

**RECEIVED**

**Jan 10 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM LEXINGTON COUNTY  
WALTON J. MCLEOD, CIRCUIT COURT JUDGE  
Case No. 2022-CP-32-01419

---

Emily P. Smith and Emily P. Smith and Associates, LLC, ..... Appellants,

v.

Robert T. Smith; Southern Collection, LLC;  
Southern Collection Brokerage, LLC;  
Terrance Smith and Associates, LLC; Robert B. Smith,  
And Sherry C. Smith, ..... Respondents.

---

**SECOND  
MOTION TO EXPEDITE APPEAL**

---

Appellants Emily P. Smith and Emily P. Smith and Associates, LLC (collectively referred to as “Emily”) hereby move this Honorable Court for an order expediting the consideration of the merits in this matter. In support of her motion, Emily would show the following:

1. On or about August 18, 2021, Emily filed an action for divorce from Respondent Robert T. Smith (“Terence”) in the Lexington County Family Court, Case No.: 2021-DR-32-1578 (“domestic action”). This matter is still pending.
2. Emily and Terence were the joint owners and sole members of Southern Collection, LLC. The Family Court action requested equitable distribution generally, but did not name the parties’ LLC and did not request a division or allocation of the LLC under the provision of the S.C. Code § 33-44-801.

3. The Family Court therefore did not have jurisdiction over the LLC. The temporary order specifically declined to deal with any property issues and did not acknowledge the existence of the LLC. This has led to years of bitter litigation in the Family Court.
4. On or about April 27, 2022, Emily filed a complaint in the Circuit Court asserting her rights as a member of a limited liability company, seeking a judicial dissolution and winding up of Respondent corporation Southern Collection LLC, emergency temporary appointment of receiver, and imposition of constructive trust.
5. Contemporaneously with the filing of the complaint, on April 27, 2022, Emily filed a statement of dissociation with the South Carolina Secretary of State pursuant to S.C. Code Ann § 33-44-704 to initiate the dissolution of Southern Collection, LLC.
6. On or about June 17, 2022, the trial court issued an order dismissing Emily's Circuit Court action and finding that the corporate issues raised in Emily's complaint were within the jurisdiction of the Family Court.
7. Emily appealed from the trial court's order on July 29, 2022, asserting that the relief sought in the circuit court action is within the exclusive jurisdiction of the Circuit Court.
8. On or about May 30, 2023, Terence filed a Motion for a Stay of Trial in the domestic action seeking to stay the domestic action or continue the trial to avoid conflicting judicial determinations in domestic action and the civil action on appeal. A hearing on this motion was held on June 20, 2023 before Judge Crouch.
9. Following the hearing, Judge Crouch issued an order on July 13, 2023, attached and incorporated herein as **Exhibit A**, staying the family court litigation until the issues on appeal before this Court are resolved in full.

10. Emily requests that the appeal in this matter be expedited so that the Court can consider the merits of the appeal and issue a decision enabling the family court litigation to resume and ultimately be resolved.

For the reasons set forth above, Emily respectfully requests that this Court grant their request to expedite this appeal.

Respectfully submitted,

s/ Haley Hubbard

Desa Ballard (S.C. Bar No. 498)

Harvey M. Watson III (S.C. Bar No. 74053)

Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON

226 State Street

West Columbia, SC 29169

Telephone 803.796.9299

Facsimile 803.796.1066

desab@desaballard.com

harvey@desaballard.com

haley@desaballard.com

ATTORNEYS FOR APPELLANTS

January 10, 2024



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 Emily P. Smith, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Robert Terence Smith, )  
 )  
 Defendant. )

IN THE FAMILY COURT FOR THE  
 ELEVENTH JUDICIAL CIRCUIT

Docket No.: 2021-DR-32-1578

ORDER

LISA M. COMER  
 CLERK OF COURT  
 LEXINGTON SC

2023 JUL 13 AM 7:58

FILED

Presiding Judge: The Honorable Huntley S. Crouch  
 Hearing Date: June 20, 2023  
 Plaintiff's Attorney: Pro Se  
 Defendant's Attorney: Matthew B. Rosbrugh, Esquire  
 Guardian ad Litem: Michelle Gorski  
 Court Reporter: Dee Anne Varnadoe

This matter was originally filed by Plaintiff on August 18, 2021. A status conference and pre-trial hearing was held before the undersigned on or about March 7, 2023. The parties' prior respective legal counsel were relieved in this matter on or about March 7, 2023 and March 14, 2023. Defendant's current counsel subsequently filed a notice of appearance on behalf of Defendant on or about May 2, 2023. Plaintiff has not retained new counsel and appeared at the hearing Pro Se.

This matter is before the Court on June 20, 2023, pursuant to a Notice of Motion and Motion for a Stay of Trial or in the Alternative Continuance of Trial filed by the Defendant on May 30, 2023.

A TRUE COPY  
  
 Lex. Ct. C.C.C.F., G.S. & E.C.

This hearing was conducted by the undersigned to address the issues raised within Defendant's motion that specifically addresses a parallel action filed in the Court of Common Pleas and which is currently pending before the South Carolina Court of Appeals. Appearing at the hearing were the Defendant and his attorney, Matthew B. Rosbrugh, as well as the Plaintiff appearing Pro Se.

At the call of the case the Court placed Plaintiff under oath and examined Plaintiff regarding her ability to participate in the proceeding and her willingness to go forward without representation of legal counsel. Based on Plaintiff's responses, the Court is satisfied as to both Plaintiff's ability and willingness to proceed without counsel.

Prior to the hearing the Court reviewed the Defendant's motion and attached exhibits. The Court heard argument from Defendant's counsel regarding the basis for the motion including the need to avoid conflicting judicial determinations regarding the question of marital assets and jurisdiction, the need to address Defendant's allegations of diminution of the marital assets through the expenditure of attorney's fees and costs in the parallel litigation in the Court of Common Pleas and the Court of Appeals, whether or not the assets in dispute in the Common Pleas matter are marital assets, and other matters raised within the motion. Defendant's counsel further pointed to the South Carolina Appellate Court Rules as requiring the stay of the instant action pending resolution by the Court of Appeals and exhaustion of the appellate process.

The Court also heard argument from the Plaintiff regarding her position on the Defendant's request for a stay or continuance of the trial of this case. The Court also considered the position taken by Plaintiff in her Common Pleas matter and the filings made in the Court of Appeals.

1+

FILED  
2023 JUL 13 AM 7:55  
LESA M. COMBER  
CLERK OF COURT  
LEXINGTON, SC

Having considered the arguments of Defendant's counsel, the statements of the Pro Se Plaintiff, and reviewed the materials at issue, including the pleadings in the Court of Common Pleas, the Order from the Defendant's motion to dismiss, and the materials in the Court of Appeals, this Court makes the following findings of fact and conclusions of law:

A. I find the Plaintiff and Defendant are citizens and residents of Lexington County, South Carolina and have been for at least one (1) year prior to the commencement of this action. I find that venue is proper in Lexington County, South Carolina. I find that this Court has *in personam* jurisdiction over Plaintiff and Defendant and has jurisdiction over the subject matter of this action. I find that all issues have been properly joined and that there are no other actions pending between them, except the instant action.

B. I find that the Plaintiff and Defendant are husband and wife having been married on or about November 3, 2012. I find the instant marital litigation was filed by Plaintiff, through her prior counsel, with this Court on or about August 18, 2021. I find that the question of equitable division of marital assets and attorney's fees are issues currently pending before this Court.

C. I find that the Plaintiff filed a parallel action over the assets of a business in which the Plaintiff and Defendant appear to have had a business interest and which may constitute a marital asset subject to equitable division by this Court.

D. I find that the appeal currently pending in the parallel action could lead to conflicting rulings regarding whether the asset is marital as asserted by Defendant, or non-marital and subject to the jurisdiction of the Court of Common Pleas asserted by the Plaintiff.

E. I find that prior to any adjudication by the Lexington County Family Court, the appellate issues must be resolved in full.

12

A TRUE COPY  
*[Signature]*  
Lex. Co. C.C.C.P., G.S. & E.C.

FILED  
2023 JUN 13 AM 7:55  
CLERK OF COURT  
LEXINGTON S.C.

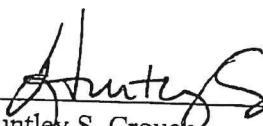
F. I find that Plaintiff's parallel action filed in the Court of Common Pleas affirmatively places at issue the question of whether or not certain assets are marital or non-marital and the correct forum for such issues to be decided and divided.

IT IS THEREFORE ORDERED that the case is hereby continued beyond the term of Court set for the week of July 24, 2023;

IT IS FURTHER ORDERED that the parties may renew the motion as may be necessary until the termination of the appellate proceedings in the case of *Emily P. Smith v. Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, Terence Smith and Associates, LLC, Robert B. Smith, and Sherry C. Smith*, bearing civil action number 2022-CP-32-01419 and Appellate Case No. 2022-001060.

IT IS FURTHER ORDERED that the Clerk of Court shall reschedule the matter for a trial following the termination of the appellate proceedings in the case of *Emily P. Smith v. Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, Terence Smith and Associates, LLC, Robert B. Smith, and Sherry C. Smith*, bearing civil action number 2022-CP-32-01419 and Appellate Case No. 2022-001060.

IT IS SO ORDERED.

  
Huntley S. Crouch  
Presiding Judge, Lexington County Family Court

LISA M. COMER  
CLERK OF COURT  
LEXINGTON, SC

2023 JUL 13 AM 7:58

FILED

Lexington, South Carolina

June 11, 2023  
*July*

A TRUE COPY

**RECEIVED**

**Jan 10 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM LEXINGTON COUNTY  
WALTON J. MCLEOD, CIRCUIT COURT JUDGE

---

Appellate Case No. 2022-001060

---

Emily P. Smith and Emily P. Smith and Associates, LLC, ..... Appellants,

v.

Robert T. Smith; Southern Collection, LLC;  
Southern Collection Brokerage, LLC;  
Terrance Smith and Associates, LLC; Robert B. Smith,  
And Sherry C. Smith, ..... Respondents.

---

**PROOF OF SERVICE**

---

I, Beth Cogan, an employee with Ballard & Watson, do hereby certify that on January 10, 2024, I served a copy of the **Second Motion to Expedite Appeal**, in the above-captioned case on the following individuals by electronic mail using their email address listed in the Attorney Information System, addressed as follows:

**Mark B. Goddard, Esquire**  
**John B. Kelchner, Esquire**  
**Turner Padget Graham & Laney, P.A.**  
**mgoddard@turnerpadget.com**  
**jkelchner@turnerpadget.com**

  
\_\_\_\_\_  
Beth Cogan, Paralegal

January 10, 2024

## Beth Cogan

---

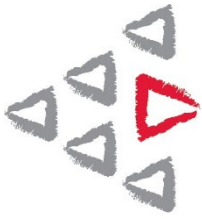
**From:** Beth Cogan  
**Sent:** Wednesday, January 10, 2024 3:14 PM  
**To:** Mark B. Goddard; Kelchner, John B; Gatlin, Cindy A  
**Cc:** Haley Hubbard; Desa Ballard  
**Subject:** (Emily P. Smith, et al. v. Robert T. Smith, et al. 2022-001060) Ltr to COA encl Second Motion to Expedite Appeal  
**Attachments:** 2024 01 10 Ltr to COA encl Second Motion to Expedite Appeal.pdf; 2024 01 10 Second Motion to Expedite Appeal.pdf; 2024 01 10 POS Second Motion to Expedite Appeal.pdf

Good afternoon,

Please see the attached Second Motion to Expedite Appeal that is being filed today with the Court of Appeals

Kindest Regards,  
-Beth

Beth Cogan, Paralegal  
Ballard & Watson, Attorneys at Law  
226 State Street  
West Columbia, South Carolina 29169  
803.796.9299  
803.796.1066 Facsimile  
[beth@desaballard.com](mailto:beth@desaballard.com)  
[www.desaballard.com](http://www.desaballard.com)



**Ballard & Watson**  
Attorneys at Law  
PERSISTENT. UNWAVERING.

Desa Ballard  
Harvey M Watson III  
Haley Hubbard

226 State Street West Columbia, SC 29169  
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

January 10, 2024

Via Email ([ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org))  
The Honorable Jenny Abbot Kitchings  
Court of Appeals Clerk of Court  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**  
**Jan 10 2024**  
**SC Court of Appeals**

Re: *Emily P. Smith, et. al. v. Robert T. Smith, et al.*  
Appellate Case No.: 2022-001060

Dear Ms. Kitchings:

Please find enclosed for filing a **Second Motion to Expedite Appeal** in the above-referenced matter. Pursuant to paragraph (c) of the Supreme Court's administrative order dated May 6, 2022 ("Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules") a check for the filing fee is being forwarded separately via US mail. If a more formal motion filing is required, please let us know and one will be submitted immediately.

By copy of this letter and as evidenced by the Proof of Service, these filing has been served upon counsel for the Respondent/Appellant. If you have any questions, please do not hesitate to contact my office.

With warm personal regards, I am,

Sincerely yours,

*Haley A. Hubbard*

Haley Hubbard  
haley@desaballard.com

Enclosures

cc: Via Electronic Mail  
Mark Goddard, Esquire  
John Kelchner, Esquire  
Emily Smith