

The Supreme Court of South Carolina

Adam Corey Rabon, as Guardian, for Erik Randall
Rabon, Appellant,

v.

Huggins Beach Service, Inc., the City of Myrtle Beach
and Craig J. Risbourg, Respondents.

Appellate Case No. 2012-208006

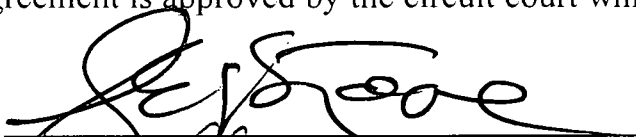
ORDER


By order dated May 1, 2013, in response to notification from the parties that they had reached a settlement, we held this appeal in abeyance and remanded the case to the circuit court for consideration of the settlement agreement. S.C. Code Ann. §§ 15-51-41, 15-51-42(C)(3) (2005); Rule 261(b), SCACR. The parties were instructed that following consideration of the settlement agreement by the circuit court, they were to inform this Court whether the agreement was approved, and if it was approved, proceed pursuant to Rules 260(b) and 261(b), SCACR, if they wish to have the appeal dismissed.

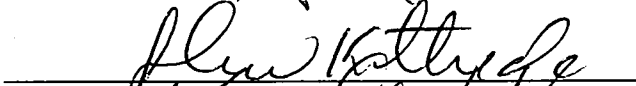
The parties have now filed an "Agreement to Dismiss Pursuant to Rules 260(b), 261(B) and 222 SCACR." Therein, the parties once again request that the appeal be dismissed, stating they have resolved their differences and entered into a settlement agreement. They state an "Agreement for the Wrongful Death and Survivorship claims" was approved by the circuit court *on April 9, 2013*. However, on April 9, 2013, the circuit court did not have jurisdiction to take any action with regard to the settlement, as the matter was still pending before this Court on appeal and had not been remanded for consideration of the settlement agreement. Accordingly, any action taken by the circuit court on the settlement agreement is hereby vacated, and the settlement agreement shall be resubmitted to the circuit court, where it was remanded by way of the May 1, 2013 order. S.C. Code Ann. § 15-51-42(C)(3) (2005)(If a wrongful death or survival action has been filed in state court and the settlement agreement is reached after notice of appeal is


filed, the duly appointed personal representative must petition the appellate court before which the matter is pending to remand the case to the circuit court for consideration of the settlement agreement.); Rule 205, SCACR. Moreover, the parties have not submitted a copy of the settlement agreement to this Court as required by Rule 261(b), SCACR (If a settlement agreement relates to a matter pending before this Court, the settlement agreement need not be submitted to the appellate court unless approval by a lower court is required before the agreement can be effective.); S.C. Code Ann. § 15-51-41 (2005)(Any settlement of a wrongful death or survival action must be approved by either a probate court, circuit court, or United States District Court, as provided in S.C. Code Ann. § 15-51-42 (2005).).

Accordingly, the parties' request to dismiss this appeal is hereby denied without prejudice to their right to resubmit the request, along with a copy of the settlement agreement, after the settlement agreement is approved by the circuit court while the case is on remand.


C.J.


J.


J.


J.

Justice Donald W. Beatty,
not participating

Columbia, South Carolina

July 11, 2013

cc:

Robert N. Richardson, Jr.
Jimmy Carlton Powell, Jr.
Jeffrey Edwin Johnson
James Richard Battle, II