STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Circuit Court Case No. 2024CP4001737

Honorable Judge Kristi Curtis, Circuit Court Judge

Appellate Case No. 2025-000762

Alonzo Jeter, III, ... Appellant,

v.

State of South Carolina, Alan McCrory Wilson, Chelsey F. Marto, Joseph Derham Cole, Mark J. Hayes, II, Ralph Keith Kelly, Brandy W. McBee, Tonnya K. Kohn, Jean Hoefer Toal, Donald W. Beatty,..... Respondents.

INITIAL BRIEF IN RESPONSE TO APPELLANT'S SECOND AMENDED INITIAL BRIEF ON BEHALF OF RESPONDENTS CHELSEY F. MARTO, JOSEPH DERHAM COLE, MARK J. HAYES, II, RALPH KEITH KELLY, BRANDY W. MCBEE, TONNYA K. KOHN, JEAN HOEFER TOAL, DONALD W. BEATTY

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Table of Contents

Table of Authorities

Cases

Rules

Statement of Issues on Appeal

1. Whether the Individual Defendants were properly dismissed from this case?

2. Whether Appellant abandoned his arguments regarding the dismissal of the Individual Defendants?

3. Whether the Appellant's notification of the June 13, 2024, hearing prejudiced his rights?

Statement of the Case

On March 18, 2024, Appellant filed this action which named Chelsey F. Marto, Joseph Derham, Mark J. Hayes, II, Ralph Keith Kelly, Brandy W. McBee, Tonnya K. Kohn, Jean Hoefer Toal, and Donald Beatty (the "Individual Defendants") along with South Carolina Attorney General Alan Wilson and the State of South Carolina (the "State Defendants") as defendants. The complaint seeks a declaratory judgment and injunctive relief. The crux of Appellant's case is a contention that the scheduling and administration of post-conviction relief ("PCR") actions unconstitutionally violates the separation of powers. He specifically challenges the role of the South Carolina Attorney General's Office in PCR cases and the South Carolina Supreme Court's October 6, 2008, administrative order regarding the appointment of counsel in PCR cases, 2008-10-06-01 (S.C. Sup. Ct. dated October 6, 2008).

On May 6, 2024, the Individual Defendants filed a Motion to Dismiss pursuant to South Carolina Rules of Civil Procedure: Rules 12(b)(1) and (6).

On May 8, 2024, the State Defendants filed a Motion to Dismiss pursuant to South Carolina Rules of Civil Procedure: Rules 12(b)(1) and (6).

Appellant filed responses to both the Individual Defendants' Motion to Dismiss and the State Defendants' Motion to Dismiss on May 21, 2024.

On May 31, 2024, attorneys for the Individual and State defendants were notified via the South Carolina Courts' e-filing system that both Motions to Dismiss had been placed on a motions roster to be heard by Judge Goodstein at 9:30 am on July 17, 2024. J. Emory Smith, counsel for the State Defendants, informed the Richland County Clerk of Court's office and Judge Goodstein's law clerk via e-mail that he was already scheduled to appear in court in a different county with

Appellant regarding a different case at that time. According to the body of the email, a copy was mailed to Appellant.

On June 6, 2024, the Common Pleas Motion Coordinator from the Richland County Clerk of Court's office contacted J. Emory Smith, counsel for State Defendants, and David Leggett, counsel for the Individual Defendants, about their availability for a motions hearing regarding the Motions to Dismiss on June 13, 2024. Both attorneys indicated that they were available, and the Common Pleas Motion Coordinator placed the Motions to Dismiss on the docket for a motions hearing before Judge Kristi Curtis on June 13, 2024, at 9:30 am. Additionally, the Common Pleas Motion Coordinator informed the attorneys that, pursuant to a conversation with Judge Curtis's office, briefs and memos were due no later than June 12, 2024.

On June 11, 2024, J. Emory Smith mailed the Memorandum in Support of the State Defendant's Motion to Dismiss to Appellant.[1] On June 12, 2024, David Leggett mailed the Memorandum in Support of the Individual Defendant's Motion to Dismiss to Appellant and emailed a copy to the South Carolina Department of Corrections for personal service on him.

On June 13, 2024, a virtual hearing was held on the Motions to Dismiss before Judge Kristi Curtis. At the hearing, Appellant alleged that he had not received notice of the hearing and objected to the hearing going forward. Transcript pgs. 6 at 14-15, 8 at 10-11, 15 at 18-24, 16 at 20-23, 27 at 12 to 28 at 4, and 29 at 20 to 30 at 8. Judge Curtis went forward with the hearing but gave Appellant 30 days to supplement his oral arguments with written arguments. Transcript pgs. 8 at 1-5 and 30 at 21-24.

On July 8, Appellant filed a variety of additional information and motions with the Court.

[1] During the hearing, J. Emory Smith stated that he also emailed a copy to the South Carolina Department of Corrections for personal service on Appellant. Transcript pgs. 7 at 21-23, 8 at 18-19, and 23 at 23 to 24 at 1.

On July 30, 2024, the Circuit Court issued an Order of Ruling granting both Motions to Dismiss and requesting counsel to prepare proposed orders of dismissal. On September 13, 2024, an Order of Dismissal was filed dismissing Plaintiff's case. The Order of Dismissal granted both Motions to Dismiss.

On September 20, 2024, Appellant filed a Motion to Reconsider, which was denied on March 17, 2025.

On April 17, 2025, Appellant filed notice of this appeal.

Standard of Review

"The question of subject matter jurisdiction is a question of law, which [is reviewed] *de novo*." *Seels v. Smalls*, 437 S.C. 167, 172, 877 S.E.2d 351, 353–54 (2022). "Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.' " *Dove v. Gold Kist, Inc*., 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994) (quoting *Bank of Babylon v. Quirk*, 192 Conn. 447, 472 A.2d 21 (1984)). Lack of subject matter jurisdiction may be raised at any time and may be raised for the first time on appeal. *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 557, 703 S.E. 2d 499, 506 (2010). A lack of standing robs the court of subject matter jurisdiction and subjects the suit to dismissal pursuant to Rule 12(b)(1). *See e.g., Heindel v. Andino*, 359 F. Supp. 3d 341, 351 (D.S.C. 2019).

Pursuant to Rule 12(b)(6), a plaintiff must allege facts sufficient to establish a cause of action. Rule 12(b)(6), SCRCP. *See Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001). A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true. *Gressette v. S.C. Elec. & Gas Co*., 370 S.C. 377, 378-79, 635 S.E.2d 538, 538 (2006); *Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Id.*

Argument

The Individual Defendants are not proper parties to this case and were, for the reasons described below, properly dismissed from this case; thus, the dismissal of the Individual Defendants should be affirmed. Further, Appellant does not clearly contest the dismissal of the Individual Defendants in his brief, so Appellant has abandoned the issue.

Appellant contends that his notification regarding the June 13, 2024, hearing prejudiced his rights. The actions of the Circuit Court remedied any prejudice resulting from the Appellant's lack of timely notification prior to the June 13, 2024, hearing.

Regarding the merits of Appellant's constitutional claims, the Individual Defendants continue to take no position on those matters and will abide by any order of the court regarding them.

1. The Individual Defendants are improper parties to this suit and were properly dismissed.

The Circuit Court ruled that Appellant lacked standing to sue the Individual Defendants, which prevented the Circuit Court from obtaining subject matter jurisdiction over this case, and that the Circuit Court lacked the authority to issue a statewide order overturning or altering the Supreme Court's administrative order. Both rulings are correct with regard to the Individual Defendants and should be affirmed.

To establish standing, a plaintiff must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016). In his Complaint, Appellant challenged the constitutionality of the current PCR scheduling process. A favorable decision against the Individual Defendants would not resolve his concerns. The declarations Appellant seeks pertain to the Office of the Attorney General and the State, not the Individual

Defendants. As a result, the Circuit Court correctly ruled that Appellant lacked standing to sue the Individual Defendants.

Standing is not a mere pleading requirement, "but rather an indispensable part of the plaintiffs' case," *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992), and Article III standing requirements cannot be "water[ed] down," *Clapper v. International USA, et al*., 568 U.S. 398 (2013); *see also Friends for Ferrell Parkway, LLC v. Stasko*, 282 F.3d 315, 320 (4th Cir. 2002). As the Circuit Court ruled, a lack of standing robs the court of subject matter jurisdiction and subjects the suit to dismissal pursuant to Rule 12(b)(1).

Moreover, the Circuit Court correctly noted that Appellant does not seek remedies which any of the Individual Defendants could provide to him. The declarations which Mr. Jeter seeks must be made by a court of competent jurisdiction according to the laws of this State. While several of the Individual Defendants are members of the judiciary, they cannot be compelled—via a declaratory judgment suit in their individual capacity—to issue the declarations which he desires.[2]

Normally, where a complaint is dismissed under Rule 12(b)(6), the plaintiff should be granted leave to file an amended complaint, *see Foman v. Davis,* 371 U.S. 178 (1962); however, a circuit court does not err in granting a Rule 12(b)(6) motion without granting leave to amend the complaint if such an amendment would be futile, *Skydive Myrtle Beach, Inc. v. Horry County*, 426

[2] To the extent that Mr. Jeter's complaint is construed against the Individual Defendants in their official capacities, the same is still true. None of the Individual Defendants have, on their own, either the authority to rule that the 2008 PCR scheduling order issued by the South Carolina Supreme Court is unconstitutional or the discretion to disregard that order.

Donald Beatty was the Chief Justice of South Carolina, but he is no longer. He is the only Individual Defendant who even arguably had the authority to invalidate the 2008 PCR Scheduling Order, but seeking a declaratory judgment against him would not have been the proper means to achieve such an outcome while he was in office and *a fortiori* it is improper now that he is longer in office.

S.C. 175, 185, 826 S.E.2d 585, 590 (2019). No facts that Appellant could allege regarding the Individual Defendants would give him standing to sue the Individual Defendants or constitute a cause of action against them with reference to the scheduling and administration of PCR cases. Therefore, any amendment in this case would be futile, and the dismissal of the Individual Defendants should be affirmed without remand.

2. Appellant has abandoned his arguments regarding the dismissal of the Individual Defendants.

Appellant does not clearly argue against the dismissal of the Individual Defendants in his Initial Brief. As a result, the court should hold that he has abandoned his appeal of the dismissal of the Individual Defendants and affirm the decision of the Circuit Court with regard to them.

"An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate Court." *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006) (quoting *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 284 (Ct. App. 1993)). "Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal." *Id.*

Appellant spends almost all of his brief addressing the merits of his constitutional claims. The closest he comes to specifically referencing the dismissal of the Individual Defendants is in the heading of Issue IV and on pages 40-41 in which he argues that he should not be forced to bring these claims in a PCR action. Notably though, Appellant does not argue that the dismissal was improper; instead, he is arguing about whether the involvement of some the Individual Defendants in his PCR case constitutes sufficient reason for him to file his complaints outside of a PCR action. As a result, Appellant has abandoned any objection to the Individual Defendants' dismissal in this appeal, and the decision of the Circuit Court should be affirmed pursuant to *Wright v. Craft*.

3. Appellant's lack of timely notice prior to the June 13, 2024, hearing did not prejudice his rights.

Rule 6(d) requires that parties be given ten days' notice of a hearing unless a different period is fixed by an order of the court. Rule 6(d), SCRCP. However, failure to provide ten days' notice is only reversible error if the failure wrongfully denies the nonmoving party the opportunity to submit affidavits, documents or testimony opposing the motion and the rights of the nonmovant were prejudiced as a result. *Loftis v. S.C. Elec. & Gas Co.* 361 S.C. 434, 438, 604 S.E.2d 714, 716 (Ct. App. 2004) (citing *Dedes v. Strickland*, 307 S.C. 152, 155, 414 S.E.2d 132, 134 (1992)), *overruled on other grounds in Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016)). In this case, Appellant did not receive ten days' notice, but his rights were not prejudiced as a result, so the order of the Circuit Court should be affirmed.

To the extent Appellant was deprived of an opportunity to fully present his arguments during the hearing, any deficiency was cured in the 30-day period after the hearing provided by Judge Curtis. In *Loftis*, the Court of Appeals held that while the nonmoving party was not given sufficient notice of the hearing its rights were not prejudiced because it had twenty seven days' notice of the motion itself, it was given ten additional days to submit a brief and opposing affidavits, and the court did not rule on the motion until full consideration of these materials was given. *Loftis*, 361 S.C. at 438, 604 S.E.2d at 716. In this case, the Motions to Dismiss were filed over a month before the hearing and Judge Curtis gave Appellant 30 days to supplement his oral arguments with written arguments, Transcript pgs. 8 at 1-5 and 30 at 21-24. On July 8, Appellant filed a variety of additional information with the Circuit Court, and the Circuit Court did not issue a ruling until July 30, 2024, after Appellant's submissions were taken into consideration. Thus,

Appellant was provided with a similar opportunity to the nonmovant in *Loftis*, thereby curing any lack of notice to him and preventing his rights from being prejudiced.

In discussing the question of notice, Appellant cites *Forfeited Land Comm'n of Bamberg Cnty. v. Beard*, 424 S.C. 137, 817 S.E.2d 801 (Ct. App. 2018), for the proposition that failure to provide the required statutory notice is a jurisdictional defect. Appellant Brief at XV. However, *Forfeited Land Comm'n of Bamberg Cnty*. addresses the notice requirements for a tax sale not a motions hearing. *See* 424 S.C. at 148, 817 S.E.2d at 806 ("We find that the failure to provide the required statutory notice is the type of jurisdictional defect contemplated in *Leysath* that renders **the tax sale void** and the statute of limitations inapplicable.") (emphasis added). Thus, *Forfeited Land Comm'n of Bamberg Cnty*. does not support Appellant's position.

Additionally, when taken as a whole, the record demonstrates that Appellant was not deprived of an adequate opportunity to present his arguments to the Circuit Court. Appellant availed himself of a variety of means to do so. First Appellant filed written responses to the Individual Defendants' Motion to Dismiss and the State Defendants' Motion to Dismiss on May 21, 2024. In his responses, Appellant detailed why he opposed the Motions. At the June 13, 2024, hearing, Appellant himself stated that all of his arguments are contained in his pleadings and motions. Transcript pgs. 17 at 25 to 18 at 1. Second, the transcript of the June 13, 2024, hearing reveals that Appellant recalled and directly addressed various arguments put forward by the Defendants during his argument. *See e.g.*, Transcript pgs. 17 at 9-19 (discussing his standing to sue), 17 at 20-25 (discussing whether *res judicata* applies), 18 at 19 to 19 at 21 (discussing the PCR process and how he alleges it violates due process), 19 at 23 to 20 at 6 (discussing his standing to sue), 20 at 8-22 (discussing the necessity of naming the Individual Defendants), 22 at 17-25 (discussing the PCR process and how he alleges it violates due process). Appellant's discussion of

the case does not evidence a party who was unprepared for argument. Finally, as discussed above, Judge Curtis gave Appellant 30 days to supplement his oral arguments with written arguments, Transcript pgs. 8 at 1-5 and 30 at 21-24, which he did. Thus, Appellant was given ample opportunity to present his arguments to the Circuit Court prior to the Court's ruling. The Individual Defendants' Motion to Dismiss was granted because Appellant's complaint is insufficient as a matter of law.

Conclusion

The Individual Defendants were properly dismissed from this case, and to the extent that they were not, Appellant has abandoned his arguments regarding their dismissal. Additionally, Appellant's notification of the June 13, 2024, hearing did not prejudice his rights because he was given an opportunity to provide additional materials, which he did. Therefore, the order of the Circuit Court should be affirmed.

Respectfully Submitted,

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