

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

Molly Morphew,  
Plaintiff,

vs.

Stephen Dudek and Doreen Cross,  
Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT  
CASE NO. 2018-CP-18-1661

ORDER  
RECEIVED

MAY 26 2023

SC Court of Appeals

On May 26, 2021, the above-captioned case came before this Court on the following motions: The Defendants' Motion to Dismiss the Plaintiff's Amended Complaint; the Plaintiff's Motion to Strike the Defendants' Motion to Dismiss; the Defendants' Motion for Protection from the Plaintiff's Discovery Requests; and, lastly, the Plaintiff's Motion to Deem Admitted Requests for Admission. At the hearing, the Plaintiff appeared *pro se*, and the Defendants were represented by Samuel M. Wheeler, Esq. This Court makes the following rulings:

**I. The Defendants' Motion to Dismiss the Plaintiff's Amended Complaint, and the Plaintiff's Motion to Strike the Defendants' Motion to Dismiss.**

There was some confusion as to the pendency of the Plaintiff's original Complaint, and the Defendants' Motion to Dismiss that Complaint, due to the procedural history of this case. On or about October 2, 2019, this Court, albeit a different presiding judge, heard the Defendants' Motion to Dismiss the Plaintiff's original Complaint. The Court took the motion under advisement; however, prior to a ruling on that motion, the Plaintiff filed an Amended Complaint, on or about March 12, 2020. The Defendants moved to dismiss the Amended Complaint under Rule 15, SCRCF, and they supplemented the motion with substantive arguments raised in their first Motion to Dismiss, which was never ruled on.

This Court finds that the Plaintiff's Amended Complaint is the operative complaint going forward. While there is an issue of whether the Amended Complaint should be in effect, given that the Plaintiff filed it while the Defendants' first Motion to Dismiss was under advisement, this Court construes the holding of *Bowers v. Robinson*, 311 S.C. 412, 429 S.E.2d 799 (1993) to render the Plaintiff's Amended Complaint the operative complaint in this action. As to the Defendants' substantive arguments contained in their Motion to Dismiss the Plaintiff's Amended Complaint, this Court must base its ruling solely on allegations set forth in the Amended Complaint. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the Plaintiff, would entitle the Plaintiff to relief on any theory, then dismissal is improper. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Considering the standard of review, this Court DENIES the Defendants' Motion to Dismiss the Amended Complaint. Pursuant to Rule 15, the Defendants shall have 15 days from the issuance of this Order to file an answer to the Plaintiff's Amended Complaint.

In response, the Plaintiff had filed a Motion to Strike the Defendants' Motion to Dismiss the Amended Complaint. The Plaintiff's Motion to Strike is broken up into four sections, which this Court will address separately.

In the first section, titled "RULE 11(a) – INTENTIONAL DELAY OF PROCEEDINGS," which contains four lettered subsections, the Plaintiff makes arguments concerning the Defendants' actions in response to her original Complaint. This Court cannot make rulings with respect to those arguments, as the Plaintiff has willfully filed an Amended Complaint. Her original Complaint, and any motions with respect to that Complaint, are not before this Court. Further, issues concerning service and default under that original Complaint were previously ruled on. The Plaintiff elected to file an Amended Complaint, which, as stated above, is now the

operative complaint going forward.

In the second section, titled “DEFENDANTS’ MEMORANDUM SUPPORTING ITS MOTION(S) TO DISMISS FAILS OR FAILS TO PLEAD A RULE 12(B)(6) MOTION,” the Plaintiff seems to be presenting arguments as to why the Defendants’ Motion to Dismiss the Plaintiff’s Amended Complaint should be denied. As stated above, that Motion is denied, thus no further analysis of this section is needed. It should be cautioned however, that the Defendants’ Motion to Dismiss is being denied under the Rule 12 standard of review, and nothing contained herein should be construed as a finding of fact with respect to this case.

In the third section, titled “UNTIMELINESS OF DEFENDANTS’ MOTION TO DISMISS PLAINTIFF’S AMENDED COMPLAINT,” the Plaintiff argues that the Defendants should be held in default, pursuant to Rule 55, due to their failure to answer or otherwise respond to the Amended Complaint. The Plaintiff argues that her Amended Complaint was served on March 9, 2020, putting the Defendants’ deadline as March 25, 2020. (Pl’s Mot., p. 13). She then argues that the Defendants’ Motion to Dismiss, filed on April 13, 2020, was untimely. (Id.).

Unfortunately, the Plaintiff has failed to accurately recount the rules and procedural history of this action. The Plaintiff mailed her Amended Complaint to the Defendants’ counsel on March 9, 2020. (see Cert. Service, Amended Compl.). Rule 6 states, “[w]henver a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.” The Plaintiff’s service by mail added five days to the 15-day answer period under Rule 15, putting the deadline on March 30, 2020 (March 29, 2020, was a Sunday). The Defendants’ filed their Motion to Dismiss on March 26, 2020. It seems the Plaintiff is arguing that the March 26<sup>th</sup> motion should be ignored, because it was made under Rule 15, and Rule 15

allows her to amend without leave. So, the Plaintiff argues the Defendants' April 13, 2020, Motion to Dismiss is untimely. Even if this Court were to agree with the Plaintiff's logic, the Defendants' April 13<sup>th</sup> motion still would have been timely, under Coronavirus orders issued by our state's Supreme Court. The Supreme Court first issued an order in response to the pandemic on April 3, 2020, and it amended the order on April 14, 2020. It states, "[i]n the event a party to a case or other matter pending before a trial court was required to take certain action on or after March 13, 2020, but failed to do so, that procedural default is hereby forgiven, and the required action shall be taken within thirty (30) days of the date of this order. If a dismissal or other adverse action has been taken, that adverse action shall be rescinded." (Appellate Case No. 2020-000447). Under that order, the Defendants would have had until May 14, 2020, to avoid default. Both their motions were filed within that time frame. This Court is bound by Supreme Court orders, and the apparent purpose of the orders were to prevent, during a global pandemic, narrow procedural arguments such as the Plaintiff's.

In the final section, titled "DEFAULT," the Plaintiff reiterates her arguments for the Defendants being held in default for allegedly failing to answer her original Complaint. Again, that issue has already been ruled on in this case. Further, as stated above, the Plaintiff willfully filed an Amended Complaint, so this Court is confused as to the Plaintiff's arguments with respect to the original Complaint. The Plaintiff argues on one hand that her Amended Complaint can go forward, and this Court has agreed with her, when it denied the Defendants' Motion to Dismiss the Amended Complaint. On the other hand, the Plaintiff argues that she is entitled to default or relief under the original Complaint. Those contrary positions cannot be maintained.

For the reasons stated above, this Court DENIES the Defendants' Motion to Dismiss the Plaintiff's Amended Complaint. Under Rule 15, the Defendants' shall have 15 days from issuance of this Order to file an answer to the Amended Complaint. This Court also DENIES the

Plaintiff's Motion to Strike.

**II. The Defendants' Motion for a Protection from the Plaintiff's Discovery Requests, and the Plaintiff's Motion to Deem Admitted Requests for Admission.**

On May 26, 2021, this Court also took up the Defendants' Motion for a Protection from the Plaintiff's Discovery Requests and the Plaintiff's Motion to Deem Admitted Requests for Admission. Due to time constraints, the parties were not able to present oral arguments on these issues, so the Court left the record open and requested follow-up briefs. This Court GRANTS the Defendants' Motion for Protection, for the reasons set forth in the Defendants' Motion and additional Memorandum, which was requested by the Court and filed on June 3, 2021. Attached to the Defendants' Additional Memorandum was an exhibit which contained all the Plaintiff's requests. The requests to which the Defendants objected were highlighted/circled, and the Defendants' reasons for objecting to the requests were stated in their Motion and Additional Memorandum. This Court agrees with the Defendants. The Defendants shall not be required to respond to the highlighted/circled requests. The Defendants shall respond to all remaining requests within 30 days of issuance of this Order.

In granting the Defendants' Motion, this Court DENIES the Plaintiff's Motion to Deem Admitted Requests for Admission. The Defendants' timely filed their motion for protection, which has the effect of preventing the requests from being deemed admitted. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 109, 410 S.E.2d 537, 542 (1991).

**CONCLUSION**

For the reasons set forth above, this Court DENIES the Defendants' Motion to Dismiss the Plaintiff's Amended Complaint. And this Court DENIES the Plaintiff's Motion to Strike the Defendants' Motion to Dismiss. The Defendants shall have 15 days from issuance of this Order to file an answer to the Amended Complaint, which is the operative complaint going forward.

This Court GRANTS the Defendants' Motion for Protection. The Defendants shall not be required to respond to the highlighted/circled requests, which were attached as an exhibit to the Defendants' Memorandum, filed June 3, 2021. The Defendants shall respond to all remaining requests within 30 days of issuance of this Order. Lastly, this Court DENIES the Plaintiff's Motion to Deem Admitted Requests for Admission.

**IT IS SO ORDERED!**

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The Honorable Maite Murphy

\_\_\_\_\_, 2021

St. George, SC



Dorchester Common Pleas

**Case Caption:** Molly M Morpew VS Stephen Dudek , defendant, et al  
**Case Number:** 2018CP1801661  
**Type:** Order/Other

So Ordered

s/ Maite Murphy 2166