

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RECEIVED

No. 10-4577

MAY 21 2013

LAVONA HILL

S.C. SUPREME COURT

v.

BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN; RETIREMENT BOARD OF THE BERT BELL NFL PLAYER RETIREMENT PLAN

v.

BARBARA H. SULLIVAN,

Appellant

ORDER

Coram: RENDELL, FISHER and HARDIMAN, Circuit Judges.

Having reviewed the responses by the parties to the March 29, 2013 order to show cause we issue the following order.

Although counsel was advised by the South Carolina Supreme Court in June, 2012 and again in September, 2012 that he must file a motion for admission pro hac vice, he failed to do so. Nothing in the South Carolina Supreme Court's June 11, 2012 letter saying that the parties would be informed when action was taken on the certified question indicates that admission pro hac vice or filing a brief once the South Carolina Supreme Court decided to accept the question was unnecessary. It is noted that South Carolina Appellate Rule 244(d) requires the filing of a brief within 30 days of receiving notice that the certified question has been accepted. The South Carolina Supreme Court issued such notice on September 7, 2012. Apparently, counsel was aware of his obligation to enter an appearance because on November 2, 2012, counsel notified the South Carolina Supreme Court that he had located a South Carolina attorney who could move his admission pro hac vice. The South Carolina Supreme Court, however, informed counsel that the time to file a brief had passed and he would be required to file a motion to be permitted to file a brief. Counsel did not file a motion. Appellant's response ¶ 8 asserts she was unable to pay the fees and costs associated with associating with a member of the South Carolina bar. The response does not give any details as to the costs, her finances, or any efforts to ameliorate the costs. It was not until the South Carolina Supreme Court's letter to this

Court dated March 15, 2013 that there was any indication that the Court was prepared to decide the certified question without briefing.

The March 15, 2013 letter from the Clerk of the South Carolina Supreme Court to our Clerk states that the South Carolina Supreme Court "is prepared to go forward and issue a decision without the benefit of any briefing or oral argument by the parties." The Clerk asks this Court to advise whether we wish to withdraw the certified question or have the South Carolina Supreme Court proceed to answer the question. Appellant's response ¶ 12 states: "Beyond what is stated in the Brief for Appellant, Appellant has no further argument to make...." Although it appears that appellant has failed to comply with the South Carolina procedures implemented to assist that Court in deciding the certified question, the South Carolina Supreme Court has nonetheless graciously expended judicial resources to assist this Court in deciding this case. In light of the judicial resources already expended and in light of Appellant's statement that she wishes to make no further argument, we respectfully request the South Carolina Supreme Court to proceed to answer the question without briefing from the parties.

The order to show cause is discharged.

For the Court,

/s/ Thomas M. Hardman
Circuit Judge



Dated: May 15, 2013
CLW/cc: Lawrence Solomon, Esq.
Robert T. Vance, Jr., Esq.
South Carolina Supreme Court

Marcia M. Waldron
Marcia M. Waldron, Clerk

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