a case contains both legal and equitable causes of action and there exist disputed common factual issues relevant to both equitable and legal claims, *the legal claims must be tried first*, with the court in the trial of the equitable claims being bound by the findings of fact made by the jury. *See Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (2014); *Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987). The South Carolina Supreme Court has stated: “If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the ‘most imperative circumstances,’ the ‘at law’ claim must be tried first.” *Johnson*, 292 S.C. at 56, 354 S.E.2d at 897 (internal citations and quotations omitted). The purpose of the sequencing rules is to “assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues.” *Id.* at 55, 354 S.E.2d 897. Only by applying the sequencing rules adopted by the appellate courts of this State can a Trial Court comply with constitutional, statutory, and case law mandates to preserve a party’s right to trial by jury inviolate. Again, common factual issues of undue influence and manipulation weave all of the causes of action together, and cherry-picking equitable causes of action to be tried before legal causes

of actions implicates mode of trial and is immediately appealable.

ARGUMENT 3

THE COURT OF APPEALS ERRED IN CONCLUDING THAT THE BIFURCATION ORDER WAS NOT IMMEDIATELY APPEALABLE. (Question Presented 3)

By statute, a party has the right of immediate appeal where a substantial right is implicated. *S.C. Code Ann.* § 14-3-330(2). It is well established that a trial court Order “affecting the mode of trial affect[s] a substantial right as defined in Section 14-3-330(2) of the *South Carolina Code* (1976), ... ‘and must, therefore, be appealed immediately’.” *Frampton v. S.C. Dept. Transp.*, 406 S.C. 377, 385, 752 S.E.2d 269, 274 (Ct. App. 2013) (quoting *Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997)); see also *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72–73, 533 S.E.2d 331, 333–34 (2000) (“Pursuant to § 14–3–330(2), this Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled as a matter of right, such Order is immediately appealable.”)(internal citations and footnotes omitted); *Plantation Fed. Bank v. Gray*, 401 S.C. 507, 737 S.E.2d 515 (Ct. App. 2013) (reversing the Trial Court’s Order which mandated that the parties’ equitable claims be tried first by the court.) “Moreover, the failure to timely appeal an Order affecting the mode of trial effects a waiver of the right to appeal that issue.” *Frampton*, 406 S.C. at 386, 752 S.E.2d at 274.

CONCLUSION

Ms. Luzak petitions for a Writ of Certiorari to the Court of Appeals because the Orders from the Court of Appeals dismissing the appeal are “in conflict with a prior decision of the Supreme Court,” Rule 242(b)(3) SCACR, and “substantial constitutional issues [right to try by jury and mode of trial] are directly involved.” Rule 242(b)(4). The trial(s) of these consolidated cases will span

weeks. Resolution of the issues raised by the bifurcation and sequencing of trials is pivotal, and if this Court does not acknowledge the immediate appealability of the Bifurcation Order, a multi-week trial will be a nullity, other than as a “trial run” of the properly sequenced trial after appeals will have finally vacated or modified the Bifurcation Order.

This Petition relies upon the memoranda and Petition for Rehearing submitted by her to the Court of Appeals. They are recited in the Procedural Overview above. Since the filing of the Notice of Appeal that initiated this present appeal, there have been several developments in the case that are relevant to the Supreme Court’s analysis of the issues presented here.

First, the Trial Court did ultimately set the first phase of the bifurcated trial to be tried starting on August 30, 2021, and, apparently, in response to the position taken by Ms. Luzak in this appeal, set it as a jury trial on the equitable causes of action for constructive trust and mandatory injunction, but the Court still left the bifurcation in place, leaving the legal causes of action to be tried at a later date by a different jury. That use of a jury trial for the equitable causes of action does not render this appeal moot since the Court still carved out equitable claims to be determined before the legal claims, thereby severely impairing the Plaintiff’s right to a jury trial on her legal causes of action.

Second, that jury trial on August 30, 2021 did not, in fact, occur because the Trial Court granted summary judgment to the Respondent Merrill Barringer on the two causes of action that were to be tried starting on August 30, 2021 and scheduled to last for several weeks. That Order granting partial summary judgment was in error and will be subject to appeal. It is far from final, and it does not make this appeal moot.

Third, several Orders have been entered in this case that strike some causes of action (although about twenty (20) remain), strike some damages, and grant other partial summary judgments, all against the Plaintiff. Those Orders have also now been appealed. Ms. Luzak anticipates that the Respondents and perhaps this Court itself will raise the question of the mootness

of this present appeal, but while the issues set forth in the later Orders and appeal may overlap with the present appeal, nonetheless, Ms. Luzak is compelled to pursue this appeal in order to protect her rights and as an essential part of her fight to protect her right to a single trial by a single jury when the same set of facts is universal to all causes of action in this case.

For the reasons stated, Ms. Luzak asks the Court to grant the Petition for A Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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