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Dec 06 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable L. Casey Manning

Circuit Court Case No. 2015-CP-40-07268
Appellate Case No. 2021-00898

Jimmy Helms.....Respondent,

v.

Debbie Willing,Appellant.

RETURN TO RESPONDENT’S MOTION TO REMAND

In his procedurally unusual Motion to Remand, Respondent cites no legal precedent or rule of court which would permit remand of a final order, now on appeal, so that the circuit court can “clarify” that order. Essentially, Respondent—who neither moved the trial court to alter or amend its order pursuant to Rule 59, SCRCPP, nor appealed the order himself—now admits that the order is flawed. Respectfully, if Respondent wanted clarification as to the terms of the order, then he was required to formally request that clarification, by motion, back in June.¹ Once a final order is

¹ Appellant timely filed with the circuit court a Motion to Reconsider Pursuant to Rule 59. **The circuit court asked counsel for Respondent to draft the order denying the motion to reconsider, as well as the final order which is now on appeal, both of which Respondent now seems to think require clarification.** (Exhibit 1, email from court asking Respondent’s attorney to prepare a proposed order, which Respondent apparently now believes is unclear).

appealed, a Respondent may not simply ask to “remand” the order to try to edit out legal and factual errors.

The circuit court’s order on appeal does indeed contain numerous errors and deficiencies, which is precisely why Appellant has appealed it and seeks to have it reversed. Nonetheless, the lower court’s order is unquestionably a final order, which makes numerous final determinations as to title to property and the relationship of the parties. Because the order on appeal makes final determinations on the substantive merits of the plaintiff’s case against the defendant, the order is immediately appealable. S.C. Code § 14-3-330(1) (appellate court has “jurisdiction to review upon appeal . . . any intermediate order . . . involving the merits . . .”); *see also Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780, (1993) (an order which “involves the merits,” [is] an order which “must finally determine some substantial matter forming the whole or a part of some cause of action or defense. . . .”). This appeal is therefore properly before this Court.

Respondent refers in his Motion to Remand to an email from Appellant’s counsel, in which Appellant contended that the order on appeal is not a judgment that can be enrolled or entered by the clerk. This is so, because the order on appeal makes final determinations on the *merits*, but it is not subject to immediate *execution*. As Respondent acknowledges in his Motion to Remand, the clerk of court “refused to enroll the judgment . . . on the basis the court order did not appear to be a ‘final judgment’.” (Motion, p. 2). Respondent further admits:

[Counsel for Respondent] sought clarification from the Chief Judge for Administrative Purposes for Lexington County as to whether or not the

judgment should be enrolled. The Chief Judge for Administrative Purposes in Lexington County conferred with the trial judge [in Richland County]. The two judges concluded they had no jurisdiction to do anything since the final order was on appeal.²

In this instance, the two judges are right. The lower court's orders are on appeal, and this Court has exclusive jurisdiction over this case.

Respondent is wrong to ask this Court to remand so that the lower court can have an opportunity to "clarify" its order. If this were the procedural mechanism for correcting errors by the lower court, every appeal would be resolved without any briefing. Respondent could simply file an "end-run" motion to remand and have the lower court edit its order to avoid the appealed issues. Instead, the proper vehicle for the correction of error by the lower court is a procedurally-correct appeal, such as this one, in which the parties follow the South Carolina Appellate Court Rules on briefing and argument.

With regard to the Motion's portrayal of the trial, the discovery before trial, and the evidence submitted at trial, Appellant disagrees with nearly all of Respondent's characterizations. Regardless, those characterizations are not relevant to this Motion to remand, and they are unsupported by any evidence. Appellant respectfully suggests that the Court disregard and not be influenced Respondent's unsupported background characterizations, which are more appropriately addressed in the appeal briefs.

For these reasons, this Court should deny the Respondent's motion and decide this appeal after briefing on the merits.

² The undersigned counsel was not copied on this correspondence and has no idea how Respondent knows that the trial "judge concluded [he] had no jurisdiction to do anything since the final order was on appeal."

Respectfully submitted,

FORD WALLACE THOMSON LLC

s/Ainsley F. Tillman

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December 6, 2021

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PROOF OF SERVICE

I certify that I served the within Return to Motion to Remand on the Respondent by sending the same to his attorney, at his email address of record with the AIS:

jake@mbmlawsc.com

s/Ainsley Tillman

Fwd: Helms v. Willing Motion to Reconsider

Lakesha Jeffries <ljeffries@jeffrieslawsc.com>

Thu 7/8/2021 2:35 PM

To: 'jake@mttlaw.com' <jake@mttlaw.com>; Manning, L. Casey Law Clerk (Harvey Shiver) <CManningLC@sccourts.org>

Harvey :

I am in receipt of the instructions to Mr. Moore below and was omitted from the email. Please accept this email as a request that I review the proposed Order before the Court approves and sign the same.

Lakesha

From: Jake Moore <jake@mttlaw.com>**Sent:** Thursday, July 8, 2021 8:42 AM**To:** Lakesha Jeffries**Subject:** FW: Helms v. Willing Motion to Reconsider

From: Manning, L. Casey Law Clerk (Harvey Shiver) [mailto:CManningLC@sccourts.org]**Sent:** Tuesday, July 6, 2021 2:41 PM**To:** Jake Moore <jake@mttlaw.com>**Cc:** Diane Corley <diane@mttlaw.com>**Subject:** RE: Helms v. Willing Motion to Reconsider

Mr. Moore,

Judge Manning requests that you prepare a proposed order denying the motion to reconsider in the Helms v. Willing case. Please email the order when finished. Thank you.

Harvey Edward Shiver II (he/him)

Law Clerk for The Honorable L. Casey Manning

Chief Administrative Judge, Common Pleas

Fifth Judicial Circuit

Richland County Judicial Center

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