The South Carolina Court of Appeals

Charleston Advancement Academy High School,
Appellant,

v.

South Carolina Public Charter School District Board of Trustees, Respondent.

Appellate Case No. 2023-001047

ORDER

Respondent revoked Appellant's charter, and Appellant filed a notice of appeal in the administrative law court (ALC) pursuant to section 59-40-110(J) of the South Carolina Code, which allows a charter school to appeal a decision to revoke its charter to the ALC pursuant to section 59-40-90 of the South Carolina Code (2020). Under section 59-40-90, a "final decision" of the school district may be appealed to the ALC as provided in the Administrative Procedures Act (APA). After filing the notice of appeal, Appellant requested the administrative law court stay the revocation of its charter. Rejecting Appellant's argument that section 1-23-380(2) of the South Carolina Code (Supp. 2022) and Rule 65 of the South Carolina Rules of Civil Procedure applied, the ALC denied the request for a stay pursuant to section 59-40-110(J) after finding Appellant failed to show "an unusual hardship" would result from the revocation.

With this court, Appellant filed a notice of appeal and an amended notice of appeal of the order denying Appellant's motion for stay. Appellant also filed an emergency motion for temporary restraining order, preliminary injunction, and/or stay on June 29, 2023, and indicated that its charter would be revoked the following day. On June 30, 2023, expressing no decision on the merits, this court granted a temporary stay and requested the parties provided memoranda on the appealability of the ALC's order. Subsequently, the parties filed their memoranda. Respondent also filed a motion to lift the temporary stay, to which Appellant filed a return, and Respondent filed a reply.

Having carefully considered the parties' pleadings, including the appealability memoranda, we conclude the order is interlocutory and not subject to immediate review. Thus, we lift the temporary stay and dismiss the notice of appeal. *See* § 59-40-110(J) (providing for an appeal of a decision to revoke a charter to the ALC pursuant to the provisions of section 59-40-90 and allowing the administrative law court to stay the revocation on the grounds of "unusual hardship"); § 59-40-90 (allowing for the appeal of a final decision of a school district to the ALC as provided in specific subsections of the APA); *Bone v. U.S. Food Serv.*, 399 S.C. 566, 576-577, 733 S.E.2d 200, 205 (2012) (holding that "section 14-3-330, a general appealability statute allowing interlocutory appeals in certain instances, and its concepts are not applicable" when applying the Administrative Procedures Act); S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2022) (permitting judicial review of a final decision of the ALC).

In its amended notice of appeal and memorandum addressing appealability, Appellant argues the order on appeal is subject to immediate review pursuant to subsections 14-3-330(2)(a) and (4) of the South Carolina Code (2017). Although we reject Appellant's argument that the general appealability statute applies, we will address the argument out of an abundance of caution. We have appellate jurisdiction to review "[a]n order affecting a substantial right made in an action when such order (a) in effective determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." § 14-3-330(2)(a). The order on appeal from the administrative law judge's denial of the motion to stay does not determine the action or prevent a judgment from which an appeal might be taken because the parties may appeal the judge's ruling on the merits of Respondent's decision to revoke Appellant's charter. We also have appellate jurisdiction to review "[a]n interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction." § 14-3-330(4). The order on appeal is from the administrative law court, not the court of common pleas, and the order addressed Appellant's motion for stay, not its request for an injunction. We reject Appellant's request to construe this provision broadly. *See Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005) (explaining that "[t]he provisions of [s]ection 14-3-330 . . . have been narrowly construed").

C.J.

FOR THE COURT

FILED
Aug 31 2023

Columbia, South Carolina

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