

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
J. Michael Baxley, Circuit Court Judge
Case No. 2005-CP-40-2925

Appellate Case No. 2014-001080

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S.C. SUPREME COURT

T.R., P.R. K.W. and A.M. on behalf of themselves and
others similarly situated; and Protection and Advocacy
for People with Disabilities, Inc.¹, Respondents,

v.

South Carolina Department of Corrections; Agency
Director of the South Carolina Department of
Corrections, Appellants.

**JOINT MOTION AND
MEMORANDUM IN SUPPORT OF DISMISSAL OF SUIT AND VACATION OF
ORDER**

Pursuant to Rules 260 and 261 of the South Carolina Rules of Appellate Procedure, the parties to the above-captioned appeal hereby move for an order dismissing the above action with prejudice and vacating the Order of The Honorable J. Michael Baxley dated January 8, 2014 (the "Order").

Plaintiffs initiated this case as a class action on June 20, 2005, on behalf of seriously mentally ill inmates (the "Class Members") incarcerated at the South Carolina Department of

¹ P.R., K.W. and A.M. are no longer incarcerated at the South Carolina Department of Corrections and have been removed as class representatives with T.R. being the only remaining class representative. Additionally, by Order dated July 11, 2016 William R. Byers was removed as a party.

Corrections (“SCDC”). Plaintiffs’ action did not seek monetary damages, fees or costs, but only declaratory and injunctive relief. Plaintiffs alleged that the SCDC’s mental health program was systemically flawed in violation of Article I, Section 15 of the South Carolina Constitution. Defendants denied Plaintiffs’ allegations. The case was designated as complex and assigned to The Honorable J. Michael Baxley. Following a six-week trial held in 2012, Judge Baxley entered the Order. Defendants filed a timely appeal.

On March 10, 2014, the parties entered into formal mediation, retaining The Honorable William L. Howard as mediator. For over two (2) years the parties have participated in numerous mediation sessions. During this period, at the request of the parties, the South Carolina Supreme Court has stayed the appeal process. On May 31, 2016, the mediation was successfully concluded with the execution of a Settlement Agreement, pending approval of the Court and notice to Class Members.

On January 21, 2016, the parties filed a Joint Motion and Memorandum in Support of Approval of the Settlement Agreement and Notice to Class Members. By Order dated June 15, 2016, this Court remanded the matter to the Honorable Robert E. Hood for consideration of the request for approval of the Settlement Agreement to include a determination as to the sufficiency of the proposed Class Notice. By Order dated September 29, 2016, Judge Hood approved the Settlement Agreement and determined that the Parties’ Class Notice was sufficient.

Rule 260, SCACR, provides that if the parties to an appeal or other proceeding shall sign and file with the clerk of the appellate court an agreement that the proceedings be dismissed, the appellate court may enter an order of dismissal. Section 8 of the Settlement Agreement provides as follows:

The Parties agree that the disposition of the Litigation shall be as follows: Concurrently with final Court approval of this Settlement Agreement, the Plaintiffs shall dismiss the Litigation with prejudice, the Parties shall petition the Court to vacate the Order and the Plaintiffs shall release the SCDC and other affiliated parties from any and all claims, damages, liabilities and remedies in any way related to the Litigation pursuant to the terms of the Release attached as Exhibit H hereto.

Based on the above portion of the Settlement Agreement, the parties request that the Court dismiss this case with prejudice.

Further, the parties hereby request pursuant to Rule 261, SCACR, that the Order be vacated. Rule 261(d) provides that, "in the agreement, the parties may request vacation of opinions, orders, decisions and judgments previously issued in the matter. The agreement must set forth the facts that warrant this extraordinary relief." The Settlement Agreement between the Parties provides as follows:

Pursuant to Appellate Court Rule 261, the Parties stipulate that the Final Order should be vacated. The Final Order makes findings of facts and conclusions of law which the South Carolina Department of Corrections disputes. By entering into the proposed Settlement Agreement and dismissing its Appeals, the South Carolina Department of Corrections will forego appealing these issues. Further, the Final Order requires the South Carolina Department of Corrections to submit a written plan to the Court appointing a monitor to report periodically to the Court. Through the proposed Settlement Agreement, the Parties have agreed upon a Remedial Plan for the operations of the South Carolina Department of Corrections' mental health system and methods of verification of the South Carolina Department of Corrections' compliance with the Remedial Plan. For these reasons, the Parties agree that the Final Order should be vacated.

The Order makes findings of facts and conclusions of law which the Defendants dispute. By entering into the Settlement Agreement and dismissing its appeal, the Defendants will forego appealing these issues. The Order also provides for injunctive relief requiring the Defendants to submit a written plan to the court and monitoring by a court appointed monitor.

The Settlement Agreement replaces that process and, instead, relies upon the Mediator and Implementation Panel to assess and review the implementation process. The injunctive relief as set forth in the Order would be inconsistent with the detailed plan set forth in the Settlement Agreement.

For the reasons presented above, the Parties hereby request this Court order that this case be dismissed, with prejudice with each Party being responsible for their respective fees and costs, and that the Order be vacated.

Respectfully submitted,

For the Defendants-Appellants

RILEY POPE & LANEY, LLC

By: 

Roy F. Laney, Esquire
SC Bar No. 64279
E-Mail: rlaney@rpllawfirm.com
2838 Devine Street (29205)
Post Office Box 11412
Columbia, SC 29211
(803) 799-9993

For the Plaintiffs-Respondents

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Stuart M. Andrews, Jr.
SC Bar No. 000400
E-Mail: stuart.andrews@nelsonmullins.com
Daniel J. Westbrook
SC Bar No. 012939

E-Mail: dan.westbrook@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Columbia, South Carolina

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