

RECEIVED

Jul 30 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

The Honorable Brian M. Gibbons
Circuit Court Judge

Trial Court Case No.: 2021-CP-20-0264
Appellate Case No. 2023-001458

John Dabeck.....Respondent,

v.

Larry Deon Ashford and Wesco International, Inc.,
of which Larry Deon Ashford is theAppellant.

CONSENT MOTION FOR AGREED DISMISSAL AND TO VACATE

Pursuant to Rules 260 and 261, SCACR, the Appellant hereby moves for the agreed dismissal of this action and asks that the orders on appeal in this matter be vacated. Respondent consents to the requested relief.

BACKGROUND

This appeal stems from a default judgment in the amount of \$1,000,000 entered against a truck driver, Larry Deon Ashford, following an accident with John Dabeck, resulting in approximately \$25,000.00 in medical expenses as well as claimed non-economic damages including emotional distress and pain and suffering. Dabeck filed his complaint on June 25, 2021, alleging negligence claims against Ashford as well as claims for negligent entrustment and negligent hiring, negligent training, and negligent supervisions against Ashford’s alleged employer,

WESCO International, Inc.¹ Ashford was served on July 6, 2021. Dabeck filed an affidavit of default on September 10, 2021. On September 30, 2021, Dabeck filed a motion seeking damages.

The circuit court ordered the entry of default on October 8, 2021. After several continuances, the circuit court took up the issue of damages on March 31, 2022. Ashford appeared at the hearing *pro se*. Dabeck and his wife testified generally as to damages and the effects of the accident on Dabeck. After the hearing, Dabeck submitted a summary of his medical bills up to that point, showing a total of \$22,020.14. Neither Dabeck nor his attorney sought any particular award. Ashford addressed the Court as to his own recollection of the accident, his own injuries, and his frustration that the company he used to work for had not appeared or done anything in response to what he described as “letters” about this lawsuit. The circuit court then ruled from the bench, “Well, based upon the testimony and evidence presented and considering the trauma testified by your client, I find an appropriate award of actual damages to be one million dollars.” A formal order followed on April 4, 2022.

On September 2, 2022, Ashford, now represented by counsel, filed a motion to set aside the entry of default and the default judgment on the following grounds: Rule 4(d)(1), (7), & (8), SCRPC; Rule 55(c), SCRPC; Rule 60(b)(1), (3) & (4), SCRPC; and *McClurg v. Deaton*, 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008). In support of the motion, Ashford submitted an affidavit outlining his efforts to make WESCO aware of the lawsuit, including notifying WESCO of the accident, calling WESCO upon service of the complaint, faxing a copy of the complaint with a request that it be sent to WESCO’s insurer, attempting to get his own counsel after WESCO had

¹ Ashford’s direct employer was Express Employment Professionals, which had contracted with WESCO. WESCO was dismissed as a party by stipulation on September 12, 2022.

allowed the matter to fall into default, notifying WESCO of the damages hearing, and reporting the result of the damages hearing to WESCO.

The motion was heard on March 23, 2023. At the hearing, Ashford argued that he demonstrated good cause for purposes of Rule 60 because he had responded as best he could to the complaint, but that WESCO had failed to respond despite repeated efforts by Ashford. Ashford also argued that that he took action with respect to the complaint promptly and promptly filed a motion once the insurer became aware of this action, that Dabeck was not unduly prejudiced, and that there was a meritorious defense as to damages because the award was excessive in light of the evidence to which the circuit court responded that in a default case “the Court, as the trier of fact, [is] basically constrained to issue an order requesting what the plaintiff wants.” Ashford then argued that the circuit court had the discretion to grant relief. The circuit court denied the motion by Form 4 order dated March 27, 2023, later explaining in a more formal order issued May 21 that there was no good cause and that Ashford had failed to establish the required factors.

Ashford moved to reconsider on April 6, 2023, arguing that he had established good cause and that the circuit court failed to exercise its discretion with respect to whether there was a meritorious defense as to the amount of damages because the circuit court believed it was required to give Dabeck what he wanted and because the award was not supported by the evidence at the damages hearing. Following a hearing on August 17, 2023, the motion was denied by Form 4 order filed on August 17, 2023. This appeal followed, and the parties have since entered a global settlement with Wesco fully resolving this matter.

BASIS FOR VACATING ORDERS ON APPEAL

The South Carolina Appellate Court Rules provide that the parties to an appeal may, by agreement, request that an appeal be dismissed and that the appellate court vacate a prior order,

opinion, or judgment in the matter. Rule 260(b), SCACR; *see also Merrill Lynch, Pierce, Fenner & Smith Inc. v. Havird*, 343 S.C. 485, 486, 541 S.E.2d 241, 242 (2001) (granting motion to dismiss and vacate under former version of Rule 260, SCACR). This request is properly made by motion. Rule 260(b), SCACR. In the motion, the parties are required to set forth the “facts that warrant this extraordinary relief[.]” Rule 261(d), SCACR.

This case presents extraordinary circumstances relating to the amount of the award coupled with unique factors surrounding Ashfords’ efforts to tender the defense of this matter for all of the reasons set forth in Ashford’s initial brief. The parties have reached a settlement agreement, including a term requiring the parties to jointly seek to have the default judgment in this action vacated in its entirety. Such a result is consistent with the interests of justice given the circumstances present here.

CONCLUSION

For the reasons stated above, Appellant, with the consent of the Respondent, seeks an order dismissing the appeal and vacating the orders on appeal in accordance with Rules 260(b) and 261(d), SCACR.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Sarah P. Spruill

Sarah P. Spruill, SC Bar # 68337
ONE North Main, 2nd Floor
P.O. Box 2048
Greenville, SC 29601-2772
(864) 240-3200
sspruill@hsblawfirm.com

Roopal S. Ruparelia, SC Bar # 16003
1201 Main Street, Suite 2200
PO Box 11889
Columbia, SC 29211-1889
(803) 540-7846
rruparelia@hsblawfirm.com

Attorneys for Appellant Larry Ashford

We agree and consent to the requested relief:

s/ Joseph O. Thickens

Joseph O. Thickens, SC Bar # 101398
J. Eric Cavanaugh, SC Bar # 100044
Cavanaugh & Thickens, LLC
PO Box 2409
Columbia, SC 29202
Eric@ctlawsc.com
joe@ctlawsc.com

David Reynolds Williams, SC Bar # 77899
Virginia Watson Williams, SC Bar # 77898
Williams & Williams
PO Box 1084
Orangeburg, SC 29116
david@williamsattys.com
ginny@williamsattys.com

Attorneys for Respondent

July 30, 2024

RECEIVED

Jul 30 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

The Honorable Brian M. Gibbons
Circuit Court Judge

C.A. No.: 2021-CP-20-0264
Appellate Case No. 2023-001458

John Dabeck Respondent,

v.


Larry Deon Ashford and Wesco International, Inc.,
of which Larry Deon Ashford is the Appellant.

PROOF OF SERVICE

I certify that I have served the *Consent Motion for Agreed Dismissal and to Vacate* on counsel
of record on July 30, 2024, by electronic mail only to the following:

Joseph O. Thicken, SC Bar # 101398
J. Eric Cavanaugh, SC Bar # 100044
Cavanaugh & Thicken, LLC
PO Box 2409
Columbia, SC 29202
Eric@ctlawsc.com
joe@ctlawsc.com

David Reynolds Williams, SC Bar # 77899
Virginia Watson Williams, SC Bar # 77898
Williams & Williams
PO Box 1084
Orangeburg, SC 29116
david@williamsattys.com
ginny@williamsattys.com


Stacey Carberry, Legal Assistant
HAYNSWORTH SINKLER BOYD, P.A.

RECEIVED

Jul 30 2024

SC Court of Appeals

HAYNSWORTH
SINKLER BOYD

HAYNSWORTH SINKLER BOYD, P.A.
ONE NORTH MAIN STREET, 2ND FLOOR
P.O. BOX 2048 (29602)
GREENVILLE, SOUTH CAROLINA 29601
MAIN 864.240.3200
FAX 864.240.3300
www.hsblawfirm.com

SARAH P. SPRUILL
DIRECT 864.240.3220
sspruill@hsblawfirm.com

July 30, 2024

VIA EMAIL AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: John Dabeck v. Larry D. Ashford
Appellate Case No. 2023-001458

Dear Ms. Kitchings:

This firm represents the Appellant in the above-captioned matter. Enclosed for filing, please find a *Consent Motion for Agreed Dismissal and to Vacate* along with our *Proof of Service* for the same. Also enclosed is our firm's check to cover the cost of the filing fee (w/ mailed copy).

Please note service on counsel of record by copy of this letter. If you have any questions, please give me a call. Thank you for your assistance in this matter.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill

SPS/sac

Enclosure

cc: Joseph O. Thickens (joe@ctlawsc.com)
J. Eric Cavanaugh (Eric@ctlawsc.com)
David Reynolds Williams (david@williamsattys.com)
Virginia Watson Williams (ginny@williamsattys.com)
Roopal S. Ruparelia (ruparelia@hsblawfirm.com)