

RECEIVED

Aug 12 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2023-CP-37-00232

PlanetONE Packaging, LLC,Respondent,

v.

American Pharma Machinery, LLC, and Dorothy Pierce a/k/a Dorothy Wells a/k/a Dorothy Aleweny a/k/a Queen Dorothy Amolo Defendants,

OF WHOM Dorothy Pierce a/k/a Dorothy Wells a/k/a Dorothy Aleweny a/k/a Queen Dorothy Amolo is the Petitioner.

MOTION TO DISMISS PETITION FOR A WRIT OF CERTIORARI

Pursuant to Rule 240, SCACR, PlanetONE Packaging, LLC (“PlanetONE” or “Respondent”) hereby moves for the dismissal of the Petitioner’s petition for a writ of certiorari (“Petition”) on the grounds that the Petition: (1) was not properly served and is, therefore, untimely; (2) raises issues not presented to the circuit court or Court of Appeals and are, thus, not appealable; (3) is premature; and (4) is frivolous. In the alternative, PlanetONE asks the Petition be summarily denied. PlanetONE requests all appellate deadlines be stayed while this motion is pending. PlanetONE further asks that this motion be decided on an expedited basis such that Petitioner Dorothy Pierce (“Pierce” or “Petitioner”) may not continue to use the appellate process to evade and delay a final damages hearing on the Plaintiff’s motion for default judgment.

Appellant is in default in the underlying circuit court action. This case has been scheduled for a final damages hearing in Oconee County multiple times, and Petitioner's ongoing abuse of the judicial system necessitates expedited review.

BACKGROUND

On March 28, 2023, PlanetONE filed this action against American Pharma Machinery, LLC ("American Pharma") and Pierce (collectively "Defendants"), asserting claims for breach of contract, fraud, constructive fraud, breach of contract accompanied by a fraudulent act, unjust enrichment, unfair and deceptive trade practices, and alter ego/piercing of the corporate veil connected to the marketing and sale of certain machinery to PlanetONE.

Defendants were served with the Amended Complaint in this matter on May 9, 2023. The deadline to answer or otherwise respond to the Complaint was June 8, 2023. No responsive pleading was submitted to the Court or PlanetONE at that time. On June 9, 2023, PlanetONE moved for an entry of default against Defendants due to the fact that no responsive pleading had been received. This Court entered default against all Defendants via Order of The Honorable R. Scott Sprouse, dated June 20, 2023. In brief, the following additional timeline of motions and orders is instructive:

- July 21, 2023, Pierce emails the Oconee Clerk of Court, court employees, and PlanetONE's counsel representing that she attempted to mail a Motion to Dismiss to the Clerk and counsel on June 1, 2023 from Uganda. Attached to the email was a .pdf of a document captioned "Motion to Dismiss." Later the same day, Pierce hand delivered a new, updated version of her Motion to Dismiss that noted, among other things, her purported June 1 mailing "may have not yet been delivered to the Court until the time of this filing."
- PlanetONE files Motion for Default Judgment as to all Defendants on August 17, 2023.
- A hearing was initially held on Defendant Pierce's Motion to Dismiss and Defendants' Motion to Set Aside Entry of Default on August 21, 2023 before Judge J. Cordell Maddox, Jr. At the hearing, Defendants verbally relied upon the purported June mailing as the basis for setting aside the entry of default but filed no memorandum of law or

documentation supporting that position. Likewise, no evidence of mailing was provided at that hearing. Still, the Court continued the hearing on both motions to allow Defendants an opportunity to submit proof of mailing for the Court's review.

- PlanetONE's counsel did not receive any proof of mailing from Defendants nor their counsel after the hearing. But on October 23, 2023, attorney of record for Defendants moved to be relieved as counsel. On the same day, Pierce emailed the Clerk of Court, several other Court personnel, and PlanetONE's counsel to indicate that while she would be representing herself going forward, that she understood American Pharma would need an attorney to represent it. No attorney has made an appearance on behalf of American Pharma since the withdrawal and is not a party to this appeal.
- October 31, 2023 – The Honorable R. Lawton McIntosh held a hearing on the motion to dismiss, motion to set aside default, and PlanetONE's motion for Default Judgment. At the hearing, Pierce's motion to dismiss and Defendants' motion to set aside default were denied. Pierce was put in default but given the opportunity to provide proof that she actually served the documents at issue from Uganda, and prove authenticity of said proof, within 45 days. A Form 4 order was issued to this effect on November 6, 2023.
- December 5, 2023 – Judge McIntosh enters a formal written order on all motions: (1) denying Pierce's motion to dismiss in full; (2) denying Defendants' motion to set aside default as to American Pharma and Pierce but giving Pierce until December 21, 2023 to prove the authenticity of her documents and service effort; and (3) reserving a ruling on default judgment as to Pierce until a finding on Pierce's motion to set aside default is made (meaning after the December 21, 2023 deadline).
- January 16, 2024 – Judge McIntosh enters order confirming Pierce is in default given that Pierce failed to comply with the December 5, 2023 order to authenticate her arguments concerning service and mailing, by failing to provide online account access and tracking information as set forth in the order.
- February 2, 2024 – Pierce files motion to reconsider asking, based on no legal authority, that the January 16, 2024 order should "be vacated."
- February 6, 2024 – Judge McIntosh denies Pierce's motion to reconsider the January 16, 2024 order.
- March 6, 2024 – Pierce files notice of appeal, seeking review of the circuit court's February 6, 2024 order.

ARGUMENT

As noted by former Chief Justice Jean H. Toal, "[b]ecause motions are used in the appellate courts to seek specific relief, there is no limit to the type of motion that could be filed in the

appellate courts.” Jean H. Toal *et al.*, *Appellate Practice in South Carolina* 379 (3d ed. 2016). This saga has already dragged on for more than a year and half. PlanetONE is simply trying to get this matter heard on the merits and a final judgment obtained as soon as possible. Pierce’s attempts to delay this matter via the filing of successive, baseless motions, appeal, and now the Petition should be rejected for any one of the three reasons set forth herein.

I. The Petition Has Not Been Served and is, Therefore, Untimely.

The Petition should be dismissed for failure to comply with Rule 242, SCACR. Pierce was required to serve her Petition on counsel for PlanetONE “within thirty (30) days after the petition for rehearing” was “decided by the Court of Appeals.” Rule 242(c), SCACR.

Here, the Court of Appeals rejected Pierce’s petition for rehearing on June 14, 2024. Service on PlanetONE was required by Monday July 15, 2024. This Court’s May 6, 2022 Order concerning electronic service notes that “A self-represented litigant who is not a lawyer admitted to practice in this state may consent in writing to be served by e-mail and designate a correct e-mail address for service. A lawyer may consent in writing to accept service by e-mail from a self-represented litigant.” *See* Order 2022-05-06-04. To date, Pierce has only emailed her petition to counsel for PlanetONE. (*See Exhibit I at p. 1* attached hereto).

As of August 12, 2024, service has not been effected upon PlanetONE via any proper service method provided under the South Carolina Rules of Civil Procedure. Additionally, Pierce has neither sought nor obtained PlanetONE’s consent to be served via electronic means. Finally, Pierce remains a pro se litigant in this matter – her attorney having withdrawn last year. Therefore, service has not been effected and the Petition should be dismissed. Pierce’s purported proof of service fails to satisfy the service of process requirements under the rules and more than thirty days has passed since the Court of Appeals denied Pierce’s petition for rehearing. *See, e.g.*, Rule 4(g),

SCRCP (“If service was by mail, the person serving process shall show in his proof of service the date and place of mailing, and attach a copy of the return receipt or returned envelope when received by him showing whether the mailing was accepted, refused, or otherwise returned.”). Contrary to the Proof of Service Pierce filed with this Court on the August 12, 2024 (*see id. at p. 2* showing the Petition was mailed via Certified Mail), and despite her email advising “hard copies of the petition have been mailed to the respondents,” this never occurred, no mailing has ever been received from Pierce concerning the Petition, and Pierce has not—and cannot—demonstrate that she served her Petition on PlanetONE. (*Id. at pp. 1-2*). This should be easy to show if she did, in fact, serve her petition on Respondent via certified mail as she represents.

II. The Petition Contains No Appealable Issues.

Service issues aside, the Petition should be dismissed as it does not seek the Supreme Court’s review of the final decision issued by the Court of Appeals in this matter—instead, it seeks “review” of a plethora of issues not appealable at this juncture.

Rule 242(a), SCACR provides that the Supreme Court may, in its discretion, “issue a writ of certiorari to review a final decision of the Court of Appeals.” On March 28, 2024, the Court of Appeals issued a one-page order dismissing Pierce’s appeal on the grounds that Pierce failed to timely serve her notice of appeal pursuant to Rule 203(b)(1), SCRCP. Now, Pierce’s Petition seeks the Supreme Court’s review based on four “questions presented” that were not raised and ruled upon by the circuit court or the court of appeals. *See, e.g., State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”).

Pierce's notice of appeal sought the Court of Appeals' review of the circuit court's February 6, 2024 order in which the court denied Pierce's motion to reconsider. That motion to reconsider was filed by Pierce in February of 2024 in response to the circuit court's entry of an order on January 16, 2024 in which the court ruled that Pierce was in default. That's it.

Simply, none of the issues raised and ruled upon by the trial court were the subject of the Court of Appeals' order dismissing Pierce's instant appeal.¹ Accordingly, the Petition, which seeks to cast this appeal as something very different than what it is, should be dismissed.

III. The Underlying Appeal is Based on an Order Not Immediately Appealable and is, Therefore, Premature.

While this motion addresses the merits of the Petition at issue, it is worth noting that Pierce's attempted appeal here is premature – which is yet another ground for dismissal of the Petition. Indeed, Pierce's appeal efforts and Petition are based solely on the January 16, 2024 order. That order denies Pierce's motion to set aside entry of default. Such an order is not immediately appealable under South Carolina law. *See, e.g., Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 122 (Ct. App. 1987) (“[A]n order refusing to grant relief from the entry of default is not appealable until after final judgment.”).

Since there is no final judgment entered and the only order at issue cannot be the basis for any appeal at this stage, the Petition should be dismissed.

IV. The Petition is Frivolous and is an Attempt to Delay This Matter Further.

Given the time and legal fees involved in responding to all of Pierce's appellate and trial court filings, PlanetONE continues to be damaged in both time spent and costs associated with

¹ Moreover, even assuming the Court of Appeals' order did rule on all the issues raised and ruled upon by the trial court, Pierce's instant Petition should still be dismissed given that the issues contained therein are brand new and could not be properly considered at this stage of this case regardless, as they have not been presented to the trial court.

Pierce's ongoing attempts to evade responsibility in the South Carolina court system. Her appeal to the Court of Appeals, and her Petition now, centers on the January 16, 2024 order, an order only pertaining to Pierce's personal default in this matter. When compared to the arguments and issues presented in her petition, and the timeline and nature of her arguments regularly before this and other South Carolina courts, it is clear that this is a frivolous Petition filed only for the purposes of delay. As such, this motion should be granted so that this matter can proceed on the merits as soon as possible.

CONCLUSION, REQUEST FOR EXPEDITED CONSIDERATION, AND REQUEST FOR SANCTIONS

For all of these reasons, this Petition must be dismissed or summarily denied. PlanetONE asks that this motion be given expedited consideration so that this case can be resolved on the merits.

In addition, given the successive nature of Petitioner's motions, appeal, and the fact that this Petition was filed in hopes of further delaying a final hearing on the merits, PlanetONE asks the Court to impose a sanction pursuant to Rule 269, SCACR.

Signature page follows

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Christopher B. Major

Christopher B. Major (SC Bar No. 72872)

J. Patrick Bradley (SC Bar No. 103608)

ONE North Main Street, 2nd Floor

P.O. Box 2048 (29602)

Greenville, SC 29601

(864) 240-3200

cmajor@hsblawfirm.com

pbradley@hsblawfirm.com

*Attorneys for Respondent PlanetONE
Packaging, LLC*

August 12, 2024