

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Before the Master In Equity

Charles B. Simmons, Jr., Master In Equity

Case No. 2007-CP-23-3206
Appellate Case No. 2012-212748

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JUN 30 2014

SC Court of Appeals

North American Rescue Products, Inc.,.....Appellant,

v.

P. J. Richardson,.....Respondent.

**APPELLANT'S RETURN TO
RESPONDENT'S MOTION TO DISMISS APPEAL**

I. Richardson's motion fails to state any proper grounds for the dismissal of this appeal.

Richardson argues this appeal should be dismissed based on two error preservation arguments: (1) law of the case doctrine; and (2) failure to make a Rule 59(e) motion. These are grounds for affirmance of an appealed order, not the dismissal of an appeal. Neither ground goes to this Court's jurisdiction. Accordingly, the motion to dismiss should be denied. In any event, both grounds argued by Richardson are manifestly without merit.

II. NARP's arguments in this appeal are not barred by the law of the case doctrine.

In his Argument I, Richardson contends that this Court's denial of a prior motion for limited remand on the issue of whether Richardson had rejected a proper tender of performance

gives rise to some “law of the case” that precludes NARP’s appeal. This argument is manifestly without merit and reflects a fundamental misunderstanding of the law of the case doctrine.

The law of the case doctrine, as Richardson correctly notes, provides that an unchallenged ruling by a court is the law of the case. The only issue raised to this Court in NARP’s motion for a limited remand was whether this Court should grant a limited remand so that NARP could then move before the trial court under Rule 60(b)(5), SCRC¹CP, to have the judgment marked satisfied because Richardson had refused NARP’s tender of the stock at the price found by the jury and the trial court. This Court denied the motion, so the only potential “law of this case” is that NARP is not entitled to a remand during the pendency of the appeal to make the Rule 60(b) motion.

The present appeal has nothing to do with any issue of remand or any Rule 60(b) motion to have the judgment marked satisfied – no such relief was requested in the present appeal. Rather, the present appeal involves the trial court’s denial of different relief that was premised upon this Court’s ruling in agreement with the jury and the trial court that “Richardson must pay \$2,936,300 for seven and one-half percent of NARP’s stock.” *North American Rescue Prods., Inc. v. Richardson*, 720 S.E.2d 53, 61 (S.C. App. 2011). This Court’s ruling did not even exist at the time that NARP made the limited remand motion and, therefore, the denial of that motion does not and cannot bar the relief requested here under the law of the case doctrine or any other doctrine. There simply has been no ruling by this Court on the issue in this appeal that could trigger application of the law of the case doctrine.

III. NARP’s arguments in this appeal are preserved for appellate review.

In his Argument II, Richardson contends that NARP’s appellate arguments are not preserved for review because NARP did not make a 59(e) motion. This argument is manifestly without merit and reflects a fundamental misunderstanding of the error preservation rules.

Richardson argues that the following matters are not preserved for review, because the trial court did not rule on them specifically and NARP did not make a 59(e) motion:

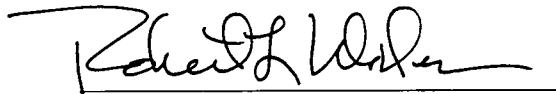
1. that Richardson's wife is not a party to the lawsuit and not subject to the judgment;
2. that Richardson's wife has unfettered access to all of the assets and no duty to pay the judgment; and
3. that if Richardson dies during the pendency of the appeal, she immediately acquires sole ownership of all assets with no corresponding duty to pay the judgment.

There was no need for the trial court to "rule" on any of these matters, because they are undisputed facts that flow from the also-undisputed fact that all assets are held by Richardson and his wife as joint tenants in common with the right of survivorship. Thus, there was no need to make a 59(e) motion – no appellate court has ever required a 59(e) motion to preserve the right to rely on undisputed facts in an appellate argument.

CONCLUSION

For all of the foregoing reasons, the motion to dismiss should be denied.

Respectfully Submitted,



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June 30, 2014
Columbia, SC

Attorneys for Appellant

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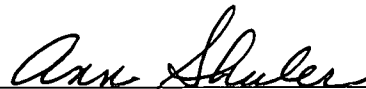
P. J. Richardson,.....Respondent.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of the McNair Law Firm, certify that I have served the Appellant's Return to Respondent's Motion to Dismiss Appeal by depositing a copy of same in the United States Mail, postage prepaid, on June 30, 2014 addressed to the attorneys of record, as follows:

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Ann Shuler

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June 30, 2014

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Via Hand Delivery

Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
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Re: North American Rescue v. P. J. Richardson
Appellate Case No. 2012-212748

Dear Madam Clerk:

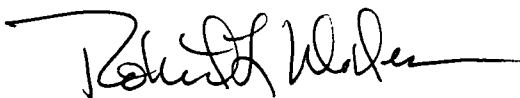
Enclosed for filing, please find the original and seven copies of Appellant's Return to Motion to Dismiss Appeal with regard to the above referenced appeal. Please file the original and return the file stamped copy to us via our courier.

PLEASE NOTE: On Friday, June 27, 2014, we filed our Reply in support of our motion to reschedule oral argument in the above-referenced appeal. That Reply referenced and incorporated the Return to Motion to Dismiss being filed under this letter, as well as our Return to the Respondent's Motion to Transfer, which was filed in the Supreme Court. We are therefore providing eight copies of our Return to the Motion to Transfer, one for this Court's file, one to be file stamped and returned to us, and six copies to be provided to the motions panel in consideration of our Reply in support of our motion to reschedule oral argument.

Thank you for your assistance in this matter.

Respectfully yours,

McNAIR LAW FIRM, P.A.



Robert L. Widener

RLW/as
Enclosures

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