

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Feb 11 2022

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

S.C. Court of Appeals Case No. 2020-000968
Case No. 2007-CP-10-01444

C. Holmes, M.D,

Respondent-Appellant,

v.

Manton Grier, James Y. Becker, and
Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Appellant-Respondents.

**RESPONDENT-APPELLANT'S INITIAL BRIEF
IN RESPONSE TO APPELLANT-RESPONDENT'S INITIAL BRIEF OF APRIL 28, 2021
AND IN RESPONSE TO THE COURT'S ORDER OF FEBRUARY 4, 2021**

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STATEMENT OF ISSUES ON APPEAL

1. When an appellant has timely filed a notice of appeal from a final judgment, are all interlocutory orders in the proceeding below also within the jurisdiction of the Appellate Court?

2. Should this appeal proceed on the briefs and designations of matter filed to date?

STATEMENT OF THE CASE

The Appellant Respondent (Hereinafter HSB) the Respondent-Appellant (Hereinafter Dr. Holmes) have been involved in a lengthy litigation process. The final process in the Circuit Court was initiated by HSB in an effort to collect on a judgment against Dr. Holmes. During that process, the Judge, Judge Scarboro, signed several orders before the final order concluding the matter. Those orders were dated January 3, 2017, January 18, 2017, February 9, 2017, March 14, 2017, June 23, 2017, September 29, 2017 and April 9, 2019. Dr. Holmes made attempts to appeal those orders during the pendency of the lower court action. Her attempts at appeal prior to the ultimate conclusion of that matter were rejected by the Court of Appeals as premature, as the matter had not concluded. The matter was finally concluded in June of 2020. HSB received an Order from Charleston County on June 10, 2020, denying its request for relief against Dr. Holmes. HSB filed a motion for reconsideration, which was denied by an Order on June 26, 2020.

HSB then filed a notice of appeal, appealing the June 10, 2020 order denying its request for relief, and appealing the June 26, 2020 Order denying HSB's motion for reconsideration. On August 4, 2020, Dr. Holmes filed a notice of cross appeal. (Notice of Cross Appeal 8-4-20) In that notice, she indicated that she was appealing all of the prior orders in the case which had been deemed untimely appealed while the matter was open (the orders of January 3, 2017, January 18, 2017, February 9, 2017, March 14, 2017, June 23, 2017, September 29, 2017 and April 9, 2019). The Notice of cross appeal also included "and/or June 26, 2020, as well as intermediate orders" and asserted that written notice of entry of the June 26th Order was received on July 6, 2020. (Id.) The purpose of including mention of the June 26, 2020 order was not that Dr. Holmes was appealing that order. She would be, in fact, defending that Order in this appeal, as it was in her favor and against HSB. Rather it was to identify that her appeal of the intermediate orders listed in the notice of appeal was timely because the matter had been fully and finally adjudicated on June 26, 2020, an order of which she had received notice on

July 6, 2020.

After Dr. Holmes filed her initial brief on the cross appeal, HSB moved to dismiss on grounds of jurisdiction. Dr. Holmes filed a response. On February 4, 2021, the Appellate Court issued an Order in which the Judge stated that the cross appeal was untimely as to the Orders from 2017 and 2019, but that the Cross appeal was timely as to the Order of June 10, 2020 and June 26, 2020. (Order Appellate Case 2020-00968, 2-4-21) Thereafter, on April 28, 2021, HSB filed it's initial brief, responding to Holmes' Initial Brief on cross appeal. (Initial Brief of HSB 4-28-21) On February 2, 2022, the Clerk of Court for the Court of Appeals, issued a letter. In the letter, the Clerk stated that "time has passed for filing a respondent's initial brief and designation of matter, responsive to the amended appellant's initial brief and designation of matter filed by Appellant/Respondent Haynsworth Sinkler Boyd on April 28, 2021" and giving Holmes 10 days to submit a brief in response to the April 28, 2021 Initial Response brief filed by HSB. (Clerk's letter 2-2-22) Holmes, of course, had already filed her initial brief on cross appeal and the related designation of matter on November 16, 2020. (Initial Brief, Designation of Matter 11-16-2020) It is HSB which is the responding party in the cross appeal, which was initiated by Dr. Holmes.

The Clerk's letter of February 2, 2022 also stated that "time has passed for filing an amended appellant's initial brief and designation of matter in accordance with this Court's February 2, 2021 order, partially dismissing the cross-appeal." (Clerk's letter 2-22-22) Dr. Holmes, however, had already filed her initial brief regarding her cross appeal on November 16, 2020. The Order of February 4, 2021 does not direct any party to file any further briefing. (Order Appellate Case 2020-00968, 2-4-21)

ARGUMENT

The Court's Order of February 2, 2021 notes that Dr. Holmes's attempts to appeal the 2017 and 2019 Orders while the lower court supplemental proceedings were still pending in the lower Court were deemed to have been untimely filed. This was because they were filed before the matter was fully

and finally adjudicated. They were interlocutory orders. "An interlocutory order not governed by a specialized appealability statute is not immediately appealable unless it fits into one of the categories listed in section 14 - 3 - 330 of the South Carolina Code (1976 & Supp.2009). *Ex Parte Capital U - Drive - It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006)." *Thornton v. South Carolina Electric & Gas Corp.* (see & G), 391 S.C. 297, 705 S.E.2d 475 (S.C. App. 2011). That is because such an order can be modified by the trial judge at any time in the proceeding prior to the final order fully adjudicating the case. "If a judgment leaves some further act to be done by the court before the rights of the parties are determined, the judgment is not final." *S.C. Dep't of Transp. v. Faulkenberry*, 337 S.C. 140, 146, 522 S.E.2d 822, 825 (Ct. App. 1999). "An order is not final until it is entered by the clerk of court; and until the order or judgment is entered by the clerk of the court, the judge retains control of the case." *Upchurch v. Upchurch*, 367 S.C. 16, 22, 624 S.E.2d 643, 646 (2006). The Court, in its February 4, 2021 Order did not determine that any of the 2017 and 2019 Orders were within the exceptions set forth in S.C. Code 14-3-330. Her attempts to appeal while the case was pending were untimely.

Generally, only final judgments are appealable. *Culbertson v. Clemens*, 322 S.C. 20, 471 S.E.2d 163 (1996). When there is a final judgment, and a party timely files its notice of intent to appeal from that judgment, the appellate court may review any intermediate order necessarily affecting the judgment not earlier appealed. *SC Dept. of Transp. v. Faulkenberry*, 337 S.C. 140, 522 S.E.2d 822 (S.C. App. 1999) citing *Lancaster v. Fielder*, 305 S.C. 418, 409 S.E.2d 375 (1991).

The final order in the case below was filed on June 26, 2020, and delivered to Dr. Holmes on July 6, 2020. (Notice of Cross Appeal 8-4-20) Dr. Holmes then, based on the conclusion of the case, filed her appeal of all of the intermediary orders for which her attempts to file appeals during the pendency of the appeal had been rejected. In the February 4, 2021 Order, the Court determined that Dr. Holmes had timely appealed based on the June 26, 2020 order. According to South Carolina law, her

appeal included the intermediate orders listed in her Notice of Cross Appeal. Dr. Holmes filed her Initial brief on cross appeal as to these Orders on November 16, 2020 along with the designation of matters to be included in the record on appeal regarding the cross appeal. There are a lot of filings in this case record. Once we set aside all the documents which are not actually initial appellate briefing or designations of matter, the following briefs and designations are in the record and before the Court:

As to HSB's Appeal:

8-31-2020 HSB's initial appeal brief and designations of matter
9-29-20 Dr. Holmes initial response brief and designations of matter
10-9-20 HSB's reply brief

As to Dr. Holmes' Cross Appeal

11-16-2020 Dr. Holmes Initial Brief and designations of matter
4-28-21 HSB's Initial Brief
2-11-22 Dr. Holmes brief that you are currently reading and designations

HSB has never filed an "amended brief" as alleged in the Clerk's letter of February 2, 2022. The Court's Order of February 4, 2021 did not include direction for Dr. Holmes to file further briefing, as it determines that her notice of cross appeal was timely filed. At this time, all of the briefs have been submitted as to the appeal and the cross appeal. It appears that there may be some confusion as to the Court's Order of February 4, 2021 on HSB's part. However, if one is to interpret the Order pursuant to the established law of South Carolina, then, when Dr. Holmes timely appealed after the Order of June 26, 2020, she also timely and properly appealed all of the orders from 2017 and 2019, which had previously been found to be interlocutory and therefore untimely. Since her appeal was timely, her brief on cross appeal need not be amended in any way and is hereby incorporated by reference, as is the designation of matter, both filed on November 16, 2020.

CONCLUSION

With the filing of this brief and concurrent designations, the matter is prepared to proceed to the

next step of the appeal process, which is for the appellant (HSB) to prepare and serve the record on appeal. HSB did attempt to file a record on appeal in November of 2020, but it was rejected by the Court as premature:

11/09/2020	Record - Proof of Service of Record on Appeal (served prematurely)	
11/09/2020	Record - Record on Appeal Filed by Appellant/Respondent (filed prematurely)	record on appeal (vol. 1)
11/09/2020	Correspondence - Incoming (Other) email	record on appeal (vol. 2)
11/16/2020	Record - Record on Appeal (filed prematurely)	

The Respondent/Appellant, Dr. Holmes, hereby respectfully requests that the case proceed by the filing of the Record on Appeal by the Appellant/Respondent, HSB, to include the designations from 8-31-2020, 9-29-2020, 11-16-2020 and 2-11-2022.

Dated February 11, 2022


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