

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2022-000286

Francine Steineman..... Respondent.

v.

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

And Meridian Security Insurance Company.....Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW¹

- I. Did the Court of Appeals correctly rule that the Circuit Court did not enter a final judgment?
- II. If the Circuit Court's August 13, 2021 Order did not end the case, did the Court of Appeals correctly conclude that Petitioner cannot immediately appeal the ruling that it lacks the right to defend this action?
- III. If the Circuit Court's August 13, 2021 Order were immediately appealable, can all of its rulings be reviewed on appeal?
- IV. If the Circuit Court's rulings were immediately appealable, did Petitioner appeal in a timely fashion?

STATEMENT OF THE CASE

On July 28, 2020, Respondent filed this action against Defendants Eric Steineman and Sarah Smith after suffering catastrophic bodily injuries in a car crash. (J.A. 134). At the time of the crash, Respondent was a passenger in Defendant Steineman's vehicle, which was insured through Petitioner. Petitioner's policy provided liability, uninsured ("UM"), and underinsured ("UIM") coverages. Defendant Steineman was insured by Petitioner for liability and Defendant Smith was uninsured, so Respondent made claims with Petitioner for each of the coverages.

This appeal focuses on Respondent's claim for UM coverage based on Defendant Smith's alleged fault in causing the collision.

On August 10, 2020, Respondent served Petitioner, as UM carrier, with the Summons and Complaint ("Original Pleadings") as required by law, through the S.C. Department of Insurance

¹ Per Rule 242(d)(2), SCACR, "[o]nly those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." Consequently, pursuant to Rule 242(f), SCACR, Respondent restates the questions presented for review based on the three arguments Petitioner outlined in its Petition for Rehearing in the Court of Appeals (and which Petitioner earlier raised in opposition to Respondent's Motion to Dismiss).

In addition, as contemplated by Rule 220(c), SCACR, Respondent includes as a fourth question an additional sustaining ground based on an argument Respondent raised in the Court of Appeals in support of her Motion to Dismiss.

(“DOI”). (J.A. 13). On September 26, 2020, Respondent served Defendant Smith personally with the Original Pleadings. (J.A. 13). Defendant Smith failed to answer the Original Pleadings; so, on November 12, 2020, the Clerk of Court entered a default as to Defendant Smith. (J.A. 13).

Later that month, Defendant Smith e-mailed Respondent’s counsel with allegations that another person was operating her car at the time of the wreck. (J.A. 13). As a result, on November 30, 2020, Respondent filed an Amended Summons and Complaint (“Amended Pleadings”). The Amended Pleadings added Defendant Griffin as an alternative UM driver but the circumstances giving rise to Meridian’s UM exposure remain unchanged. (J.A. 13).

On December 5, 2020, Defendant Smith was personally served with the Amended Pleadings. (J.A. 13; 88, ¶ 1). On December 29, 2020, Defendant Griffin was personally served with the Amended Pleadings. (J.A. 13; 88, ¶ 2). Neither Defendant filed an answer; as a result, on March 8, 2021, they were both held in default. (J.A. 13; 89).

Meanwhile, Respondent had the Amended Pleadings served on Petitioner through the DOI on December 16, 2020. (JA 13; 58; 88, ¶ 4). But Petitioner did not file an appearance until March 5, 2021 (JA 13), at which time it also filed a motion seeking relief from default. (J.A. 14). In addition, on March 11, 2021, Petitioner moved to alter or amend the Circuit Court’s March 8, 2021 Order pursuant to Rule 59(e), SCRCF. (J.A. 36). The Circuit Court denied both of Petitioner’s motions on June 10, 2021. (J.A. 6).

On June 21, 2021, Petitioner filed a second Rule 59(e) motion. (J.A. 39). This motion did not challenge a new ruling or raise any issue not already considered. Rather, its only new request was for the Circuit Court to clarify the legal and factual reasons for its June 10, 2021 Order.

On August 13, 2021, the Circuit Court issued a formal Order detailing the legal and factual reasons for its denial of Petitioner’s first Rule 59(e) motion. (J.A. 12). Also, that Order denied

Petitioner's successive Rule 59(e) motion because it failed to challenge a new ruling or raise any issue not already considered. (J.A. 16).² The Order further reiterated that Petitioner was properly served with the Original Pleadings on August 10, 2020 and the Amended Pleadings on December 16, 2020. (J.A. 21). Finally, the Order noted that S.C. CODE ANN. 38-77-150 requires a UM carrier to appear within thirty days of service in order to exercise its statutory right to defend (J.A. 17-18) and found Petitioner failed to appear within thirty days of service such that it had no right to defend under the statute. (J.A. 21).

On September 10, 2021, Petitioner appealed. (J.A. 1). Respondent moved to dismiss the appeal as interlocutory. (J.A. 30). Petitioner opposed the motion. (J.A. 43). By Order dated November 10, 2021, the Court of Appeals granted the Motion to Dismiss. (J.A. 132).

Petitioner then sought a rehearing from the Court of Appeals. (J.A. 133). The Court of Appeals denied the Petition for Rehearing on February 9, 2022. (J.A. 319). The present petition followed.

ARGUMENT

I. The Court of Appeals correctly ruled that the Circuit Court did not enter a final judgment.

As outlined above, the Circuit Court denied Petitioner relief from its March 8, 2021 Order on two occasions. It denied Petitioner's first Rule 59(e) motion (as well as its Motion for Relief from Default) in a June 10, 2021 Order. (J.A. 6). Subsequently, the Circuit Court issued a Form 4 Order dated August 6, 2021 that stated it would be issuing a "written formal order" denying Petitioner's second Rule 59(e) motion (J.A. 192) and, indeed, issued a formal Order dated August 13, 2021 that detailed its ruling denying the motion. (J.A. 12).

² The August 13, 2021 Order was preceded by a Form 4 Order of August 6, 2021 that stated the Circuit Court would subsequently issue a "written formal order" denying Petitioner's second Rule 59(e) motion. (J.A. 192).

Focusing entirely on the August 6, 2021 Form 4 Order, Petitioner argues the Circuit Court entered a final judgment that was directly appealable. (Pet. for Writ of Cert., p. 9). Petitioner's reliance on that order is misplaced.

As an initial matter, a Form 4 order that indicates a formal order will follow is "not in any way final." *Metts v. Mims*, 384 S.C. 491, 499, 682 S.E.2d 813, 817 (2009). Rather, the finality of the court's ruling is based on the ensuing formal order. See Rule 203(b)(1), SCACR ("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 or judgment."). Thus, the question of whether the Circuit Court issued an appealable final judgment is answered by a review of the August 13, 2021 Order and the substance of its rulings.

The August 13, 2021 Order denied Petitioner's request to alter or amend the earlier Order of June 10, 2021. In other words, the Circuit Court reiterated the rulings in its June 10, 2021 Order. The June 10, 2021 Order stated it did not end the case but instead denied relief from the March 8, 2021 Order. (J.A. 6).

It is clear the March 8, 2021 Order was not a final judgment. "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). To the contrary, the March 8, 2021 Order simply found Defendants Smith and Griffin were in default and that Petitioner had not exercised its statutory right to defend in a timely fashion. (J.A. 4). It did not determine damages and therefore could not constitute a final judgment. *5Star Life Ins. Co. v. Peek Performance*, 434 S.C. 334, 336, 863 S.E.2d 468, 469 (Ct. App. 2021) ("Until damages are entered, there is no default judgment."). As this Court has noted in the context of a finding of

default, a “party has no right of appeal until after final judgment.” *Palmetto Constr. Group v. Restoration Specialists*, 432 S.C. 633, 636, 856 S.E.2d 150, 151 (2021).

Alternatively, to the extent the Court were to accept Petitioner’s invitation to base its analysis on the August 6, 2021 Form 4 Order, it should nevertheless affirm the Court of Appeals. To be sure, as Petitioner points out, the Form 4 Order includes a check mark next to a notation that the Order “ends the case.” (J.A. 192). This is clearly a scrivener’s error inasmuch as it directly contradicts the substance of the rulings in the Circuit Court’s formal Orders. As the Court of Appeals reasoned in *5Star*, a mischaracterization of the nature of an order cannot convert an interlocutory ruling into a final judgment; instead, the appellate court must examine the real effect of the ruling. *5Star Life Ins. Co.*, 434 S.C. at 337, 863 S.E.2d at 469 (“Although Peek and the trial court used the term ‘default judgment as to liability,’ the court’s order is not a final judgment because damages have not been entered against 5Star.”). In short, this Court should not seize upon a mistake in a superseded form order to disregard all of the Circuit Court’s rulings and the remaining need for a damages hearing to enter judgment.

II. The Court of Appeals correctly concluded that Petitioner cannot immediately appeal the Circuit Court’s ruling that Petitioner lacks the right to defend this action.

“An appeal ordinarily may be pursued only after a party has obtained a final judgment.” *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). “The determination of whether a party may immediately appeal an order ... is governed primarily by S.C. Code Ann. § 14-3-330 (1976 & Supp. 2003). An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable.” *Id.* at 195, 607 S.E.2d at 708.

As correctly noted by the Court of Appeals, one may not appeal the denial of a motion seeking relief from default until a final judgment for damages has been entered. (J.A. 132). *See generally 5Star Life Ins. Co.*, 434 S.C. at 337, 863 S.E.2d at 469-70 (summarizing cases).

Petitioner focuses on S.C. CODE ANN. § 14-3-330(2) (1976, as amended) and relies on *Hagood* for its contention that the Circuit Court’s Order is immediately appealable. But *Hagood* does not apply here. Specifically, the Circuit Court’s order does not disqualify “a party’s attorney” so it does not “affect[] a substantial right and [is not] immediately appeal[able] under Section 14-3-330(2).” *Hagood*, 362 S.C. at 197, 607 S.E.2d at 710 (emphasis added). To be sure, Petitioner is not a party to this litigation. Moreover, even if it were, its attorney was not disqualified. Rather, the Circuit Court simply found Petitioner failed to comply with the statutory requirements that it must satisfy to exercise the right to appear and defend this action.

Nor does Petitioner – technically a non-party to this action – have a substantial right at issue sufficient to trigger Section 14-3-330(2). Petitioner’s right to appear and defend is granted by statute subject to specific statutory conditions. To that extent, its rights are restricted by the statute and are not as broad as those granted to parties under Rule 55, SCRPC. It is clear in light of the holdings in *5Star*, as well as the cases cited therein, that Petitioner’s inability to contest liability is itself insufficient to create a the deprivation of a substantial right for purposes of Section 14-3-330(2).³

Because Petitioner has no substantial right that is affected by the Circuit Court’s Order, it is not immediately appealable.

III. If the Court finds that the Circuit Court’s August 13, 2021 Order was immediately appealable, all of the Circuit Court’s rulings may be reviewed on appeal.

Respondent does not dispute that a timely appeal of a final judgment permits the appellate court to review all rulings of the lower court. However, for the reasons outlined above and below,

³ Not only would a contrary ruling create an exception that would swallow the rule, the *5Star* Court specifically rejected a similar argument based on Section 14-3-330(2). See *5Star Life Ins. Co. v. Peek Performance*, Appellate Case No. 2018-002114, Appellant’s Memorandum Regarding the Appealability of the Orders Challenged on Appeal, pp. 3-4.

the Court should find that Petitioner's appeal was from an interlocutory order that was not directly appealable or, alternatively, that Petitioner did not appeal in a timely fashion.

IV. Alternatively, even if the Circuit Court's rulings were immediately appealable, Petitioner failed to appeal in a timely fashion.⁴

Assuming for the sake of argument – without conceding – that Petitioner had a right to appeal the Circuit Court's rulings refusing it relief from failing to appear in a timely fashion and denying it the right to defend this action, Petitioner's appeal was untimely and therefore did not confer jurisdiction on the Court of Appeals.

Within thirty days after receipt of written notice of entry of an order or judgment, a notice of appeal in a case appealed from the Court of Common Pleas must be served within thirty days on all respondents. Rule 203(b)(1), SCACR. This is important because “[t]he requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004).

Of, course, a timely motion pursuant to Rule 59(e), SCRCPP, tolls the time for appeal. Rule 59(f), SCRCPP. But successive Rule 59(e) motions do not always work the same. Here, Petitioner's second Rule 59(e) motion did not extend its time for appeal. Thus, Petitioner's appeal is untimely.

On March 8, 2021, the Circuit Court issued the Order (J.A. 3) causing Petition to file a written Rule 59(e), SCRCPP, Motion to Alter or Amend.⁵ (J.A. 36). The Circuit Court denied that

⁴ Respondent submits this argument as an additional sustaining ground pursuant to Rule 220(c), SCACR.

⁵ Regardless of how the motion is labeled, a motion to alter or amend is the same as a motion for reconsideration. *See Elam*, 361 S.C. at 21, 602 S.E.2d at 778-79.

motion on June 10, 2021. (J.A. 6). Petitioner should have served a notice of appeal on all respondents by July 12, 2021, thirty days after it received written notice of the June 10, 2021 Order.

Petitioner did not serve a notice of appeal. Instead, on June 21, 2021, it filed another Motion for Reconsideration. (J.A. 39). This subsequent motion did not challenge a new ruling or raise any issue not already considered. Rather, it asked the Circuit Court to clarify the reasons for denying its first Rule 59(e) motion. After the Circuit Court clarified its reasons for the denial (J.A. 12), Appellant served its notice of appeal on September 10, 2021. (J.A. 1). However, this was sixty days after the appellate deadline.

Coward Hund Constr. Co. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999) controls this issue. In *Coward Hund*, the Court of Appeals held “a successive Rule 59(e), SCRPC, motion, following the denial of a similar motion, did not toll the time for filing appeal, where the court’s ruling on the first such motion did not change its ruling at trial.” *Quality Trailer Products v. CSL Equip. Co.*, 349 S.C. 216, 219, 562 S.E.2d 615, 617 (2002).

As in *Coward Hund*, Petitioner filed a written motion for reconsideration after the Circuit Court made its initial adverse ruling; the court denied the motion in its entirety; and Petitioner filed a second, similar motion for reconsideration seeking clarification of the court’s ruling. In other words, “the court’s ruling on [Petitioner’s] first such motion did not change its [earlier] ruling.” Petitioner’s successive motion therefore did not toll the time for filing an appeal.

Elam does not change this analysis. There, in a different procedural posture than the present case, this Court found a successive Rule 59(e), SCRPC, motion did toll the time for filing an appeal. The Court explained this holding was necessary because a new issue was raised – namely, the propriety of the legal standard used by the trial court in ruling on the first Rule 59(e) motion. *Elam*, 361 S.C. at 26, 602 S.E.2d at 781. Thus, the subsequent motion “raised at least

one issue that came to light as a result of the order denying” the first motion. T.C. Ezzell, *Successive Rule 59(e) Motions: A Less Slippery Slope*, 56 S. C. L. Rev. 659, 669–70 (2005).

Unlike the circumstances in *Elam*, Petitioner here could not – and did not – raise any new issue in its successive motion because the Circuit Court’s ruling on its first Rule 59(e) motion did not change its earlier ruling. *See Elam*, 361 S.C. at 19–20, 602 S.E.2d at 777 (citing *Sears v. Sears*, 85 Ill.2d 253, 52 Ill. Dec. 608, 422 N.E.2d 610 (1981) (successive written post-trial motion which repeats what was raised or could have been raised in first written motion is not authorized by rules and does not extend time for appeal; losing litigant is not entitled to return to trial court indefinitely hoping for change of heart or a more sympathetic judge, or string out arguments one at a time over months because “[t]here must be finality, a time when the case in the trial court is really over and the loser must appeal or give up”)).

As this Court acknowledged in *Elam*, *Coward Hund* remains good law. And it applies to Petitioner’s appeal. The Court of Appeals’ dismissal of the present appeal is additionally sustained by the fact that it lacked jurisdiction to consider this appeal due to Petitioner’s untimely filing and service of its Notice of Appeal.

CONCLUSION

The Court of Appeals correctly dismissed this appeal. This Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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