

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN)	
)	CASE NO.: 2022-CP-02-01563
SP OF AUGUSTA, LLC,)	
)	
Plaintiff,)	
vs.)	ORDER GRANTING JOINT MOTION TO
)	DISMISS FOR LACK OF PROSECUTION
MARILYN KILLE,)	
)	
Defendant.)	
_____)	
)	
MARILYN KILLE,)	
)	
Third-Party Plaintiff,)	
vs.)	
)	
BRADLEY PLUMBING AND)	
HEATING, INC.; DURACLEAN)	
SYSTEMS INCORPORATED OR)	
NORTH AUGUSTA AND JOHN DOES)	
1 THROUGH 10,)	
)	
Third-Party Defendants.)	
_____)	

This matter came before the Court upon the Motion of Plaintiff and Counterclaim Defendant SP of Augusta, LLC and Third-Party Defendants Bradley Plumbing and Heating, Inc. and Duraclean Systems Incorporated (hereinafter referred to as the “Parties”), seeking an order granting Dismissal for Lack of Prosecution with Prejudice pursuant to Rules 41(b), S.C.R.C.P. For the reasons set forth herein, the Motion is GRANTED.

PROCEDURAL HISTORY

This case arises from the Parties’ involvement with an August 2021 leak and subsequent remediation of the home of Defendant, Counterclaimant, and Third-Party Plaintiff Marilyn Kille (hereinafter, “Kille”). Plaintiff SP of Augusta, LLC (“SP of Augusta”) filed the original breach of contract Complaint in the Aiken County Magistrate Court on June 8, 2022, following Kille’s refusal

to pay SP of Augusta for its services at the home. Kille filed her Answer, Counterclaim, and Third-Party Complaint and successfully removed the case to the Court of Common Pleas on July 11, 2022. Kille named as Third-Party Defendants Bradley Plumbing and Heating, Inc. (“Bradley”) and Duraclean Systems Incorporated (“Duraclean”). A Second Amended Scheduling Order was filed on April 12, 2024. It ordered mediation to occur by November 16, 2024 and this case eligible for trial after March 16, 2025.

A Consent Order granting the withdrawal of Kille’s counsel was later granted on April 30, 2024 and included a thirty (30) day stay of the case. Kille submitted updates on her case to the Aiken County Clerk of Court, detailing her attempts to seek representation and inability to proceed, allegedly due to her health, which were filed June 6, 2024, July 16, 2024, and August 23, 2024. Kille remains unrepresented.

The Parties attempted to set mediation and provided Kille with multiple dates but Kille declined to participate in mediation on October 31, 2024. Following Kille’s refusal to mediate, a status conference was first requested by Defendants on December 4, 2024. The case was then placed on the April 14, 2025 trial docket but converted to a status conference. Kille sent emails to the Court on March 25, 2025 and April 4, 2025 indicating she has been unable to hire counsel and was unable to appear “*pro se*” at the status conference due to alleged illness. The status conference was held in front of Judge Clyburn Pope on April 14, 2025, with counsel for SP of Augusta, Bradley, and Duraclean in attendance. The Clerk of Court provided notice of the status conference to Kille. Kille did not attend and no attorney appeared on her behalf.

ANALYSIS

Rule 41(b), *SCRCP*, states that a party may move for dismissal of an action or of any claim against him for failure of the adverse party to prosecute or to comply with these rules or any order of the court. Whether an action should be dismissed for failure to prosecute is left to the discretion of the trial court judge, and her decision will not be disturbed, except upon a clear showing of an abuse of discretion. Small v. Mungo, 254 S.C. 438, 442, 175 S.E.2d 802, 804 (1970). A party has the burden of prosecuting her own action, and the trial court may properly dismiss an action for that party's unreasonable neglect in proceeding with her cause. McComas v. Ross, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct. App. 2006). (citing Don Shevey & Spires, Inc. v. Am. Motors Realty Corp., 279 S.C. 58, 60, 301 S.E.2d 757, 758 (1983)). When our supreme court has affirmed dismissal of actions based on a failure to prosecute, the dismissals were imposed to maintain the orderly disposition of cases in the face of repeated warnings to the offending party or multiple opportunities to proceed, and only then upon a finding of unreasonable neglect. Id. (citing Small v. Mungo, 254 S.C. 438, 443, 175 S.E.2d 802, 804 (1970)). Moreover, "it would be anomalous to require a defendant to force or encourage a plaintiff to proceed with his suit." Don Shevey & Spires, 279 S.C. 58, 60, 301 S.E.2d 757, 759 (1983). There is a limit beyond which the court should allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties. Georganne Apparel, Inc. v. Todd, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990). "In granting dismissal for failure to prosecute, there must be some showing of indifference to the rights of the defendant." McComas, 368 S.C. at 62-32, 626, S.E.2d at 904.

Kille has proceeded pro se since April 30, 2024. Kille has repeatedly represented to the Court and to Parties that she cannot find representation but that she cannot participate in or schedule the events needed to prosecute this matter. Kille refused to participate in scheduling mediation. Kille

refused to attend the status conference scheduled on April 14, 2025 and ignored the notice she received of the status conference. Based on the foregoing, the Court finds that Kille has failed to carry her burden in prosecuting her claims. The Court finds that, by refusing to mediate or appear in front of this Court, Kille's conduct constitutes unreasonable neglect and pursuant to Rule 41(b), S.C.R.C.P., requires dismissal of all claims asserted by Kille. The Court further finds that Kille has had multiple opportunities to proceed with this case since it was originally filed in June 2022 but her refusal to do so has prolonged unnecessarily the time, effort, and costs of the defending parties, showing an indifference to the rights of the defending parties. Accordingly, the Court finds that Kille has failed to prosecute her Counterclaim and Third-Party Complaint.

CONCLUSION

Accordingly, the Court finds that Kille has failed to prosecute her claims and that Kille's Answer, Counterclaims, and Third-Party Complaint should be dismissed pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED!

Presiding Judge, Circuit Court
Second Judicial Circuit

This ___ day of _____, 2025
Aiken, South Carolina



Aiken Common Pleas

Case Caption: Sp Of Augusta Llc , plaintiff, et al VS Marilyn Kille , defendant, et al

Case Number: 2022CP0201563

Type: Order/Dismissal

So Ordered

The Honorable Courtney Clyburn Pope