THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Civil Action No. 2020-CP-43-00734
Appellate Case No. 2021-001150

Ronald L. Jones……. ……..... ……Appellant,

v.

Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones and Shelley Allsbrooks……. …….. …….Respondents.

RETURN TO MOTION TO DISMISS

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TABLE OF AUTHORITIES

CASES

STATUTES

MISCELLANEOUS

The relief sought in Movants/Respondents' Motion to Dismiss[1], relevant to the Appellant/Plaintiff's Appeal of the Lower Court's Orders, dated September 22, 2021 (Appendix pg. 01), and Order dated October 8, 2021, (Appendix pg. 04), (hereinafter together as, "The Immediately Appealable Orders") is not supported by South Carolina Law and Case Law.

Section 14-3-330, Supports the Immediately Appealable Orders.

The Immediately Appealable Orders are not interlocutory. Section 14-3-330 of the South Carolina Code of Laws, specifically supports the Immediately Appealable Orders, Section 14-3-330, "….shall review upon appeal…" and specifically, Section 14-3-330(2)(c) which reads as follows, "…**strikes out** … any part thereof **or any pleading in any action**." (Emphasis supplied), (Appendix pg. 42). The Lower Court improperly struck "three important factual allegations" from the Appellant/Plaintiff's **pleading** (Complaint (Second Amended)), (Appendix pg. 06). Movants/Respondents expressly concede that Section 14-3-330, S.C. Code Ann., (1976, as amended), primarily governs the right of a party to immediately Appeal, an order issued before or during trial (Movants/Respondents' Motion to Dismiss p. 4, Appendix pg. 18).

Despite that concession, Movants/Respondents provide a copious and an irrelevant discussion on other types of appeals. (Motion to Dismiss p. 6-11, Appendix pgs. 20-25).

[1] Factually, the Movants/Respondents initially asked this Court to, "…dismiss the Notice of Appeal….", filed by the Appellant. The Appellant's Notice of Appeal was timely filed and compliant with South Carolina Law.

Movants/Respondents, apparently recognizing that Section 14-3-330(2)(c), S.C. Code Ann., (1976, as amended), clearly provides Appellant/Plaintiff with a right of Appeal, attempt to parse the Statute to render the Immediately Appealable Orders, interlocutory. Movants/Respondents devote a substantial part of their Motion to Dismiss in an attempt to avoid the plain English meaning of Section 14-3-330(2)(c), S.C. Code Ann., (1976, as amended), as to "pleading", "any part thereof", and "strike" (Motion to Dismiss p. 9-10, Appendix pgs. 23-24).

Movants/Respondents extensive attempt to avoid the plain English meaning of the Statute runs afoul of clear South Carolina precedent. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Id. "Whe[n] the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed[,] and the court has no right to impose another meaning." Crocker v. SC Dept. of Health, 428 S.C. 1, 831 SE 2d 924 (S.C. Ct. of App. 2019).

Movants/Respondents' Motion to Strike.

Appellant/Plaintiff's counsel took the Deposition of Respondent, Shelley Allsbrooks on March 16, 2021, wherein she made "three important factual admissions[2]" Thereafter, Appellant/Plaintiff filed Appellant/Plaintiff's Complaint (Second Amended) containing the "three important factual admissions" from Respondent, Shelly Allsbrooks, on **April 22, 2021**, (Appendix pg. 6). Fourteen days later on **May 6, 2021**, Movants/Respondents' counsel, after reviewing the allegations of Appellant/Plaintiff's Complaint (Second Amended), and apparently realizing that the "three important factual admissions", fully supported Appellant/Plaintiff's Causes of Action for Promissory Estoppel and Civil Conspiracy, filed their Motion to Strike the "three important factual admissions" made by Respondent, Shelley Allsbrooks, (Appendix pg. 13). The "three important factual admissions" do not fall within the standards of Rule 12(f), SCRCP. The "three important factual allegations" are not redundant, immaterial, impertinent or scandalous.

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2 At Deposition, Respondent, Allsbrooks, made "three important factual admissions", which admissions directly supported the allegations of Appellant's case. Those three important factual admissions were:

- Appellant had lived on the Property for a little over ten years (Deposition Transcript pg. 14 L. 16 – pg. 15 L. 10, Appendix pgs. 38-39);
- Respondent Shelley Allsbrooks conspired, *inter alia*, with her father against the economic interests of Appellant, (Deposition Transcript pg. 15 L. 17 – pg. 17 L. 15, Appendix pgs. 39-41); and
- Respondent Shelley Allsbrooks was the decision maker in the conspiracy with her father. (Deposition Transcript pg. 12 LL. 1-11, Appendix pg. 37).

Quite frankly, it is apparent that the Movants/Respondents filed an improper Motion to Strike the "three important factual admissions", because the "three important factual admissions" supported Appellant/Plaintiff's Complaint and not because the "three important factual admissions" fell within the standards of Rule 12(f), SCRCP.

The Immediately Appealable Orders clearly show a standard different than the Rule 12(f), SCRCP standards were improperly argued by Movants/Respondents, before the Lower Court.

- Movants/Respondents' Motion to Strike as filed with the Lower Court misstated the standards of Rule 12 (f), SCRCP, by stating in Movants/Respondents' Motion that matter may be struck as immaterial, **irrelevant and evidentiary**, pursuant to Rule 12(f), SCRCP, (Appendix pg. 13). Neither "irrelevant" nor "evidentiary" are Rule 12(f), SCRCP standards and these two standards were improperly included in Movants/Respondents' Motion to Strike, as presented to the Lower Court, (Appendix pg. 44).

- At the Hearing before the Lower Court, Movants/Respondents' counsel highlighted and argued to the Court, that "evidentiary" allegations should be struck pursuant to Rule 12(f), SCRCP, even though **evidentiary**, is not, as stated, a standard in Rule 12(f), SCRCP, (Hearing Tr. p. 4 LL. 16-22, p. 5 LL. 7-9, p. 6 LL. 11-13, p. 7 LL. 4-6, Appendix pgs. 31-34)

- Specifically, to support Movants/Respondents' misplaced argument concerning evidentiary matters, Movants/Respondents' counsel argued to the Lower Court at the Hearing, that Stroud v. Riddle, 194 SE 2d 236 (1973), was controlling, (Hearing Tr. p. 4 LL. 16-22, Appendix pg. 31); (Hearing Tr. p. 7 L. 4, Appendix pg. 34). The Movants/Respondents' counsel's reliance on Stroud was inapposite, because Stroud was a South Carolina case from 1973, when "code pleading" was in effect in South Carolina, (South Carolina has required "fact" pleading, consistent with Rule 8(a), SCRCP, since July 1, 1985.)

- The Lower Court's Order of September 22, 2021, (Appendix pg. 01), granting the relief sought in Movants/Respondents' Motion to Strike was based on findings unrelated to Rule 12(f), SCRCP, and therefore, was improper. A review of the Lower Court's Order reveals that Movants/Respondents' counsel's argument had confused the issues before the Lower Court, because the Lower Court in paragraphs "2", "3" and "4", set forth the Lower Court's Findings, with mention of "**evidentiary**" in paragraphs, "2", "3" and "4", indicating the Lower Court had adopted Movants/Respondents' counsel's improper argument that evidentiary matters should be struck, pursuant to Rule 12(f), SCRCP, (Appendix pg. 01).

Movants/Respondents Incorrectly State that Appellant/Plaintiffs Suffer no Harm from the Lower Court's Improper Action in Striking Three of Appellant/Plaintiff's Important Factual Allegations.

Movants/Respondents' Motion contains the following remarkable *ipse dixit* statements, which are false:

- "Appellant's three causes of action fully remain, and Appellant can still attempt to prove the stricken facts at trial." (Emphasis supplied), (Movants/Respondents' Motion to Dismiss, p. 6, Appendix pg. 20).

- "The circuit court's order in no way prohibits the very same allegations to be proven by evidence at a later stage" (Emphasis supplied), (Movants/Respondents' Motion to Dismiss, p. 7, Appendix pg. 21).

- "The case has not yet gone to trial, and Appellant can still introduce the stricken facts at the appropriate time and can still potentially succeed at trial on the merits of his causes of action." (Emphasis supplied), (Movants/Respondents' Motion to Dismiss, p. 7, Appendix pg. 21).

- "Appellant can still proceed on all three of his causes of action and can still present the very same allegations through evidence submitted to the jury during the evidentiary stage of trial." (Emphasis supplied), (Movants/Respondents' Motion to Dismiss, p. 8, Appendix pg. 22).

- "First, Appellant can still prove the very same stricken facts at trial to support his causes of action." (Emphasis supplied), (Movants/Respondents' Motion to Dismiss p. 12, Appendix pg. 26).

Movants/Respondents thereby attempt to minimize the significant harm to the Appellant/Plaintiff, from the Lower Court's striking the "three important factual admissions", from Appellant/Plaintiff's Complaint (Second Amended), by opining that even though the "three important factual admissions", will be missing from Appellant/Plaintiff's Complaint (Second Amended) at trial, having been struck by the Immediately Appealable Orders. Movants/Respondents improperly argue that Appellant/Plaintiff can simply move forward with the "three important factual admissions", despite the Immediately Appealable Orders. It is important to note that, the Immediately Appealable Orders did not contain any language allowing Appellant/Plaintiff to move forward with the "three important factual admissions", at trial, (Appendix pg. 01 and Appendix pg. 04)

Movants/Respondents Provided a Citation to a Case, in a Misleading Context.

Movants/Respondents provide this Court with a citation to Cobb v. Marccaro, 423 SE 2d 156 (Ct. of App. 1992), as support for Movants/Respondents' Motion to Dismiss. However, Movants/Respondents failed to disclose to this Court that the party in Cobb, could still move forward at trial, because the Court's Order contained the following, "In the present case, the trial judge's order preserves the Maccaros' right to renew their claim for statutory dissolution of the lien during later proceedings. The Maccaros, therefore, will not be denied a later judgment from which they can appeal the same issue.", (emphasis supplied) Cobb at 305.

Movants/Respondents Provided a Citation to a
Case that Fully Supports Appellant/Plaintiff's Position.

Movants/Respondents provided a citation to a case in their Motion to Dismiss, which fully supports Appellant/Plaintiff's position, (Movants/Respondents' Motion to Dismiss p. 5, Appendix pg. 19, and p. 10, Appendix pg. 24). Namely, Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 303, 705 S.E.2d 475, 478 (Ct. App. 2011). "After noting that such an order was not immediately appealable, the court heard the appeal anyway because 'appeal has also been taken from the order upon the [defendant's] demurrer, which in effect strikes out a portion of the complaint,' making it appealable under the predecessor to section 14-3-330(2)(c)…In holding the order was not appealable, the court quoted Harbert to draw a distinction between the order before the court and an order granting a motion to strike a pleading, which the court noted is appealable: **If the circuit court errs in striking out any material allegations of a good cause of action or good defense, it is impossible to remedy it in the course of the trial, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading**, and on appeal from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings…Under the reasoning of Miles and Bowden, an appellate court should look to the effect of an interlocutory order to determine its appealability under section 14-3-330(2)(c). **An order affects a substantial right by striking a pleading if the order**

removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial.", (Emphasis supplied) Thornton at 304.

Movants/Respondents' False Statement.

Movants/Respondents' Motion to Dismiss contains the following nonsensical statement, "Appellant appears to argue prejudice flows from his inability to prove these facts…" (Movants/Respondents' Motion to Dismiss, p. 11, Appendix pg. 25). The "three important factual admissions" were made by Respondent, Shelley Allsbrooks in a Deposition, whereby Respondent, Shelley Allsbrooks was under oath and no further proof is required.

CONCLUSION

Based on the foregoing (**i**) applicable case law (**ii**) case law citations from Movants/Respondents (**iii**) applicable statutes and (**iv**) the facts of this case, the Immediately Appealable Orders are not interlocutory. Therefore, the relief sought in Movants/Respondents' Motion to Dismiss, should be denied.

[**Signature Page Follows**]

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February 14, 2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Civil Action No. 2020-CP-43-00734
Appellate Case No. 2021-001150

Ronald L. Jones..... ....Appellant,

v.

Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones and Shelley Allsbrooks..... ....Respondents.

APPENDIX

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INDEX TO APPENDIX

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Respectfully submitted this 14th day of February, 2022

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February 14, 2022

STATE OF SOUTH CAROLINA COUNTY OF SUMTER Ronald L. Jones, Plaintiff, vs. Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones, and Shelley Allsbrooks, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT CASE NUMBER: 2020-CP-43-00734 **ORDER STRIKING CERTAIN ALLEGATIONS OF PLAINTIFF'S COMPLAINT**

This matter came before me on August 30, 2021 pursuant to a Notice of Motion and Motion to Strike filed by of the Defendants, Gary A. Jones, Sr., Becky J. Jones and Shelley Allsbrooks, to strike certain allegations in the Plaintiff's Second Amended Complaint.

The Defendants, Gary A. Jones, Sr., Becky J. Jones and Shelley Allsbrooks, are represented by Marvin E. McMillan, Jr., Esquire of the Sumter County law firm of Player & McMillan, L.L.C. The Plaintiff, Ronald L. Jones, is represented by Richard L. Whitt, Esquire of the Whitt Law Firm, LLC.

I have reviewed the Court's file in regard to this matter, considered arguments of counsel, reviewed memorandums and documents presented to the Court by counsel at the hearing and I make the following findings of fact and conclusions of law.

1. That this Court has jurisdiction over the parties hereto and the subject matter herein.

2. That the Defendants seek to strike certain evidentiary allegations in the Plaintiff's Second Amended Complaint and allegations regarding alleged conspiracies or actions on the part of the Defendants which include references in the Complaint to deposition testimony of the Defendant, Shelley Allsbrooks.

3. I find that a Motion to Strike is the proper vehicle for a party to eliminate any immaterial, redundant or impertinent allegations from a pleading. A pleading should set forth a cause of action and shall contain a short statement of the facts showing that the pleader is entitled to relief. Rule 8(a), SCRCP. I further find that pleadings should contain ultimate facts rather than evidentiary facts. *See* Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001).

4. I further find that the first paragraph numbered 13 as well as paragraphs 30 and 31 of the Plaintiff's Second Amended Complaint do not attempt to allege the existence of a cause of action or ultimate facts but appear to allege evidentiary facts which are not necessary and should therefore be stricken.

NOW, THEREFORE, based upon the foregoing, it is

ORDERED that the first paragraph numbered 13 in the Plaintiff's Second Amended Complaint and paragraphs 30 and 31 of the Plaintiff's Second Amended Complaint be, and hereby are, stricken and removed from the Plaintiff's Second Amended Complaint.

AND IT IS SO ORDERED!

_____

R. Ferrell Cothran, Jr.
Circuit Court Judge, Third Judicial Circuit

Sumter, South Carolina
September _____, 2021

Sumter Common Pleas

Case Caption: Ronald L Jones VS Gary A Jones Sr , defendant, et al

Case Number: 2020CP4300734

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
Ronald L. Jones,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	C/A NO. 2020-CP-43-00734
Gary A. Jones, Becky J. Jones and Ima Lee Jones,	)	
	)	
Defendant.	)	

This matter is before the Court pursuant to Rule 59 (e) SCRCP. The Plaintiff seeks an Order of this Court amending or altering its Order of September 22, 2021.

Pursuant to Rule 59 (f) SCRCP, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of the Plaintiff, this Court has determined that its original Order dated September 22, 2021 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.

AND IT IS SO ORDERED.

Manning, South Carolina

Dated:_October 8, 2021

R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit

Sumter Common Pleas

Case Caption: Ronald L Jones VS Gary A Jones Sr , defendant, et al

Case Number: 2020CP4300734

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

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STATE OF SOUTH CAROLINA COUNTY OF SUMTER	)	IN THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT
Ronald L. Jones Plaintiff,	)	Civil Action No.: 2020-CP-43-00734
v.	)	**COMPLAINT** (Second Amended – By Consent) (Jury Trial – Civil Conspiracy)
Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones and Shelley Allsbrooks, Defendants.	)	

Now Comes the Plaintiff Ronald L. Jones, complaining of the Defendants, Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones and Shelley Allsbrooks, (hereinafter sometimes referred to together as, "Defendants") and amending his Complaint for the second time, by consent, as follows.

PARTIES AND JURISDICTION

1. Plaintiff Mr. Ronald L. Jones is a citizen and resident of Sumter County, South Carolina.

2. Upon information and belief, Defendant, Gary A. Jones, Sr. is a citizen and resident of Sumter County, South Carolina.

3. Upon information and belief, Defendant, Becky J. Jones, is a citizen and resident of Sumter County, South Carolina.

4. Upon information and belief, Defendant, Ima Lee Jones, is a citizen and resident of Sumter County, South Carolina.

5. Upon information and belief, Defendant, Shelley Allsbrooks, is a citizen and resident of Sumter County, South Carolina.

6. The matters complained about in these pleadings took place in Sumter County, South Carolina and the Property in dispute is located in Sumter County, South Carolina.

7. Therefore, venue and jurisdiction are proper in the Sumter County Court of Common Pleas, for the Third Judicial Circuit.

COURSE AND PATTERN OF DEALINGS

8. Paragraphs one through seven above, are re-alleged, as if set forth verbatim.

9. The Property that is the subject of this action is shown on a Plat prepared by Anderson Land Surveying, showing 6.72 acres and dated February 27, 2020, (hereinafter as, the "Property").

10. This Property is located in Sumter County South Carolina.

11. Plaintiff Ronald L. Jones claims ownership of this Property as is more fully set out hereafter.

12. Plaintiff Ronald L. Jones has occupied the Property and utilized it as his residence for a period in excess of ten years.

13. Defendant, Shelley Allsbrooks has also testified that Plaintiff, Ronald L. Jones has occupied the Property for a little over ten years.

13. The larger tract from which the Property that is the subject of this action was carved out, is currently owned, by virtue of a life estate by Defendant, Ima Lee Jones, the Plaintiff's mother.

14. At the time of the creation of the life estate, the remainder interest was held by Warren E. Jones and Deborah Jones, the brother and sister-in-law of the Plaintiff.

15. During the time he held the remainder interest, Warren E Jones committed to conveying the Property that is the subject of this action to Plaintiff in exchange for the Plaintiff occupying, safeguarding and maintaining the Property.

16. Both Defendant Ima Lee Jones and Defendant Becky J. Jones were aware of this commitment, and Plaintiff's performance of his obligations, by in fact occupying, safeguarding and maintaining the Property.

17. At no time did either Defendant, Ima Lee Jones or Defendant, Becky J. Jones express any opposition to this arrangement or indicate to Plaintiff that Plaintiff should cease performing the obligations that Plaintiff had undertaken.

18. After the death of Warren E. Jones in 2013, Deborah Jones conveyed her remainder interest to Defendant, Gary A. Jones, Sr. and Defendant Becky J. Jones, the Plaintiff's brother and sister-in-law.

19. Defendant, Gary A. Jones, Sr. repeatedly ratified the promise made to Plaintiff by Warren E. Jones, without objection from Defendant Becky J. Jones.

20. During the time Plaintiff has occupied the Property that is the subject of this action, Plaintiff has made numerous and substantial improvements to the Property, incurring large expenses of his time, labor and money in improving the Property.

21. Specifically, Plaintiff improved the Property by, inter alia, planting a tree orchard, clearing access to the Property, installing a water irrigation system, the installation of thirty raised flower beds also with a water irrigation system, landscaping, additional electric lighting and constructing his current residence on the Property.

22. At no time did any of the previously mentioned family members object to Plaintiff incurring these expenses to improve the Property.

23. The February 27, 2020, plat was prepared, at substantial expense to Plaintiff, with the full knowledge of Defendant, Gary A. Jones, Sr. and with a reaffirmation that the Property described in the Plat would be conveyed to Plaintiff.

24. In early April 2020, both Defendant, Ima Lee Jones and Defendant, Gary A. Jones, Sr. agreed in writing to facilitate Plaintiff incurring the expense of enhancing the electric service to the Property. These documents are attached collectively as Exhibit "A".

25. Plaintiff's current address is used for the payment of personal taxes to Sumter County.

26. Plaintiff's current address is used as his registered address for voting.

27. All of Plaintiff's vehicles are registered at his current address and Plaintiff's Driver's License shows his current address.

28. Plaintiff does not claim an interest in any part of the parent tract, except as expressly included in the 6.72 acres shown on the February 27, 2020 Plat.

FIRST CAUSE OF ACTION AGAINST DEFENDANTS GARY A. JONES AND BECKY J. JONES AND SHELLEY ALLSBROOKS
(Civil Conspiracy)

29. Paragraphs one through twenty-eight above, are re-alleged, as if set forth verbatim.

30. Defendants, Gary A. Jones, Sr. Becky J. Jones, and Shelley Allsbrooks combined together and acted in concert, to injure Plaintiff and cause economic loss to Plaintiff and to cause Plaintiff to incur Special Damages. Defendants' express intent was to cause economic loss to the Plaintiff, Ronald L. Jones, as best shown by Defendant, Shelley Allsbrooks demand that a "15-foot-wide recreational easement", be placed on Plaintiff, Ronald L. Jones' current Property in front of the front door of Plaintiff's residence, which would render the Property worthless as to any resale, etc. As to the 15-foot-wide recreational easement, Defendant, Shelley Allsbrooks declared, "Uncle Ronnie is going to have to like it or [he] gets nothing."

31. Specifically, Defendant, Shelley Allsbrooks took the lead in discussions against the economic interests of the Plaintiff, Ronald L. Jones. Defendant, Shelley Allsbrooks met and conspired with Defendant, Gary A. Jones, Sr. between five and ten times, both in person and electronically, against the economic interests of the Plaintiff, Ronald L. Jones.

32. Specifically, the February 27, 2020 Plat, described in more detail hereinabove, was prepared, at substantial expense to Plaintiff, with the full knowledge of Defendant, Gary A. Jones, Sr. and with a reaffirmation that the Property described in the Plat would be conveyed to Plaintiff.

33. Also, and specifically, in early April 2020, both Defendant, Ima Lee Jones and Defendant Gary A. Jones, Sr. agreed in writing to facilitate Plaintiff incurring the expense of enhancing the electric service on the Property. These documents are attached collectively as Exhibit "A".

34. Despite Plaintiff's reliance on the good-faith of Defendant, Gary A. Jones, Sr., to convey the Property, Defendant Gary A. Jones, Sr., reneged on his firm commitment to convey the Property to the Plaintiff, acting in concert with Defendant, Becky J. Jones and Defendant, Shelley Allsbrooks.

35. The Defendants, Gary A. Jones, Sr., Becky J. Jones and Shelley Allsbrooks' overt acts in furtherance of the Civil Conspiracy were to combine and act against the economic interests of the Plaintiff in the time frame of February 2020 and April 2020, and agreeing that Defendant, Gary A. Jones, Sr. would refuse to convey the Property to the Plaintiff, causing Special Damages to the Plaintiff of Attorney's fees, the loss of enjoyment of the Property, the cost of the installation of additional electric service as described in more detail in paragraph "33" hereinabove, and the cost of Plaintiff securing a Plat depicting the Property that Defendant Gary A. Jones, Sr., had agreed to convey to the Plaintiff as is described in more detail in paragraph "23" hereinabove.

36. It was only after the events described hereinabove, occurring in February of 2020 and April 2020, that the Plaintiff realized that the Defendant Gary A. Jones, Sr., had no intention of conveying the Property to the Plaintiff, despite Defendant, Gary A. Jones, Sr.'s previously stated promise to do so.

SECOND CAUSE OF ACTION
(Oral Gift)

37. Paragraphs one through thirty-six above, are re-alleged, as if set forth verbatim.

38. Plaintiff has taken possession of the property in question and has occupied it for longer than the period required to establish adverse possession.

39. Plaintiff has also taken possession of the property and made permanent and valuable improvements to the property.

40. Either of these conditions would be a sufficient basis to establish an oral gift and remove this case from the operation of the Statue of Frauds. See Satcher v. Satcher 351 S.C. 477, 570 S.E. 2d 535 (S.C. App. 2002).

THIRD CAUSE OF ACTION
(Promissory Estoppel)

41. Paragraphs one through forty above, are re-alleged, as if set forth verbatim.

42. A promise was made to Plaintiff that in exchange for the Plaintiff occupying, safeguarding and maintaining the property, the property would be conveyed to Plaintiff.

43. Plaintiff reasonably relied on this promise, made by one of his brothers and ratified by another, with the support of their mother.

44. Plaintiff's reliance on the good faith of his family was expected and foreseeable to them.

45. Plaintiff would be damaged by the loss of the benefit of his years worth of expenses and labor improving the property, as well as the loss of the opportunity to devote those years and dollars to improving some other property.

46. The Plaintiff's right to ownership of the property is therefore established under the doctrine of promissory estoppel. See, Woods v. State 314 S.C. 501, 505; 431 S.E. 2d 260, 263 (S.C. App. 1993).

47. Plaintiff is entitled to have this Court confirm Plaintiff's ownership of the 6.72 acres, the property that is the subject of this action and direct Defendants to execute a deed to that effect; and

48. Plaintiff is entitled to receive from this Court, Such Other and Further Relief as this Court May Deem Just and Proper.

49. The August 7, 2020, Order of the Court granted Plaintiff's Motion for a Jury Trial on the Civil Conspiracy charge with the consent of the parties.

PRAYER FOR DAMAGES

WHEREFORE, Plaintiff Mr. Ronald L. Jones is entitled to receive from this Court:

(**A**) Confirming Plaintiff's ownership of the 6.72 acres, the Property that is the Subject of this action and an Order requiring Defendants to execute a deed to that effect;

(**B**) An award for Special Damages of (**i**) Attorney's fess (**ii**) compensation for the loss of enjoyment of the Property (**iii**) compensation of the cost of the installation of additional electric service and (**iv**) compensation of the cost of Plaintiff securing a Plat depicting the Property;

(**C**) **AND FOR SUCH OTHER AND FURTHER RELIEF AS THIS COURT DEEMS NECESSARY AND PROPER.**

[Signature Page Follows]

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All as Counsel for Plaintiff, Ronald L. Jones.

April 22, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
	)	CASE NUMBER: 2020-CP-43-00734
Ronald L. Jones,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**DEFENDANTS' MOTION TO STRIKE**
	)	
Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones, and Shelley Allsbrooks,	)	
	)	
Defendants.	)	
	)	

TO: RICHARD L. WHITT, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendants, Gary A. Jones, Sr., Becky J. Jones and Shelley Allsbrooks, will move on the date, time and place before this Honorable Court pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure to strike the allegations in the Plaintiff's Complaint including, but not limited to, any alleged deposition testimony of Shelley Allsbrooks as well as any specific allegations regarding conspiracy or actions on the part of the Defendants related to specific actions to support conspiracy. Defendants reference herein paragraphs 13, 25, 26, 27, 30 and 31 as it relates to the factual allegations of alleged conspiracy. These statements are opinions and evidentiary that are only appropriate for a trier of fact to determine. The Defendants also move to strike any allegations of consent as it relates to amending the pleadings or transfer of a particular cause of action to the jury roster. Rule 8 provides "A pleading ... shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends ... (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled." Rule 8(a), SCRCP. The Plaintiff's Complaint fails to comply with the

pleading requirements of Rule 8, SCRCP. Therefore, the aforementioned purported allegations and statements in the Complaint should be stricken as immaterial, irrelevant and evidentiary and the Plaintiff should be required to replead his Complaint.

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Attorneys for the Defendants Gary A. Jones, Sr., Becky J. Jones and Shelley Allsbrooks

Sumter, South Carolina
May 6, 2021

RULE 11(a), SCRCP - ATTORNEY CERTIFICATION

Defendants' counsel did not correspond with Plaintiff's counsel because such consultation would serve no useful purpose.

s/Marvin E. McMillan, Jr.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

The Honorable R. Ferrell Cothran, Jr.
Circuit Court Judge

Civil Action No. 2020-CP-43-00734

Appellate Case No. 2021-001150

Ronald L. Jones, Appellant,

v.

Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones, and Shelley Allsbrooks, Respondents.

MOTION TO DISMISS

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondents Gary A. Jones, Sr., Becky J. Jones, and Shelley Allsbrooks (collectively, "Respondents"), by and through the undersigned counsel, respectfully request this Honorable Court dismiss the Notice of Appeal filed by Appellant Ronald L. Jones ("Appellant") on October 8, 2021. Should Appellant's interlocutory appeal proceed on this minor, insignificant issue, this case would become antithetical to South Carolina's clear disfavor of piecemeal appeals and would become the infamous "'stop-and-start' enterprise" consistently denounced by our appellate courts in South Carolina. *See State v. Ledford*, 422 S.C. 244, 249, 810 S.E.2d 868, 870 (2018) (dismissing an appeal and holding the

issue was not immediately appealable due to the unnecessary creation of a "'stop-and-start' enterprise").

BACKGROUND

For purposes of Respondents' Motion to Dismiss, it is unnecessary to delve into the underlying facts of this family land dispute initiated by Appellant. However, a brief summary of relevant portions of this lawsuit's procedural history is appropriate to assist the Court in its quick dispense of Appellant's interlocutory appeal prior to any additional briefing and consideration of the underlying merits.

On May 4, 2020, Appellant filed this lawsuit against Respondents Gary A. Jones, Sr., Becky J. Jones, and Ima Lee Jones, claiming Appellant was entitled to relief pursuant to an oral gift and the doctrine of promissory estoppel. On June 10, 2020, Appellant filed his First Amended Complaint, adding a cause of action for civil conspiracy directed at Respondents Gary A. Jones, Sr., and Becky J. Jones. The parties subsequently engaged in discovery, including the deposition of Respondent Shelley Allsbrooks on March 16, 2021. Appellant filed his Second Amended Complaint on April 22, 2021, adding Respondent Allsbrooks as a defendant to his claim for civil conspiracy. On May 6, 2021, Respondents filed an Answer to Appellant's Second Amended Complaint and a Motion to Strike certain factual allegations that had been raised in the Second Amended Complaint. The circuit court heard argument on Respondents' Motion to Strike. On September 22, 2021, pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure,[1] the circuit court, exercising its broad discretion, ordered stricken from the Second Amended

[1] Rule 12(f), SCRCP ("**Motion to Strike.** Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.").

Complaint three purely factual allegations that it found were inappropriately included at the pleading stage of the litigation.[2] Appellant timely filed Rule 59(e) Motion, and the circuit court denied the same on October 8, 2021. Thereafter, Appellant filed his Notice of Appeal of the circuit court's interlocutory order the same day. Respondents now respectfully move for this Court to dismiss Appellant's Notice of Appeal for the following reasons set forth in detail below.

ARGUMENT

A review of the circuit court's order and the governing appealability statute makes certain that Appellant has no foundation to support any argument that this Court should review his interlocutory appeal. To be sure, the circuit court's order is not immediately appealable, and Appellant's attempt to appeal the same is, quite frankly, an improper attempt to frustrate the ordinary pretrial procedures below. Therefore, this Court should refuse to expand the narrow construction of section 14-3-330 of the South Carolina Code and should dismiss Appellant's

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[2] The circuit court struck the following factual allegations from the Second Amended Complaint:

> 13. Defendant, Shelley Allsbrooks has also testified that Plaintiff, Ronald L. Jones has occupied the Property for a little over ten years.
>
> 30. Defendants, Gary A. Jones, Sr.[,] Becky J. Jones, and Shelley Allsbrooks combined together and acted in concert, to injure Plaintiff and cause economic loss to Plaintiff and to cause Plaintiff to incur Special Damages. Defendants' express intent was to cause economic loss to the Plaintiff, Ronald L. Jones, as best shown by Defendant, Shelley Allsbrooks demand that a "15-foot-wide recreational easement", be placed on Plaintiff, Ronald L. Jones' current Property in front of the front door of Plaintiff's residence, which would render the Property worthless as to any resale, etc. As to the 15-foot-wide recreational easement, Defendant, Shelley Allsbrooks declared, "Uncle Ronnie is going to have to like it or [he] gets nothing."
>
> 31. Specifically, Defendant, Shelley Allsbrooks took the lead in discussions against the economic interests of the Plaintiff, Ronald L. Jones. Defendant, Shelley Allsbrooks met and conspired with Defendant, Gary A. Jones, Sr. between five and ten times, both in person and electronically, against the economic interests of the Plaintiff, Ronald L. Jones.

appeal, thereby allowing the proper pre-trial procedures to proceed accordingly without unnecessary disruption or delay.

A party's right to appeal arises from and is governed by statute. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Traditionally, an appeal may be pursued only after the entry of final judgment. *Id.* "A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017). "An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005).

"The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by [section 14-3-330 of the South Carolina Code]." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 6, 630 S.E.2d at 467. "Absent a specialized statute,[3] an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable." *Id.* Section 14-3-330 is "construed narrowly" with the goal of avoiding "circuitous litigation and needless appeals." *Tillman*, 420 S.C. at 250, 801 S.E.2d at 760. To be sure, "[p]iecemeal appeals" are disfavored in South Carolina. *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

No specialized statute permits Appellant's present appeal; therefore, to be immediately appealable, the circuit court's order must fit neatly into one of the categories set forth in section

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[3] Section 14-3-330 is not the only statute which governs appealability, "*e.g.*, S.C. Code Ann. § 14-11-85 (direct appeals from masters); S.C. Code Ann. § 15-48-200 (arbitration orders); S.C. Code Ann. § 1-23-390 (1986) (appeals under the Administrative Procedures Act)." *Link v. Sch. Dist. of Pickens Cty.*, 302 S.C. 1, 5, 393 S.E.2d 176, 178 (1990) (cleaned up). However, this case only involves the application of section 14-3-330.

14-3-330. *See id.* at 195, 607 S.E.2d at 708. Section 14-3-330 provides for appellate jurisdiction over:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.
>
> (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
>
> (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330; *see also Cobb v. Maccaro*, 310 S.C. 303, 305, 423 S.E.2d 156, 157 (Ct. App. 1992) ("Only interlocutory orders which (1) involve the merits; (2) affect a substantial right; or (3) involve certain orders regarding injunctions and appointments of receivers, can be appealed."). "Our courts have previously looked beyond the labels on motions and orders to discern their actual effect for purposes of appealability." *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 303, 705 S.E.2d 475, 478 (Ct. App. 2011).

Here—under the well-established approach to analyzing the appealability of interlocutory orders—the circuit court's order is not immediately appealable. The effect of the circuit court's order is clear. The circuit court granted Respondents' Motion to Strike, which simply removed three factual allegations from Appellant's Second Amended Complaint. The circuit court's order

did not dismiss Appellant's case; the circuit court's order *did not* dispense of any of Appellant's causes of action; the circuit court's order *did not* constitute a final judgment; the circuit court's order *does not* prevent an appeal of Appellant's complained issue following a final judgment in this matter. Importantly, the removal of these *facts* is not akin to the dismissal of a *case* or the removal of a *pleading*.

Appellant's three causes of action fully remain, and Appellant can still attempt to prove the stricken facts at trial. Appellant is in no way prohibited from doing so at the appropriate time through the introduction of admissible evidence. The circuit court narrowly found the factual allegations to be inappropriately presented at the pleadings stage. Nothing more.

Therefore, looking at the effect of the circuit court's order and viewing it through the requisite "narrow" lens that disfavors piecemeal litigation, Appellant's appeal fails to fit any subsection set forth in section 14-3-330. Because Respondents can foreshadow that Appellant's Return to this Motion to Dismiss will present an attempt to "fit a square peg in a round hole," Respondents will show, in turn, why this appeal plainly does not fit any of the 14-3-330 subsections.

1. Subsection 14-3-330(1) does not apply.

This is an interlocutory appeal and is not the appeal of a final judgment. Therefore, pursuant to subsection 14-3-330(1), the circuit court's order must "involve the merits" in order to be immediately appealable. "An order 'involves the merits,' as that term is used in [subsection] 14-3-330(1) and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense." *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 7, 630 S.E.2d at 467 (footnote omitted). "The phrase 'involving the merits' is narrowly construed in modern precedent. An order usually will be deemed interlocutory and not

immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights." *Id.* at 7, 630 S.E.2d at 467–68.

Here, the circuit court's order does not "involve the merits" of this case because the circuit court has not yet determined a substantial matter affecting the parties' rights in this litigation which impacts the parties' ability to litigate this dispute over the ownership of family land. Simply put, the circuit court's order removes three factual allegations from being presented at the pleading stage. The circuit court's order in no way prohibits the very same allegations to be proven by evidence at a later stage.

There is still a lot to be done at the circuit court prior to a determination of the parties' rights. The case has not yet gone to trial, and Appellant can still introduce the stricken facts at the appropriate time and can still potentially succeed at trial on the merits of his causes of action. Should Appellant be unsuccessful at trial on the merits of his causes of action and should Appellant believe the circuit court's order was somehow prejudicial to the outcome of his case, Appellant can then appeal and launch his argument concerning the merits of the circuit court's order. *See Baldwin Constr. Co. Inc. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004) ("Petitioners have not 'arrived at the end of the road' and will be able to appeal the decision after the trial is finished." (quoting *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993))).

Again, the circuit court's order is an interlocutory order that does not "involve the merits" of this underlying lawsuit, and Appellant may appeal once a final order has been issued in the case, if even necessary. *See Hagood*, 362 S.C. at 196, 607 S.E.2d at 709 ("Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial."). The circuit court's order does not fit within the narrow and exceptional circumstances contemplated by subsection

14-3-330(1), and this Court should reject Appellant's attempt to broaden the scope of the appealability statute. *See Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 7, 630 S.E.2d at 467 ("The phrase 'involving the merits' is narrowly construed in modern precedent.").

2. Subsection 14-3-330(2) does not apply.

Subsection 14-3-330(2) allows for immediate appeal of an interlocutory order whenever it affects a "substantial right" in an action which "(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action." "To appeal an order affecting a substantial right, an order must not only involve a right, but it must also 'prevent[] a judgment from which an appeal might be taken.'" *Cobb*, 310 S.C. at 305, 423 S.E.2d at 157. Respondents will address each subpart in turn.

First, the circuit court's order does not affect a "substantial right" which effectively determines or discontinues the action. Stricken facts are not equivalent to stricken causes of action or a stricken complaint. Appellant can still proceed on all three of his causes of action and can still present the very same allegations through evidence submitted to the jury during the evidentiary stage of trial. As noted above, if Appellant is unsuccessful at trial, and if Appellant believes this narrow issue is somehow prejudicial to the outcome of his trial, then and only then may he appeal this issue.

Second, the circuit court's order does not affect a "substantial right" which effectively grants or refuses a new trial. No further analysis is necessary on this point, as this is clearly not the effect of the circuit court's order.

Third, the circuit court's order does not affect a "substantial right" which effectively strikes out an answer or any part thereof or any pleading in any action. This portion of subsection 14-3-

330(2) is disjunctive and is triggered whenever (a) an answer or any part thereof is struck, *or* (b) a pleading is struck. Neither apply under the facts of this case. Part (a) can be quickly disposed of because this issue does not involve an Answer.

Part (b) can similarly be disposed of but requires additional explanation. Simply put, under the appealability statute, a pleading is not the equivalent of a factual allegation contained in a pleading. Black's Law Dictionary defines a "pleading" as "[a] formal *document* in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials, or defenses." *Pleading*, Black's Law Dictionary (11th ed. 2019) (emphasis added). Necessarily, a factual allegation is a smaller component of a pleading. To be immediately appealable, an entire pleading must be struck, not just a small component thereof. If the General Assembly intended for the striking of "any part" of a pleading to be immediately appealable, it would have said so, like it chose to do under disjunctive part (a). *See* S.C. Code Ann. § 14-3-330(2) ("An order affecting a substantial right made in an action when such order . . . (c) strikes out an answer or any part thereof **or** any pleading in any action." (emphasis added)). Clearly, "any part thereof" only applies to an Answer.

This plain reading of the statute is buttressed by a plain reading of Rule 12(f) governing motions to strike. Rule 12(f) states in pertinent part "the court may order stricken *from any pleading* any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." This plain language makes clear that a "pleading" is not akin to a factual allegation, and pursuant to subsection 14-3-330(2)(c), interlocutory appeal is appropriate only if an actual "pleading" is struck by the circuit court.

Respondents predict Appellant will attempt to grasp firmly on the fact that subsection 14-3-330(2)(c) mentions the term "strike." However, the use of the word "strike" in subsection 14-

3-330(2) and in the circuit court's order granting the motion to "strike" is of no moment. To explain, the word "strike" in subsection 14-3-330(2)(c) and Rule 12(f) has completely different origins. *See Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 302, 705 S.E.2d 475, 478 (Ct. App. 2011) (explaining this distinction and holding a circuit court's striking of class allegations is not immediately appealable simply because of the use of the word "strike" in the appealability statute). In subsection 14-3-330(2)(c), the word "strike" comes from its code pleading predecessor enacted in 1870. *See* S.C. Acts Part I., tit. I, sec. 11, Gen. Assemb., Reg. Sess. (S.C. 1869-70). This subsection, which has not changed in over 100 years, "includes the phrase 'strikes out an answer or any part thereof, or any pleading in any action.'" *Thornton*, 391 S.C. at 302, 705 S.E.2d at 478 (quoting *Harbert v. Atlanta & Charlotte Air Line Ry. Co.*, 74 S.C. 13, 16, 53 S.E. 1001, 1001–02 (1906)). On the other hand, a Rule 12(f) motion to "strike" originated in the Federal Rules of Civil Procedure decades after and without any reference to the use of the word "strike" in subsection 14-3-330(2)(c). *See id.* at 302, 705 S.E.2d at 478 (citing Rule 86 of the South Carolina Rules of Civil Procedure for the July 1, 1985 effective date of the Rules).

Appellant's appeal is simply an attempt to delay this case and avoid trial on the merits of the underlying claims. It is well-established the avoidance of trial is not a substantial right. *See Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991). Further, Appellant is not prohibited from appealing this ruling, if necessary, at a later date after a final judgment in this case.

3. Subsection 14-3-330(3) does not apply.

Because this appeal does not stem from a "special proceeding" or "upon a summary application in any action after judgment," subsection (3) is a nonstarter. No further analysis is needed.

4. Subsection 14-3-330(4) does not apply.

Because this appeal does not stem from an order concerning injunctive relief or an order concerning a receivership, subsection (4) is likewise a nonstarter. Similarly, no further analysis is needed.

* * * *

One final point appropriate for this Motion to Dismiss. Respondents are compelled to draw the Court's attention to a glaring defect in Appellant's appeal of the circuit court's order. Respondents stand firm that the circuit court did not err in granting their Motion to Strike.[4] However, assuming for sole purpose of this Motion to Dismiss, the circuit court erred, there is no harm. An elementary concept of every appeal is (1) error and (2) harm resulting from said error. *See Visual Graphics Leasing Corp. v. Lucia*, 311 S.C. 484, 489, 429 S.E.2d 839, 841 (Ct. App. 1993) ("An error is not reversible unless it is material and prejudicial to the substantial rights of the appellant."). Appellant cannot—despite tortured attempts to do so—show any harm that has resulted from the circuit court's decision.

Again, three factual allegations were struck from Appellant's Second Amended Complaint. Quite tellingly, Appellant's brief is heavy on the alleged error, but is otherwise very light on the alleged prejudice resulting from said error. Appellant appears to argue prejudice flows from his inability to prove these facts and that without these facts, Respondents, *could have* moved to dismiss the Second Amended Complaint. Nevertheless, even a cursory review of the record makes clear that prejudice is nonexistent.

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[4] If necessary, Respondents will brief to this Court their position as to why the circuit court did not abuse its discretion in granting their Motion to Strike.

First, Appellant can still prove the very same stricken facts at trial to support his causes of action. *Second*, Appellant's perception that, without the stricken facts in the Second Amended Complaint, Respondents could have moved to dismiss the Complaint is a red herring and is entirely speculative.[5] In fact, this provides further support to Respondents' argument that Appellant's appeal is not immediately appealable. Appellant speculates to hypothetical past or future harms. This speculation is inappropriate and flies in the face of decades worth of precedent holding steadfast that appellate issues must be ripe for consideration. *See Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 353–54, 815 S.E.2d 446, 451 (2018) ("We have explained ripeness by defining what is not ripe, stating 'an issue that is contingent, hypothetical, or abstract is not ripe for judicial review.'" (quoting *Colleton Cty. Taxpayers Ass'n v. Sch. Dist. of Colleton Cty.*, 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006))).

Assuming Respondents convinced the circuit court to completely dismiss the Second Amended Complaint or convinced the circuit court to dismiss an entire cause of action, *then* Appellant could argue the necessity of an appeal. Until then, Appellant has only presented a non-appealable interlocutory issue with absolutely no evidence of resulting harm. Therefore, dismissal is appropriate.

CONCLUSION

Based on the foregoing analysis, Respondents respectfully request the Court grant their Motion to Dismiss Appellant's interlocutory appeal and remand this matter to the circuit court to proceed accordingly. Appellant's attempt to create piecemeal litigation is inappropriate and conflicts with the well-established South Carolina law governing appealability. Dismissal of

[5] Appellant appears to be concerned regarding his cause of action for civil conspiracy. The pleading requirements to allege civil conspiracy are not overly onerous. *See Paradis v. Charleston Cty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021).

Appellant's appeal best promotes the policy of our state to allow for final judgments prior to beginning the appellate process and best effectuates judicial economy by avoiding unnecessary and piecemeal appeals. To be sure, our state disfavors interlocutory appeals in order to allow our judicial system to run its course and avoid creating additional burdens that are not, and may never be, necessary. Furthermore, Appellant has completely failed to show any harm stemming out of any alleged error committed by the circuit court. Therefore, at this stage, a consideration of the merits of Appellant's appeal is unnecessary and dismissal is appropriate.

(*signature page to follow*)

Respectfully submitted,

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ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina

February 4, 2022

State of South Carolina	)	
	)	IN THE COURT OF COMMON PLEAS
County of Sumter	)	
	)	
	)	
Ronald Jones,	)	
	)	
	)	
Plaintiff,	)	2020-CP-43-00734
	)	
versus	)	
	)	
Gary Jones, et al.	)	
	)	
Defendant.	)	
	)	

Sumter County Courthouse
August 30, 2021

TRANSCRIPT OF HEARING

B E F O R E

The Honorable R. Ferrell Cothran, Jr.

A P P E A R A N C E S:

Richard L. Whitt, Esquire
Attorney for Plaintiff

Marvin E. McMillan, Jr., Esquire
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I N D E X

E X H I B I T S

(There were no exhibits marked during this hearing)

in his original complaint was not by a deed transfer, not by any consideration, but rather that he was allowed to live there for, as he's alleged ten (10) years or more, and as a result through a oral gift or otherwise it's his property.

Your Honor, recognizing that 12(f), and a motion to strike I will concede to the court is something that you don't see very often in the complaint --- I mean, in regard to the complaint but there's a solid basis for my motion. Recognizing that Rule 12(f) states that a motion to strike is a proper vehicle to strike, eliminate or remove any redundant, immaterial, impertinent or scandalous matter, Rule 8 goes further to state that any claim for relief should state a short and plain statement of facts showing that the pleaders entitled to relief.

I've got, for submission to the court, a short memorandum as well as a copy of a second amended complaint, which is the basis for this motion to strike, Judge. In that memorandum you will see the *Stroud* case which states that not only --- states that Rule 8 mandates that pleading contain "ultimate facts" rather than "evidentiary facts" and it is improper to plea evidentiary facts. Specifically, alleged in my complaint, the paragraphs that we are seeking to strike. In the plaintiff's first complaint they had two causes of action, a oral gift and

promissory estoppel. In his first amended complaint, he amended it and alleged conspiracy against Gary Jones and Becky Jones. Then the plaintiff amended his complaint again and brought in another defendant, the niece, the daughter of Becky and Gary Jones and alleged her as one of the co-conspirators.

If you look at the plaintiff's second amended complaint you will see that it is replete with evidentiary allegations in there. He took the deposition of Shelley Allsbrooks and Paragraph Thirteen is duplicated, there is two thirteens but they state different allegations. He alleges in Paragraph Thirteen of his complaint that the defendant, Shelley Allsbrooks also testified that the defendant Ronald L. Jones has occupied the property for a little over ten years.

You will notice in Paragraph Twenty-Five of the complaint, he's alleging that Mr. Jones has paid property taxes in Sumter County. That his current address for voting was at this location. That his vehicles were registered at this location. You will also see in the conspiracy allegation, in addition, alleging that they were conspirators that it states it's been shown that Shelley Allsbrooks demanded a fifteen foot right-of-way easement on the property, and I'm summarizing, which would render the property easement, Ms. Allsbrooks declared, "Uncle Ronnie

is going to have to like it or he gets nothing". And that's in quotations. And that's in Paragraph Thirty. Paragraph Thirty-One, which is the basis for my motion to strike as well is that Shelley Allsbrooks took lead in discussions against the economic interest of Ronald Jones met and conspired with Gary Jones between five and ten times both in person and electronically for the economic interest of Gary Jones.

Judge, Rule 43(g) states that a party may read or state to the jury its facts in it's pleadings but shall not argue the case. To allow these documents to remain in the pleadings, these allegations to remain in the pleadings, would be in essence to allow evidentiary allegations, the allegations which we've denied, the allegations that have to be proved at the trial in their opening statement. I can't honestly say I've ever seen anybody quote it in their pleadings something that was alleged, and we submit out of context, from a deposition. It's not necessary. It's immaterial. The purpose of an opening statement is to allow someone to argue the theory of their case not these ultimate facts. We, as the defendants, don't want to waive any other obligations --- defenses that we might have in this trial.

For example, very likely that some of those allegations would be consider some of those allegations,

those factual allegations in his complaint could be alleged to be settlement negotiations and not even admissible at trial. So we are seeking to clean these pleadings up now.

In the *Stroud* case and in my brief, I cited the case talking about how to define ultimate facts from evidentiary facts. And that case clearly states, if you want to allege agency in your pleadings, allege agency. You don't have to prove and it would be improper to make the allegations that prove the allegations in the pleadings. And on those basis we seek to strike those sections of the second amended complaint, Your Honor.

THE COURT: Okay.

MR. WHITT: Your Honor, may it please the court. Richard Whitt here for the plaintiff. Your Honor, may I approach and hand a reference guide to you?

THE COURT: Yes, sir. Thank you.

MR. WHITT: Your Honor, our amended complaint is behind tab 4 for Your Honor's review, of course. And really our response is very short because this is going to turn on, Your Honor's, review of the amended complaint and the applicability of law. We have taken the deposition of this defendant, this additional defendant, and subject to check I believe that our first complaint alleged criminal conspiracy already and we simply added Shelley Allsbrooks. After we took her deposition she made admissions for civil

STATE OF SOUTH CAROLINA COUNTY OF SUMTER RONALD L. JONES, PLAINTIFF, VS. GARY A. JONES, SR., BECKY J. JONES AND IMA LEE JONES, DEFENDANTS.	) IN THE COURT OF COMMON PLEAS) FOR THE THIRD JUDICIAL CIRCUIT)) CIVIL ACTION NO.:) 2020-CP-43-00734)) **DEPOSITION**)) **OF**)) **SHELLEY ALLSBROOKS**

DEPOSITION OF **SHELLY ALLSBROOKS**, TAKEN BEFORE WENDY SHANNON SULLIVAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 10:02 A.M., TUESDAY, THE 16TH OF MARCH, 2021, VIA VIDEOCONFERENCE AT VARIOUS LOCATIONS IN SOUTH CAROLINA.

COPY

APPEARANCES

FOR THE PLAINTIFF
RICHARD L. WHITT, ESQUIRE
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IRMO, SOUTH CAROLINA 29063

FOR THE DEFENDANTS
CHIP MCMILLAN, ESQUIRE
THOMAS E. PLAYER, ESQUIRE
PLAYER & MCMILLAN
305 N. MAIN STREET
SUMTER, SOUTH CAROLINA 29150

REPORTED BY
WENDY SHANNON SULLIVAN
VERBATIM, INC.
POST OFFICE BOX 7123
COLUMBIA, SOUTH CAROLINA 29202

INDEX

EXHIBITS

(ALL EXHIBITS WERE MARKED AFTER THE CONCLUSION OF THE DEPOSITION)

*THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

Q Okay. Who would you say was making the decisions in April and May concerning the plat and concerning getting Mr. Anderson out there to do a new plat? Were you making those decisions, or was your father, or were you doing it jointly?

A We were doing it jointly because he had told Ronnie that it was up to me.

Q Your father had told your Uncle Ronnie --

A Correct.

Q -- that you would make the decisions?

A Correct.

Q Okay. What do you recall happened when you proposed the 15-foot easement to your Uncle Ronnie?

A I'm not --

Q I'm sorry. I'll rephrase it. You had to let your -- it says in your emails you were going to discuss it with your Uncle Ronnie. When you discussed it with him and he saw the 15-foot easement, what was his reaction?

A He did not react.

Q Did he approve of it, or disapprove of it, or he just had no reaction?

A No reaction.

Q Okay. Well, why did that matter not proceed to a plat? Why did it stay a sketch as you described it?

A Because he never let me know that he was okay with it.

you aware of any?

A I only know what my aunt has told me.

Q Oh, okay. What has she told you?

A She told me that her instructions from my Uncle Warren were to make sure that Ronnie never owned land because he would borrow money against it and potentially lose it.

Q When did you have that conversation?

A With my aunt?

Q Yes.

A After we -- I believe, if I remember correctly, after my dad was served with papers.

Q All right. Just one moment. Ms. Allsbrooks, how old are you now?

A How old am I? I'm 41 years old.

Q Okay. So your Uncle Ronnie, his position is he has been living out there a little over ten years. So being 41, you're aware of the period of time he has been living on that property?

A Correct.

Q Okay. How long do you estimate that he has been living on that property?

A Oh --

Q Well, let me ask it this way: If he says it has been over ten years, does that sound right to you? Does

that sound correct?

A That sounds correct between him living with my grandmother, and fixing up the club house, and living out there, that would sound correct.

Q Okay. And so he lived with your grandmother?

A That was my understanding.

Q Was that prior to him moving into what you describe as the clubhouse and fixing it up and moving in about ten years ago? Is that prior to that?

A Yes, sir.

Q Okay. All right. And your grandmother also has a life estate in her property; correct?

A Correct.

Q Okay. Just give me one moment, Ms. Allsbrooks. That may be all the questions I have.

A Okay.

Q (Pause.) All right. I do have a little bit of follow-up. So you said that you met with your father and you discussed with your father the concerns about Uncle Ronnie staying on the property and getting a plat. How many times do you think you met with your parents concerning this dispute back in that April-May time frame?

A Well, I'd like to rephrase that, because I never had a problem with my uncle living on the land.

Q Okay.
A I had a problem with anything being in someone else's hands after him.
Q Okay. Understood. I understand. Thank you for clarifying that.
A You're welcome.
Q How many times do you think you met with him? More than five, more than ten?
A When you say met, do you mean face-to-face?
Q Well, either face-to-face or discussions by, you know, telephone or text.
A In April and May, you say?
Q Yes, ma'am.

MR. MCMILLAN: Just for clarification, excuse me, Richard. Who are you asking that about with, Ronnie or with Gary or someone else?

MR. WHITT: I'm asking about her discussions with her father concerning it.

MR. MCMILLAN: Okay. Got it.

THE WITNESS: Okay. Between April and May, Richard, I would say maybe five to ten times.

BY MR. WHITT:

Q Okay. And how about your mother? Was she involved in those conversations or was it just your father, concerning the problem with Uncle Ronnie?

A Just my father, really. I mean, I would talk to my mother as a mother if that makes sense, but about this, it was me and my father.

Q Okay. About the details, it was just strictly with your father and not your mother?

A Correct.

Q And did your father have advice for you or did he say, you know, keep on doing what you're doing?

A I would say that we were trying to do everything we could to resolve the matter. So he just supported me 100 percent.

Q Okay. So, basically, you were free to make decisions about dealing with your Uncle Ronnie about your concerns about the land?

A Yes, sir.

Q You'll be happy to know, that's all the questions I have today, and I really appreciate you participating.

A Well, no problem at all.

MR. MCMILLAN: We don't have any questions.

THE COURT REPORTER: Mr. McMillan, did you want a copy of this?

MR. MCMILLAN: Please, yes. Just an etran.

(WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION WAS CONCLUDED AT 10:20 A.M.)

(DEPONENT HAS WAIVED READING AND SIGNING.)

SECTION 14-3-330. Appellate jurisdiction in law cases.

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(2) An order affecting a substantial right made in an action when such … (c) strikes out an answer or any part thereof or any pleading in any action;

RULE 8
GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a cause of action, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. Relief for a sum certain in money may be demanded for actual damages, but claims for punitive or exemplary damages shall be in general terms only and not for a stated sum, provided however, a party may plead that the total amount in controversy shall not exceed a stated sum which shall limit the claim for all purposes.

RULE 12
DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS

(f) Motion to Strike. Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2021-001150

Ronald L. Jones..... .....Appellant,

v.

Gary A. Jones, Sr., Becky J. Jones, Ima Lee Jones and Shelley Allsbrooks..... .....Respondents.

AFFIDAVIT OF SERVICE

I, Carrie A. Schurg, an employee of Whitt Law Firm, LLC, hereby certify that I have caused Appellant's Return to Motion to Dismiss, Appendix and this Affidavit of Service, to be served via, electronic mail, as addressed below, on February 14, 2022.

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February 14, 2022