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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2020-CP-46-02219
Appellate Case No. 2021-001009

Francine Steineman,Respondent.

v.

Eric Steineman, Sarah Smith, and Charles Griffin,Defendants.

And Meridian Security Insurance Company,Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies the Petition for Rehearing was made and finally ruled on by the Court of Appeals on February 9, 2022.

QUESTIONS PRESENTED

1. Should the Court of Appeals have found that the circuit court's ruling that Petitioner cannot defend this action on behalf of Defendant Smith or Griffin, including, but not limited to, at a future damages hearing, is immediately appealable?
2. Should the Court of Appeals have found that an order "ending the case" is immediately appealable?
3. If the circuit court's ruling that petitioner cannot defend this action on behalf of Defendant Smith or Griffin, including, but not limited to, at a future damages hearing, is immediately appealable and/or an order "ending the case" is immediately appealable, can other holdings of the circuit court contained in the Appealed Orders not otherwise immediately appealable also be reviewed?

STATEMENT OF THE CASE

Pursuant to Rule 242 of the South Carolina Appellate Court Rules, Petitioner Meridian Security Insurance Company, an alleged uninsured motorist carrier (Petitioner), petitions this Court for a writ of certiorari to review the Court of Appeals' dismissal of Petitioner's appeal. In dismissing Petitioner's appeal, the Court of Appeals failed to address any of the actual grounds for immediate appeal raised by Petitioner, which are:

- (a) the circuit court has held that Petitioner cannot defend this action on behalf of Defendant Smith or Griffin, including, but not limited to, at a future damages hearing;
- (b) an order "ending the case" has been entered by the circuit court; and
- (c) because the circuit court's ruling that Petitioner cannot defend this action on behalf of Defendant Smith or Griffin, including, but not limited to, at a future damages hearing, is immediately appealable and/or an order "ending the case" is immediately appealable, all other holdings of the circuit court contained in the Appealed Orders not otherwise immediately appealable may also be reviewed.

Instead, the Court of Appeals filed an Order on November 10, 2021 (the Order of Dismissal) which merely states:

After careful consideration, Respondent's motion to dismiss is granted. *See Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 428 S.C. 261, 266, 834 S.E.2d 204, 206 (Ct. App. 2019, *cert granted* (June 16, 2020), *aff'd as modified*, 432 S.C. 633, 856 S.E.2d 150 (2021). (“[T]he denial of a motion to set aside an entry of default is not appealable until after final judgment.”). The remittitur will be sent as required by Rule 221(b), SCACR.

Appx. p. 132.

Petitioner has never contended that the mere denial of a motion to set aside an entry of default is alone immediately appealable so it filed a petition for rehearing, which again restated the actual three grounds for immediate appeal of the Appealed Orders set forth hereinabove. Said petition was denied by the Court of Appeals without addressing any of Petitioner's grounds for immediate appeal, *see* Appx. pp. 319-320, leaving Petitioner no alternative but to petition this Court to review the dismissal of its appeal.

I. FACTS.

This matter arises out of an automobile accident that occurred on or about January 22, 2018, on Highway 160 at the intersection of Highway 160 and Textile Way in Fort Mill, York County, South Carolina. At that time, Respondent was traveling as a passenger in a motor vehicle being operated by her husband, Eric Steineman (Defendant Steineman). Defendant Steineman attempted to make a left turn onto Textile Way, requiring his vehicle to cross the lanes of traffic traveling the opposite direction. Respondent alleges that Defendant Smith or Griffin was operating a vehicle that was approaching the intersection from the opposite direction on Highway 160 in the outside lane. As Defendant Steineman attempted to complete his left turn, the Steineman vehicle was impacted on the passenger's side by the vehicle operated by either Defendant Smith or Defendant Griffin.

II. PROCEDURAL HISTORY.

On July 28, 2020, Respondent filed a Summons and Complaint against Defendant Steineman and Defendant Smith (the Original Summons and Complaint).

On November 30, 2020, Respondent filed an Amended Summons and Complaint (the Amended Summons and Complaint) to add Defendant Griffin and amend the action to include claims against Defendant Griffin.

On December 5, 2020, Respondent purportedly served Defendant Smith with the Amended Summons and Complaint. On December 29, 2020, Respondent purportedly served Defendant Griffin with the Amended Summons and Complaint.

On December 16, 2020, the South Carolina Department of Insurance accepted service of the Amended Summons and Complaint, Interrogatories, Requests for Production, and Requests for Admission on behalf of Petitioner as the alleged uninsured motorist carrier. *See Appx. pp. 148-173.* The Department of Insurance's letter forwarding the same and providing notice to Petitioner is dated December 17, 2020. *See Appx. p. 148.* However, it is undisputed Petitioner did not actually receive the Department of Insurance's December 17, 2020, letter until February 3, 2021. *See Appx. pp. 145-147.* Based on the tracking information, the letter departed from a USPS Regional Facility on January 27, 2021 and was "in transit" to the final postal facility on Saturday, January 30, 2021. It was picked up at a postal facility on February 3, 2021, the following Monday.

On March 1, 2021, Respondent filed a Motion for Default as to Defendants Smith and Griffin.

On March 5, 2021, thirty days after receipt and actual service of the Amended Summons and Complaint by Petitioner, counsel for Petitioner as the alleged uninsured motorist carrier, filed

a notice of appearance and a Motion for Relief from Default or, in the Alternative, to File Late Answers. *See* Appx. pp. 175-176. Later that same day, Respondent filed a motion to strike Petitioner’s notice of appearance as untimely, although, as noted above, Petitioner filed its notice of appearance within thirty days of actual service of the Amended Summons and Complaint upon it.

On March 8, 2021, three days after Petitioner appeared and filed the March 5, 2021 motion, the circuit court entered an Order of Default as to Defendants Smith and Griffin, *see* Appx. pp. 178-180, which did not rule on Petitioner’s Motion for Relief from Default and also incorrectly found that “[Petitioner] has not in any way made an appearance in this matter.” Appx. p. 178.

On March 11, 2021, Petitioner filed its Motion to Alter or Amend the March 8, 2021 Order pursuant to Rules 52(b) and 59(e), SCRCPP, *see* Appx. pp. 182-183, seeking, in part, for the circuit court to alter or amend its March 8, 2021 Order to allow the circuit court to (a) rule on Petitioner’s March 5, 2021 Motion for Relief from Default and (b) amend the incorrect finding that “[Petitioner] has not in any way made an appearance in this matter.”

On May 12, 2021, an in-person hearing was held on Petitioner’s Motion to Alter or Amend the March 8, 2021 Order.

On June 10, 2021, the circuit court issued a Form 4 Order from the May 12, 2021 hearing, *see* Appx. pp. 185-187, which provided:

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

After careful consideration:

Meridian Security Company’s Motion for Relief From Default is DENIED.

Meridian Security Company’s Motion to Alter or Amend Order of Default is DENIED.

On June 21, 2021, Petitioner filed a motion for reconsideration and/or clarification of the June 10, 2021 Order (Petitioner's Motion to Reconsider and/or Clarify the June 10, 2021 Order). *See Appx. pp. 189-190.* An in-person hearing was scheduled for July 28, 2021 to address said motion.

On July 26, 2021, two days prior to the hearing on Petitioner's Motion to Reconsider and/or Clarify the June 10, 2021 Order, Respondent filed a Motion for Default as to Petitioner.

On July 28, 2021, an in-person hearing was held on Petitioner's Motion to Reconsider the June 10, 2021 Order. Respondent's Motion for Default as to Petitioner was not addressed at this hearing.

On July 29, 2021, just three days after Respondent filed a Motion for Default as to Petitioner and without having heard from Petitioner on said motion, the Court entered an Order of Default as to Petitioner.

On August 6, 2021, Petitioner filed a Motion to Reconsider the Order of Default as to Petitioner. A virtual hearing was scheduled for August 24, 2021.

Later that same day, the Court issued a Form 4 Order, which denied Petitioner's Motion to Reconsider and/or Clarify the June 10, 2021 Order, directed Respondent's counsel submit a proposed formal order for the circuit court's review, and ended the case. *See Appx. pp. 192-194.*

On August 13, 2021, the circuit court issued the formal order. *See Appx. pp. 196-210.*

On August 24, 2021, a virtual hearing was held on Petitioner's Motion to Reconsider the Order of Default as to Petitioner.

On August 27, 2021, the circuit court issued a Form 4 Order granting Petitioner's Motion to Reconsider the Order of Default as to Petitioner and denying Petitioner's Motion for Order of Default as to Petitioner.

On September 10, 2021, Petitioner timely¹ served its Notice of Appeal (the Appeal), which appeals the Orders filed by the Honorable Daniel D. Hall on March 8, 2021 and June 10, 2021, August 6, 2021, and August 13, 2021 (collectively, the Appealed Orders). *See* Appx. pp. 1-26.

On September 20, 2021, Respondent filed a Motion to Dismiss this appeal (the Motion). *See* Appx. pp. 30-42.

On September 30, 2021, Petitioner filed a Return to the Motion (the Return). *See* Appx. pp. 43-123.

On October 4, 2021, Respondent filed a Reply to the Return (the Reply). *See* Appx. pp. 124-127.

On November 10, 2021, the Court of Appeals filed the Order of Dismissal. *See* Appx. p. 132.

On November 16, 2021, Petitioner filed a Petition for Rehearing. *See* Appx. pp. 133-318.

On February 9, 2022, the Court of Appeals denied the Petition for Rehearing. *See* Appx. pp. 319-320. Petitioner now seeks a writ of certiorari to review this denial.

ARGUMENTS

I. THE COURT OF APPEALS SHOULD HAVE FOUND THAT THE CIRCUIT COURT’S RULING THAT PETITIONER CANNOT DEFEND THIS ACTION ON BEHALF OF DEFENDANT SMITH OR GRIFFIN, INCLUDING, BUT NOT LIMITED TO, AT A FUTURE DAMAGES HEARING, IS IMMEDIATELY APPEALABLE.

The circuit court ruled that “[Petitioner] cannot defend this action in the name of Defendant Smith or Defendant Griffin.” Appx. p. 209. This holding is immediately appealable.

S.C. Code § 14-3-330(2), provides, in pertinent part:

¹ “When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order of judgment.” Rule 203(b)(1), South Carolina Appellate Court Rules.

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 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

....

(emphasis added).

Further, this Court has held that an order which “*could* determine the action and prevent a judgment from which an appeal might be taken” is immediately appealable. *Hagood v. Sommerville*, 362 S.C. 191, 198, 607 S.E.2d 707, 710 (2005) (emphasis added). In *Hagood*, a circuit court order disqualifying a party’s attorney was determined to be immediately appealable because it affected a party’s substantial right to choose counsel and could have effectively determined the case as it affected the attorney/client relationship. *Id.* 197-198. Here, the circuit court’s holding affects a substantial right by disqualifying the Petitioner from defending this action on behalf of Defendant Smith or Griffin, including, but not limited to, at a future damages hearing², and could effectively determine the case as Petitioner would be barred from defending the case going forward, including, but not limited to, at a future damages hearing.

1. *The circuit court’s holding affects a substantial right of Petitioner.*

The circuit court’s ruling is contrary to Petitioner’s statutory right to appear and defend in the name of Defendants Smith and Griffin as uninsured motorists. *See* S.C. Code 38-77-150(B). Additionally, Rule 55(b)(2) of the South Carolina Rules of Civil Procedure states, in pertinent part:

² To date, Respondent has not requested a damages hearing and no damages have been awarded to Respondent.

If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application.

The clear purpose of this provision is to afford a defaulting party or a defaulting party's representative, who has appeared in the action, the opportunity to defend at a damages hearing. This provision is complemented by South Carolina case law, which provides "[a] defaulting party [is] entitled to notice of the damages hearing" and may "cross-examin[e] witnesses and [object] to evidence" at such hearing. *Roche v. Young Bros., of Florence*, 332 S.C. 75, 81–82, 504 S.E.2d 311, 314 (1998).

Petitioner, as an alleged uninsured motorist carrier, has appeared in this action to defend on behalf of Defendants Smith and Griffin. *See* Appx. pp. 175-176. Accordingly, Petitioner, as Defendants Smith and Griffin's representative, is, at the very least, entitled, pursuant to Rule 55(b)(2) and *Roche*, to defend this action at a future damages hearing. However, the circuit court's ruling strips Petitioner of that substantial right.

2. *The circuit court's holding as to Petitioner could effectively determine the case.*

In *Hagood*, this Court held that "an appeal after final judgment and a new trial, if granted, would not adequately protect a party's interests because it would be difficult or impossible for the affected party or the appellate court to ascertain by any objective standard whether prejudice resulted from the disqualification." *Hagood* at 198. Here, an appeal after the entry of the circuit court's order from a damages hearing would not adequately protect Petitioner's interests as it would almost certainly be impossible or, at the very least, difficult for this Court to ascertain by any objective standard whether prejudice resulted from the circuit court disallowing Petitioner to

defend at that hearing. Thus, Petitioner’s appeal should be considered now before a damages hearing takes place.

II. THE COURT OF APPEALS SHOULD HAVE FOUND THAT AN ORDER “ENDING THE CASE” IS IMMEDIATELY APPEALABLE.

As noted above, in dismissing Petitioner’s appeal, the Court of Appeals merely cited to *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 428 S.C. 261, 266, 834 S.E.2d 204, 206 (Ct. App. 2019, *cert granted* (June 16, 2020), *aff’d as modified*, 432 S.C. 633, 856 S.E.2d 150 (2021), which provides that “[t]he denial of a motion to set aside an entry of default is not appealable until after **final judgment**.” *Palmetto Constr. Grp., LLC* at 266 (emphasis added). However, the August 6, 2021 Order entered by the circuit court plainly provides that it **ends** the case:

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

After careful consideration, Meiridan Security Insurance Company’s Motion for Reconsideration is DENIED.

However, The Court directs Plaintiff’s attorney to submit a proposed formal order for review by opposing counsel and the Court. The Court will then issue a written formal order.

ORDER INFORMATION

This order ends does not end the case.

[See Page 2 for additional information.](#)

Appx. p. 192.

“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). In addition to ending the action, the August 6, 2021 Order, as formalized by the August 13, 2021 formal order, does not reserve an issue, or leave open any possibility of further action. *See* Appx. pp. 192-210. Accordingly, a “final judgment” exists in this case and is immediately appealable pursuant to Rule 201(a) of the South Carolina Rules of Appellate Practice.

III. BECAUSE THE CIRCUIT COURT’S RULING THAT PETITIONER CANNOT DEFEND THIS ACTION ON BEHALF OF DEFENDANT SMITH OR GRIFFIN, INCLUDING, BUT NOT LIMITED TO, AT A FUTURE DAMAGES HEARING, IS IMMEDIATELY APPEALABLE AND/OR AN ORDER “ENDING THE CASE” IS IMMEDIATELY APPEALABLE, ALL OTHER HOLDINGS OF THE CIRCUIT COURT CONTAINED IN THE APPEALED ORDERS NOT OTHERWISE IMMEDIATELY APPEALABLE MAY ALSO BE REVIEWED.

“[A]n order that is not directly appealable may be considered if there is an appealable issue before the court.” *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005)(emphasis added); *see Briggs v. Richardson*, 273 S.C. 376, 379, 256 S.E.2d 544, 546 n.1 (1979). For the reasons stated in the preceding sections, the circuit court’s ruling that Petitioner cannot defend this action on behalf of Defendant Smith or Griffin, including, but not limited to, at a future damages hearing is immediately appealable and/or an order “ending the case” is immediately appealable. Thus, pursuant to *Edge* and *Briggs*, the Court may consider all other issues presented in the Appealed Orders. *See* Appx. pp. 3-26.

CONCLUSION

For the reasons stated, Petitioner asks this Court to grant the petition for a writ of certiorari.

Date: March 11, 2022

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