

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No. 2014-CP-42-01622

Appellate Case No. 2015-000366

RECEIVED

MAR 10 2015

SC Court of Appeals

Spartanburg Buddhist Center of South Carolina, Inc., Respondent,

v.

Ron Ork and Luke Dong, Appellants.

Ron Ork and Luke Dong, Third Party Plaintiffs,

v.

Chivin Sun, Robert Pek, Sakhan Sok, Sambo Khieav,
Sophay Pres, and Tommy Ong, Third Party Defendants.

RETURN TO MOTION TO EXPEDITE APPEAL

Respondents hereby file this Return to Appellants' Motion to Expedite Appeal ("Motion"). Pursuant to South Carolina Rule of Appellate Procedure 263(b), this Court has the discretion to order an expedited appeal process in this matter. SCRAP 263(b). Respondents have not stated sufficient reasons justifying an expedited appeal in this matter, for the following reasons.

1. Appellants' attempted appeal of the Order Granting Temporary Injunction dated May 16, 2014, the Order dated July 25, 2014 denying Appellants' SCRCR Rules 59

and 60 Motion, or the Order Granting Temporary Injunction dated April 21, 2014 are untimely, as the most recent of these is more than seven months old. Appellants did not file a Notice of Appeal as to these Motions within thirty days as required by Rule 203, such that these issues are not properly before the Court and thus, the Court lacks jurisdiction to hear those issues. *See* South Carolina Rule of Appellate Procedure 203(b).

2. As for expediting an appeal of the January 7, 2015 Contempt Order holding Ron Ork in contempt for spending Respondent's funds in violation of the Temporary Injunction(s) and the February 20, 2015 Order denying Appellants' SCRCP Rules 59 and 60 Motion and Rule 62 Motion, Appellants' reasons are at best not compelling and at worst misrepresentations to this Court.

3. Appellants, in paragraphs 2 through 13 of their Motion, give this Court a one-sided view of the facts and merits of the underlying litigation, and then claim in paragraph 14 that "Appellants ... need this appeal decided before April 2015 so that they can elect whomsoever they desire to serve as the Respondent's president and board of directors." *See* Motion, para. 14.

4. The election at issue in the underlying litigation is an entirely separate issue from the expenditure of funds involved in the contempt proceedings. The election issue is not involved in the contempt proceedings, and the election issue will require a final determination from the trial court (which is not scheduled for determination in March or April of 2015). Thus, any potential future election among the parties is wholly irrelevant to the contempt issue before this Court.

5. For the record, however, Respondents dispute almost all of Appellants' allegations and arguments in paragraphs 2 through 13, and for the sake of brevity state in

response only that Respondents brought the underlying lawsuit because the alleged April 2014 election Appellants attempted to hold was improper under Respondent's bylaws.

6. It is also worth noting to this Court that Respondent, not Appellants, moved the lower court for an Order granting an expedited hearing on the election issue, and won that motion in front of Judge Lee in June 2014.

7. Despite that Order having been in effect for over eight months, Appellants have not so much as requested to Respondent that the expedited hearing on the election issue be set, nor did Appellants timely appeal the now-seven month old Temporary Injunctions stating that no corporate action may be taken on behalf of Respondent during the pending litigation. Appellants' own actions belie their just-now urgent request to this Court to somehow have the election issue resolved before April 2015.

8. As stated above, the May 16, 2014 Temporary Injunction in this matter stating that no corporate action (such as an election) may be taken pending the outcome of the case was not timely appealed by Appellants, and remains in effect despite any outcome of finding Ork in contempt for spending Respondent's funds. It is extremely unlikely that an expedited appeal of the contempt issue will lead to the underlying litigation being resolved in time for an April 2015 election to take place, as this case or even the expedited hearing on the election issue is not on a March or April 2015 docket.

9. Thus, an alleged potential election in April 2015 is not a valid reason to expedite this appeal.

10. The second reason given by Appellants for an expedited appeal is likewise without merit. Appellants claim that Ork "has no income, survives on the donations of

others, owns no property...” and thus, “does not have the ability to purge himself of contempt.” *See* Motion, para. 17.

11. In support of their argument that a party should not be held in contempt when the party cannot purge the contempt, Appellants cite the *Phillips* case. *See Phillips v. Phillips*, 341 S.E.2d 132, 288 S.C. 185 (S.C. 1986). In the *Phillips* case, a grandmother was held in contempt for failing to bring a child to court hearings as ordered when the child’s father had taken the child out of state. *See id.* Because the grandmother did not physically have the child in her custody, it was impossible for her to comply with the court’s order. *See id.* Obviously, the Order for Ork to pay back the money he removed from Respondent’s account is not so impossible.

12. In actuality, Ork does have personal funds, as he is given personal donations by the members of the temple and others. During and immediately prior to this litigation, he has taken cross-country trips, hired Appellants’ counsel to facilitate the election prior to the underlying litigation, and probably has been paying his attorneys during this litigation. These funds seemingly do not come from Respondent’s building temple fund, as Ork feels using those for anything beyond building construction is a “misuse” of donations. *See* Petition for Writ of Supersedeas with Request for Expedited Decision, para. 12. This begs the question, “where is Ork’s money coming from?”

13. Ork again belies his own argument that he has no money and cannot purge himself of contempt, as he has admitted to this Court that he has already received enough donations to purge himself of contempt. *See* Petition for Writ of Supersedeas with Request for Expedited Decision, para. 60 (“Some of the Head Monk’s supporters donated cashier’s

checks for the entire amount the Contempt Order requires the Head Monk to pay.”). Again, it seems it is possible for Ork to purge his contempt, and to have already done so.

14. Further, Appellants’ argument that a party ordered to deposit money into a joint account during pending litigation could spend said money, and then avoid a contempt order because he does not have the means to repay the money is ludicrous. What kind of incentive would this give parties ordered to safeguard funds in litigation?

15. The third and final reason given for an expedited appeal, that members are not donating while litigation is pending, is irrelevant and false. Ork claims he does not use donations to the temple for his personal benefit, i.e., paying off his contempt order, so those donations must be irrelevant to this appeal. Also, whether this appeal is expedited or not will have little effect on the timeline of the underlying litigation allegedly at issue to the Temple members.

16. Further, Appellants’ allegation is false. Respondent has a video of at least one fundraiser that has been held during the litigation (in violation of the Temporary Injunctions), in which Appellants raised almost \$40,000 at one event. Appellants did not deposit that money into Respondent’s trust account in this matter. While this may be subject to a Rule to Show Cause later in the underlying litigation, Appellants’ third reason for an expedited appeal, that donations are not being made to the building fund during litigation, is false and irrelevant.

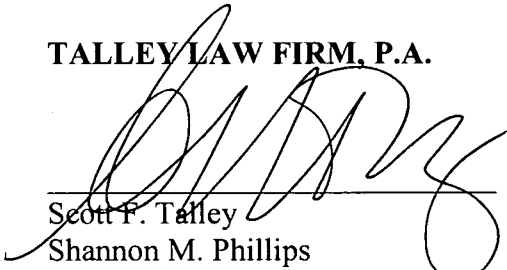
17. There will be no harm to Appellants if this appeal is not expedited. This is not like a case in which expedited appeals are necessary, such as a termination of parental rights or a case involving the fairness of a criminal trial. *See Re Expediting Appeals from Termination of Parental Rights Proceedings*, 623 S.E.2d 661 (S.C. 2005) (stating that

appeals concerning termination of parental rights will be expedited); *Decker, Matter of*, 471 S.E.2d 459, 322 S.C. 212 (S.C. 1995) (granting expedited appeal to ensure fair trial). In this case, there is simply an order to pay back money that Appellant spent out of Respondent's bank account, plus attorney's fees. Appellants have cited no authority supporting their argument this appeal should be expedited.

Accordingly, Respondent respectfully requests the Appellants' Motion to Expedite be denied.

Dated this the 6th day of March, 2015.

TALLEY LAW FIRM, P.A.



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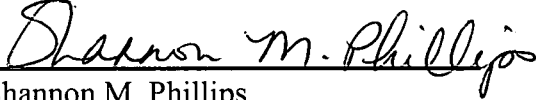
Chivin Sun, Robert Pek, Sakhan Sok, Sambo Khieav,
Sophay Pres, and Tommy Ong, Third Party Defendants.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Return to Motion to Expedite in this action was served upon Defendants, by and through their attorneys, Thomas Belenchia and Camden Shealy, by first class mail sending copies of the same with sufficient postage affixed thereto, and addressed as follows:

Thomas Belenchia
Camden Shealy
P.O. Box 3421
Spartanburg, SC 29304

TALLEY LAW FIRM, P.A.


Shannon M. Phillips

March 6, 2015



Scott F. Talley
Shannon M. Phillips
Wendy N. Griffith

March 6, 2015

VIA U.S. MAIL

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

RECEIVED

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SC Court of Appeals

Re: Spartanburg Buddhist Center of South Carolina, v. Ork and Dong,
Appellate Case No. 2015-000366

Dear Ms. Kitchings:

Enclosed please find the original Return to Motion to Expedite and Return to Motion for Supersedeas, along with Certificates of Service for each.

By copy of this letter to Thomas Belenchia and Camden Shealy, attorneys for Appellants, I am serving them with a copy of same.

If you have any questions or concerns, please let me know.

With kind regards, I remain

Yours very truly,

TALLEY LAW FIRM, P.A.

A handwritten signature in cursive script that reads 'Shannon M. Phillips'.

Shannon M. Phillips

Enclosures

Copy to: Thomas Belenchia, Esquire
Camden Shealy, Esquire