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S.C. SUPREME COURT

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. 2021-001022

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.

**PETITIONER’S REPLY TO RETURN TO REQUEST TO HOLD
PETITION FOR WRIT IN ABEYANCE**

PROCEDURAL POSTURE OF PRESENT APPEAL

The Petitioner (Ms. Luzak) filed her Petition for a Writ of Certiorari on September 20, 2021. The response was Respondents Motion to Dismiss the Petition for Certiorari as Moot and Return on October 20, 2021. Ms. Luzak filed her Reply to that Return and Motion on November 1, 2021. In that Reply, Ms. Luzak alerted the Court to developments in the trial court that could

impact the Petition for a Writ of Certiorari and proposed procedural options available to the Court. The Respondents apparently interpreted that Reply to contain a new Motion and filed their Return To what Respondents named “Request to Hold Petition for Writ in Abeyance” on November 11, 2021. Whether such a Return to a “Request” is proper or not, Ms. Luzak files this Reply to that Return.¹

REPLY ARGUMENT

Ms. Luzak appealed the Bifurcation Order to the Court of Appeals on February 12, 2021, and it is that appeal that is before this Court on Ms. Luzak’s Petition for a Writ of Certiorari. The issue presented is whether the Bifurcation Order, standing alone, is immediately appealable. This is the First Appeal (Appellate Case No. 2021-000159).

Subsequent to the First Appeal, the trial court issued orders granting partial summary judgment to Merrill Light and granting permission to the non-party family business (CFRC) to intervene. The intervention by CFRC resulted in granting of its motion striking Ms. Luzak’s civil conspiracy cause of action and most of her damages, and granting other relief against Ms. Luzak. Ms. Luzak appealed those orders on August 5, 2021, and that appeal is pending before the Court of Appeals as Appellate Case No. 2021-000837. That appeal includes, among other appeals from final orders, an appeal of the same Bifurcation Order. Because the Bifurcation Order is combined with an appeal from a final order, it is not considered interlocutory. S.C. Code Ann. §14-3-330(1). *See also* Section 14-3-430.

¹ The Reply of Ms. Luzak was her Reply not only to the Return of the Respondents but also her Response to Respondents’ Motion to Dismiss, but it also set forth why Respondents’ Motion to Dismiss the Petition for Writ of Certiorari (included in Respondent’s Response) should not be granted.

Subsequent to the filing of the Second Appeal, the trial court issued another order on August 20, 2021. This time it granted summary judgment to Merrill Barringer (the mother of Ms. Luzak and Ms. Light) on the two equitable causes of action filed by Ms. Luzak against Merrill Barringer. These were the two causes of action that were to be tried “first and prior to any separate and subsequent trial(s) of the remaining causes of action,” that are the subject of the Bifurcation Order. Ms. Luzak filed her Notice of Appeal on that order on November 8, 2021 as a part of an appeal from several other, immediately appealable, final orders.² That is the Third Appeal. (Appellate Case No. 2021-001337). The Respondents assert, in part, that the summary judgment order addressed in the Third Appeal rendered the Petition for a Writ of Certiorari (seeking review of the Court of Appeals’ final ruling in the First Appeal, Appellate Case No. 2021-000157) moot. Respondents are mistaken.³

The Respondents also write: “Petitioner now takes the position that the First Appeal could be rendered moot if the Court of Appeals reverses one of the summary judgment rulings but not the bifurcation order in the Second Appeal.” That is not the position of Ms. Luzak;⁴ her position is that the Bifurcation Order was and remains immediately appealable for the reasons previously

² The Petitioner’s Reply to Respondents’ Motion To Dismiss The Petition for Certiorari as Moot and Return anticipated that Third Appeal but inadvertently stated on page 4 that she had filed that appeal. The appeal was actually filed after that Reply.

³ It is not difficult to see why the cases, initially designated as complex and consolidated in 2017 (when only two cases were pending) are so integrated with one another that they should not be handled piecemeal. There is a good way to present a dispute to the Court (and a jury) and there are many bad ways to do it. This Court has dealt with the evils of piecemeal litigation occurring at both the trial and appellate levels and, as far as Ms. Luzak can determine, this Court has never found piecemeal litigation a wise use of judicial resources. *Breland v Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000).

⁴ The Petitioner’s Reply to the Respondents Return and Motion should have read on page 5: “Depending on the ruling of the Court of Appeals on the multiple issues before it in that appeal, the question of whether the Bifurcation Order continues to affect Ms. Luzak’ rights may be squarely back before this Court if the Court of Appeals affirms the Bifurcation Order but reverses the grant of summary judgment to Merrill *Barringer*.”

cited to the Court, and the failure to pursue that appeal to its conclusion can constitute a waiver of her appeal rights on that issue *in the future iterations* of the litigation, depending on what decisions are made in the appellate courts in the three (so far) appeals. The First Appeal⁵ is not rendered moot if the Court of Appeals in the Second Appeal affirms the Bifurcation Order but reverses the granting of summary judgment.

To be clear, Ms. Luzak asserts that the problems created by the Bifurcation Order will continue to exist regardless of whether the granting of partial summary judgment to Ms. Light on the February 2012 instruments is affirmed or reversed⁶ in the Second Appeal. Either way, the remaining causes of action will have to be tried. Those remaining causes of action are slated for trial in the second phase of the bifurcated trials.

If the summary judgment in favor of *Ms. Barringer* on the two equitable causes of action that are the sole causes of action to be tried in the “first and prior” phase of the bifurcated trials is reversed and is remanded back for trial under the Third Appeal, the bifurcation issue will still persist and need to be addressed, possibly on its own, without being bootstrapped on to an appeal of a yet-to-come final order as the piecemeal litigation moves forward. Only if the summary

⁵ Ms. Luzak adopts the terms used by the Respondents. “First Appeal” refers to the appeal filed on February 12, 2021 and is the subject of the present Petition for a Writ of Certiorari, and the “Second Appeal” refers to the appeal filed on August 5, 2021.

⁶ Of the possible outcomes that could result from any of the appeals, Ms. Luzak has not attempted to determine whether the Second Appeal may be expedited to the date of filing of the First Appeal. Section 14-3-620(1). That issue can be addressed when the final briefs and Record on Appeal in the Second Appeal are finalized, and the Second Appeal is ready for consideration and barring any other procedural hurdles Respondents may erect.

judgment granted to Ms. Barringer is affirmed and becomes final will interlocutory nature of the Bifurcation Order possibly become moot.⁷

Therefore, the bifurcation issue will continue to exist regardless of the appeals of summary judgment, except in the sole scenario of the summary judgment in favor of Ms. Barringer on the two equitable causes of action being affirmed and becoming final, and perhaps not even then. *See* footnote 7. Of course, the bifurcation issue also is removed if the Bifurcation Order is reversed as part of the Court of Appeals' decision in the Second Appeal.

The First Appeal and the Second Appeal both appeal the Bifurcation Order. The issues will be the same in each appeal, but the current Petition for a Writ of Certiorari is limited to the singular issue of whether the Bifurcation Order is immediately appealable standing alone because it affected a substantial right of Ms. Luzak under *S.C. Code Ann.* §14-3-330.

It makes sense for this Court to recognize the overlap of appeals and use its inherent jurisdiction to either consolidate the appeals of the Bifurcation Order or to stay the current Petition and allow the appeal to proceed forward in the Court of Appeals. Ms. Luzak strenuously opposes dismissal of the current Petition for any reason, especially on some theory of mootness. At present, dozens of causes of action still pending standing at the trial court level, any of one which may be chosen by Respondents, at any time, to seek Bifurcation and to be tried "first and prior" as was the

⁷ Even in that event, nothing prevents Respondents from yet again seeking to bifurcate other causes of action to be designated to be tried "first and prior" to other of the remaining causes of action, which makes the question of whether a bifurcation order is immediately appealable anything but moot. The question of the interlocutory nature of the Bifurcation Order will not truly become moot until all causes of actions are tried and, perhaps only in a fantasy world, appealed in a single appeal. It begs the question to ask, if the cases were consolidated and complex at some point in the past, how did it become possible to bifurcate and prioritize any of the causes of action to be tried "first and prior" to any others.

case here. If the Court of Appeals were to pursue decisions that kept it from considering the Second Appeal of the Bifurcation Order on its merits and if the current Petition for a Writ of Certiorari had been dismissed, then Ms. Luzak is faced with the possible loss of her appeal rights on the Bifurcation Order. That is not tolerable, especially when the procedural steps suggested by her can simply protect those rights.

CONCLUSION

For these reasons and the reasons stated in her Reply to Return to Petition for Certiorari and Response to Motion to Dismiss, Ms. Luzak opposes dismissal of her Petition and reiterates her positions asserted in her Reply to Respondents' Response to Petition for Writ of Certiorari.

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