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.

RESPONDENTS' REPLY TO APPELLANT'S RETURN TO MOTION TO DISMISS

Respondents Gary A. Jones, Sr., Becky J. Jones, and Shelley Allsbrooks (collectively, "Respondents"), by and through the undersigned counsel, respectfully submit this Reply to Appellant Ronald L. Jones's Return to the Motion to Dismiss filed February 14, 2022. Respondents stand confident that their Motion to Dismiss clearly demonstrates that dismissal of this interlocutory appeal is appropriate. However, for the Court's benefit, Respondents submit this brief Reply, not to reargue points raised in its Motion to Dismiss, but to simply highlight several of the inaccuracies and misunderstandings found in Appellant's Return. Respondents address Appellant's main points in turn.

I. Section 14-3-330 Does Not Support Appellant's Appeal.

Appellant claims justification for his appeal can be found in the plain language section 14-3-330. **(Return 3–4).** However, quite the opposite rings true, the plain and unambiguous language of section 14-3-330 makes certain that this appeal does not fit the mold for any of the situations in which our General Assembly has decided to permit a party an immediate appeal of an interlocutory order (despite Appellant's tortured attempts to do so). As accurately foreshadowed in Respondent's Motion to Dismiss, Appellant attempts to grasp firmly onto subsection 14-3-330(2)(c) for support of his appealability argument. **(Return 3–4).** However, Appellant's argument is unavailing and lacks merit based on the very same reasons discussed in Respondents' Motion to Dismiss. **(Motion to Dismiss 3–11).**

Further, in his Return, Appellant accuses Respondents of incorrectly "parsing" the appealability statute in an attempt to avoid the "plain English meaning of Section 14-3-330(2)(c)." **(Return 4).** Again, quite the opposite rings true. Indeed, this is an interesting argument to make when, Respondents—with support of the law—analyzed the statute as a whole, and Appellant—with no support in the law—attempts to force upon this Court a rejected "piecemeal approach" to reading a statute. Appellant—deploying a convenient placement of ellipses—notes that subsection 14-3-330(2)(c) gives appellate jurisdiction over an order that "… **strikes out** … any part thereof **or any pleading in any action**." (**Return 3).** Appellant extracts and isolates the words "pleading," "any part thereof," and "strike" in a last-minute search to find justification for his appeal. **(Return 4).** However, Appellant's approach to statutory interpretation ignores that a statute must be read in its entirety. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("We therefore should not concentrate on isolated phrases within the statute."); *id.* ("Instead, we read the statute as a whole and in a manner consonant and in harmony

with its purpose.").

Reading subsection 14-3-330(2)(c) in its entirety, as we must, the plain and unambiguous language provides that appellate jurisdiction may vest over an order affecting a substantial right made in an action when the order "(c) strikes out an answer or any part thereof or any pleading in any action." The plain and unambiguous language gives firm support to Respondents' stance that subsection 14-3-330(2)(c) is only triggered whenever (a) an answer or any part thereof is struck, *or* (b) a pleading is struck. As made clear in the Motion to Dismiss, a pleading is not the equivalent of a factual allegation. Therefore, Appellant's appealability argument is without merit, and this appeal must be dismissed.

II. The Validity Of The Circuit Court's Ruling Should Not Be Considered At This Interlocutory Juncture Because The Matter Is Unappealable.

Appellant delves into the merits of his appeal in a clear attempt to shift focus away from the fact that this matter is not immediately appealable. **(Return 4-7).** However, the Court can quickly disregard Appellant's argument because the underlying merits of the circuit court's order are not relevant at this point in time when the Court is tasked with considering whether a matter is immediately appealable. If this Court finds the order is immediately appealable, Respondents will then discuss the merits of this case and respond to Appellant's arguments by submitting Respondents' Brief.[1]

[1] Respondents are compelled to note inaccuracies in Appellant's argument in which he suggests that Respondent Allsbrooks "conspired . . . with her father" and "was the decision maker in the conspiracy." Appellant appears to be making legal conclusions in these statements as to whether a civil conspiracy exists, and Respondents vehemently oppose these conclusions. Moreover, Appellant's cited portions of the deposition transcript do not support his legal conclusion that a civil conspiracy exists.

III. Respondents Did Not Mislead The Court By Citing To *Cobb v. Marccaro* In Their Motion To Dismiss.

Throughout their Motion to Dismiss, Respondents cite a myriad of authority that supports their argument that this is an unappealable issue. Despite this fact and despite the dearth of legal citation in Appellant's Return to support his conclusory arguments, Appellant launches an unnecessary attack concerning Respondents' citation in their Motion to *Cobb v. Marccaro*, 310 S.C. 303, 305, 423 S.E.2d 156, 157 (Ct. App. 1992), stating it was presented to the Court in a "misleading context." **(Return 8).** This argument is frivolous; Respondents in no way attempted to mislead the Court.

First, Respondents cited to *Cobb* in a string citation for its explanation of what is required for an interlocutory order to be immediately appealable. **(Motion to Dismiss 5).** Second, Respondents' citation to *Cobb* was actually the use of a direct quote from the case, which is still good law in South Carolina. Third, the cited material from *Cobb* supports Respondents' argument. Fourth, the *Cobb* Court's holding is powerful as it dismissed an appeal because the issue was not immediately appealable. Respondents' citation was far from misleading.

Appellant extracts a single line from *Cobb* to support his claim that Respondents' citation was misleading: "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." *Cobb*, 310 S.C. at 305, 423 S.E.2d at 157; **(Return at 8).** The quotation does nothing more than provide further support for Respondents' argument. If he would like, Appellant can appeal this issue following a final judgment in this matter, just like the issue in *Cobb*.

IV. *Thornton v. South Carolina Electric and Gas Corp.* Does Not Support Appellant's Position.

Appellant believes *Thornton v. South Carolina Electric and Gas Corp*, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011), supports his position in this matter. However, this case—like the others cited—supports Respondents' position.

In *Thornton*, this Court issued an opinion with three different holdings: (1) the circuit court's order striking class action allegations was not immediately appealable; (2) the circuit court's order granting summary judgment under the Mining Act was not immediately appealable; and (3) the circuit court's order denying summary judgment as to the statute of limitations was not immediately appealable. *Id.* Appellant highlights a discussion in *Thornton* which cites to two cases that discussed appealability stemming from the predecessor statute to subsection 14-3-330(c)(2). *Thornton* summarized, "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." *Id.* at 304, 705 S.E.2d at 479.

Here, the order did not remove a material issue from the case. Thus, the order does not prevent the issue from being litigated on the merits. Appellant still has the same three causes of action. Nothing prevents Appellant from presenting the very same stricken facts into evidence at the appropriate time. The circuit court's ruling simply found the stricken factual allegations were inappropriately included at the pleading stage. The circuit court did not rule that Appellant cannot attempt to prove the stricken facts at a later stage in the litigation. Moreover, should Appellant believe that he was harmed by the circuit court's decision to strike, at the pleading stage, the three factual allegations from the Complaint, Appellant will have the opportunity to argue error and prejudicial harm after a final judgment has been issued in the circuit court.

V. Appellant Has Still Failed to Show How He is Prejudiced by the Circuit Court's Ruling.

Appellant makes a conclusory claim of "significant harm." **(Return 7–8).** However, despite being given a second chance to show prejudice stemming from the circuit court's order, Appellant still falls short.

Appellant has presented causes of action for (1) oral gift, (2) promissory estoppel, and (3) civil conspiracy. To be sure, (1) Appellant presented three causes of action in his Second Amended Complaint; (2) Appellant still has three causes of action in his Second Amended Complaint; (3) Appellant can still present evidence in which he believes supports the three causes of action during the appropriate stage of the litigation.

Again, prejudicial harm is non-existent. The fact that the circuit court struck three factual allegations from the Second Amended Complaint in no way prohibits Appellant from attempting to prove the very same factual allegations at trial by competent evidence. Appellant's claim that the circuit court's order somehow requires "magic language" to allow him to attempt to prove the stricken allegations during trial is mistaken. There is nothing in the circuit court's order that states Appellant is prohibited from attempting to prove the stricken allegations at the appropriate stage of the litigation. Therefore, Appellant's claims of prejudice only exist in the realm of hypotheticals and speculation, neither sufficient to justify an interlocutory appeal to this Court.

CONCLUSION

Accordingly, based on the foregoing and based on the reasoning set forth in Respondents' Motion to Dismiss, Respondents respectfully request this Court reject Appellant's attempt to turn this litigation into a stop-and-start enterprise. This interlocutory appeal should be dismissed and remanded to the circuit court for further proceedings.

Respectfully submitted,

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February 18, 2022

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PROOF OF SERVICE

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I, the undersigned attorney of the law offices of Smith Robinson Holler DuBose and Morgan, LLC, do hereby certify that on February 18, 2022, I have served all counsel in this action with a copy of the pleading(s) hereinbelow in accordance with the Supreme Court's Administrative Order by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

Documents Served: Reply to the Return to Motion to Dismiss

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Cc: 'chipmcmillan@playermcmillan.com'; Jon Robinson; Shanon Peake; Dot Faulkenberry
Subject: RE: Jones v. Jones (Appellate Case No. 2021-001150)
Attachments: FINAL - Reply to Return to MTD.pdf; 02.18.22 - Proof of Service - Jones v. Jones.pdf

Good afternoon,

Please find attached the Respondents' Reply to the Return to the Motion to Dismiss and Proof of Service in *Jones v. Jones*, Appellate Case No. 2021-001150, which we are electronically filing with the Court of Appeals today, served on you pursuant to Rule 262(c)(3) of the South Carolina Appellate Court Rules and section (d) of the South Carolina Supreme Court's August 25, 2021 Order discussing methods of electronic filing and service.

If you have any questions, please let me know.

I hope everyone has a nice weekend.

Thank you,

Austin

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