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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Appellate Case No. 2019-000367

Desa Ballard and Desa Ballard P.A.,
d/b/a Ballard & Watson

Appellants,

v.

Admiral Insurance Company and Adele R. Pope,
individually and as Special Administrator of the
Estate of Gloria Corley,

Respondents.

**RESPONDENT ADMIRAL INSURANCE COMPANY'S RETURN TO RESPONDENT
ESTATE OF GLORIA P. CORLEY'S PETITION AND MEMORANDUM FOR ORDER
LIFTING STAY AND FOR RELATED RELIEF**

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondent Admiral Insurance Company ("Admiral") hereby respectfully submits its Return to "Petition and Memorandum of Respondent Estate of Gloria P. Corley for Order Lifting Stay and for Related Relief."

SUMMARY

The Estate of Gloria Corley's Petition seeks to have this Court lift a stay order imposed in another Circuit Court case where there is no appeal currently pending. The Petition must be denied

for several, separate reasons. First, the Court has no jurisdiction over the stay order. An order granting a stay is an interlocutory order that is not immediately appealable. Additionally, even if the stay order was not interlocutory, the Estate's Petition is procedurally improper. It seeks to appeal an order from a separate court case without having: (1) served a notice of appeal on the parties in that case; (2) filed a notice of appeal with the Circuit Court in that case; and (3) instituted a separate appeal for that case. Rather than complying with the Appellate Court Rules, the Petitioner has sought to bootstrap its appeal of an interlocutory order in another case to this pending appeal of a different case with different parties and issues. Therefore, the Petition must be denied.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Declaratory Judgment Action – Civil Action No. 2018-CP-32-01743

Desa Ballard and Desa Ballard P.A., d/b/a Ballard & Watson filed a declaratory judgment action in the Richland County Court of Common Pleas, styled as: Desa Ballard and Desa Ballard P.A., d/b/a Ballard & Watson v. Admiral Insurance Company, Monitor Liability Managers, Mendes & Mount LLP, Adele R. Pope, individually and as Special Administrator of the Estate of Gloria Corley, Civil Action No. 2018-CP-32-01743 (hereinafter the “Declaratory Judgment Action”).¹ (R. pp. 93-112). In that action, the plaintiffs sought a declaration “that the insurer defendants’ policy obligates them to provide a defense to the claim until and unless the Plaintiffs consent to permit them to pursue settlement” and injunction relief to prevent the insurer defendant “from taking action in violation of the contractual obligation to defend.” (R. p. 94).

¹ Thereafter, the action was transferred to Lexington County and renumbered with the case number shown above. (R. pp. 3-6). By agreement of the parties, Defendants Monitor Liability Managers and Mendes & Mount LLP were dismissed with prejudice. (R. pp. 206-07, Stipulation of Dismissal with Prejudice).

On May 21, 2018, Defendants Adele R. Pope (“Pope”) and the Estate of Gloria Corley (the “Estate”) filed a Motion to Dismiss on the basis that no relief was sought against these Defendants. (R. pp. 182-194). On November 14, 2018, the Circuit Court held a hearing on this Motion. (R. p. 23). By Order dated February 15, 2019, the Circuit Court granted these Defendants’ Motion, finding that this action “is a dispute between an insured and the insured’s insurance carrier” and dismissing Ms. Pope and the Estate from the action. (R. pp. 23-28).

On May 31, 2018, Defendant Admiral Insurance Company filed a Motion for Judgment on the Pleadings. (R. pp. 208-11). By Order dated February 15, 2019, Judge Walton J. McLeod granted Admiral’s Motion for Judgment on the Pleadings. (R. pp. 7-22). Plaintiffs then filed a Notice of Appeal appealing only the Circuit Court’s Order granting Admiral’s Motion for Judgment on the Pleadings and attaching only that Order to the Notice of Appeal. (Notice of Appeal). That appeal is currently pending before this Court.

The Plaintiffs did not appeal the Circuit Court’s granting of Pope’s and the Estate’s Motion to Dismiss. *See* (Notice of Appeal). However, despite no longer being parties to the Declaratory Judgment Action, Pope and the Estate filed initial respondents’ briefs on August 5, 2019. On October 10, 2019, Appellants filed a motion to remove Pope and the Estate as respondents since they were no longer parties to the Declaratory Judgment Action. On February 5, 2020, the Court filed a one-page Order denying Appellants’ Motion without explanation.

B. The Legal Malpractice Action – Civil Action No. 2017-CP-32-00618

On February 23, 2017, the Estate of Gloria P. Corley, by its Special Administrator filed a legal malpractice action in the Lexington County Court of Common Pleas, styled as: Estate of Gloria P. Corley, by its Special Administrator v. Desa Ballard and Desa Ballard, P.A., Civil Action No. 2017-CP-32-00618 (hereinafter the “Legal Malpractice Action”). (R. pp. 30-38). Admiral is

not a party to this case. (R. p. 30). Adele Pope, individually, is not a party to this case. (*Id.*). Additionally, Andra R. Williams was added as a third-party defendant in the Legal Malpractice Action. *See* (Estate's Pet. Ex. A). She is not a party in the Declaratory Judgment Action nor a party to this appeal of the Declaratory Judgment Action.

The complaint in the Legal Malpractice Action alleges a professional negligence cause of action against the defendants. (R. p. 36). On August 26, 2021, the defendants in the Legal Malpractice Action filed a third motion to stay that action. (Estate's Pet. Ex. B). By Order dated October 6, 2021, the Circuit Court in the Legal Malpractice Action stayed that action. (Estate's Pet. Ex. A). On October 15, 2021, the plaintiff in the Legal Malpractice Action filed a Motion to Alter the October 6, 2021 Order in that case. (Estate's Pet. Ex. C). By Order dated November 8, 2021, Judge Debra R. McCaslin in the Legal Malpractice Action denied that Motion. (Estate's Pet. Ex. D).

At this time, the Estate has not filed a notice of appeal or properly served such notice of appeal on the other parties in the Legal Malpractice Action. *See* Rule 203, SCACR ("A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."). Rather, the Estate has filed a Petition seeking to appeal the October 6, 2021 Order entered in the Legal Malpractice Action in this appeal of the separate Declaratory Judgment Action. (Estate's Pet., p. 1 (petitioning the Court to lift "the stay imposed by Order of the Honorable Debra McCaslin dated October 6, 2021")). Not only does this appeal involve a separate order decided by a different Circuit Court judge in a different case, it also involves separate parties. Some parties to this Declaratory Judgment Action are not parties in the Legal Malpractice Action, and one party in the Legal Malpractice Action is not a party in this Declaratory Judgment Action.

ARGUMENT

The Estate's Petition should be denied for three separate reasons: (1) the granting of a stay order is an interlocutory order that is not immediately appealable; (2) the Estate failed to comply with the South Carolina Appellate Court Rules for appealing such stay order; and (3) the Estate improperly seeks to appeal an order from another case in this Declaratory Judgment Action appeal. Consequently, this Court lacks appellate jurisdiction over the Legal Malpractice Action stay order the Estate seeks to have reversed.

The jurisdiction of this Court to hear interlocutory appeals is limited by statute to certain circumstances. S.C. Code § 14-3-330; *see also Cobb v. Maccaro*, 310 S.C. 303, 304-05, 423 S.E.2d 156, 157 (Ct. App. 1992) ("The ability of this Court to hear appeals is limited by statute. *See* S.C.Code Ann. § 14-3-330 (1976 & Supp.1991). Only...certain interlocutory orders are appealable."). As the South Carolina Supreme Court in *Edwards v. Suncom* explained, an order granting a stay is interlocutory and does not come within any of those statutory categories of immediately appealable interlocutory orders. 369 S.C. 91, 95, 631 S.E.2d 529, 531 (2006). Therefore, "an order granting a stay is not immediately appealable." *Id.* Consequently, the Estate's Petition seeking the lifting of a stay order in another case must be denied.

Moreover, even if an order granting a stay was immediately appealable, the Estate has not properly brought such order before this Court for consideration. Therefore, the Court has no jurisdiction to hear this appeal. As the South Carolina Supreme Court in *Elam v. S.C. Dep't of Transp.* explained:

The notice of appeal in a case appealed from the Court of Common Pleas must be served on all respondents within thirty days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCACR. The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to

“rescue” the delinquent party by extending or ignoring the deadline for service of the notice. *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985).

361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004); *see also Sadisco of Greenville, Inc. v. Greenville Cty. Bd. of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000) (“This Court has consistently stated that service of the Notice of Appeal is a jurisdictional requirement....”). Under Rule 203(a) of the South Carolina Appellate Court Rules, “[a] party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules.” Rule 203(a), SCACR. The notice of appeal must be served on all respondents within thirty (30) days after receipt of written notice of the entry of the order. Rule 203(b), SCACR. The notice of appeal “shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals” within ten (10) days after the notice of appeal is served. Rule 203(d)(1), SCACR. The Estate has not complied with these Rules. Consequently, jurisdiction over the stay order has not been transferred from the Circuit Court to this Court. *See State v. Devore*, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) (“The failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction.”) (citation omitted)

Furthermore, the South Carolina Appellate Court Rules do not allow a party to appeal an interlocutory order from one case in the appeal of another case. *See generally* SCACR. This is exactly what the Estate is attempting to do with its Petition. The entire argument section of the Estate’s Petition focuses on why the Circuit Court in the Legal Malpractice Action allegedly incorrectly granted the Motion for Stay in that case. (Estate’s Pet. pp. 7-8).² Admiral is not even a

² Even if this Court had jurisdiction to address the Estate’s arguments, they are without merit. The Petition repeatedly states that the stay in the Legal Malpractice Action “threatens to deprive this Court of jurisdiction and render the matters which are the subject of this appeal moot” without ever explaining how so. (Estate’s Pet. pp. 2, 7-8). Rather than depriving this Court of jurisdiction or making issues in this case moot, the stay in the Legal Malpractice Action preserves the status quo.

party to that case but is now expending time and resources dealing with a stay order in another case because Petitioner's counsel attempted to circumvent the Appellate Court Rules.³

CONCLUSION

For the foregoing reasons, the Estate's Petition must be denied. The Petition seeks reversal of an order granting a stay in another case. An order granting stay is an interlocutory order that is not immediately appealable. Therefore, the Court lacks jurisdiction over the order granting the stay. Additionally, the Estate has failed to comply with the South Carolina Appellate Court Rules for appealing an order, including, but not limited to, filing and serving a notice of appeal. Even if the Court could have jurisdiction over the interlocutory stay order, such failures would divest this Court of appellate jurisdiction over the stay order. Furthermore, the Estate has improperly sought to appeal an order from a separate case in this Declaratory Judgment Action appeal. For each of these reasons, Admiral respectfully requests that the Court deny the Estate's Petition.

MURPHY & GRANTLAND, P.A.



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**Attorneys for Respondent Admiral Insurance
Company**

Columbia, South Carolina
December 6, 2021

³ To the extent that the Petition seeks to have the Appellants make certain redactions so that the record on appeal may be published, Admiral does not object to this being done.

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In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Appellate Case No. 2019-000367

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Appellants,

v.

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the Estate of Gloria Corley

Respondents.

PROOF OF SERVICE

I certify that I have served upon Respondent Estate of Gloria P. Corley and Appellants via Counsel of Record Respondent Admiral Insurance Company's Return to Respondent Estate of Gloria P. Corley's Petition and Memorandum for Order Lifting Stay and for Related Relief by emailing a copy of same to their counsel, addressed as follows, on December 6, 2021.



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December 6, 2021

Via Email Only

Honorable Jenny Abbott Kitchings
SC Court of Appeals Clerk of Court
Calhoun Building
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

Re: Desa Ballard and Desa Ballard, P.A. d/b/a Ballard & Watson, Appellants v. Admiral Insurance Company, Respondent
Civil Action No.: 3:17-cv-02916-DCC-SVH
C/A No.: 2017-CP-40-05628
Appellate Case No.: 2019-000367
Insured: Desa Ballard
Claim No.: 36218
Our File No.: 1575-0022

Dear Ms. Kitchings:

Enclosed herewith for filing please find Respondent Admiral Insurance Company's Return to Respondent Estate of Gloria P. Corley's Petition and Memorandum for Order Lifting Stay and for Related Relief and Proof of Service in the above-referenced matter.

By copy of this letter to opposing counsel, I am serving the same upon them this date.

With kind regards, I am

Sincerely yours,

Wesley B. Sawyer

WBS/dlb

CC: Ronald L. Richter, Jr., Esquire
Scott M. Mongillo, Esquire
Eric S. Bland, Esquire
Adam Tremaine Silvernail, Esquire
Adele J. Pope, Esquire