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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appellate Case No. 2021-001124

Gabriel Barnhill and GSB Enterprises LLC, Respondents,

v.

J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners LLC, SMS Services LP, William C. Piner, WCP Limited LLC, 809 Holdings LP, QC Financing LLC, and Sage Financial Group LLC, Defendants.

Of whom J. Floyd Swilley, Laurel K. Swilley and Heath Causey are the Petitioners.

REPLY BRIEF OF PETITIONERS

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ARGUMENT

A. PETITIONER CAUSEY HAS PRESERVED AND PRESENTED ARGUMENT SUFFICIENT TO ENTITLE HIM TO RELIEF AS REQUESTED.

1. Causey is properly included within this Court's grant of certiorari.

Petitioners J. Floyd Swilley and Laurel K. Swilley moved for an extension of time in which to file a petition for writ of certiorari, which was granted, and which was followed by the timely filing of the initial petition for writ of certiorari. In doing so, both in the motion and initial petition, they inadvertently omitted to include Heath Causey within the caption as a separately specified petitioner. That administrative oversight, effectively a scrivener's error, was corrected via amended petition the very next day. Respondent now objects, as was done prior to grant of the certiorari as to all petitioners, but again presents no evidence or even claim of prejudice.

Additionally, given the identical nature of relief sought by all petitioners (remand for a proper hearing on the motions heard inappropriately during an ordered stay of the proceedings), and identical argument made as to entitlement to that relief (the order of stay remained effective, and thus the hearing and efforts leading thereto were null and void), any grant of relief by this Court as to one petitioner necessarily effectuates the relief for all affected during the subject trial court hearing at issue. As such, the corrected petition is consistent with efficiency principles set forth within appellate court rules addressing certiorari. See Rule 242(h), SCACR ("Where several cases that involve identical or closely related questions are sought to be reviewed on certiorari, the filing of a single petition for writ of certiorari shall suffice to cover all the cases.")

2. Petitioner's brief sets forth argument as to the basis upon which Causey, as well as the other petitioners, are entitled to reversal and remand.

Although Petitioner's brief uses "Swilley" as shorthand for the petitioners, the term can and should be interpreted as encompassing Causey as well. Even Respondent's brief acknowledges "arguably Causey might be included in the term 'Swilleys'." (Resp. Br. p. 11-12).

Substantively, the brief extensively argues that the hearing held on February 16, 2016 was improper because it occurred during the continuing effect of an order staying the entirety of the case proceedings. That order providing for the stay was an order relieving the joint counsel of Causey and the Swilleys, and did not order a stay merely as to a portion of the claims/case, but as to the entirety. The resulting "proceedings" that occurred during the effective period of stay, including those necessary in advance of the hearing itself (i.e. scheduling and notice), were improper as to all defendants. Having set forth the basis by which the entirety of proceedings were improper, the relief sought, in turn, was remand and the holding of a properly noticed hearing. Such relief, having necessarily rendered null and void all activity having occurred during the prior hearing that never should have gone forward (i.e. resulting orders affecting Causey individually) would necessarily be likewise cast aside even if Causey were not a continuing petitioner before this court.

Finally, Floyd and Laurel Swilley share common interests with Causey in the litigation, as is evidenced by their joint representation during the underlying matter, Causey having adopted and incorporated argument offered by the Swilleys at the Court of Appeals,¹ and current joint representation at this stage of proceedings. At any proper hearing on the motions below, the Swilleys could have assisted in defending the motions, including those addressed to Causey specifically, in furtherance of their common interest in defeating claims that were premised upon

¹ See *pro se* Brief of Appellant Causey before the Court of Appeals at App. p. 686 ("This Appellant references the entire Brief of the Swilleys' and asserts the same arguments and assertions as his own unless specifically identified within this brief.").

alleged improper joint acts between defendants. Relief requested by the Swilleys would not be complete without that same opportunity on remand, and thus rescission of the order specifically as to Causey is within the scope of the Swilley's requested relief even if they had not been joined in such request by Causey.

B. DURING THE EFFECTIVE TERM OF THE ORDER STAYING THE PROCEEDINGS BELOW, ATTEMPTS TO SERVE NOTICE BY ANY MEANS WERE NULL AND INEFFECTIVE.

Respondent misapprehends multiple pages of Petitioners' brief on the issue of notice. For the reasons set forth in Petitioner's Brief at p. 6-8 as to the nature and effect of the stay, even if a sheriff's deputy had stuck a copy of the motions and hearing notice in the hand of each of the petitioners and received a signed acknowledgment of receipt thereof while capturing it all on video, such act would still be null, ineffective, and irrelevant. That is true because scheduling and notice of scheduling (in addition to the hearing itself) would all be in contravention of an unappealed, undisturbed order staying all "proceedings." As noted in the brief, "proceedings" is a broad term, including "any procedural means" and any "act or step that is part of a larger action." (Pet. Br. pp. 6-7). The order at issue constituted a "stopping" under SC caselaw, not merely a slowing. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989).

Accordingly, the Court of Appeals' reference to mailing on February 3, 2016 is misguided, as by all interpretations that date was within the order's period of abeyance, and thus was ineffective as specifically prohibited. Stated plainly, sending a notice of hearing during the undisputed efficacy period of the stay had no effect at all. It was compounded by both counsel present at the subsequent hearing and then misleadingly incomplete and vague background given to the judge to prompt an erroneous conclusion that is was all he needed to know.

C. RESPONDENT REITERATES UNREASONABLE PRESERVATION STANDARDS.

Respondent faults Petitioners because they “could” have appeared at the hearing and raised contemporaneous objections. (Resp. Br. p. 19). While physically possible, that ignores an obvious and unstated reality at the time, however, which was a specific court order specifically precluding any hearing from going forward on that date (or any other administrative build up to the hearing that occurred during the period of stay). As explained in Petitioners’ brief, that restriction to the status quo was put in place to protect the defendants (now Petitioners) for a brief period, the prompt for which was the court allowing them to be left without counsel in the middle of a contested action. (Pet. Br. p. 7).

By the standard of Respondent and the Court of Appeals, a party would be forced to appear and contemporaneously object at a hearing even if it were noticed as being held next to a navigational buoy off the coast of Myrtle Beach. After all, the party “could” attend via boat to make the objections known. Such an example may seem hyperbolic, but it is not so far-fetched given the actual circumstances in question here, which involve direct contravention of a proactive, protective order in favor of Petitioners.

The facts are clear. Respondent’s counsel violated the court-ordered stay by charging ahead, presented an inaccurate and misleadingly incomplete presentation to an unsuspecting judge, and got the relief he wanted. There is nothing about Respondents’ conduct, or that of counsel, that can be permitted to stand, even if the Petitioners had (although they certainly did not) engaged in all the conduct alleged by Respondent and their counsel.

CONCLUSION

When this Court granted the petition for writ of certiorari in this case, Petitioners would like to believe that this Court saw the conduct of Respondents and their counsel and rightly saw an opportunity to foreclose the current and future disregard for court orders. It appears that may be accomplished in a straightforward fashion, by reiterating the nature and effect of an order of abeyance, and remanding this matter to the Circuit Court for the benefit of Petitioners who were not treated in accordance therewith. Such an opinion would be of wider benefit to the bench and bar, and would protect future parties who are similarly situated as to Petitioners under these specific circumstances.

Respectfully submitted,

s/ Desa Ballard

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