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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Daniel DeWitt Hall, Circuit Court Judge

Appellate Case No. 2022-001533
Case No. 2019-CP-25-00111

Renee S. Beach, as Personal Representative of the Estate of Mallory Beach,.....Respondent,

v.

Gregory M. Parker, Inc. d/b/a Parker’s Corporation, Richard Alexander Murdaugh, Richard Alexander Murdaugh, Jr., John Marvin Murdaugh, as P.R. of the Estate of Margaret Kennedy Branstetter Murdaugh, and Randolph Murdaugh, IV, as P.R. of the Estate of Paul Terry Murdaugh,Defendants,

Of whom Gregory M. Parker, Inc. d/b/a Parker’s Corporation, is the.....Appellant.

RETURN OF APPELLANT TO MOTION FOR COSTS OF RESPONDENT

Appellant Gregory M. Parker, Inc. d/b/a Parker’s Corporation (hereinafter “Parker’s” or “Appellant”), pursuant to Rules 222 and 240, SCACR and in response to the January 17, 2023 Motion for Costs of Respondent, hereby submits this Return requesting this Honorable Court to deny Respondent’s Motion for Costs. The basis of this Return is that a good faith basis existed on behalf of Appellant to seek clarification and an initial ruling from the Court of Appeals on a very important matter to the litigants in terms of clarification from the Circuit Court’s filing of two diametrically opposed Orders and rulings on one issue before the Circuit Court. Because clarification from the Court of Appeals was necessary to proceed further in discovery and litigation, Appellant respectfully

requested the Court of Appeals to make a determination of the issue, including its appealability, before the issue might have been waived, as the Appellant contends that the Circuit Court's ruling affects the substantial rights of not only the Appellant, but with respect to all parties in this matter. Because of this Court's ruling, and since clarification has now been determined, all parties now benefit from this clarification and the dismissal of the appeal. Therefore, Appellant respectfully requests that Respondent's Motion for Costs taxed against the Appellant be denied.

PROCEDURAL HISTORY

Respondent, as the Plaintiff, filed a Summons and Complaint in the Hampton County Circuit Court on March 29, 2019 against several defendants, including Parker's (Appellant), Richard Alexander Murdaugh ("Alex Murdaugh"), Richard Alexander Murdaugh, Jr. ("Buster"), and others following the boat accident which occurred on February 24, 2019 that ultimately caused the death of Mallory Beach. Respondent amended her Complaint several times, and eventually included as defendants the Estate of Paul Terry Murdaugh ("Paul") and the Estate of Margaret Kennedy Branstetter Murdaugh ("Maggie").

On June 7, 2021, defendants Maggie Murdaugh and Paul Murdaugh were tragically killed on their property in Colleton County. On July 14, 2022, defendant Alex Murdaugh was indicted for allegedly murdering his wife Maggie and his son Paul, and Alex Murdaugh's murder trial is currently proceeding in Colleton County as of the date of the signing of this Return. Alex Murdaugh also has been indicted on multiple other charges, including money laundering, insurance fraud, theft, computer crimes, obstruction of justice, and others.

As a result of the indictments for murder filed against him, Alex Murdaugh's attorneys, in this action, filed on August 5, 2022 a Motion to Stay Discovery and Continue Trial, which trial had been set to begin in Hampton County starting on October 3, 2022. A hearing on the Motion

to Stay Discovery and Continue Trial was held by the Court on August 10, 2022 during which the Court granted the Motion to Continue Trial. The continuance was granted due to significant events that had not yet occurred when this case was set for trial beginning on October 3, 2022, including the fact that Alex Murdaugh was indicted for the alleged murders of two codefendants in this action, Maggie and Paul; and the fact that different attorneys were retained by and filed notices of appearances for Alex, Maggie and Paul following these events. The Court ruled that based on the above circumstances, trial should not go forward on October 3, 2022, particularly with respect to the Murdaugh defendants. The Court, however, indicated during the August 10, 2022 hearing that it might consider a separate trial involving Respondent's claims against Appellant should the issue of severance be raised.¹

On August 19, 2022, Appellant filed a Motion to Sever and requested that the trial move forward on October 3, 2022 with respect to Respondent's claims against Appellant (*Exhibit "A"*). The Court set a hearing on Appellant's Motion to Sever for September 1, 2022, and Respondent filed a Memorandum in Opposition on August 30, 2022 (*Exhibit "B"*). The hearing was conducted on September 1, 2022 in the Lancaster County, SC Courthouse with counsel for the parties present, and the Court provided all parties, including Respondent, the opportunity to be heard, both in briefing and with respect to lengthy oral arguments at the hearing.

On September 13, 2022, the Court issued a measured and well-considered Order Granting Appellant's Motion to Sever (*Exhibit "C"*). The Order, in pertinent part, states as follows:²

¹ "Now, I will say that, when I say it's continued, there again, we're just talking out loud, if the other parties were severed and this boiled down to the Parker involvement, it appears that part of the case is ready to be tried in October. That's not before the court today. And if that's something the court needs to address in the next week or so, just let me know. There are other motions that might lead to that." *The Honorable Daniel DeWitt Hall, presiding during the hearing in the Spartanburg County Court of Common Pleas, August 10, 2022.*

² *Order Granting Parker's Motion to Sever* signed and filed by The Honorable Daniel DeWitt Hall on September 13, 2022.

The Court grants Parker's Motion to Sever to prevent delay, embarrassment, additional expense, and the prejudice it will suffer if not severed away from the Murdaugh defendants. Plaintiff's lawsuit against Parker's began when the Summons and Complaint were filed on March 29, 2019 – over three years ago. Due to the recent murder indictments of Alex Murdaugh with an unknown criminal trial date set for these charges, and due to the fact that counsel for each of the Murdaugh defendants (Alex, Maggie, Buster, and Paul) in this matter recently filed notices of appearances, a trial with all defendants in this case will not occur in the year 2022, and such a trial date is indefinite. Additionally, the murder charges relate to events that do not involve Parker's and will undoubtedly cause additional expense and certain delay to Parker's if Plaintiff's claims against Parker's are not severed. Further, Plaintiff's claims against Parker's are separate and distinct such that Plaintiff may fully try her case against Parker's during a trial separate from the Murdaugh defendants. Therefore, in order to prevent delay, additional expense, and prejudice (as further discussed herein below), the Court finds that exercising its discretion to grant Parker's Motion to Sever and order separate trials is sound.

Moreover, the Court is well aware of the local, regional, national, and international interest and focus of the Murdaugh family, each of whom are codefendants with Parker's in the instant action. Most of the Murdaugh defendants, individually and/or collectively, have been or are currently being accused of misconduct or various crimes, including, *inter alia*, murder, intentional misconduct, obstruction of justice, computer crimes, money laundering, tampering with the investigation of the very boat crash involved in this action, theft, fraud, and extortion. Alex Murdaugh, a codefendant, has been indicted for allegedly murdering two codefendants in this case, Maggie and Paul. The entire jury venire in Hampton County, South Carolina likely will be aware of the Murdaugh name, family, and news surrounding them. The media has written and continues to write about the Murdaugh defendants involving the above allegations. The recent criminal indictments and civil lawsuits surrounding the Murdaugh family involve potentially the most reactionary and publicized proceedings in the history of the South Carolina judiciary and legal system, none of which is due to any conduct of Parker's and have nothing to do with Plaintiff's allegations against Parker's in this case. If Parker's is not severed away from the Murdaugh defendants and remain tethered to any of them at trial in the instant case, Parker's undoubtedly will be prejudiced. Rule 20(b) states that a Court “may order separate trials or make other orders to prevent delays or prejudice” and if there was ever a case in which a Court may exercise its sound discretion to order separate trials *to prevent delays or prejudice*, this is it, based on the facts and circumstances involving the parties in this matter. Therefore, in order to prevent prejudice to Parker's, the Court finds that exercising its discretion to grant Parker's Motion to Sever from each of the Murdaugh defendants and ordering a separate trial is sound and necessary.

Under these extraordinary circumstances, the Court finds that severance is warranted and necessary to prevent delay, embarrassment, additional expense, and the prejudice Parker's will suffer if not severed away from the Murdaugh defendants.

Despite the fact that nothing had changed or developed (i.e., no new evidence and no new changes in the law) from the time Judge Hall issued his Order Granting Appellant's Motion

to Sever, Respondent filed a Motion for Reconsideration and Memorandum in Support on September 12, 2022 (*Exhibit “D”*). In response, Appellant filed, on September 22, 2022, a Memorandum in Opposition to Respondent’s Motion for Reconsideration (*Exhibit “E”*). The Court conducted a hearing on September 23, 2022 in the Hampton County Courthouse with counsel for all parties present.

On September 27, 2022, the Court signed and filed a Form 4 Order granting Respondent’s Motion for Reconsideration (*Exhibit “F”*), stating as follows:³

Upon further review of the South Carolina Rules of Civil Procedure, applicable case law, brief of parties and oral arguments, Plaintiff’s Motion for Reconsideration is GRANTED and the September 13, 2022 Order of this Court Granting Plaintiff’s Motion to Sever is REVERSED.

This civil case is set for day certain trial on Monday, January 9, 2023 in Hampton County with the inclusion of all named Defendants.

On October 24, 2022, Appellant served a Notice of Appeal on Respondent and counsel of record. On November 3, 2022, Ms. Katherine Harrison, the Honorable Deputy Clerk for the South Carolina Court of Appeals, issued a letter requesting that counsel “serve and file a memorandum addressing the issue of appealability within ten (10) days of the date of this letter.” On November 7, 2022, Respondent served and filed her Response and Motion to Dismiss Appeal. Appellant’s Memorandum in Support of Appeal and Response to Respondent’s Motion to Dismiss Appeal was filed on November 11, 2022. Respondent’s Motion to Dismiss Appeal was granted and the Order was filed on December 22, 2022. Thereafter, this case was “remitted to the lower court or tribunal” on January 11, 2023 as signed by the Honorable V. Claire Allen, Chief Deputy Clerk of the Court

³ *Form 4 Order* signed and filed by The Honorable Daniel DeWitt Hall on September 27, 2022.

of Appeals.⁴ Respondent filed her Motion for Costs on January 17, 2023, and Appellant’s Return hereby follows.

DISCUSSION

Appellant, pursuant to Rules 222 and 240, SCACR and in response to the January 17, 2023 Motion for Costs of Respondent, hereby requests this Honorable Court to deny Respondent’s Motion for Costs. The taxing of costs and attorneys’ fees are not mandatory but, rather, discretionary with the Court, as Rule 222(a) states, “*Unless otherwise ordered by the appellate court…costs shall be allowed only as ordered by the appellate court.*” Rule 222(a), SCACR (italics added). This Court has also declined to order that costs be paid by one party over another, especially when this Court’s ruling affirms a circuit court’s order that “essentially amounts to nothing more than a court-ordered maintenance of the status quo.” *Dehoney v. S.C. Dept. of Corrections*, 2005 WL 7084212. In this case, and since this Court granted Respondent’s Motion to Dismiss Appeal before full briefing and the expenditure of time and costs with respect to a full appeal, this Court’s ruling “essentially amounts to nothing more than a court-ordered maintenance of the status quo.” *Id.* In *Dehoney*, this Court denied taxing the party who did not prevail on appeal. Appellant requests the same determination and ruling to be made in this case, because (1) this matter never became a full appeal with the expenditure of much time and costs, and (2) this Court ruled that the issues presented were not immediately appealable, which answered a very important question in this case—the determination of which benefits both parties in terms of clarifying the remaining litigation and discovery to be accomplished before trial.

Interestingly, and with respect to the appealability of the underlying issue before this Court, Respondent initially agreed with Appellant that this matter was appealable. Contrary to

⁴ *Remittitur* and letter from V. Claire Allen, Chief Deputy Clerk of Court dated January 11, 2023.

Respondent's position as reflected in her Response and Motion to Dismiss Appeal filed on November 7, 2022, Respondent asserted that the Circuit Court's Order on the issue of severance should be appealed.⁵ Moreover, Respondent stated in her Motion for Reconsideration and Memorandum in Support filed on September 12, 2022 that the Circuit Court's Order initially granting severance "is not allowed under Morrow, under our Supreme Court's pronouncement in that case, or under the Constitution. Further, this reality renders the Order Granting Parker's Motion to Sever *immediately appealable*."⁶ (Italics added.) Respondent, for a third time in her Motion for Reconsideration and Memorandum in Support filed on September 12, 2022, asserted the issue of severance was immediately appealable, stating in her conclusion that, "For each of these reasons, the Plaintiff respectfully request[sic] the Court's reconsideration of its Order Granting Parker's Motion to Sever *which is immediately appealable and fraught with errors that will result in reversal...*"⁷ (Italics added). Finally, Respondent's counsel communicated with the media with respect to the appealability of this issue to the extent that he "also vowed to file an appeal in the event the judge sticks with his original decision" on this issue. Respondent should not be allowed to benefit from an appeal they explicitly stated they would have sought, too, notwithstanding the fact that both parties now benefit from the clarity of this Court's ruling.

Under Rules 222 and 240, SCACR, this Court has the discretion to deny a Motion for Costs. Appellant requests the Court to exercise that discretion under the circumstances and, in light of Respondent's initial position in this matter and particularly because both parties now

⁵ "Significantly, if the Court severs Plaintiff's claims, Plaintiff will be left with no choice but to appeal this Order." *Plaintiff's Motion for Reconsideration and Memorandum in Support* filed on September 12, 2022 in the Hampton County Circuit Court, Case No. 2019-CP-25-00111.

⁶ *Plaintiff's Motion for Reconsideration and Memorandum in Support* filed on September 12, 2022 in the Hampton County Circuit Court, Case No. 2019-CP-25-00111.

⁷ *Id.*

benefit from the clarification provided by this Court, Respondent's Motion for Costs should be denied.

CONCLUSION

Based on all of the above, Appellant respectfully requests this Honorable Court to deny Respondent's Motion for Costs, accordingly.

Respectfully Submitted,

s/David L. Williford

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Of whom Gregory M. Parker, Inc. d/b/a Parker’s Corporation, is the.....Appellant.

PROOF OF SERVICE

I certify that I served the Return of Appellant to Motion for Costs of Respondent on the above-named Respondent and counsel of record to this matter, pursuant to Order No. 2022-05-06-03 of the Supreme Court of South Carolina, by e-mailing a copy of it on January 27, 2023 addressed to counsel of record as follows:

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SC Court of Appeals

Via E-mail Only

The Honorable Jenny A. Kitchings
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Re: *Renee Beach v. Gregory M. Parker, Inc.*
Appellate Case No. 2022-001533

Dear Ms. Kitchings:

Please find enclosed and attached for filing the Return of Appellant to Motion for Costs of Respondent in the above-referenced case. I am also enclosing and attaching a Proof of Service upon all counsel to this matter, including counsel for Respondent.

Thank you, and please let me know if you have any questions.

With kind regards, I am

Sincerely,



David L. Williford

DLW/
Enclosures

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