

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SC Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2013-002510

THE STATE,Respondent,

v.

JOSEPH WRIGHT, JR.,Appellant.

APPELLANT'S RETURN IN OPPOSITION
TO
HOMEOWNERS MORTGAGE ENTERPRISES, INC.'S
MOTION TO INTERVENE

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ATTORNEY FOR APPELLANT

ARGUMENT

The Initial Brief of Appellant Joseph Wright, Jr. was filed and served in this case on February 7, 2014. The Respondent, State of South Carolina, had until March 12, 2014 to file a Response Brief under S.C. Rules of Appellate Procedure, Rule 208 (a)(2). However, the Respondent has not done so. Under Rule 208 (a)(4), "Upon the failure of the respondent to timely file a brief, the appellate court may take such action as it deems proper."

In a letter to the Honorable Jenny Abbott Kitchings, dated March 28, 2014, Matthew C. Buchanan, Esq., Counsel for South Carolina Department of Probation, Parole and Pardon Services, advised in pertinent part:

... Respondent [South Carolina Department of Probation, Parole and Pardon Services] was never served with a copy of Appellant's Initial Brief and Designation of Matter, and requested . . . the Court to allow [said] Respondent additional time in order to be served with the Initial Brief and be allowed time to file an Initial Brief of Respondent.

On April 4, 2014, an Amended Certificate of Service was filed with the Clerk of Court stating Attorney Matthew C. Buchanan was, in fact, served with Initial Brief of Appellate and Designated Matter to Be Included in the Record on Appeal.

In a letter to the undersigned, dated April 10, 2014, Deputy V. Claire Allen advised, in pertinent part:

The respondent, represented by Matthew Buchanan, has thirty (30) days from April 4, 2014 to serve and file a respondent's initial and designated matter.

On April 11, 2014, Homeowners Mortgage Enterprises, Inc. [hereinafter "Homeowners"] moved to be allowed to intervene in this appeal from a criminal proceeding in order that Homeowners may file a Response Brief in place of the State, which apparently has elected not to participate in this appeal. Homeowners admits that it is not aware of any authority dealing with the issue of intervention on appeal; however, Homeowners argues that Rule 24 of the South Carolina Rules of Civil Procedure provides

a “framework” for considering motions to intervene in an appeal. Homeowners’ argument fails for the following reasons:

- (1) Intervention means to become a party to the action. *Ex parte Condon v. State*, 354 S.C. 634, 642, 583 S.E.2d 430 (S.C. 2003).
- (2) This is an appeal from a criminal proceeding, not a civil proceeding.
- (3) The parties to a criminal action are the State and the criminal defendant. Concepts such as “real party in interest” and standing apply to civil proceedings. See Rule 17 of the South Carolina Rules of Civil Procedure.
- (4) The Victims’ Bill of Rights does not grant the victim of a crime the right to become a party to a criminal proceeding.

The South Carolina Constitution, Section 24, “Victims’ Bill of Rights,” enumerates specific rights to be accorded victims of a criminal act. Although a victim is entitled to be informed of and to be present at criminal proceedings, may be heard at hearings affecting bond or bail or at proceedings involving a post-arrest release decision, a plea or sentencing, and may confer with the prosecution, nothing in the Victims’ Bill of Rights grants a victim the right to become a party to a criminal proceeding. See also S.C. Code § 16-3-1535 (Summary court’s duty to notify victim of victim’s rights); S.C. Code § 16-3-1515 (Victim or witness wishing to receive services under article to supply certain information); S.C. Code § 17-25-322 (Restitution to crime victim by person convicted of crime); and S.C. Code § 17-25-323 (Continuing jurisdiction over court-ordered payments and conversion of orders of restitution into civil judgments). The case cited by Homeowners, *Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 394 S.E.2d 712 (1990) is inapposite, because it is a civil case.

- (5) Homeowners as a victim could not have intervened as a party in the criminal trial court proceeding; therefore, *ipso facto*, Homeowners cannot intervene in the appeal of a criminal proceeding.

Furthermore, the failure to intervene as a party at the trial court level precludes the right to appeal because the intervenor is not an aggrieved party who may appeal under Rule 201(b) of the South Carolina Appellate Court Rules. *Ex parte Condon, supra; Ex Parte South Carolina Dep't of Motor Vehicles v. State*, 390 S.C. 457, 458, 702 S.E.2d 568 (S.C. 2010)

- (6) Homeowners' own presentation of the record in this case demonstrates why the State has not participated in this appeal and why Homeowners has no standing or right to intervene in this case.

As Homeowners points out, Homeowners obtained a civil judgment against Wright in 2004, even before his initial criminal plea agreement was entered in 2005. Consent Judgment entered September 22, 2004 (Exhibit B to Homeowners' Motion to Intervene). Wright entered a plea in 2005, and that plea was superseded by the Order of Restitution entered on July 19, 2007 (Exhibit C to Homeowners' Motion to Intervene). That Order provided that probation would end on July 1, 2012. Although the probation period had expired, at Homeowners' request, the State issued a warrant and a probation hearing was held on September 6, 2013. The probation agent testified that probation expired on July 8, 2013, but there is nothing in the record to support the probation agent's assertion as to that end date of probation. (Homeowners' Exhibit F, p. 2, lines 6-20). In any event, the trial court determined that probation would terminate on September 6, 2013 but, then, entered an order on November 20, 2013, finding Mr. Wright in civil contempt and setting a payment schedule to purge the contempt. (Wright did not admit, as Homeowners asserts, that he had not paid past due payments even though he had the ability to do so. He only stated that he had the ability to pay future payments. Homeowners' Exhibit F, p. 7, lines 9-11). As set forth in Appellant's Brief, the trial court had no subject matter jurisdiction to assist

Homeowners in this way in Homeowners' efforts to enforce its civil judgment against Wright because the period of probation had expired.¹

Therefore, Homeowners has no standing to pursue relief in criminal court, but must seek damages in civil court. In *Ex parte Littlefield*, 343 S.C. 212, 221, 540 S.E.2d 51 (S.C. 2000), the Supreme Court stated, "Once a criminal case has been resolved and the defendant is sentenced, the alleged victim loses his victim status under the Victim's Bill of Rights. The trial court cannot use the Victim's Bill of Rights to re-open a completed criminal proceeding." Here, the probation period had ended prior to the Court's Order of November 20, 2013, and subject matter jurisdiction had terminated. Neither the State nor Homeowners had the ability to seek relief in the criminal proceeding and the November 20, 2013, Order was a nullity.

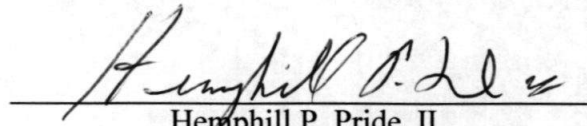
¹ The fact that the trial court's November 20, 2013 Order created a "mechanism" by which the court could resolve the civil dispute between Homeowners' and Wright, thereby resulting in a stay of the contempt proceedings at the trial court level pending this appeal, does not mean that the trial court had the power or authority to create such a mechanism." In fact, the trial court's Order is a nullity. See Order of this Court, entered March 12, 2014.

CONCLUSION

For all of the foregoing reasons, the Appellant requests that Homeowners' Motion to Intervene be denied and that the Order entered on November 20, 2013, be vacated as a nullity or reversed on the merits and that no further proceedings be allowed in this case.

Respectfully submitted,

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ATTORNEY FOR APPELLANT

April 22, 2014.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

I, the undersigned do hereby certify that all counsel and/or parties in this action were served with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States mail, postage prepaid, to the following address(es):

PLEADING: Appellant's Return in Opposition to Homeowners Mortgage Enterprises, Inc.'s Motion to Intervene

PARTY: Robert P. Wood, Esq.
ROGERS TOWNSEND & THOMAS, PC.
Post Office Box 100200
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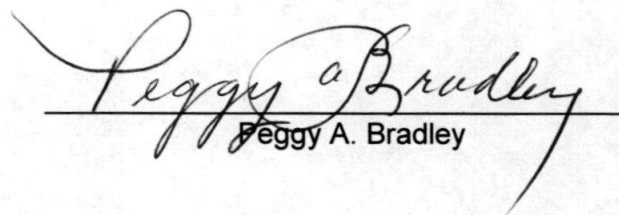
Honorable Daniel E. Johnson
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SC Court of Appeals


Peggy A. Bradley

Columbia, South Carolina

April 22, 2014.