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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
CARMEN T. MULLEN, CIRCUIT COURT JUDGE

Appellate Case No. 2021-001337
Trial Court Case Nos. 2016-CP-07-01919, 2019-CP-07-01253 and 2019-CP-07-01294

In re: IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton Barringer Luzak,Appellant,

v.

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate of Paul Brandon Barringer II, J. Randolph Light Jr., Merrill B. Light as Putative Trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998, and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable Trust, Defendants.

Of whom

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate Of Paul Brandon Barringer II, Merrill B. Light as Putative Trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998, And Merrill B. Light as Trustee of the Merrill Barringer Light Revocable Trust, are Respondents,

--and--

Hampton B. Luzak,Appellant,

v.

Merrill U. Barringer,Respondent.

APPELLANT’S INITIAL BRIEF FOR BIFURCATION ORDER

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STATEMENT OF ISSUES ON APPEAL ¹

- VI. Did the trial court err in ordering a bifurcation of the trial of the causes of action brought by Ms. Luzak when there were common issues of law or fact (Orders filed Dec. 30, 2020 and June 7, 2021)?**
- VII. Did the trial court err in ordering that the equitable causes of action (Second and Third Causes of Action) set forth in the case of *Hampton Luzak v. Merrill U. Barringer*, 2019-CP-06-1253 and -1294 be tried before the remaining predominately legal causes of action in the consolidated causes of action (Orders filed Dec. 30, 2020 and June 7, 2021)?**
- VIII. Did the trial court abuse its discretion in bifurcating the trial of Ms. Luzak’s causes of action (Orders filed Dec. 30, 2020 and June 7, 2021)?**

STATEMENT OF THE CASE

On December 30, 2020 the Honorable Carmen Mullen ordered a bifurcation of two equitable causes of action for a separate trial prior to a trial on all the remaining, predominantly legal, causes of action set forth in the case of *Hampton Luzak v. Merrill U. Barringer*, 2019-CP-06-1253 and -1294. Pursuant to S.C. Code Ann. §14-3-330(a), Ms. Luzak appealed the order of bifurcation to this Court as a part of the appeal of a number of final orders on August 5, 2021, and the appeal was assigned Case No. 2021-000837. By order dated April 29, 2022, the Supreme Court certified that appeal and vacated the final orders that were on appeal, and dismissed the remaining appeal. The Supreme Court did not specifically address the appeal of bifurcation, which was also one of the issues on appeal, as allowed by S.C. Code Ann. § 14-3-330(a). Pursuant to S.C. Code Ann. §14-3-330(a), Ms. Luzak now addresses the interlocutory bifurcation order which has not been ruled upon on the merits by the appellate courts.

By way of background, on May 28, 2019 Ms. Luzak filed an action against Merrill U.

¹ On May 25, 2022, Appellant Hampton Luzak (“Ms. Luzak”) filed her Final Brief in this appeal setting forth Issues I through V. This Initial Brief regarding the trial court’s bifurcation order dated December 30, 2020 continues the numerical sequencing used previously in the Final Brief, and thus includes Issues VI to VIII. That Final Brief and the existing Record on Appeal are incorporated herein by reference.

Barringer in the Beaufort County Court of Common Pleas asserting causes of action for intentional interference with inheritancy and gifts, constructive trust and injunction, enforcement of a contract not to revoke and injunction, attorneys fees and costs, and civil conspiracy, to which the Respondents duly and timely responsively pled.²

Already pending at that time were Ms. Luzak's claims to rescind the improper transfer of controlling stock in Coastal Forest Resources Company ("CFRC") and to set aside amendments to the will and revocable trust of Paul Barringer occurring after the onset of Paul Barringer's dementia on the grounds of undue influence committed by the defendants on Paul Barringer, lack of mental capacity of Paul Barringer, and other related causes of action. Merrill U. Barringer, the mother of Ms. Luzak and Ms. Light, was named as a defendant in her capacity as personal representative of the estate of Paul Barringer. In the pending actions, Ms. Luzak also asserted claims actions against her sister, Merrill Light, and her sister's husband, defendant Randy Light,³ for the improper transfer of CFRC stock and other assets from Paul Barringer's name.

On September 10, 2020 Merrill Light filed her first Motion for Summary Judgment to dismiss all of Ms. Luzak's causes of action. While the first Motion for Summary Judgment of Ms. Light was pending, Ms. Light and Respondent Merrill U. Barringer jointly filed a motion to bifurcate the two equitable causes of action involving the purported testamentary powers of appointment associated with Decedent's trusts and to set them for trial before the remaining causes of action. The Honorable Carmen Mullen denied Ms. Light's first summary judgment motion on December 30, 2020. By a separate order filed the same day, Judge Mullen ordered a bifurcation

² Those actions were consolidated for purposes of discovery and trial with the 2016 case by order of consolidation filed December 3, 2019. (Order of Judge Mullen filed Dec. 3, 2019).

³ Randy Light died on March 16, 2020.

of the two equitable power of appointment related causes of action for a separate trial prior to a trial on all the remaining causes of action.

Ms. Luzak filed and served her Notice of Appeal of the order of bifurcation on February 12, 2021, and the appeal was assigned Appellate Case No. 2021-000159. The Court of Appeals dismissed the appeal as interlocutory on May 4, 2021 and affirmed its order on August 19, 2021. The Supreme Court denied Mrs. Luzak's petition for writ of certiorari on the original dismissal as interlocutory on April 29, 2022.

Pursuant to S.C. Code Ann. § 14-3-330(a), Ms. Luzak also separately appealed the order of bifurcation as a part of the appeal of a number of final orders on August 5, 2021, and the appeal was assigned Case No. 2021-000837. By order dated April 29, 2022,⁴ the Supreme Court certified that appeal and vacated the final orders that were on appeal, and dismissed the remaining appeal. The Supreme Court did not specifically address the appeal of bifurcation, which was also one of the issues on appeal, as allowed by S.C. Code Ann. § 14-3-330(a).

Since Mrs. Luzak has other final orders pending in the instant action, 2021-001337, she filed a Supplemental Notice of Appeal on June 1, 2022 of the December 30, 2020 order as permitted by S.C. Code Ann. § 14-3-330(a).

STATEMENT OF FACTS

Mrs. Luzak incorporates her statement of facts set forth in her Final Brief and the

⁴ That Order was separate from the Order denying Ms. Luzak's petition for writ of certiorari in a separate appeal (Appellate Case No. 2021-000159). Ms. Luzak had two separate appeals of the bifurcation order: the first was a standalone appeal, for which the Supreme Court denied her petition for certiorari on April 29, 2022 (Appellate Case No. 2021-000159). Her other appeal of the bifurcation order was appended, pursuant to S.C. Code Ann. § 14-3-330(a), to her appeals of subsequently-issued final summary judgments, which were dismissed by the Supreme Court after vacating the underlying final summary judgments (Case No. 2021-000837) by its separate Order also dated April 29, 2022.

documents included in the Record on Appeal filed on May 25, 2022, in this Appellate Case No. 2021-001337.

ARGUMENT

THE TRIAL COURT ERRED IN ORDERING A BIFURCATION OF TWO ISOLATED CAUSES OF ACTION FROM ONE OF THE THREE CONSOLIDATED ACTIONS, WITH INSTRUCTIONS THAT THOSE CAUSES OF ACTION BE TRIED “FIRST AND PRIOR” TO ANY SEPARATE AND SUBSEQUENT TRIAL(S) OF THE REMAINING CAUSES OF ACTION.

The trial of these consolidated cases was ordered to be bifurcated by Order of Judge Mullen on December 30, 2020 (Bifurcation Order). Without belaboring what was described above, but to set the stage for this Argument, Judge Mullen ordered that two equitable causes of action in the cases of *Hampton B. Luzak v. Merrill U. Barringer*, 2019-CP-07-01253 and 2019-CP-07-01294, be tried first and for the remaining causes of action in both cases, predominantly legal, to be tried later, as a follow-up to the first trial. (Order 12.30.20). This Court reviews that order pursuant to an abuse of discretion standard.

When stated clearly, the effect of the Bifurcation Order reveals the error thereof to the requisite standard justifying this appeal and reversal of the Bifurcation Order. To wit, the trial court did not order that one factfinder hear the first phase before the same factfinder proceeds to hear the second phase, such as when trials are bifurcated for punitive damages, or when the same jury first hears the liability phase, followed by the same jury hearing the damages phase. Instead, the effect of the Bifurcation Order is for one factfinder to first determine the facts and remedy on the equitable causes of action, followed by a separate factfinder considering the same evidence and facts at a later trial before finding its own facts for the legal causes of action. Therein lies the core problem: two separate factfinders make their own independent findings on the same set of facts and evidence.

Ms. Luzak filed her initial case in 2016 against Merrill Light, Randy Light, and Merrill Barringer as Personal Representative, and in 2019 she filed companion cases against Merrill Barringer individually. All of the parties in all these cases consented for the trial court to consolidate the cases pursuant to Rule 42(a), SCRPC, which the trial court did on December 3, 2019 with its Consent order on Ms. Luzak's Motion for Consolidation of Actions. Rule 42(a) provides for such consolidation when separate actions involve common issues of fact or law. The trial court erred in later bifurcating the trial despite there being those common issues of law or fact that led to the consolidation to begin with.

The Bifurcation Order inexplicably plucked two equitable causes of action from the cases against Merrill Barringer and slated them for a trial separate from the predominant legal causes of action, and then it compounded the problem by stating that the equitable causes action would be tried *before* the legal causes of action. That is the exact opposite of the law in South Carolina when there are such common issues of law and fact. That is addressed below. The trial court erred with the bifurcation in three respects: bifurcation with separate trials is inappropriate when there are common issues of law or fact; if such a bifurcation were appropriate, the legal causes of actions are to be tried before the equitable causes of action; and the trial court abused any discretion it had when ordering the bifurcation of the trial and created a procedural chaos wrought with terrible trial inefficiency and essentially requiring the same trial twice with the same witnesses and evidence.

A. Bifurcation with separate trials is inappropriate when there are common issues of law or fact.

All causes of action arise from a common core of facts that are universally applicable to all causes of actions and defenses. It is virtually indisputable that a common factual thread weaves all of the causes of action in all pending cases together.

The two causes of action slated for trial first under the Bifurcation Order are purely equitable in nature. They seek an injunction against Ms. Barringer from revoking her Will and exercising any power of appointment over the assets of Mr. Barringer inconsistently with her agreement with and promise to Mr. Barringer and the imposition of a constructive trust for the benefit of Ms. Luzak in the subject property. The facts and law supporting such causes of action, and the defenses raised by the Respondents, all revolve around the common core of facts involving the manipulation of Mr. Barringer and his estate plan to vest the family legacy business in Ms. Light to the harm and detriment of Ms. Luzak as set out in the other causes of action.

The parties do not dispute that Mr. Barringer had testamentary capacity when he executed his 1998 Will and Trust, but the parties intensely dispute the validity of his subsequent testamentary instruments that he executed in 2012 (two times), 2014, and 2015 and his gift of stock to Merrill Light on September 11, 2012. That is what this entire litigation revolves around. It is rudimentary probate law that any subsequent valid Will or Trust effectively revokes any prior Wills or Trusts, *White v. Wilbanks*, 301 S.C. 560, 393 S.E.2d 182 (S.C. 1990)), but this litigation focuses on whether *any* of the testamentary instruments after 1998 were valid, or whether the 1998 instruments are the governing instruments, as well as the validity of the gift to Merrill Light of his voting stock.

When the trial court addresses whether to issue the injunction against Ms. Barringer and impose a constructive Trust, it must necessarily determine which Will and Trust of multiple sets of testamentary documents are the prevailing and governing documents. Since validly executed Wills and Trusts revoke prior Wills and Trusts, the fact finder must first determine if the last instruments in 2015 are valid; if it determines that the 2015 instruments were invalid, then it backs up to the next most recent instruments (2014) to determine if they are valid. That process continues

in reverse chronological order until the jury finds valid instruments. Ms. Luzak maintains that the last valid instruments were the 1998 instruments; the Respondents argue that the 2015 instruments were the most recent valid instruments. Each post-1998 document and gift will be subject to challenge for lack of capacity, undue influence, mistake, fraud, and the like.

The evidence presented for that determination will be the same evidence presented by Ms. Luzak in support of her other causes of action that are slated for a clean-up trial after the trial on the two equitable causes of action. Under the Bifurcation Order, two separate trials with two separate fact finders will be asked to determine their separate versions of the facts. This will be true regardless of whether the first trial on the equitable claims is by jury or the bench.

The facts and law will significantly overlap each cause of action, and when facts and law and causes of action overlap, bifurcation is inappropriate. “A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice. Where evidence relevant to the issues of both liability and damages overlap, bifurcation is inappropriate.” *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct. App. 1998) (internal citation omitted); *see also Winthrop Univ. Trustees v. Pickens Roofing and Sheet Metals Inc.*, 418 S.C. 142, 167, 791 S.E.2d 152 (Ct. App. 1996). The Bifurcation Order does not anticipate a common fact finder to find common facts in both phases. The issues in this case are not so distinct that the trial of each alone will not result in injustice, and the evidence relevant to each cause of action overlaps. It is the remedy associated with each cause of action that is different, not the underlying facts.

This issue will persist regardless of whether the first phase of the trial is by jury or the bench, because the problem lies with having two separate fact finders in a bifurcated trial making their own separate findings on a common set of facts.

B. If such bifurcation were appropriate, the legal causes of actions are to be tried before the equitable causes of action.

The trial court erred in ordering any bifurcation, but it aggravated the problem and further erred by ordering that the two (2) equitable causes of action for injunction and constructive trust be tried first, with the legal causes of action to be tried in a second trial. That sequencing of trials is contrary to the declared law of this State and violates Ms. Luzak's right to a jury trial.

Sequencing rules mandate that when a case contains both legal and equitable causes of action and there exists disputed common factual issues relevant to both equitable and legal claims, *the legal claims must be tried first*, with the court in the trial of the equitable claims being bound by the findings of fact made by the jury. *See Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (2014); *Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987); *Plantation Fed. Bank v. Gray*, 401 S.C. 507, 737 S.E.2d 515 (Ct. App. 2013); *Bateman v. Rouse*, 358 S.C. 667, 596 S.E.2d 386 (Ct. App. 2004). The South Carolina Supreme Court has stated: "If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the 'most imperative circumstances,' the 'at law' claim must be tried first." *Johnson*, 292 S.C. at 56, 354 S.E.2d at 897 (internal citations and quotations omitted). The purpose of the sequencing rules is to "assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues." *Id.* at 55, 354 S.E.2d at 897.

This issue is not some esoteric, technical procedural issue; instead, it goes to the heart of Ms. Luzak's right to have a jury determine her case and a single jury to hear it. Only by applying the sequencing rules adopted by the appellate courts of this State can a trial court comply with constitutional, statutory, and case law mandates to preserve a party's right to trial by jury inviolate.

Even if the two (2) equitable causes of action are tried by jury, the judge's order, findings of fact, conclusions of law, and even evidentiary rulings on the equitable remedies can have a binding, or, at least, prejudicial effect on the trial by jury of the legal causes of actions and their elements. Stated differently, anything short of a full jury trial on all legal causes of action before a ruling on the equitable remedies will substantially and severely prejudice Ms. Luzak's right to trial by jury. Under the Bifurcation Order, the equitable remedies suddenly become paramount, and a jury trial on common issues of fact takes a backseat to the trial judge's rulings. There are necessarily disputed issues of fact that are common to all of the causes of action, and that is why the cases were consolidated to begin with. That is why the Order to Bifurcate has far-reaching and inappropriate consequences on the mode of trial and the sequencing of trial beyond the mere label of an Order to Bifurcate.

C. The trial court abused any discretion it had when ordering the bifurcation of the trial and created a procedural chaos wrought with terrible trial inefficiency and essentially requiring the same trial twice with the same witnesses and evidence.

The trial of this case will be lengthy. No one can dispute that. It will last weeks. Because each phase of the trial will involve the same facts, each phase of the trial will involve the same witnesses and the same documents. All of the post-1998 estate planning documents and gift must be considered at each trial, and each must be separately considered for lack of capacity, undue influence, fraud, and mistake, which necessarily involves the same witnesses and same documents. Further, a second trial is inevitable regardless of the outcome of the first trial. Even if the Respondents prevail at a first trial so that Ms. Barringer is determined to have an unfettered power of appointment over the voting stock, that does not avoid, or significantly shorten, a second trial, where capacity, undue influence, fraud, etc., will still be relevant and still require essentially the same witnesses and evidence.

Ms. Luzak has tens of millions of damages claimed against Defendants regardless of the bifurcated equitable causes of action, and the liability and damages portion of the trial will go on regardless of the outcome of any bifurcated trial; the liability and damages portion of the trial will not be avoided or made more efficient by any premature determination of the power of appointment issue. Each phase of the bifurcated trial will also involve agreements and promises between Mr. Barringer and Ms. Barringer to treat each daughter equally and not to exercise the power of appointment, resulting in the same evidence and witnesses.

The intent to simplify the resolution of these cases by bifurcation actually creates a procedural morass that will essentially double the total trial time and will result in two different fact finders each finding their own facts from the same evidence and will violate Ms. Luzak's right to a trial by jury, a single jury.

CONCLUSION

This is not a summary judgment case or one that should be bifurcated into multiple trials. For all the reasons stated above, the trial court erred in bifurcating two causes of action and requiring them to be tried first, and prior to other pending causes of action. Mrs. Luzak respectfully asks this Court to vacate and reverse the aforesaid orders and remand to the trial court with instructions to try all of Ms. Luzak's causes of action and claims for damages in case numbers 2016-CP-07-1919, -1253, and 2019-CP-07-1294 in one consolidated trial.

Respectfully submitted,

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June 1, 2022

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
CARMEN T. MULLEN, CIRCUIT COURT JUDGE

Appellate Case No. 2021-001337
Trial Court Case Nos. 2016-CP-07-01919, 2019-CP-07-01253 and 2019-CP-07-01294

In re: IN THE MATTER OF: Estate of Paul Brandon Barringer II

Hampton Barringer Luzak,Appellant,

v.

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate
of Paul Brandon Barringer II, J. Randolph Light Jr., Merrill B. Light as
Putative Trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998,
and Merrill B. Light as Trustee of the Merrill Barringer Light Revocable
Trust, Defendants.

Of whom

Merrill B. Light, Merrill U. Barringer, as Personal Representative of the Estate
Of Paul Brandon Barringer II, Merrill B. Light as Putative
Trustee of the Paul B. Barringer II Revocable Trust dated December 4, 1998,
And Merrill B. Light as Trustee of the Merrill Barringer Light Revocable
Trust, are Respondents,

--and--

Hampton B. Luzak, Appellant,

v.

Merrill U. Barringer, Respondent.

PROOF OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that on June 1, 2022, I served a copy of the **Supplemental Notice of Appeal, Initial Brief of Appellant and Appellant's Designation of Matter** in the above-captioned case on the following individuals by electronic mail using their email address listed in the Attorney Information System, addressed as follows:

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Beth Cogan, Paralegal

June 1, 2022
West Columbia, South Carolina

Beth Cogan

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Subject: (Luzak v. Barringer, et al. 2021-001337) Ltr to COA encl Supplemental NOA/AIB and DOM
Attachments: 2022 06 01 Ltr to COA encl Supplemental NOA, AIB and ADOM.pdf; 2022 05 31 Supplemental Notice of Appeal.pdf; A-2020 12 30 ORDER granting bifurcate motion.pdf; 2022 06 01 AIB Bifurcation order.pdf; 2022 06 01 A. DOM Bifurcation Supplemental Appeal.pdf; 2022 06 01 POS Supplemental NOA; AIB; DOM.pdf

Good afternoon,

Please see the attached Supplemental NOA, Initial Brief and Designation of Matter that is being filed today with the Court of Appeals.

Kindest Regards,

-Beth

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June 1, 2022

Via Email (ctappfilings@sccourts.org)
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Jun 01 2022

SC Court of Appeals

Re: *Hampton Barrington Luzak v. Merrill U. Barringer, et. al.*
Appellate Case No.: 2021-001337

Dear Ms. Kitchings:

Please find enclosed for filing a **Supplemental Notice of Appeal, Appellant's Initial Brief and Designation of Matter** in the above-referenced matter. Pursuant to paragraph (c) of the Supreme Court's administrative order dated August 25, 2021 ("Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules") a check for the filing fee is being forwarded via US mail.

By copy of this letter and as evidenced by the Proof of Service, these filing has been served upon counsel for the Respondents. Thank you for your time in this matter. If you have any questions, please do not hesitate to contact our office.

With warm personal regards, I am,

Sincerely yours,

Desa Ballard

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cc: Via Email
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