

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

John Doe #53, John Doe 66, John Doe)
66A, John Doe 67, Jane Doe 1 and Jane)
Doe 2 and Rachel Roe, individually and)
as representatives of a class of people)
similarly situated,)

Case Nos.: 2006-CP-18-1310
2006-CP-18-1311
2006-CP-18-1636

Plaintiffs,)

vs.)

ORDER

The Bishop of Charleston, a Corporation)
Sole, and The Bishop of the Diocese of)
Charleston, in his official capacity,)

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Defendants.)

SC Court of Appeals

PROCEDURAL HISTORY

This matter has a long history and arises from a class action settlement approved pursuant to Rule 23, SCRCP in the Dorchester County Court of Common Pleas in 2007. On August 15, 2006, the first two of the three above-captioned class actions were commenced on behalf of victims who were allegedly sexually abused by members of the Catholic church in their capacity as agents of The Bishop of Charleston, a Corporation Sole (“the Diocese”). (Complaints filed in C/A Nos. 2006-CP-18-1310 and 2006-CP-18-1311.) The third suit was commenced on October 6, 2006. (Complaint filed in C/A No. 2006-CP-18-1636.) The cases were designated complex by order entered October 17, 2006.

On January 17, 2007, the plaintiffs moved for certification of the classes and for preliminary approval of the class settlement. The class action court granted that motion by order entered January 19, 2007. The class was represented by Lawrence E. Richter, Esquire and David

K. Haller, Esquire. As part of its order, the class action court required that class counsel submit its petition for attorneys' fees and costs by February 14, 2007, and scheduled a fairness hearing for March 9, 2007. The Honorable Diane Schafer Goodstein presided over the fairness hearing. Judge Goodstein heard arguments on class certification, approval of the proposed settlement, class counsel's fee petition, and objections. On July 30, 2007, the class action court entered an order approving the class action settlement and awarding class counsel the maximum fee of \$2,500,000.00 and overruling the objections made on behalf of John Does A through N. That order approved the January 12, 2007 settlement agreement as an order of the court.

On August 1, 2007, the objectors filed an Objection to Proposed Order advancing fifteen different objections to the class action settlement. The objectors subsequently filed a motion to alter or amend the Order Approving Settlement and a supporting memorandum based on his objections to the settlement terms on August 7, 2007. The objectors claims were subsequently settled and the terms of that settlement were incorporated into an order the class action court entered August 31, 2007.

Following the final settlement approval and disposition of the objectors' Rule 59, SCRCF, motion, the Diocese funded the settlement. The claims of class members were administered pursuant to the terms of the court-approved settlement through the court-appointed escrow agent and court-appointed arbitrator. On March 10, 2008, following disbursements to the claimants, the class action court was provided a final accounting of the disbursements signed by the escrow agent. At that time, the claims and issues had been disposed of, and there was nothing more for the class action court to decide with regard to the claims of the class members. The litigation involving the class action claims was concluded. Filings continued under the class action caption and the court held a hearing on January 29, 2009 on the pending motions which included the objectors' motion

for recusal, the Diocese's motions to enforce settlement and for leave to deposit funds into court, the objectors' motion to dismiss the motions filed by the Diocese and a petition to appear as *amicus curiae*. By orders filed February 3, 2009 and March 23, 2009, the court denied the objectors' motions and the petition to appear as *amicus curiae*. For reasons unknown to this court, an order ending the litigation was never filed. The objectors appealed the March 23, 2009 order. The Supreme Court of South Carolina dismissed the appeal. By order filed January 24, 2013, Judge Goodstein recused herself from hearing any further matters related to this litigation.

On May 11, 2016, Allen Sires filed a motion *pro se* requesting a post-award fairness hearing. The motion was not scheduled for a hearing. On August 29, 2022, Julie and Richard McDonald filed a motion to intervene and sought to join Mr. Sires' motion for a post-award fairness hearing. By order of the South Carolina Supreme Court dated November 10, 2022, the undersigned was vested with exclusive jurisdiction to hear and dispose of this case.

On January 27, 2023, the parties appeared before the court to address the pending motions. Mr. Sires appeared *pro se*. Gregg Myers, Esquire appeared on behalf of Julie and Richard McDonald. Class counsel, David K. Haller, Esquire, appeared along with his personal attorneys, John C. Cuttino, Esquire and Benjamin C. Bruner, Esquire. The Defendants were represented by Richard S. Dukes, Jr. Esquire.

DISCUSSION

The motions filed by Mr. Sires and the McDonalds¹ urge this court to conduct a post-award fairness hearing. Mr. Sires and the McDonalds both participated in the claims process and received their settlement proceeds. Although various grievances were aired during the hearing, the principal

¹ The McDonalds also filed a simultaneous Motion to Intervene. Because the McDonalds were accepted as members of the class that is the subject of this litigation, the court finds and concludes that intervention pursuant to Rule 24, SCRCP is not necessary for the McDonalds to file their motion.

reason cited by Mr. Sires and the McDonalds for a post-award fairness hearing centers around fees charged by class counsel to individual class members upon resolution of the individual claims through the court approved claims process.²

It appears a thorough and complete fairness hearing was held by Judge Goodstein which addressed certain objections. An order was issued on July 30, 2007 formally approving the settlement. Judge Goodstein's order also made the parties' Settlement and Arbitration Agreement filed January 17, 2007 an order of the court. A series of motions followed Judge Goodstein's July 30, 2007 order which she addressed in a subsequent order filed March 23, 2009. An appeal of the March 23, 2009 order was dismissed by the South Carolina Supreme Court.

Neither Mr. Sires nor the McDonalds cite any authority for this court to hold a post-award fairness hearing. It is true that "[c]ourts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex Parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (1983). However, it is not the province of this court to create a right or remedy where one does not exist. Further, "[t]he doctrine of the law of the case applies to an order or ruling which finally determines a substantial right." *S.C. Public Interest Foundation v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022). The Settlement and Arbitration Agreement filed January 17, 2007 and Judge Goodstein's order filed July 30, 2007 were an unquestionable final determination of substantial rights of the class members. Finally, "[t]here is a long-standing rule in this State that one judge of the same court cannot overrule another." *Charleston County Dep't of Social Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307,

² Class counsel and the Defendant's assert that Mr. Sires and the McDonalds lack standing to be heard on their motion for a post-award fairness hearing. Because of the court's ruling with regard to the post-award fairness hearing, the court declines to rule on the issue of standing but notes the argument and its preservation for appellate purposes. *See, I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

310 (1995). The relief sought by Mr. Sires and the McDonalds would require this court to re-examine the fairness of the settlement procedure and effectively overrule Judge Goodstein's order which finally determined the fairness of the settlement. This court is not inclined to do so. Because the July 30, 2007 Order Approving Settlement was a final determination of substantial rights of the class members, it is the law of the case. This court has no authority to set Judge Goodstein's order aside or conduct further proceeding with regard to the fairness of the settlement or claims process.

CONCLUSION

Based upon the foregoing, this court finds and concludes that the motions for a post-award fairness hearing should be and are hereby denied. Because the claims process for class members has concluded and there appearing to be no further matters for this court to address, the above captioned matter is hereby dismissed with prejudice.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the motions of Mr. Sires and the McDonalds are denied and this matter is hereby dismissed with prejudice.

IT IS SO ORDERED!



Dorchester Common Pleas

Case Caption: Jane #1 Doe , plaintiff, et al VS Bishop of charleston , defendant, et al

Case Number: 2006CP1801310

Type: Order/Other

IT IS SO ORDERED.

Heath P. Taylor