

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Op. No. 2024-UP-183 (S.C. Ct. App. filed May 22, 2024)

Johnnie Cordero Petitioner,

v.

Valerie Moore, in her official capacity as
Chair of The Richland County Democratic
Party; The Richland County Democratic Party;
Christale Spain, in her official capacity as
Chair of The South Carolina Democratic
Party; The South Carolina Democratic Party, Respondents.

**PETITIONER'S REPLY TO RESPONDENTS'
RETURN TO PETITIONER'S
PETITION FOR A WRIT OF CERTIORARI
(CORRECTED)**

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PETITIONER, PRO SE

RESPONDENTS' COUNTER-STATEMENT OF THE CASE
IS BOTH INACCURATE AND INTENTIONALLY MISLEADING

Respondents state that "Petitioner commenced this action by filing a Summons and Complaint in the Richland County Court of Common Pleas on April 16, 2020. (Summ. & Compl., R. pp. 1-14.) . While the statement is accurate as far as it goes, it intentionally fails to mention that the Summons and Complaint was for "Declaratory and Injunctive Relief" pursuant to SC Code §§15-53-10 and 15-53-90¹ *only*. This makes clear that the gravamen of this action is and always has been declaratory and injunctive relief.

Respondents correctly stated that the district court granted their joint motion to dismiss on September 25, 2020, but argued below that the order was filed with Richland County on September 30, 2020. This point is intentionally misleading. It is intentionally misleading because Respondents were notified via email by the Clerk of the United States District Court for the District of South Carolina on September 25, 2020, that the Order had been entered. (Fed. ECF 41, R. p. 110).

When a case is remanded from a federal district court to a state court, the remand becomes effective *immediately upon issuance of the remand order*. It is important, however, because it is the entry date of the remand and not the filing date that determines when the circuit court regained jurisdiction and, thereby, when the Respondent's time to respond to the Complaint for Declaratory Judgment began.

Again Respondents, while asserting that a hearing was held at which all parties had ample time, fails to mention the following:

"THE COURT: We are here on three motions filed by Johnnie Cordero versus

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¹ This chapter may be cited as the "Uniform Declaratory Judgments Act."

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Matthew Kisner et al.” (R. p. 138, lines 1-4). Needless to say, Respondents’ Rule 12(b)(6) Motion was not filed by Petitioner and was not on the calendar for hearing. In fact, the Respondent’s Motion to Dismiss had only been received by mail on February 6, 2021. The hearing was held on February 9, 2021.

Failure to File Motion Rule 59(e) SCRPC

Curiously the Respondents raise the issue of Petitioner’s failure to file a Motion to Alter or Amend Judgment under Rule 59(e) SCRPC for the first time in this Return. Apparently, this issue cannot be heard because it was not preserved either.

Petitioner is a pro se litigant

Petitioner is a pro se litigant. According to the unanimous decision of the United States Supreme Court in *Haines v. Kerner*, 404 U. S. 519 (1972), a *pro se* complaint, “however inartfully pleaded,” must be held to “less stringent standards than formal pleadings drafted by lawyers” and can only be dismissed for failure to state a claim if it appears “*beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.*” *Id.* at 404 U. S. 520-521, quoting *Conley v. Gibson*, 355 U. S. 41, 355 U. S. 45-46 (1957).

Respondent’s Return Misrepresents a Material Fact

Respondents state on page 2 of the Return in paragraphs 3 and 4 that the certified copy of the Federal District Court Order of Remand was filed on September 30, 2020.

However, Respondents conveniently failed to mention that at the circuit court hearing held on February 9, 2021, the following:

“MS. SHUTT: Yes, Your Honor, and just so there’s no confusion, Judge Anderson issued his order on the dispositive motions on *September 30 and simultaneously*

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something was filed with the state court on the same day, but those dates are one and the same. See (R. p. 142, lines 14-17). (italics mine).

MR. CORDERO: Your Honor, the order of Judge Anderson was date - dated September 25, not September 30. It may have been sent - the order from the Clerk of Court may have come down September 30, but I would argue that September 25 is the dispositive date.” (R. p 142, lines 20-23).

Respondents knew then and know now that Mary Floyd, Courtroom Deputy to Judge Anderson, emailed them and the Richland County Clerk of Court a copy of the Certified Order on September 25, 2020, which Order stated in pertinent part that: (1) the date of the Certified Order (9/25/20); (2) directed the parties to provide the state court with documents filed in federal court. (R. p. 110). ((Fed. ECF# 41, 3:20-cv-02195 - JFA).

Respondents never complied with the directive to file federal court documents with the state court as required by the order. As a result, the record below was incomplete. In fact, Judge Lee stated at the only hearing held in this matter that:

“THE COURT: --- was, I don’t have access to any of these federal documents. So, you will need to make sure that they’re filed in state court so that there’s a record of them here in state court.

MR. CORDERO: Yes.

THE COURT: And I can review them.” (R. p. 149, lines 1-6, see also lines 12-18).

Petitioner filed his federal court documents on 2/16/20. Upon information and belief Respondents never complied with the Order. See Plaintiff’s Submission in Compliance with Federal District Court Order of September 25, 2020, filed February 16, 2020.

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It may be that the reason that Respondents did not comply with the Federal District Court's directive is that they had filed a Notice of Constitutional Question with South Carolina Attorney General Allen Wilson, indicating "Defendants raised a question concerning the constitutionality of South Carolina Code Ann. §§ 7-9-70, -80, and -100." (Fed. ECF# 23, 3:20-cv-02195 - JFA). This document is not included in the Record on Appeal because the Respondents did not comply with the directive.

EQUITY JURISDICTION

In Respondents Return, they did not address Petitioner's Argument 1(e). *i.e.*, "[t]his Court may exercise its equity jurisdiction to resolve this matter." It follows that by neglecting to do so, they have conceded this issue. Out of an abundance of caution, however, Petitioner submits the appropriate equity jurisdiction standard of review.

Standard of Review

It is now settled law that this Court has equity jurisdiction and that the standard of review under such jurisdiction is *de novo*. In *Lewis v. Lewis*, this court opined that "Article V, § 5 of the South Carolina Constitution provides in relevant part that our appellate jurisdiction in cases of equity requires that we "review the findings of fact as well as the law." "Our standard of review, therefore, is *de novo*." 392 S.C. 381, 709 S.E.2d 650 (S.C. 2011).

In *Rutherford v. Rutherford*, 307 S.C. 199, 414 S.E.2d 157 (1992) at footnote 3, the court held that "[i]n appeals from *all equity actions* including those from the Family Court, the appellate court has authority to find facts in accordance with its own view of the preponderance of the evidence." (Italics added).

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Declaratory judgments are neither legal "nor equitable." *Bundy v. Shirley*, 412 S.C. 292, 301, 772 S.E.2d 163, 168 (2015). ("The standard of review for a declaratory judgment action is, therefore, determined by the nature of the underlying issue.").

The underlying issue in the case at bar is an injunction, *O'Cain v. O'Cain*, 322 S.C. 551, 560, 473 S.E.2d 460, 465 (Ct. App. 1996) (an action for an injunction is in equity).

It should be noted here that Respondents have conceded that this action is a "purely equitable action." (R. p.146, lines 19-22).

Petitioner submits and would urge this Court to find that it can and should exercise its equity jurisdiction and review this matter *de novo*.


Petitioner asks this court to acknowledge and address what every court below has ignored, and Respondents fear more than anything else i.e, *exposure*.

Finally, Petitioner would urge this court to review the transcript of the only hearing held in this matter in which Petitioner stated what this matter is about. (R. p. 150, line 8 through p. 154, line 17).

Conclusion

For the reasons stated above, Petitioner asks this Court to grant the Petition for a Writ of Certiorari to ensure that justice is done.

Respectfully submitted,



Johnnie Cordero

November 21. 2024

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