

RECEIVED

Nov 29 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
BENTLEY PRICE, CIRCUIT COURT JUDGE

Appellate Case No. 2021-000837

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

Hampton B. Luzak,Appellant

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--

Coastal Forest Resources Company (“CFRC”)Intervenor/Respondent.

--and--

Hampton B. Luzak,Appellant,

v.

Merrill U. Barringer,Respondent.

**APPELLANT’S RETURN TO
RESPONDENTS’ MOTION TO DISMISS**

Appellant Hampton B. Luzak (hereafter “Ms. Luzak”) files this Return to the Respondents’ Motion to Dismiss the appeal by Ms. Luzak of the trial court’s order dated December 30, 2020 ordering the bifurcation of the trial of the causes of action set forth in the

consolidated cases filed by Ms. Luzak against the Respondents. Ms. Luzak also appealed the trial court's order of January 14, 2021 denying her motion for reconsideration of the December 30, 2020 bifurcation order. For brevity's sake, Ms. Luzak simply refers to both orders as the Bifurcation Order.

FACTUAL AND PROCEDURAL BACKGROUND

The Respondents set out their version of the factual and procedural background, and while Ms. Luzak does not agree with all that the Respondents state, some arguments made by the Respondents cannot go unchallenged.

1. The Respondents state on page 4 under "Barringer I" that Ms. Luzak seeks to set aside all of the post-1998 testamentary instruments and the 2012 transfer of stock to Merrill Light on the basis of incapacity, undue influence, and mistake, and, while that is true, Ms. Luzak also seeks to set aside those documents and stock transfer on the grounds of fraud, the facts or merits of which were raised in Merrill Light's first motion for summary judgment but denied by Judge Mullen in her order of December 30, 2020. When the trial court entered its order of July 6, 2021, which is one of the orders subject to the present appeal, it never addressed the issue of fraud, nor was the issue before it.
2. The Respondents also state on pages 4-5 that the two equitable causes of actions against Ms. Barringer that were bifurcated for the first trial are "different and factually distinct from all other causes of action in the consolidated cases." That is not true. *South Carolina Rules of Civil Procedure (SCRPC)* Rule 42(a) provides for consolidation of cases "[w]hen actions involving a common question of law or fact are pending before the court." That is what the parties acknowledged when

they consented to the entry of the Consent Order on Plaintiff's Motion for Consolidation of Actions entered by the Court on December 3, 2019. The Respondents agreed that such consolidation was appropriate.

More particularly, all of the causes of action in the consolidated cases emanate from a common core of facts: The Decedent, Mr. Barringer, 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 and Merrill Light to be treated equally in Mr. Barringer's estate plan. Upon the Mr. Barringer's onset of dementia and his inability to protect himself and his estate plan, if not earlier, Merrill Light and her mother, Merrill Barringer, and Randy Light engaged in concerted acts and conspiracies to deprive Ms. Luzak of her share of the inheritance that Mr. Barringer intended to provide her via his estate. During the relevant time of Mr. Barringer's dementia and the acts of Ms. Barringer and Randy and Merrill Light, Mr. Barringer purportedly executed the various testamentary instruments in 2012, 2014, and 2015 and purportedly gave Merrill Light control of CFRC by gifting his voting stock to her. Those instruments and gifts to Merrill Light, especially of Mr. Barringer's voting stock in CFRC, are strongly challenged by Ms. Luzak, as they do not represent Mr. Barringer's long-held wishes nor his prior and express estate plans.

The bifurcated equitable causes of action slated for a separate and distinct trial before the other causes of action are not at all "different and factually distinct" (Respondents' Motion to Dismiss, page 4 and 5). The Respondents

state: “[T]he evidence in the two trials would not overlap.” (Respondents’ Motion to Dismiss, pages 5-6). The correct statement is that the evidence, documents, and witnesses will not only overlap, but will also almost completely overlap.

ARGUMENT

Ms. Luzak first preserves her rights under the prior appeal (Appellate Case No. 2021-000159)(First Appeal) that is presently pending before the Supreme Court on her Petition for a Writ of Certiorari, and she incorporates all of the arguments that she asserted before this Court in her Appellant’s Memorandum in Support of Immediate Appealability of Order Granting Motion to Bifurcate filed with the Court of Appeals on March 4, 2021, her Petition and Memorandum For Rehearing filed on May 18, 2021, and her Reply to Respondents’ Return for Petition for Rehearing filed on August 16, 2021. Nothing in the present Return should be considered a waiver of any rights and arguments set forth therein.

The First Appeal was dismissed by the Court of Appeals with a finding that the Bifurcation Order was interlocutory and not immediately appealable. That appeal is presently pending before the Supreme Court on Ms. Luzak’s Petition for a Writ of Certiorari, and the current procedural posture of that appeal revolves around the issue of whether the Bifurcation Order is immediately appealable by itself as a matter of right under S.C. Code Ann. §14-3-330(2).

Ms. Luzak continues to assert that the Bifurcation Order, by itself, was immediately appealable under Section 14-3-330(2), but the issue in this current appeal (Second Appeal) is different. The current issue is the appealability of the Bifurcation Order, whether interlocutory or not, when other immediately appealable orders have been appealed pursuant to Section 14-3-330(1). The Respondents’ Motion to Dismiss does not seek dismissal of the Second Appeal in

full; it seeks only the dismissal of the appeal of the Bifurcation Order as part of the Second Appeal.

In seeking dismissal at this point, before Ms. Luzak has stated her issues on appeal by brief with regard to the Bifurcation Order, Respondents want this Court to mistakenly believe the issues in the two appeals are different, when they are not. Respondents prefer that the error of the Bifurcation Order never be addressed...or at least not addressed until after two multi-week trials of the bifurcated issues.¹

The pending issue before this Court with the Motion to Dismiss is the appealability of the Bifurcation Order, interlocutory or otherwise, simultaneously with the appeal of summary judgment and an order striking a cause of action and damages, *i.e.*, pursuant to Section 14-3-330(1). Ms. Luzak steadfastly preserves her argument that the Bifurcation Order is immediately appealable standing alone under Section 14-3-330(2). But for the sole purpose of this appeal, Ms. Luzak argues that including the appeal of the Bifurcation Order in this, the Second Appeal, is proper combined with the appeals from final orders pursuant to Section 14-3-330(1) .

The appellate courts of this State have addressed that before, going back to at least 1915. Interlocutory orders are generally not appealable by themselves until after final judgment. But in *Woods v. Rock Hill Fertilizer Co.*, 102 S.C. 442, 86 S.E. 817, 819 (1915), the Supreme Court recognized that the general rule serves no purpose when another order is immediately appealable and “it will be better for both parties in the further progress of the case to have these [interlocutory] questions decided.” *Id.*

¹ After the bifurcated proceedings are held, Respondents would no doubt argue that an appeal of the Bifurcation Order is moot, thus attempting to guarantee that the merits of the Bifurcation Order never be examined by an appellate court. That is precisely why Section 14-3-330(2) provides for immediately appealability of orders affecting a substantial right and that is the issue that is the subject of the Petition for Writ of Certiorari to the Supreme Court in the First Appeal (2021-000157).

That is the guiding principle running through the cases in this State that have dealt with this issue, and that presents to this Court the core issue: Will it “be better for [all] parties in the further progress of the case to have [this bifurcation question] decided” as part of the present appeal?

This is not some minor technical issue that has minimal impact on the resolution of these cases. It directly implicates the mode of trial; it directly implicates the sequencing of trial of equitable issues before legal issues; and it directly implicates judicial efficiency in determining whether a multi-week case will be tried *twice* with the same evidence and the same witnesses before this Court will determine the propriety of the bifurcation.

The principle enunciated by *Woods* found itself reiterated in 2001 when the Court of Appeals held: “However, an order that is not directly appealable will be considered if there is an appealable issue before the court.” *Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001) (citing *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct.App.1998); see *Briggs v. Richardson*, 273 S.C. 376, 256 S.E.2d 544 (1979)). See also *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 564 S.E.2d 94 (2002); *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991) (“[A]n order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court and a ruling on appeal will avoid unnecessary litigation.”), *overruled on other grounds by Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995); *Morris v. Anderson Cnty.*, 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002) (“Although this Court may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation.”)(citing *Roberts v. Recovery Bureau, Inc.*, 316 S.C. 492, 450 S.E.2d 616 (Ct.App.1994). Further, as the *Morris v. Anderson Cnty, supra*, Court stated, a review by this

Court in conjunction with the present appeal is appropriate since “such a ruling will avoid unnecessary litigation.”

The bifurcation issue does not stand in isolation, remotely removed from the granting of summary judgment to Merrill Light on the February 2012 testamentary documents or the trial court order striking the civil conspiracy cause of action and most of Ms. Luzak’s damages as derivative. The Bifurcation Order separates two causes of action, involving powers of appointment, from the rest of the case. However, a critical element in the power of appointment causes of action involves whether a power of appointment was created, and if so, by what set of estate planning documents and the agreement and/or estoppel between Mr. and Ms. Barringer with respect to what power of appointment Ms. Barringer may have. The Respondents essentially argued to the trial court in their summary judgment motions which led to the instant appeal that only estate planning documents executed in 1998 should be considered. However, these 1998 documents are not valid if the summary judgment order finding the February 28, 2012 Will and Trust to be valid is upheld because the 1998 documents would be revoked by the 2012 documents. Similarly, each set of estate planning documents would have to be examined separately, in order, to determine which are the most recent valid documents, if any, and those documents would control the power of appointment causes of action. The civil conspiracy cause of action provides a means by which Ms. Luzak can question the validity of any of those estate planning documents for purposes of the power of appointment cause of action.

Ms. Luzak also hastens to point out to the Court that since the filing of the Second Appeal, the trial court went further and granted summary judgment to Respondent Merrill Barringer on the bifurcated causes of action that were to be tried first before the legal causes of action, and Ms. Luzak has had to appeal that order as well. That Notice of Appeal was filed on

November 8, 2021 (Appellate Case No. 2021-001337). The Respondents assert that summary judgment renders the Bifurcation Order and its appeals moot since their position is that summary judgment eliminated the need for the first phase of the trial. Since the granting of that summary judgment is now on appeal, the need for this Court to proceed with review of the Bifurcation Order is now particularly critical. If the summary judgment on the two bifurcated equitable causes of action is affirmed and that decision becomes final, the Court may conclude that the Bifurcation Order is indeed moot, but if or when that order granting summary judgment is reversed and remanded for trial, the bifurcation issue will continue to persist; hence the need for this Court to proceed with the present appeal of the Bifurcation Order to ensure that all causes of action are tried before a single jury and the legal and equitable causes of action are properly sequenced.

Respectfully submitted,

BALLARD & WATSON

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com

James R. Gilreath (S.C. Bar #02133)
William M. Hogan (S.C. Bar #65272)
THE GILREATH LAW FIRM, PA
110 Lavinia Avenue (zip 29601)
P.O. Box 2147
Greenville, South Carolina 29602
Telephone: 864.242.4727
Facsimile: 864.232.4395
jim@gilreathlaw.com
bhogan@gilreathlaw.com

S. Alan Medlin (S.C. Bar No. 3924)
1713 Phelps Street
Columbia, South Carolina 29205
Telephone: 803.777.7465
Facsimile: 803.777.7465
amedlin@sc.rr.com

Charles B. Macloskie (S.C. Bar No. 3514)
MACLOSKIE LAW FIRM
P.O. Box 280
Beaufort, South Carolina 29901
Telephone: 843.524.0909
Fax: 843.521.1379
macloskielawfirm@hargray.com

Thomas W. Traxler (S.C. Bar No. 5624)
CARTER, SMITH, MERRIAM ROGERS &
TRAXLER, PA
900 East North Street (29601)
P.O. Box 10828 (29603)
Greenville, South Carolina
Telephone: 864.242.3566
Facsimile: 864.232.1558
tom.traxler@carterlawpa.com

Attorneys for Appellant Hampton B. Luzak

November 29, 2021

RECEIVED

Nov 29 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
BENTLEY PRICE, CIRCUIT COURT JUDGE

Appellate Case No. 2021-000837

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

Hampton B. Luzak,Appellant

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--

Coastal Forest Resources Company ("CFRC").....Intervenor/Respondent.

--and--

Hampton B. Luzak,Appellant,

v.

Merrill U. Barringer,Respondent.

PROOF OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, do hereby certify that on November 29, 2021, I served a copy of the **Return to Motion to Dismiss**, in the above-captioned case on the following individuals by electronic mail using their email address listed in the Attorney

Information System, addressed as follows:

Bijan Khaladj-Ghom, Esquire
Rosen Hagood LLC
bghom@rosenhagood.com

Alice Paylor, Esquire
Rosen Hagood LLC
apaylor@rosenhagood.com

Charles Molster, Esquire
The Law Offices of Charles B. Molster, III, PLLC
cmolster@molsterlaw.com

J. Ashley Twombly, Esquire
Twenge & Twombly, LLC
twombly@twlawfirm.com

Lee Anne Walters, Esquire
Twenge & Twombly, LLC
lwalters@twlawfirm.com

Kevin Johnson, Esquire
Johnson & Johnson Attorneys at Law, LLC
kjohnson@johnsonlawyers.com
kjohnson@twlawfirm.com

Harley Ruff, Esquire
Ruff & Ruff, LLC
hruff@ruffllc.com

Denise Collins, Esquire
Ruff & Ruff, LLC
dcollins@ruffllc.com

Ryan Rich, Esquire
Hunton Andrews Kurth LLP
rrich@hunton.com

Edward J. Fuhr, Esquire
efuhr@huntonAK.com

Jonathon Schronce, Esquire
jschronce@huntonAK.com

Beth Cogan

Beth Cogan, Paralegal

November 29, 2021

Beth Cogan

From: Beth Cogan
Sent: Monday, November 29, 2021 3:48 PM
To: Ashley Twombly; Alice Paylor; Bijan Ghom; Taylor Davis; Lee Walters; Charles Molster; Harley D. Ruff; Denise Collins; Kevin Johnson; kjohnson@johnsonlawyers.com; Rich, Ryan G.; efuhr@huntonak.com; jschronce@huntonak.com; Andrea Smith
Cc: Desa Ballard; Bill Hogan; 'Gilreath, Jim (Gilreath, Jim)'; Alan Medlin, Esquire; 'Macloskie Law Firm'; Tom Traxler; kathie@gilreathlaw.com
Subject: (Luzak v. Light, et al. 2021-000837) Ltr to COA encl Return to MTD
Attachments: 2021 11 29 Ltr to COA encl Return to MTD.pdf; 2021 11 29 Return to MTD.pdf; 2021 11 29 POS Return to MTD.pdf

Good afternoon,

Please see the attached Return to Motion to Dismiss that is being filed today with the Court of Appeals in the above-referenced matter.

Kindest Regards,
-Beth

Beth Cogan, Paralegal
Ballard & Watson, Attorneys at Law
226 State Street
West Columbia, South Carolina 29169
803.796.9299
803.796.1066 Facsimile
beth@desaballard.com
www.desaballard.com



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

November 29, 2021

Via Email (ctappfilings@sccourts.org)
The Honorable Jenny Abbot Kitchings
Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

Nov 29 2021

SC Court of Appeals

Re: *Hampton Luzak v. Merrill B. Light, et al.*
Appellate Case No.: 2021-000837

Dear Ms. Kitchings:

Enclosed for filing please find the Return to Respondents' Motion to Dismiss and Proof of Service for the above-referenced matter.

By copy of this letter and as evidenced by the Proof of Service, these filing has been served upon counsel for the Respondents. Thank you for your time in this matter. If you have any questions, please do not hesitate to contact our office.

With warm personal regards, I am,

Sincerely yours,

Desa Ballard
desab@desaballard.com

Enclosures

cc: *Via Electronic Mail*
Alice Paylor, Esquire
Bijan Ghom, Esquire
Charles Molster, Esquire
J. Ashley Twombly, Esquire
Lee Anne Walters, Esquire
Kevin Johnson, Esquire

The Honorable Jenny Abbot Kitchings
In Re: Luzak v. Light, et al. (2021-000837)
November 29, 2021

Page 2 of 2

Harley D. Ruff, Esquire
Denise Collins, Esquire
Ryan Rich, Esquire
Edward Fuhr, Esquire
Jonathon Schronce, Esquire
Thomas W. Traxler, Esquire
S. Alan Medlin, Esquire
Charles Macloskie, Esquire
James R. Gilreath, Esquire
William Hogan, Esquire
Hampton Luzak