

RECEIVED

Jun 24 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2022-000776

MorningStar Fellowship Church,

Appellant,

v.

York County, South Carolina,

Respondent.

**RESPONDENT'S MEMORANDUM REGARDING
APPEALABILITY OF ORDER BELOW**

s/ Brian A. Autry
Brian A. Autry (SC Bar # 69401)
Ashley C. Thibault (SC Bar # 103522)
Kenison Dudley & Crawford, LLC
1122-B Barnwell Street
Columbia, SC 29201
Office: (864) 242-4899
E-mail: autry@conlaw.com
thibault@conlaw.com
Attorneys for Respondent

Columbia, South Carolina

TABLE OF CONTENTS

TABLE OF AUTHORTIES ii

STATEMENT OF UNDISPUTED FACTS 1

ARGUMENT 1

CONCLUSION..... 3

TABLE OF AUTHORTIES

CASES

Shields v. Martin Marietta Corp., 303 S.C. 469, 402 S.E.2d 482 (S.C. 1991).....2

RULES

Rule 11 SCRPC.....1

Rule 40(j) SCRPC.....1, 2

Respondent, York County, South Carolina (the “County”), by and through its undersigned counsel, hereby submits this Memorandum regarding the appealability of the order challenged by Appellant in the above-captioned matter. The County would respectfully show the Court the following:

STATEMENT OF UNDISPUTED FACTS

In the matter below, Respondent and Appellant filed a Stipulation Pursuant to Rule 40(j) SCRPC (the “Stipulation”) on August 31, 2020. On August 30, 2021, less than one year after the Stipulation was filed, York County filed a Notice and Motion to Restore Case to the Active Roster. As stated in York County’s Motion to Restore, counsel for York County, Michael K. Kendree, did not consult with counsel for Morningstar because consultation would serve no useful purpose, which is allowed by Rule 11 SCRPC. Mr. Kendree certified the same to the lower court via his electronic signature pursuant to the electronic filing requirements of the lower court, and counsel for Morningstar received notice of the Motion to Restore via electronic means.

On January 18, 2022, the lower court’s personnel contacted Mr. Kendree’s office and asked him to submit a proposed order granting the Motion to Restore. Mr. Kendree then submitted a proposed order, which the lower court signed and filed on January 19, 2022, without a hearing. Appellant then filed a slew of motions – a motion to strike the lower court’s January 19 order, a motion to strike restoration of the case, a motion for sanctions for violation of SCRPC Rule 11, and a motion to set aside order/judgment/motion (the “Motions”).

A hearing was held on May 20, 2022. On May 31, 2022, the lower court issued its order denying the Motions (the “Order”). A copy of the Order is attached hereto as Exhibit A. The basis for the Order was that: (1) Appellant had no grounds to challenge restoration of the case to

the active docket because the Motion to Restore was timely filed under SCRCP 40(j); (2) the restoration of the case to the active docket is automatic pursuant to the Stipulation and Rule 40(j) SCRCP if the motion to restore is timely filed; (3) no hearing was required prior to restoration because restoration is automatic; and (4) since the restoration of the matter to the active docket is automatic, counsel for the County had no duty under Rule 11 SCRCP to consult with counsel for Morningstar prior to filing the Motion to Restore. The lower court opined that, if anything else were true under the circumstances, “no Plaintiff would ever consent to a 40(j) dismissal because such consent would offer the defendant a free opportunity to have the case dismissed (i.e., not restored).”

Plaintiff then filed its Notice of Appeal on June 2, 2022.

ARGUMENT

“The decision on a motion to restore the case to the active docket is not a final judgment and is interlocutory and, therefore, not immediately appealable.” *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 402 S.E.2d 482 (S.C. 1991). Since the Order involves restoration of the underlying case to the active docket and a denial of a motion for sanctions for actions related to filing the motion for restoration of the case to the active docket, the Order is interlocutory and is not immediately appealable.

Appellant will argue that it was denied due process of law because the court below did not afford it a hearing on the Motions to Strike or the Motion for Sanctions. This position defies belief. Respondent, Appellant, and their respective counsel were present at a hearing on the Motions on May 20, 2022. The Court spent the vast majority of the hearing listening to Appellant’s arguments on the Motions to Strike, the order restoring the case to the active roster, and the Motion for Sanctions. The lower court denied the Motion for Sanctions on the basis that

consultation was not required on the Motion to Restore since the restoration of the case is automatic when timely filed. The lynchpin of due process is notice and an opportunity to be heard. Appellant had both of those here.

CONCLUSION

For the forgoing reasons, Respondent York County respectfully submits to this Court that the Order challenged on appeal is interlocutory and not immediately appealable. As such, the Appellant's appeal should be dismissed summarily.

Respectfully submitted,

s/ Brian A. Autry
Brian A. Autry (SC Bar # 69401)
Ashley C. Thibault (SC Bar # 103522)
1122-B Barnwell Street
Columbia, SC 29201
Office: (864) 242-4899
E-mail: autry@conlaw.com
thibault@conlaw.com

Attorneys for Respondent

June 24, 2022
Columbia, South Carolina

RECEIVED

Jun 24 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

The Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2022-000776

MorningStar Fellowship Church,

Appellant

V.

York County, South Carolina,

Respondent

PROOF OF SERVICE

I certify that I have served the Respondent York County's Memorandum Regarding Appealability of Order on Appellant, MorningStar Fellowship Church, by transmission to Appellants' attorneys of record – Donald M. Brown, Jr. of 10440 Park Road, Suite 200 Charlotte, NC 28210 by electronic mail to don@brownattorneys.com and Richard B. Fennell of 525 N. Tryon Street, Suite 700 Charlotte, NC 28202 by electronic mail to rfennell@jmdlaw.com.



April Haynes
Paralegal for Brian A. Autry