

RECEIVED
JUN 06 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
In the Court of Common Pleas

The Honorable Michael S. Holt, Circuit Court Judge

Case No. 2021-CP-13-00465

Appellate Case No. 2022-000683

Sheanna Simmons, Plaintiff,.....Appellant,

v.

Cagle Brothers Logging, Inc., Ronnie Dewayne James, Jr.,
and Charles Ingram Lumber Co., Inc., Defendants,

Of which Cagle Brothers Logging, Inc. and Ronnie Dewayne James, Jr.,.....Respondents.

RESPONDENTS' MEMORANDUM ADDRESSING APPEALABILITY

T. David Rheney, S.C. Bar No. 13148
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200 (29601)
Post Office Box 10589
Greenville, South Carolina 29603
864-271-9580
864-271-7502 FAX
drheney@gwblawfirm.com

This matter is before the Court upon the request of the Clerk of Court of the South Carolina Court of Appeals, V. Claire Allen, dated May 26, 2022, requesting that the parties address the appealability of the Order of Judge Michael S. Holt granting the defendants' motions for confidentiality and to enlarge the time to produce documents. A hearing on the motions was held in Chesterfield on April 13, 2022, and a Form 4 Order granting the motions was entered the following day. The formal Order was entered shortly after that. Thereafter, the plaintiff moved for reconsideration of the Order granting the motions on the same basis as was argued during the hearing of the motions. That motion was denied on May 9, 2022. The plaintiff then filed this appeal of the Order granting the motions. For the following reasons, the Order is not appealable at this stage of the litigation and, therefore, the defendants oppose this appeal and move to dismiss the same.

A. The Order Granting the Motions of the Defendants is Interlocutory and Not Subject to Appeal

Appealability of an order is generally controlled by *S.C. Code Ann.* §14-3-330. See, *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006) ("The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by *S.C. Code Ann.* §14-3-330."). According to the statute, the Court may review on appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits or 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 (1976). Further, the provisions of the statute are to be narrowly construed to preserve judicial economy by avoiding piecemeal appeals. *Stone v. Thompson*, 426 SC 291, 826 SE2d 868 (2019). An order "involves the merits" for purposes of exception to the final judgment rule of appealability when it finally determines some substantial matter forming the whole or a part of some cause of action or defense. *Tillman v. Tillman* 420 SC 246, 801SE2d 757 (SC appellant 2017). Discovery orders are interlocutory and not immediately appealable. *Ex parte Whetstone*, 289 S.C. 580, 347 S.E. 2d 881 (1986).

In this case, the defendants moved to have a subset of documents ordered to be produced marked as confidential. The plaintiff refused to consent, either before or after the filing of the motions. Following the hearing, Judge Holt ruled that the motions were reasonable because there would be no need for publication of the materials outside of the confines of the litigation. This was

a discovery motion that was within the sound discretion of the judge to decide, and there was no abuse of discretion in granting the motion. In addition, this was not a final order that determined the action, did not determine the scope of issues at the trial, or which invaded a substantial right of the plaintiff. Instead, it is nothing more than a routine discovery order for which there is no sound basis for appeal. The defendants do not contest that the documents should be produced, only that a small portion should be marked confidential prior to production. Accordingly, the appeal should be dismissed as a matter of law.

B. The Motions Were Not Controlled by Rule 59(e)

During the hearing of the motions, plaintiff's counsel argued that the motions were attempts to request reconsideration of the ruling of the judge on the plaintiff's motion to compel, which had been previously argued. However, the defendants were not asking that the Court reconsider any portion of that ruling, or that they not be required to produce documents they had been ordered to produce. Instead, the motions were merely requests to mark as confidential documents which contained sensitive personal information and which the defendants were not contesting the production of. Judge Holt correctly held in his Order that the motions were not an effort to alter or amend the previous Order, but instead were routine discovery motions which were not subject to the Rule 59(e) filing requirements.

For the foregoing reasons, the defendants request that the plaintiff's appeal be dismissed.

(SIGNATURE ON FOLLOWING PAGE)

Respectfully submitted,

s/T. David Rheney

T. David Rheney, S.C. Bar No. 13148
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200 (29601)
PO Box 10589
Greenville, SC 29603
864-271-9580
864-271-7502 FAX
drheney@gwblawfirm.com

*Attorney for Respondents, Cagle Brothers
Logging, Inc. and Ronnie Dewayne James,
Jr.*

June 3, 2023
Greenville, South Carolina

Other Counsel of Record:
Lane D. Jefferies, S.C. Bar No. 101764
ANASTOPOULO LAW FIRM, LLC
32 Ann Street
Charleston, SC 29403
843-614-8888
lane@akimlawfirm.com
CLD@AkimLawFirm.com
Attorney for Appellant

Julie J. Moose, S.C. Bar No. 12944
McANGUS GOUDELOCK & COURIE, LLC
1320 Main St., 10th Floor (29201)
PO Box 12519, Capitol Station
Columbia, SC 29211-2519
803-227-2231 DIRECT
803-229-2300
803-748-0526 FAX
julie.moose@mgclaw.com
*Attorneys for Defendant,
Charles Ingram Lumber Co., Inc.*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
In the Court of Common Pleas

The Honorable Michael S. Holt, Circuit Court Judge

Case No. 2021-CP-13-00465

Appellate Case No. 2022-000683

Sheanna Simmons, Plaintiff,.....Appellant,

v.

Cagle Brothers Logging, Inc., Ronnie Dewayne James, Jr.,
and Charles Ingram Lumber Co., Inc., Defendants,

Of which Cagle Brothers Logging, Inc. and Ronnie Dewayne James, Jr.,.....Respondents.

PROOF OF SERVICE

T. David Rheney, S.C. Bar No. 13148
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200 (29601)
Post Office Box 10589
Greenville, South Carolina 29603
864-271-9580
864-271-7502 FAX
drheney@gwblawfirm.com

RECEIVED
JUN 06 2022
SC Court of App

I certify that the Respondents' Memorandum Addressing Appealability was served on Appellant by electronic mail and U.S. Mail on June 3, 2022, addressed to Appellant's attorney of record, Lane D. Jeffries at Anastopoulo Law Firm, LLC, lane@akimlawfirm.com and cld@akimlawfirm.com, 32 Ann Street, Charleston, South Carolina 29403.

Respectfully submitted,

s/T. David Rheney

T. David Rheney, S.C. Bar No. 13148
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Suite 1200 (29601)
PO Box 10589
Greenville, SC 29603
864-271-9580
864-271-7502 FAX
drheney@gwblawfirm.com

*Attorney for Respondents, Cagle Brothers
Logging, Inc. and Ronnie Dewayne James,
Jr.*

June 3, 2023
Greenville, South Carolina

Other Counsel of Record:
Lane D. Jefferies, S.C. Bar No. 101764
ANASTOPOULO LAW FIRM, LLC
32 Ann Street
Charleston, SC 29403
843-614-8888
lane@akimlawfirm.com
CLD@AkimLawFirm.com
Attorney for Appellant

Julie J. Moose, S.C. Bar No. 12944
McANGUS GOUDELOCK & COURIE, LLC
1320 Main St., 10th Floor (29201)
PO Box 12519, Capitol Station
Columbia, SC 29211-2519
803-227-2231 DIRECT
803-229-2300
803-748-0526 FAX
julie.moose@mgclaw.com
*Attorneys for Defendant,
Charles Ingram Lumber Co., Inc.*

June 3, 2022

Via U.S. Mail

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
JUN 06 2022
SC Court of Appeals

Re: Sheanna Simmons v. Cagle Brothers Logging, Inc., et al.
C.A. No. 2021-CP-13-00465
Appellate Case No. 2022-000683

Dear Ms. Kitchings:

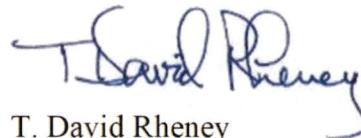
Enclosed for filing please find the original and three (3) copies of Respondents Cagle Brothers Logging, Inc. and Ronnie Dewayne James, Jr.'s Memorandum Addressing Appealability and Proof of Service for the same in the above-referenced case.

Upon filing, please return the clocked copies to each party. Thank you for your help in this matter.

With kind personal regards, we are

Very truly yours,

GALLIVAN, WHITE & BOYD, P.A.



T. David Rheney

TDR/gwm
Enclosures

cc: Lane Jeffries (*via-email only*)
Julie J. Moose (*via e-mail only*)



NEOPOST
06/03/2022
US POSTAGE \$002.16⁰⁰
ZIP 29601
041M11404315

RECEIVED
JUN 06 2022
SC Court of Appeals

GWB
GALLIVAN WHITE BOYD

P.O. Box 10589 (29603) | 55 Beattie Place | Suite 1200
Greenville, South Carolina 29601

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211