

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
MARVIN H. DUKES, MASTER IN EQUITY
Trial Court Case No. 2020-CP-07-0231
Appellate Case No. 2022-000277

GEORGIA HARRISON, BARBARA HARRISON,
JOYCE ELLEN HARRISON, WILLIAM S. HARRISON III,
STANLEY ROBERTS AND DIANA MENDHEIM INDIVIDUALLY
AND AS ATTORNEY IN FACT,

Respondents,

v.

STEPHANIE LORRAINE KIRKLAND, GARY LAMONT
KIRKLAND, KIETA NICOLE WHITE, AND CHERYL
KIRKLAND,

Appellants.

MOTION PURSUANT TO RULE 241(A)

Appellants Stephanie Lorraine Kirkland and others (hereafter “Appellant”) move this Honorable Court for an order declaring the existence of an automatic stay of the proceedings and the trial court and the effect of the orders on appeal, as set forth in the Amended Notice of Appeal filed March 9, 2022. In support of the motion, Appellants will show:

1. This is an action pursuant to the Clementa C. Pinkney Uniform Partition of Heirs' Property Act, S.C. Code Ann. 15-61-320 *et seq.*, hereafter referred to as "the Pinkney Act."
2. Included in this appeal are appeals from the following orders:
 - a. Order of September 1, 2021, establishing the property is 26.4662 acres, more or less, with a fair market value of \$9,100,000.00¹, ordering a date of September 26, 2021 for any of the Appellants to issue notice of their interest in purchasing the interests of Respondents and Appellant co-tenants in the subject property, and setting the date of October 6, 2021 as the trial for the partition action.
 - b. Order dated October 21, 2021, recognizing the notice of interest in purchasing the cotenants' interests had been filed by Defendants Keita Nicole White, Gary Lamont Kirkland, Stephanie Lorraine Kirkland and Cheryl Kirkland, and recognizing the motion by then-defendants Christopher Kirkland, Shawn Kirkland, William Charles Kirkland, Paulette Kirkland and Paul T. Allbright to revoke respective powers of attorney earlier given to Respondent Diana Mendheim and granting their motion to be realigned as Defendants in this action, recognizing the interests of those parties in

¹ Other incidental relief was ordered as well in that order.

purchasing the interests of the other parties to the land, declaring the fractional ownership interests of the parties to this action of the real property to be sold and the price to be paid for the real property by each Defendant, and setting the date of December 22, 2021 by which any party who had given notice must pay their apportioned prices into the Court. The order further provided that if Appellants (ostensibly as a group) “fail to pay their apportioned prices into the Court” by December 22, 2021, that “Plaintiffs shall be authorized to enter into, or ratify a contract of sale for not less than” \$9,100,000.00 and “including such other commercially reasonable terms and conditions as are deemed appropriate” , ordering the sale by the Respondents of the subject property

- c. Order dated January 20, 2022 finding that the Master in Equity lacked jurisdiction to entertain Appellants’ Motion for Relief of Judgment and for Extension of Time to Tender Purchase Price Under Right of First Refusal and their Supplemental Motion for Relief of Judgment and for Extension of Time to Tender Purchase Price because no party had appealed the October 20,2021 order, and concluding the Master could not amend the October 20, 2021 order

even if he wanted to because no appeal had been taken from the October 20,2021 order; and

d. Order dated Denying Appellants’ Motion for Reconsideration filed January 31, 2022.

3. Appellants will argue in this appeal that the Master in Equity erred in ruling that he lacked jurisdiction to reconsider the October 20, 2021 order because no one had appealed that order, and his error was based on several grounds: (1) Rule 54(b) gave the trial court the jurisdiction, power and authority to reconsider the October 20, 2021 order at anytime prior to final judgment and (2) S.C. Code Section 14-3-330 did not permit appeal by any party of the order of October 20, 2021 order, such that the Master in Equity erred as a matter of law in concluding that he lacked jurisdiction to amend the order of October 20, 2021 because such order was final when it was not final.

Argument

The existence of an automatic stay on appeal is governed by Rule 241(a), SCACR, which provides that the service of a notice of appeal in a civil matter “acts to automatically stay matters decided in the order, judgement, decree or decision on appeal and to automatically stay the relief order in the appealed order, judgment or decree or decision.” Section (b) of the rule sets forth the exceptions to the automatic

stay provision, none of which are applicable here, so there is, as a matter of law, an automatic stay in effect during this appeal.

This appeal is from *inter alia*, an order dated January 20, 2022 mistakenly finding that the trial court lacked jurisdiction to entertain the relief sought, and this appeal therefore automatically stays that finding. Respondents argue that the order on appeal is not stayed because the order falls within the exception set forth in Rule 241(b)(3), “judgments directing the execution of conveyance or other instruments as provided in S.C. Code Ann. Section 18-9-160.”

However, the order on appeal does not “direct[] the execution of conveyance or other instrument” pursuant to Section 18-9-160, and instead erroneously concludes that the trial court lacked jurisdiction to order any relief other than that which had already been ordered. While an incidental effect of the order on appeal may be to permit certain parties to move forward with a sale of property under the Pinkney Act, the order on appeal is one finding that the trial court lacked jurisdiction to consider the issue presented. The order on appeal does not “direct[] the execution of conveyances or other instruments. . .” The order on appeal is immediately appealable because the trial court ruled that he lacked jurisdiction to entertain the issue presented, and any purported conveyance of land is merely an incidental result of the order on Appeal.

The exception set forth in Rule 241(b)(3) for an order “directing the execution of conveyances. . . as provided in Section 18-9-160” does not apply here because the

order on appeal does not order any conveyance at all. The order on appeal erroneously rules that the court lacks jurisdiction to entertain a motion which was properly pending before it.

Moreover, since Appellants have appealed the order of January 20, 2022, this Court now has appellate jurisdiction to consider the order dated October 20, 2021. While that order may not have been immediately appealable at the time it was issued, Section 14-3-330(1) permits the appellate court to now consider, on appeal from an “intermediate judgment order or decree” or “a final order affecting a substantial right” . . . “as well as “any intermediate order or decree necessarily affecting the judgment not before appealed from.” *See* Section 14-3-330(1) and (3).

As a result, there is an automatic stay in effect by virtue of Rule 241(a), in that none of the exceptions in Rule 241(b) applies to the order on appeal. Additionally, the October 20, 2021 order, which was not appealable at the time it was issued is appealable now by virtue of Section 14-3-330(1) and (3).

Wherefore, appellants seek an order of this Court declaring that the automatic stay provided by Rule 241(a), SCACR, is in effect such that the relief ordered by the order on appeal is stayed and no action can be taken to implement the relief or incidentally permitted by the order of January 20, 2022.

Judge Dukes clearly erred in the January 20, 2022 order in ruling that he lacked jurisdiction to reconsider the October 20, 2021 order “even if [he] wanted to”

because Rule 54(b) clearly gave him the jurisdiction to consider the merits of the issue before him, which he did not reach based on his erroneous conclusion regarding jurisdiction.

Alternatively, should this Court determine that no stay is automatically in effect by virtue of Appellants' appeal from the order of January 20, 2022, Appellants seek a temporary stay of the orders on appeal to permit them sufficient time to submit a petition for writ of supersedeas to this Honorable Court, to permit the issue of a stay to be considered by this Court on the merits.

Respectfully submitted,

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March 17, 2021
Hilton Head Island, SC