

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Dean Elliot Gaither,

Plaintiff,

v.

Andria Lesa Bucknor,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No. 2022CP4003605

ORDER DENYING MOTION TO REOPEN

This matter comes before the Court upon “Motion to Reopen for Lacking to Provide Notice of Hearing...” which was filed by Defendant on September 21, 2023, and an additional Motion to Reopen filed by Defendant on February 12, 2024. For the reasons set forth below, Defendant’s motions are DENIED.

BACKGROUND

The Summons and Complaint in this action were filed by Plaintiff on July 15, 2022, alleging that Defendant is liable for damages sustained by Plaintiff in a motor vehicle collision that occurred on or about December 23, 2021. On the same date, Plaintiff filed an Amended Complaint. The Summons and Amended Complaint were served on Plaintiff on or about July 20, 2022.

After service of the pleadings on Plaintiff – but before Defendant filed a response – Plaintiff filed a Notice of Dismissal pursuant to Rule 41 of the South Carolina Rules of Civil Procedure. On August 18, 2022, this case was officially closed.

Despite the case being closed, on October 3, 2022, Defendant filed documents entitled “Answer to Amended Summons in a Civil Action” and “Answer to Amended Complaint,” in

which she denies Plaintiff's allegations and contends that she is the party who is entitled to recover damages. On October 7, 2022, Defendant filed an additional document that appears to be a counterclaim, yet is entitled "To: Reopen Amended Complaint." A second Motion to Reopen was filed by Defendant on March 15, 2023.

In response to Defendant's filings, Plaintiff filed a Motion to Dismiss. A hearing on Plaintiff's motion was scheduled for May 30, 2023, but Defendant did not receive notice of the hearing. Nevertheless, the hearing occurred on May 30, and the Court granted Plaintiff's motion and denied Defendant's motions to reopen the case.

Since that time, Defendant has filed two additional motions asking the Court to reopen this case. In the September 21, 2023, motion Defendant complains that she never received the Notice of Dismissal in August 2022 and that she did not receive notice of the May 2023 hearing. In the February 2024 motion, Defendant again complains that she never received the Notice of Dismissal which has hindered her ability to "get this case resolved."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. This Case was Properly Dismissed in August 2022.

Defendant argues that this case should be reopened because she did not receive notice that this case was dismissed on August 18, 2022. The Court disagrees.

Rule 41 of the South Carolina Rules of Civil Procedure provides that "[A]n action may be dismissed by the plaintiff without order of court (A) by filing and serving a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment, whichever occurs first..." Rule 41(a), SCRPC. Therefore, Plaintiff did not need permission from Defendant or from the Court to dismiss his claim. Rather, he filed the requisite notice of dismissal forty-two (42) days before Defendant filed her Answer.

Finally, while it is unclear whether the Notice of Dismissal was served on Defendant as required by the rule, the Court finds that failure to serve notice on the adverse party does not invalidate the dismissal. Therefore, this case was properly dismissed in August 2022.

II. The May 2023 Dismissal was Also Proper

Defendant also contends that this case should be reopened because she did not receive notice of the hearing on Plaintiff's Motion to Dismiss which was scheduled for May 30, 2023. The Court, again, disagrees.

Defendant is correct that all parties are generally entitled to notice of court hearings and the opportunity to be heard on the issues pending before the Court. However, this situation is a bit of an anomaly. Because this case was properly dismissed in August 2022, Plaintiff's Motion to Dismiss and the hearing on that motion were, in fact, unnecessary. Once Plaintiff filed his Notice of Dismissal, there were no valid pending claims before the Court¹ and, therefore, no contested issue for the Court to decide. Instead, the Court simply reaffirmed the previous dismissal of this case.

CONCLUSION

IT IS, THEREFORE, ORDERED that Defendant's Motions to Reopen this case, filed on September 21, 2023 and February 12, 2024, are DENIED.

AND IT IS SO ORDERED.

¹ To the extent that Defendant intended to file a counterclaim on (or after) October 3, 2022, that was improper because (1) the case had already been dismissed; (2) the counterclaim was not timely given that more than 30 days had elapsed since the Amended Complaint was served on Defendant; and (3) there is no proof of service of the "counterclaim" on Plaintiff which complies with Rules 4 and 5 of the South Carolina Rules of Civil Procedure.



Richland Common Pleas

Case Caption: Dean Elliot Gaither vs Andria Lesa Bucknor

Case Number: 2022CP4003605

Type: Order/Other

IT IS SO ORDERED.

Jocelyn Newman, Chief Judge for Administrative
Purposes, Court of Common Pleas, 5th Judicial
Circuit