

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Bentley Price, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No.
2021-000837

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

Hampton B. LuzakAppellant

vs.

Merrill B. Light, Merrill U. Barringer as Personal Representative of the Estate of Paul Brandon Barringer II, Merrill B. Light as 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 TrustRespondents

--and--

Coastal Forest Resources Company ("CFRC")Intervenor/Respondent

--and--

Hampton B. LuzakAppellant

vs.

Merrill U. BarringerRespondent

**RESPONDENTS' RETURN TO APPELLANT'S MOTION
TO ALTER OR AMEND ORDER OF APRIL 29, 2022**

Pursuant to Rule 240(e) of the South Carolina Rules of Appellate Procedure, Merrill Barringer, individually and as personal representative of the Estate of Paul Brandon Barringer, II, and Merrill B. Light, individually and as trustee of the Paul B. Barringer, II Revocable Trust dated December 4, 1998, and as trustee of the Merrill Barringer Light Revocable Trust (collectively, “Respondents”), submit this Return to the Motion to Alter or Amend Order of April 29, 2022, filed by Appellant Hampton B. Luzak (“Luzak”) on May 26, 2022.

In its Order dated April 29, 2022, this Court vacated a circuit court order granting summary judgment and dismissed this appeal (the “Vacating Order”). In the Vacating Order, this Court held that the circuit court lacked authority to grant a motion for summary judgment while Luzak’s prior appeal (Supreme Court Case No. 2021-001022) (the “First Appeal”) of the circuit court’s prior Order granting Defendants’ Joint Motion to Bifurcate Trial (the “Bifurcation Order”) was pending. The Court relied solely upon Rule 241(a), SCACR for this conclusion, noting in a parenthetical that the First Appeal acted to stay trial court proceedings affected by the appeal. On the same day, this Court also dismissed the First Appeal because the Bifurcation Order was “not immediately appealable.”

In her motion, Luzak asks the Court to alter or amend the Vacating Order to vacate *all* orders at issue in this appeal (Appellate Case No. 2021-000837) (the “Second Appeal”). The Court should deny Luzak’s motion for several compelling reasons.¹

¹ On May 26, 2022, Respondents filed a petition for rehearing of the Vacating Order. In that petition, Respondents discussed the background and procedural history of this dispute, and Respondents argued that the Court should rescind the Vacating Order, certify the appeal in Appellate Case No. 2021-001337 (the “Third Appeal”), and decide the Second Appeal and the Third Appeal on the merits. For the sake of efficiency, Respondents incorporate their petition for rehearing herein by reference.

First, the Court should not vacate any orders by the circuit court because, as explained in Respondents’ petition for rehearing of the Vacating Order, an appeal of an interlocutory order that is not immediately appealable—such as the Bifurcation Order—does not act to stay any proceedings in the circuit court. *See, e.g., S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 536 (1986); *State v. Dingle*, 279 S.C. 278, 282, 306 S.E.2d 223, 225 (1983), *abrogated on other grounds by Horton v. California*, 496 U.S. 128 (1990). Thus, the circuit court had authority to enter the orders at issue in this appeal despite Luzak’s earlier appeal of the Bifurcation Order.

Second, even if Luzak’s premature appeal of the Bifurcation Order had caused a stay, the stay applied only to “matters decided in the order, judgment, decree or decision on appeal,” and the circuit court retained authority to issue the orders that Luzak requests this Court to vacate. Rule 241(a), SCACR; *see also* Rule 205, SCACR. No stay applied to “matters not affected by the appeal” of the Bifurcation Order. *Id.* Luzak appealed three orders in this Second Appeal: (1) an Order granting a motion by Coastal Forest Resources Company (“CFRC”) for intervention and for protective relief (the “Derivative Damages Order”); (2) an order granting Defendant Merrill Light’s Motion for Summary Judgment as to the validity of the Will and First Amendment to the Paul B. Barringer, II, Revocable Trust, dated December 4, 1998, executed by Paul B. Barringer, II, on February 28, 2012 (the “July 2021 Summary Judgment Order”); and (3) the Bifurcation Order, which Luzak seeks to appeal for a second time in this Second Appeal.² The Derivative Damages

² Despite this Court’s ruling that the Bifurcation Order is not immediately appealable, Luzak claims that the Bifurcation Order is appealable with the Derivative Damages Order and the July 2021 Summary Judgment Order in the Second Appeal. (Motion to Alter or Amend, p. 2, n.1.) But the Bifurcation Order is not reviewable with Luzak’s appeal of the Derivative Damages Order and the July 2021 Summary Judgment Order because the Bifurcation Order is not closely related to those Orders. (*See* Respondent’s Br. pp. 32-35.)

Order dismissed Luzak’s civil conspiracy claim and struck the derivative damages that Luzak is seeking to recover. The July 2021 Summary Judgment Order held that no evidence in the record supports Luzak’s claims that Mr. Barringer lacked testamentary capacity, was under undue influence, or was mistaken when he executed certain estate planning documents. Appellate review of bifurcation has no bearing on the matters decided in the Derivative Damages Order or the July 2021 Summary Judgment Order. The circuit court therefore retained authority to issue the Derivative Damages Order and the July 2021 Summary Judgment Order because these orders address matters “not affected by the appeal” of the Bifurcation Order. Rule 241(a), SCACR.

Conclusion

For the above reasons, Luzak’s motion to alter or amend should be denied.

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June 10, 2022

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