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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
The Honorable Steven H. John

Appellate Court Case 2022-000513

Thomas Wade Long and Clyde Kiser, individually,
And on behalf of TNW and More, LLC, ……. Respondents,

v.

Timothy D. Kettner, Donald Kettner, and TNT and
More, INc., d/b/a Crab Catchers on the Waterfront, ……. Appellants.

Initial Brief of Respondents

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STATEMENT OF THE CASE

This litigation is relatively recent, but with a ridiculously litigious procedural history. For brevity's sake, Respondent will focus on only the relevant portions of the procedural history of this case, and not the magistrate case repeatedly cited by Appellant.

The Complaint was filed on March 12, 2021 alleging a joint venture existed between Appellants and Respondents. A Consent Order was issued by Judge Keesley July 27, 2021 in which the parties agreed to refrain from interfering with operation of their respective businesses unless ordered to do so by a court of competent jurisdiction or regulatory agency. Respondents filed a motion for a new, specific and narrowly tailored retraining order to stop Appellants from shutting down the only egress and ingress to his floating docks over memorial weekend. Judge Stephen John granted the injunction on May 27, 2022. Appellants filed a motion to reconsider that was denied in toto on June 17, 2022. This appeal followed.

STATEMENT OF THE FACTS

A Consent Order was issued by Judge Keesley July 27, 2021 in which the parties agreed to refrain from interfering with operation of their respective businesses unless ordered to do so by a court of competent jurisdiction or regulatory agency. **Keesely Order**. Specifically, the Consent Order stated:

> During the pendency of this action, the Defendants agree that they shall undertake no further actions to remove, repair, assemble or disassemble any portion of the marina utilized by the Plaintiffs and TnW and More, LLC unless necessary to comply with the law and/or any regulatory agency, in which event written consent shall be sought from the Plaintiffs. In the event Plaintiffs fail to respond within 7-days' notice of a request for written consent without justification provided, then Defendant may comply with any lawful order or directive from any court of competent jurisdiction or any regulatory agency. Written notice must be emailed to counsel for the Plaintiffs and the Defendants simultaneously along with written notice to the Plaintiffs.

After Judge Keesley's Consent Order was issued, an Horry County Magistrate found that the mobile hut being used as part of the marina utilized by the Plaintiffs/Respondents was not properly licensed and issued a fine to Defendants/Appellants. More importantly, the same magistrate eventually issued an Order that the mobile hut, which is worth far more than the $7500.00 jurisdictional limit of South Carolina Magistrates, must be removed from the property. Defendants/Appellants did not seek the consent of or notify Plaintiffs/Respondents of their intention to remove the mobile hut within 10 days as required by the Consent Order. Moreover, the County refused to enforce the Order from the magistrate requiring the removal of the mobile hut from the property. Despite all of this, Appellants/Respondents removed the mobile hut from the property on June 5, 2022.

At the same time the motion for sanctions was filed, Respondents filed a motion for a restraining order to stop Appellants from shutting down the only egress and ingress to the floating docks at the marina over the memorial day weekend. Judge Stephen John granted the injunction on May 27, 2022. Neither Order addresses nor references the improper removal of the mobile hut. Neither did either of these Orders attempt to alter, overrule, disparage, or nullify any order from the magistrate. It simply prohibited Appellants from shutting down the walkway during the three day period over memorial day. Appellants filed a motion to reconsider that was denied *in toto* on June 17, 2022.

Appellants forcibly removed the rental hut from the property on June 5, 2022 without complying with Judge Keesley's Consent Order. As a result, Respondents filed a new motion seeking to restrain Appellants from their continued harassment of Respondents and violations of Judge Keesley's Order.

A hearing was held on the Respondents' Motions on June 16, 2022. On June 17, 2022, the trial court issued an Order Granting Respondents Temporary Restraining Order and an Order Denying Appellants' Motion to Reconsider. While Respondents filed two separate motions seeking two separate forms of relief, the trial court issued a singular order entitled Order Granting Respondent's Motion for Temporary Restraining Order dealing with both motions filed by Respondents on June 3, 2022 and June 6, 2022. The trial court also ruled on Appellants' Motion to Reconsider Judge John's Order dated May 27, 2022 in a separate order denying Appellants' motion.

ARGUMENTS

STANDARD OF REVIEW

The grant of an injunction is reviewed for abuse of discretion. *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "An abuse of discretion occurs when the decision of the trial court is unsupported by the evidence or controlled by an error of law." *Peek v. Spartanburg Reg'l Healthcare Sys*., 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005).

I. THIS APPEAL IS MOOT

Generally, this Court only considers cases presenting a justiciable controversy. *Byrd v. Irmo High School*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract. *Id* at 431, 468 S.E.2d at 864. A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). If there is no actual controversy, this Court will not decide moot or academic questions. *Id.* (citing *Jones v. Dillon-Marion Human Res. Dev. Comm'n.,* 277 S.C. 533, 535, 291 S.E.2d 195, 196 (1982)); *see also Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981) as cited in *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 25-26, 630 S.E.2d 474, 477 (2006).

The Orders being appealed merely reaffirmed a previous Consent Order that is the law of the case. The May 27, 2022 Order only prohibited Appellants from closing a shared pier on the

days of May 27, 2022 through May 29, 2022. That Order does not mention the rental hut in any way. The subsequent June 17, 2022 Order denying the motion to reconsider does not mention, affect, or invoke the magistrate's illegal order to remove the structure from the property. It only prohibited Appellants from closing a shared pier on the days of May 27, 2022 through May 29, 2022. Those dates have passed and any reversal of those Orders will have no effect on litigation in any way. It is moot and must be dismissed.

The June 17, 2022 Order granting an additional Restraining Order is moot as well, but for a different reason. Appellants destroyed the rental hut when it was moved. It is impossible for the rental hut to be placed in the condition it was before May 27, 2022. Respondents intend to seek reparations for the destruction of their property through a separate legal proceeding and do not seek to return the rental hut to the property at this time.

II. THE LOWER COURT DID NOT ERR IN MERELY REAFFIRMING THE CONSENT ORDER OF THE PARTIES

In every Order appealed by Appellants, the Circuit Court reaffirmed the Consent Order entered into by all parties and memorialized by Judge Keesley in 2021. That Order remains unappealed and unappealable. It was a Consent Order drafted and agreed to by the parties. There is no basis for appealing the Consent Order and it remains the law of the case, despite Appellants repeated and blatant violations thereof.

"Collateral Attack"

Appellants argue that the Circuit Court Judge's Order that predated a magistrate's issuance of a criminal fine is a collateral attack on the magistrate's subsequent Order. Think about that for a second. Appellants are essentially arguing that a magistrate, a non-lawyer magistrate in this case, can overrule the restraining order issued by a Circuit Court judge. This,

coupled with two very fundamental legal concepts of "due process" and "jurisdictional limits," demonstrate this appeal not only lacks merit, it is frivolous.

Due process requires the owner of property to have an opportunity to be heard before that property is taken or otherwise altered in any way. *Myers v. 1518 Holmes St.*, 306 S.C. 232, 411 S.E.2d 209 (1991) The owners of the rental hut (Respondents) were never given ANY hearing before the rental shed was forcibly removed and destroyed by Appellants. This violates the United States Constitution, the South Carolina Constitution, and every concept of good faith and fair dealing adhered to in American Jurisprudence. The prosecuting authority, Horry County understood this fundamental concept as they refused to enforce the illegal order of the magistrate. **See Page 9 of Appellant's Brief**. Once again, Appellants refuse to recognize or do not understand the fundamental concept of "separation of powers." The Constitutional republic that was established in 1776 incorporated several checks and balances to the operation of government. The three branches of government were separated and each branch was granted an exclusive power with regard to the law that is necessary for the system to work. The legislative branch makes the law, the judicial branch interprets the law, and the executive branch enforces the law. The legislative branch cannot interpret or enforce the law, the executive branch cannot interpret the law or make the law, and the judiciary cannot enforce the law or make the law. Appellants entire argument is based on the removal of the rental hut being lawful under the color of law. That was only possible if the prosecuting agency, Horry County, was the entity that enforced the law. A non-lawyer magistrate does not have the power to deputize Appellants to remove the private property of individuals when the only lawful organization with the power to

do so refuses to enforce an illegal order. The only power available to the magistrate is to appoint a constable pursuant to S.C. Code Section 22-9-10, which did not happen.

Finally, the concept of jurisdictional limits evades Appellants completely. In South Carolina, magistrates are restricted criminal matters involving fines of no more than $500.00 or 30 days in jail, and civil matters involving less than $7500.00. The rental hut that was seized and destroyed by Appellants was purchased for more than $10,000.00. The entire basis of Appellant's argument for the "exclusive jurisdiction" of the magistrate is solely based on the jurisdictional limit of $500.00. No Appellant can honestly claim the removal of the rental hut involved less than $500.00. Most importantly, the magistrate's order only prohibited the "use" of the structure, not its existence on Appellants property. The magistrate did not have the power to order any action that exceeded his statutorily defined jurisdictional limits. Thus, any Order that required the removal of a $10,000.00 rental hut was void on its face and may be attacked at any time. Thus, Judge John's Order cannot collaterally attack an order that was void on its face.

Standing

Appellants claim that the owner of a rental hut has no standing to complain about the forced removal and damage of that rental hut. They further claim that Appellants have no standing to enforce a Consent Order issued by a circuit court judge to protect their businesses, in a case that they filed and are the named plaintiffs. I quite frankly have no idea how to respond to this argument. It is utterly devoid of merit. "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008) (alteration and internal quotation marks omitted). "Standing is . . . that concept of justiciability that is concerned with whether a

particular person may raise legal arguments or claims." *Id.* (alteration in original) (internal quotation marks omitted). "It concerns an individual's sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." *Id.*

III. THE LOWER COURT DID NOT ERR IN DENYING THE MOTION TO RECONSIDER

Appellants make a slew of arguments based on the law surrounding temporary restraining orders and the legal requirements therefore. It should be noted that the entire argument based on the lower court's "failure" to balance the equities in inapplicable to preliminary injunction cases. *Poynter Invs. v. Century Builders of Piedmont*, 387 S.C. 583, 694 S.E.2d 15 (2010). Moreover, the record clearly shows that Judge John did not treat the motion as one for a "new" injunction. In his email to counsel, Judge John stated he considered the motion to be one that sought compliance with the Consent Order issued by Judge Keesley. Thus, the analysis conducted by the Court was based on a previous agreement to place a restraining order in place. Appellants try to frame the injunction, and the Order, as arising from the beginning of the case. That is simply untrue. Appellants agreed to the requirements of Judge Keesley's Consent Order, and all of the elements necessary for a preliminary restraining order. There was no need to reprove all of the elements the parties agreed to in the consent order. However, Respondents did prove all of the elements necessary for an additional injunction through the submission of affidavits, correspondence and 13 videos of Appellants blatantly violating the Consent Order. Judge John specifically found that Appellants violated the Consent Order and ordered them to put things back the way they were at the time the injunction was issued. This is clearly within the inherent equitable powers of the Court. Courts have the inherent power to do all things reasonably

necessary to insure that just results are reached to the fullest extent possible. *State ex rel. Gentry v. Becker*, 351 Mo. 769, 174 S.W. (2d) 181 (1943) as cited in *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983). The parties agreed to the requirements of the Consent Order and Appellants violated those requirements. Judge John was merely attempting to effectuate the requirements of the Consent Order as was his right. He did not abuse his discretion and the Orders must be affirmed. As for the claim that Respondents offered no proof of irreparable harm, the Record is clear. The affidavit of Wade Long clearly alleges that the continued harassment and violation of the consent order would lead to the destruction of several businesses. This affidavit alone is sufficient to sustain Judge Johns's ruling and the appeal must be dismissed. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005) *reversed on other grounds Poynter Invs. v. Century Builders of Piedmont,* 387 S.C. 583, 694 S.E.2d 15 (2010).

The Order does not conflict with itself. The Order requires the replacement of the rental shed, but does not permit its use if such use violates the law. The Order also requires the parties to work together to remedy any licensing or permitting issues so any use of the replaced building was in compliance with the law. There is simply no basis for Appellants hysterical arguments of impending doom if the shed is replaced in compliance with the Consent Order.

CONCLUSION

Appellants appeal is without merit and must be dismissed and the lower court's rulings must be affirmed.

Respectfully submitted,

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