

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

JOYCE MCKIVER, et al.,)
)
)
 Plaintiffs,) Civil Action No. 7:14-cv-00180-BR
)
 v.)
)
 MURPHY-BROWN, LLC,)
)
)
 Defendant.)

NOTICE OF APPEAL

Defendant Murphy-Brown LLC (“Murphy-Brown”) hereby appeals to the United States Court of Appeals for the Fourth Circuit from the judgment of the district court entered on August 31, 2018 (ECF No. 318); the order entered on December 17, 2018 (ECF No. 346) denying Murphy-Brown’s motions to alter or amend judgment (ECF No. 323), for judgment as a matter of law (ECF No. 325), and for a new trial (ECF No. 327); and all adverse rulings leading up to or supporting entry of the final judgment.

Murphy-Brown also appeals from the court’s rulings that the 2018 amendments to North Carolina’s Right to Farm Act (the “RTFA”) do not bar Plaintiffs’ claims or prohibit their recovery of punitive damages (*see* ECF No. 346 at 2-5) and that Kinlaw Farm, LLC is not a necessary and indispensable party (*see id.* at 5-7). Murphy-Brown also appeals from the court’s rulings rejecting Murphy-Brown’s arguments that:

- North Carolina law—including the 2017 amendments to the RTFA—limits the scope of available compensatory damages (which Plaintiffs have waived) and does not permit Plaintiffs to recover damages for annoyance and “fear of” future harm (*id.* at 8);
- Plaintiffs have not presented sufficient evidence to recover punitive damages or damages for “fear of” future harm (*id.* at 7);

- Murphy-Brown may not be held liable for conduct occurring at Kinlaw Farm (*id.* at 7, 8);
- Plaintiffs’ claims are barred by North Carolina’s three-year statute of limitations (and that the jury, not the court, should make that determination) (*id.* at 7, 8);
- it was improper to permit Plaintiffs’ expert, Dr. Shane Rogers, to testify regarding odor but to exclude Murphy-Brown’s expert, Dr. Pamela Dalton, from testifying about her odor study (*id.* at 8);
- it was improper to deny Murphy-Brown’s motion to bifurcate the trial (*id.*);
- it was improper to admit financial evidence and salaries of Murphy-Brown’s parent companies and executives and evidence of Murphy-Brown’s and predecessors’ lobbying and public relations efforts (*id.*); and
- it was improper to reject Murphy-Brown’s proposed jury instructions regarding the scope of damages recoverable by Plaintiffs and Murphy-Brown’s potential liability under a *respondeat superior* theory (*id.*).

Murphy-Brown also appeals from all adverse rulings of the district court in orders filed in

In re: NC Swine Farm Nuisance Litigation, Master Case No. 5:15-CV-00013-BR (E.D.N.C.)

(“Master Case”)—which under the Case Management Order in the Master Case are deemed filed in this case (*see* Master Case ECF No. 1 at 2)—including but not limited to the following:

- 6/25/15 Order (Master Case ECF No. 31): denying Murphy-Brown’s motion to dismiss claims for annoyance and other damages (Master Case ECF No. 13);
- 5/25/17 Order (Master Case ECF No. 439): denying Murphy-Brown’s motion for judgment on the pleadings (Master Case ECF No. 168);
- 5/25/17 Order (Master Case ECF No. 440): denying Murphy-Brown’s motion to exclude the expert testimony of Plaintiffs’ expert, Steven Wing, Ph.D. (Master Case ECF No. 253); and
- 11/8/17 Order (Master Case ECF No. 476): denying Murphy-Brown’s motions for partial summary judgment on Plaintiffs’ punitive damages claims (Master Case ECF No. 282) and on their annoyance damages claims (Master Case ECF No. 287), and granting Plaintiffs’ motions for partial summary judgment with regard to Murphy-Brown’s “Right to Farm Act” defense (Master Case ECF No. 305) and other affirmative defenses (Master Case ECF No. 321).

Murphy-Brown also appeals from the adverse rulings of the district court in orders filed in this individual case, including but not limited to the following:

- 2/16/18 Order (ECF No. 66): after the court set the case for trial in the Western Division (Master Case ECF No. 488), overruling Murphy-Brown's objection to the transfer of venue from the Southern Division (ECF No. 50);
- 3/16/18 Order (ECF No. 155): denying Murphy-Brown's motion to bifurcate (ECF No. 56);
- 3/21/18 Oral Ruling (see Tr. at 93:20-23, Master Case ECF No. 494) [reflected in ECF No. 191 (minute entry)]: denying Murphy-Brown's motion in limine to exclude evidence of lobbying (ECF No. 133);
- 3/28/18 Order (ECF No. 190): overruling Murphy-Brown's objections to deposition testimony of Plaintiffs' expert, Steven Wing, Ph.D. (ECF No. 186 at 155-62);
- 3/30/18 Order (ECF No. 194): denying in part Murphy-Brown's motion in limine to exclude misleading financial information (ECF No. 137);
- 4/4/18 Oral Ruling (see Trial Tr. at 7:12-8:3, ECF No. 286): denying Murphy-Brown's motion in limine to exclude testimony of Plaintiffs' expert Dr. Shane Rogers (ECF No. 80);
- 4/4/18 Oral Ruling (see Trial Tr. at 22:17-23:15, ECF No. 286): qualifying Plaintiffs' expert, Steven Wing, Ph.D., whose testimony Murphy-Brown had filed a motion in limine to exclude (Master Case ECF No. 253);
- 4/12/18 Oral Ruling (see Trial Tr. at 126:3-127:16, ECF No. 272): allowing into evidence misleading financial information that Murphy-Brown filed a motion in limine to exclude (ECF No. 137);
- 4/16/18 Oral Ruling (see Trial Tr. at 103:6-7, ECF No. 274) [reflected in ECF No. 227 (minute entry)]: denying Murphy-Brown's motion for judgment as a matter of law at the close of Plaintiffs' case (ECF No. 225);
- 4/19/18 Order (ECF No. 234): granting in part Plaintiffs' motion to exclude testimony of Murphy-Brown's expert, Dr. Pamela Dalton (ECF No. 95);
- 4/23/18 Oral Ruling (see Trial Tr. at 120:19-20 & 131:24-132:2, ECF No. 257) and ECF No. 262: rejecting Murphy-Brown's proposed jury instructions (ECF Nos. 182, 242);
- 4/23/18 Oral Ruling (see Trial Tr. at 130:10-16, ECF No. 257) [reflected in ECF No. 253 (minute entry)]: denying Murphy-Brown's motion requesting use of special verdict form and interrogatories (ECF No. 245); and

- 4/24/18 Oral Ruling (see Trial Tr. at 10:22, ECF No. 296) [reflected in ECF No. 258 (minute entry)]: denying Murphy-Brown's motion for judgment as a matter of law at the close of its case (ECF No. 255).

MURPHY-BROWN LLC

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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2018, I caused the foregoing **NOTICE OF APPEAL** to be electronically filed with the Clerk of the Court using the CM/ECF system, which sent notification of such filing (NEF) to all CM/ECF registered attorneys indicated on the NEF, including counsel for Plaintiffs.

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