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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No. 2023-001295

Willie J. Bennett,Appellant,

v.

Sasha N. Gray, Claire H. Eckert,
and Chick-fil-A, Inc. Respondents.

**RESPONDENTS SASHA N. GRAY AND CLAIRE H. ECKERT’S RETURN TO
APPELLANT’S MOTION TO STAY ORDER**

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

On August 17, 2023, Appellant Willie Bennett (“Appellant”) filed a “Motion to Stay Order” with this Court. Appellant stated in his motion: “Appellant ask the Court to Grant Stay the attached Order of Judge Maite Murphy from the Richland County Court until a hearing is heard by the Appeals Court.” It is unclear what relief Appellant seeks from the Motion. To the extent Appellant seeks a stay of any unappealed matters that the trial court retains jurisdiction over, Respondents Sasha N. Gray and Claire Eckart submit the below response.¹

This is a negligence matter arising out of a motor vehicle accident that occurred on June 17, 2022. Appellant alleges that on that date, he was parked within the parking lot of the Chick-fil-A branded restaurant on Garners Ferry Road in Columbia, South Carolina. Appellant alleges

¹ This return is filed in accordance with the Court’s August 28, 2023 correspondence requesting a return to Appellant’s motion.

that he was in his parked pick-up truck, when a vehicle driven by Sasha Gray, an employee of 2CE, LLC (the owner-operator of the subject restaurant), hit the left rear bumper of Appellant's vehicle.

Appellant filed suit against Gray, Chick-fil-A, Inc., and Claire Eckart. Gray and Eckart moved to dismiss or in the alternative, moved to substitute in the proper parties in interest; that being, 2CE, LLC as the proper party in interest in the place of Chick-fil-A, Inc. and Claire Eckart. The motion was ultimately heard and granted by the trial court, and the caption subsequently amended to reflect the substitution. The order was filed by the trial court on August 11, 2023.

On August 15, 2023, Appellant filed his Notice of Appeal of the order entered by the trial court regarding the motion to substitute parties. Appellant subsequently filed a "Motion to Stay Order" on August 15, 2023.

Rule 241 of the South Carolina Appellate Court Rules states: "As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal." Rule 41(a), SCACR. Accordingly, the stay regarding matters on appeal is not discretionary. Other unappealed matters are not automatically stayed. *See Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012).

As it relates to matters that are not appealed and remain at the trial court, based on Rule 41, SCACR, Respondents maintain that this Court does not have jurisdiction to stay any trial court proceedings. Rather, Rule 41 contemplates that the lower court retains jurisdiction over matters

not affected by the appeal. Therefore, the trial court retains the exclusive jurisdiction to stay any matter within its jurisdiction while part of the case is within the jurisdiction of the Court of Appeals.

To the extent this Court has jurisdiction to stay any matters remaining within the jurisdiction of the trial court, Respondents do not oppose a stay of the trial court proceedings. Respondents note that Appellant has filed a single cause of action for negligence as to all named defendants. Because of the single cause of action arising out of the same incident, Respondents maintain that a stay would advance judicial economy and efficiency to litigate the single cause of action against all proper parties at one time.

Therefore, to the extent Appellant's motion can be construed as a request to stay any matters that remain within the jurisdiction of the trial court, and to the extent this Court has jurisdiction to order a stay of trial court proceedings, Respondents do not oppose a stay of the unappealed matters within the jurisdiction of the trial court.²

[SIGNATURE PAGE FOLLOWS]

² To the extent the Court grants Appellant's motion, Respondents request that the Court order or direct Appellant that no matters may be filed with the trial court during the stay as the matter will be litigated in the appellate court on the appealed matters.

Respectfully submitted,

COLLINS & LACY, P.C.

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ATTORNEYS FOR DEFENDANTS
SASHA N. GRAY AND 2CE, LLC

**RESPONDENTS SASHA N. GRAY AND
CLAIRE H. ECKERT'S RETURN TO
APPELLANT'S MOTION TO STAY
ORDER**

September 7, 2023
Columbia, South Carolina

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PROOF OF SERVICE

The undersigned certifies that she has caused to be served **Willie J. Bennett** with a copy of **RESPONDENTS SASHA N. GRAY AND CLAIRE H. ECKERT'S RETURN TO APPELLANT'S MOTION TO STAY ORDER** by mailing a copy of same to him at the address of 113 Healing Springs Road, Hopkins, SC 29061, in the United States mail, with sufficient postage affixed thereto and return address clearly marked on September 8, 2023.

COLLINS & LACY, P.C.

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