

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2010-CP-23-7631

Brenda W. Bryant, individually and in)
Capacity as Guardian for Madison,)
A mentally disabled person,)

Plaintiff)

vs.)

The Greenville County Disabilities and)
Special Needs Board, The South Carolina)
Department of Disabilities and Special)
Needs, John King (individually and in his)
official capacity), Brent Parker (individually)
and in his official capacity), Melissa)
Stubblefield (individually and in her official)
Capacity), Jennifer Bogart (individually and)
In her official capacity), Tracy Parsons,)
William H. Davidson, II, Esquire, and Theresa)
A. Horton, Esquire,)

Defendants.)

MOTION TO VACATE

[Bench Warrant and Orders without
bodily presence]

RECEIVED
NOV 18 2013
SC Court of Appeals

The undersigned, **Brenda W. Bryant**, moves to vacate that certain *Order* filed April 2, 2012, and all subsequent Orders and matters generated as a result thereof on the following grounds:

Factual History

A Bench Warrant was issued for the arrest and incarceration of Brenda W. Bryant in the above action pursuant to that certain *Order* of Judge Edward W. Miller dated and filed April 2, 2012, for failure to appear at a Rule to Show Cause Hearing scheduled on March 14, 2012. The Rule to Show Cause sought to hold Mrs. Bryant in contempt of Court for failure to pay legal fees to Rodney Pillsbury attorney for Tracy Parsons. The above action was filed by Mrs. Bryant against Tracy Parsons and Greenville County DSS, Brent Parker, John King and others for breach of neglect and other claims regarding Mrs. Bryant's special needs daughter, Madison, a name used to protect the identity of this mentally disabled person. Prior to service of the pleadings in the lawsuit upon any of the named defendants, Mr. Pillsbury went to the Clerk of Court's Office in the Greenville Court House, picked up a copy of the pleadings and moved to dismiss the action and for attorney's fees and costs. After the motion was granted by the Court, Mrs. Bryant's then attorney, Alice Perkins, filed objections to the Court Order and then filed a Motion for Reconsideration. The Court scheduled a Rule to Show Cause hearing and Mrs. Perkins testified she had mailed the Objections and Motion for Reconsideration to the Clerk of Court and presented her stamped mailing receipt. The Court questioned Ms. Perkins by asking if they should believe her. The Greenville Court Clerk lost the Motion on claimed they never received it. The Court found Mrs. Bryant in contempt for not paying Mrs. Parsons' attorneys fees even though Mrs. Bryant's attorney argued that the since the pleadings in the case had never been served, the action had never commenced and further that a hearing had never been held to approve the Attorney's Fees as sought by Mr. Pillsbury.

During the course of time, Ms. Perkins decided to no longer practice law, leaving Mrs. Bryant without counsel. Mrs. Bryant, and the Court scheduled another Rule to Show Cause Hearing in which Mrs. Bryant was never properly served. Judge Mary H ___ then re-scheduled the Hearing until proper service and notice of the hearing could be made upon Mrs. Bryant; however, no service was made and Mrs. Bryant received an Order holding her in contempt of Court from which she timely filed and served a Notice of Intent to Appeal. The Court of Appeals clocked in the Notice. The Circuit Court proceeded to hold another Rule to Show Cause Hearing. Mrs. Bryant was never properly served with notice of that hearing as required by S.C. Rules of Civil Procedure. Subsequently, Mrs. Bryant learned that Mr. Pillsbury sent an email to Judge Miller requesting he not serve Mrs. Bryant, a copy of which is attached. Mrs. Bryant was not properly served with those pleadings. During that Show Cause Hearing the Circuit Court was called by the Court of Appeals notifying the Court that a notice of appeal had been filed. The Circuit Court stopped the hearing and called to get a copy of the Notice of Intent to Appeal. Judge Miller was aware that a Notice of Appeal had been filed and that his Court did not have subject matter jurisdiction proceed with the Hearing.

S.C. Appellate Court Rules provide that once a Noticed has been filed concerning the particular subject that the lower Court then has no jurisdiction; however, Judge Miller then filed a Final Order holding Mrs. Bryant in contempt of Court and issued a Bench Warrant for her arrest. The Bench Warrant stated Mrs. Bryant was a fugitive fleeing from justice and was facing up to a year in prison which is the only way the Bench Warrant could have caused an out of state arrest. Mrs. Bryant was not a criminal and was not sentenced to a year in prison. Therefore, the Bench Warrant was illegal. The S.C. Supreme Court defines that "failure to appear in a civil matter does not constitute a criminal offence. See *Demarco vs. Demarco*.

Mrs. Bryant was not a fugitive, nor does she ___ from justice. Mrs. Bryant had not even been properly served the Bench Warrant.

Summary

For the following reasons set forth, the Bench Warrant and all Orders should be vacated without bodily presence nor affidavit of service as required by S.C. Rules of Court:

- 1) The action had not commenced because there was no proper service of the pleadings upon any Defendant in the action.
- 2) Failure of the Court to accept Mrs. Perkins' testimony that the Notice of Reconsideration had been filed. Mrs. Perkins was an officer of the Court.
- 3) Failure to properly serve Mrs. Bryant the Notice and Rule to Show Cause therefore denied her due process. See email from Rodney Pillsbury which was *ex parte* communication with the Court.
- 4) Failure to recognize that the Court lacked jurisdiction to issue any other Orders or a Bench Warrant after becoming aware of the Notice of Intent to Appeal.
- 5) In order to hold one in contempt the contempt must be willful and intentional. Mrs. Bryant did not refuse to be at the March Hearing. _____ immediately filed a motion to dismiss before the action had been properly served or commenced. This action was not ripe due to the fact that there had been no service nor was there an Affidavit of Service filed in the Court as required. S.C. law and the Rules of Civil Procedure state that "commencement of does not begin until proper service has been made."

The Court proceeded to hold a hearing on the Motion to Dismiss and Request for Sanctions for filing a frivolous document. Mrs. Bryant was represented by Alice Perkins. The court did not allow

testimony or evidence to be presented by Mrs. Perkins. Mr. Pillsbury, however, sent ex parte documents to the Court. The Court dismissed the action prior to commencement and sanctioned only Mrs. Bryant. The Court concluded. that the ___ of a ___ was a frivolous action.

The sanction of attorney fees are to be only awarded when there is evidence that a frivolous action was filed.

See S.C. Frivolous Claims and Proceedings Act. The Court did not hold a hearing prior to _____.

All grounds previously argued at prior hearings and at the Hearings herein concerned are hereby renewed and preserved.

June __, 2013

Brenda W. Bryant