

IN THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No. 2012-AJL-07-0050-CC

James R. Maull,

Appellant/Petitioner,

v.

South Carolina Department of Health and Environmental Control
and David Abdo,

Respondents,

and Russell and Laura Schaible,

Respondents.

RESPONDENT DAVID ABDO'S
VERIFIED RESPONSE TO APPELLANT/PETITIONER
JAMES R. MAULL'S VERIFIED PETITION FOR
WRIT OF SUPERSEDEAS

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*Attorney for Respondent
David Abdo (in connection with
Supersedeas only)*

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JUN 12 2014
SC Court of Appeals

Respondent David Abdo submits this Verified Response in opposition to Appellant/Petitioner James R. Maull's Verified Petition for Writ of Supersedeas. Maull's request for a writ of supersedeas should be denied because he cannot satisfy the grounds required for a writ of supersedeas.

I. Procedural Background

When Abdo purchased the improved property at 29 Broughton Road in 2007, the prior owner had already obtained a dock permit. In May 2011, Abdo submitted an amendment application to reconfigure the dock authorized to be built under the existing permit. OCRM staff granted the amendment request but with a condition that the dock be situated 30.5 feet off the shared extended property line between Abdo and Maull.¹

All parties requested review by the DHEC board. After considering the matter, the DHEC board removed the special condition and approved the amendment as applied for in the application, authorizing Abdo to construct his dock approximately 20 feet off the shared extended property line between Abdo and Maull. The DHEC board made the final agency decision on January 9, 2012.

Maull filed a request for a contested case hearing with the Administrative Law Court. A contested case hearing was held January 15, 2013 before the Administrative Law Court. All parties participated fully in the trial, including introducing testimony and exhibits. The ALC issued its Final Order and Decision on August 1, 2013. The ALC concluded:

[T]he Amendment and Mr. Abdo's dock location is consistent with other docks in the area, and construction of the dock as authorized by the Board will not have an unreasonable impact on navigation in the area. South Carolina law is clear that a reasonable and standard space between a pierhead

¹ Maull is Abdo's neighbor immediately to the left. Maull has a dock. The Schaibles are Abdo's neighbor immediately to the right. The Schaibles have a dock.

and extended property line is 20 feet. The amendment places Mr. Abdo's dock 20.5 off the extended property line and therefore complies with the law.

The ALC affirmed the amendment as issued by the DHEC board.

Mauil has appealed to the Court of Appeals. The final briefs have recently been submitted by all parties.

Mauil now seeks a writ of supersedeas "preventing Abdo from proceeding with construction of his dock in accordance with the amended permit, pending final resolution of Mauil's appeal." Mauil is not entitled to the relief he seeks.

II. Governing Legal Principles

"As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, decree or decision." Rule 241(a), SCACR. The general rule, however, is subject to numerous exceptions. One of the exceptions listed in Rule 241 is the following: "Appeals from administrative tribunals as provided in S. C. Code Ann. § 1-25-380(A)(2) and § 1-23-600(G)(5)." Rule 241(b)(11), SCACR.

Section 1-25-380(A)(2) provided: "Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision."² Section 1-23-600(G)(5) provided: "A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals."³ Therefore, the service of the notice of appeal by Mauil in this

² Section 1-25-380 was amended in 2008 to delete the designation of the first paragraph as Subsection (A).

³ Section 1-23-600 was amended in 2008 such that Subsection (G) was redesignated as Subsection (H). The current cite is S. C. Code Ann. § 1-23-600(H)(5) (Supp. 2013).

case did not act to automatically stay the ALC's Final Order and Decision dated August 1, 2013.

“In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the Notice of Appeal.” Rule 241(c)(1), SCACR. The criteria for evaluating the request is as follows:

In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.

Rule 241(c)(2), SCACR. Maull's request for a writ of supersedeas satisfies neither condition.

First, Maull does not argue that a writ of supersedeas “is necessary to preserve jurisdiction of the appeal.”

Second, Maull cannot show that a writ of supersedeas is necessary “to prevent a contested issue from becoming moot,” although this is how he couches the argument in his petition. Maull states in his verified petition that he seeks a writ of supersedeas to “protect and preserve Maull's right to a full and meaningful appellate review process by preventing the contested issue in this case from becoming moot, and to protect the public interest in avoiding the navigational hazards presented by the amended permit until that permit has been subjected to a full appellate review process” Even if Maull had standing to seek to protect the public interest, that ground is not a legitimate basis for seeking a writ of supersedeas. The sole issue becomes whether Maull can show that a writ of supersedeas is necessary “to prevent a contested issue from becoming moot.”

III. Discussion

If Maull is not granted a writ of supersedeas, then Abdo will have the dock completed in accordance with the configuration authorized by the amended permit. If Maull is ultimately

successful in his appeal with his argument that Abdo's dock should be farther away from Maull's dock than is authorized by the amended permit, then Abdo's dock constructed in accordance with the amended permit would be subject to removal. If the dock were removed, then Maull will have received the relief he seeks. Therefore, Abdo's construction of the dock in accordance with the amended permit will not moot the issue on appeal.

Abdo and his wife have resided in the house at 29 Broughton Road since 2008. Their twin sons, age 12, live with them. They purchased the property because it was situated on the water and they could access the water by building a dock. They would not have purchased the property if they could not have built a dock. They sought an amendment to the existing dock permit to allow for reconfiguration of the proposed dock, and the amendment they sought was ultimately approved by the DHEC board on January 9, 2012.

Almost two and one-half years have passed since then. Children do not stop growing while a case winds its way through the appellate process. The limited time the Abdos have to experience the fun associated with being able to use their dock with their children – while their children are still children living in the house with them – is passing them by and can never be reclaimed.

Maull has had the opportunity to present his arguments to two neutral tribunals, both of whom rejected his arguments. He has had the opportunity to testify himself and present witnesses, cross-examine witnesses, and introduce exhibits at a trial. His arguments were rejected. He has chosen to appeal the ALC's decision against him. If unsuccessful in the court of appeals, he has the right to seek further appellate review. How long should Abdo be required to wait?

III. Conclusion

Mauil's Verified Petition for Writ of Supersedeas should be denied. Mauil cannot satisfy the criteria for obtaining a writ of supersedeas. A writ of supersedeas is not necessary to prevent a contested issue from becoming moot.

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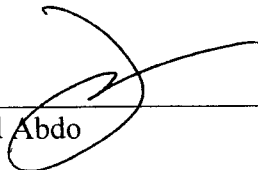
*Attorney for Respondent
David Abdo (in connection with
Supersedeas only)*

Charleston, South Carolina
June 9, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

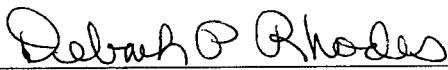
VERIFICATION

PERSONALLY APPEARED before me David Abdo, who, being first duly sworn, states that he is the Respondent in this case, that he has read the Verified Response to Appellant/Petitioner James R. Maull's Verified Petition for Writ of Supersedeas, and that it is true and correct to the best of his knowledge and belief.



David Abdo

SWORN TO AND SUBSCRIBED before me
this 9th day of June, 2014



Notary Public for the State of South Carolina
My Commission Expires: _____

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CERTIFICATE OF SERVICE

I, Stanley C. Rodgers, of Law Office of Stanley C. Rodgers, LLC, counsel for Respondent David Abdo, do certify that I have served Respondent David Abdo's Verified Response to Appellant/Petitioner James R. Maull's Verified Petition for Writ of Supersedeas by hand delivering a copy of the same on June 9, 2014 to the following counsel of record:

Michael A. Molony, Esquire
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401

**Attorney for Appellant/Petitioner
James R. Maull**

Leslie S. Riley, Esquire
McNair Law Firm, PA
100 Calhoun Street
Suite 400
Charleston, SC 29401

**Attorney for Respondents
Russell and Laura Schaible**

Nathan M. Haber, Esquire
South Carolina Department of
Health and Environmental Control
1362 McMillan Avenue
Suite 400
Charleston, SC 29405

**Attorney for Respondents
SCDHEC**

And by depositing a copy of same in the United States Mail, postage prepaid, to the Court of Appeals at the following address:

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

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June 9, 2014

VIA OVERNIGHT MAIL

The Honorable Jana E. Cox Shealy
Clerk of Court
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street
Suite 224
Columbia, SC 29201

RE: James R. Maull v. SCDHEC and David Abdo, and
Russell and Laura Schaible
ALC Case No. 2012-ALJ-07-0050-CC
SC Appellate Case No. 2013-001878

Dear Ms. Shealy:

I am enclosing the original and one copy of Respondent David Abdo's Verified Response to Appellant/Petitioner's Verified Petition for Writ of Supersedeas. After filing the original, please stamp the copy and return it to me in the enclosed envelope.

With best regards, I remain

Very truly yours,

LAW OFFICE OF STANLEY C. RODGERS, LLC



Stanley C. Rodgers

SCR/dpr

cc: Michael A. Molony, Esquire (with enclosures) (via hand delivery)
Nathan M. Haber, Esquire (with enclosures) (via hand delivery)
Leslie S. Riley, Esquire (with enclosures) (via hand delivery)
Mr. David Abdo (with enclosures) (via US mail)
The Honorable Jenny Abbott Kitchings (with enclosures) (via US mail)

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