

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2012-CP-08-0637

RODNEY LADSON, 262438,)
Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
Respondent,)

ORDER

HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2014 OCT 17 PM 1:45

FILED

Procedural History

This matter comes before the Court by way of an Application for Post Conviction Relief filed on February 9, 2012. Respondent submitted a Return and Motion to Dismiss and Conditional Order of Dismissal on July 9, 2013. Thereafter, the Honorable Roger M. Young signed the Conditional Order of Dismissal, which was filed on July 17, 2013. Applicant, through counsel, received service of the Conditional Order of Dismissal on April 28, 2014. Applicant, without the assistance of counsel, responded to the Return and Motion to Dismiss and proposed Conditional Order of Dismissal on July 19, 2013, and Applicant, through counsel, submitted a response to Conditional Order of Dismissal on May 12, 2014. On June 9, 2014, Applicant, through counsel, received notice of the entry of a Form Four Order by the Honorable Stephanie P. McDonald finding that the Conditional Order of Dismissal is rescinded and the case shall be set for an evidentiary hearing.

On August 1, 2014, Applicant, through counsel, filed a Motion for Discovery. On August 8, 2014, Respondent filed a Return to Motion for Discovery. On September 8, 2014, Applicant appeared in front of the Honorable G. Thomas Cooper, Jr. at the Charleston County Courthouse for a Motion Hearing. Applicant was represented by Tricia A. Blanchette, Esquire. Ashleigh R. Wilson, Assistant Attorney General, was

present, but Rutledge Johnson, Assistant Attorney General, entered his appearance on behalf of the Respondent. At the start of the hearing, Mr. Johnson informed the Court that the case was being called on the State's Motion to Dismiss, to which Applicant's counsel responded that it was her understanding that the State's Motion to Dismiss had been addressed in the Order issued by Judge McDonald and that the case was being called on Applicant's Motion for Discovery. Respondent did not have a packet for the Court to review, so Applicant's counsel provided a copy of the Motion for Discovery, Applicant's Response to Conditional Order of Dismissal, and the Order issued by Judge McDonald. Respondent also provided the Court some of the case documents.

The Honorable G. Thomas Cooper, Jr. determined that he could not hear Applicant's Motion for Discovery until the matter of the State's Motion to Dismiss was properly resolved finding that it "presented a legal issue." Applicant's counsel clarified with the Court that Applicant's Motion for Discovery was not being heard and requested that she have the opportunity to be heard on the Motion at a later date. The Court instructed both parties to submit a Brief and/or proposed Order, from which Applicant's counsel submitted a Brief and from which this Order follows.

Findings

Based upon the argument set forth in the Applicant's Brief, this Court finds that there is not a pending Motion to Dismiss properly before this Court, which must be resolved prior the hearing of Applicant's Motion for Discovery. On July 9, 2013, Respondent submitted a Return and Motion to Dismiss, along with a Conditional Order of Dismissal. Thereafter, the Honorable Roger M. Young signed the Conditional Order of Dismissal, which was filed on July 17, 2013. Applicant, through counsel, received

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service of the Conditional Order of Dismissal on April 28, 2014. Applicant, without the assistance of counsel, responded to the Return and Motion to Dismiss and proposed Conditional Order of Dismissal on July 19, 2013, and Applicant, through counsel, submitted a response to Conditional Order of Dismissal on May 12, 2014. On June 9, 2014, Applicant, through counsel, received notice of the entry of a Form Four Order by the Honorable Stephanie P. McDonald, which held: "The Conditional Order of Dismissal is hereby rescinded; case shall be set for an evidentiary hearing." Respondent did not file a Rule 59, SCRCF, or Rule 60, SCRCF, Motion or an appeal following the issuance of Judge McDonald's Order.

This Court finds that Judge McDonald's Order holding that an evidentiary hearing shall be set is controlling. Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."). Here, Applicant has moved for discovery to properly prepare for the evidentiary hearing that Judge McDonald has ordered be held, and Respondent did not file a motion and/or appeal on her Order.¹ Therefore, it would be improper for this Court to set aside the Order of Judge McDonald for an evidentiary hearing.² Nevertheless, this Court has reviewed the Response to Conditional Order of Dismissal,

¹ At the motion hearing, Applicant's counsel provided this Court documents from the disciplinary action Applicant filed against trial counsel for failure to provide Applicant with his case file. Plea counsel's failure to provide Applicant with his file is a basis for his untimely filing and for the requested discovery.

² In response to the State's argument at the motion hearing that Judge McDonald did not have the authority acting in her capacity as Administrative Judge for Common Pleas to rescind the Conditional Order of Dismissal of Judge Young under Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986), this Court does not agree with this argument since the language contained in the Conditional Order of Dismissal and due to the fact that a Final Order of Dismissal was not issued. Applicant submits that Judge McDonald acted properly in her capacity as Administrative Judge and the State failed to file a timely motion or appeal arguing otherwise.

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and this Court is in agreement with Judge McDonald's finding that an evidentiary hearing shall be held.

IT IS THEREFORE ORDERED:

1. That this Court finds that there is not a pending Motion to Dismiss properly before this Court, which must be resolved prior the hearing of Applicant's Motion for Discovery.
2. That this Court's findings are controlled by the Order issued on June 9, 2014 by the Honorable Stephanie P. McDonald.
3. That a motion hearing shall be set on Applicant's pending Motion for Discovery prior to the scheduling of an evidentiary hearing.

AND, IT IS SO ORDERED this 10TH day of OCTOBER, 2014.

Chandler, South Carolina



Honorable G. Thomas Cooper, Jr.
Circuit Court Judge

STATE OF SOUTH CAROLINA
 COUNTY OF BERKELEY
 IN THE COURT OF COMMON PLEAS
 RODNEY LADSON #262438

FORM 4

JUDGMENT IN A CIVIL CASE
 CASE NO. 2012-CP-08-0637
 STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: The Conditional Order of Dismissal is hereby rescinded; case shall be set for an evidentiary hearing.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, reference in the order:		

2014 JUN - 9 10:00
 COUNTY CLERK
 BERKELEY COUNTY, SC
 LFD

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

Stephanie L. McDonald
 Circuit Court Judge

2163
 Judge Code

06/02/14
 Date

6/9/14
 email

A. Wilson, T. Blanchette
 SCRPC Form 4C (05/2013)

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