

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

FILED
HORRY COUNTY
2016 APR 13 PM 1:55

Deborah A. Frye,

Plaintiff,

vs.

Jackey R. Frye,

Defendant.

MELANIE HUGGINS-WARD
CLERK OF COURT

RECEIVED

IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO. 2015-1135 Appeals
SEP 29 2017

ORDER DISMISSING DEFENDANT'S
RULE TO SHOW CAUSE FOR
FAILURE TO PROSECUTE
PURSUANT TO RULE 41, SCRPC

This matter came before the Court on January 11, 2016 on Plaintiff's Motion to Dismiss for Failure to Prosecute Pursuant to Rule 41, SCRPC and Motion for Attorneys' Fees. For the reasons set forth below, Plaintiff's Motion to Dismiss is granted.

FACTS AND PROCEDURAL HISTORY

1. On May 4, 2011, Plaintiff filed a Summons and Complaint for Separate Support and Maintenance.
2. On June 9, 2011, Judge Timothy H. Pogue signed the Final Order, which incorporated a Separation and Property Settlement Agreement signed by Plaintiff and Defendant.
3. On February 11, 2015, Defendant filed a Petition in Support of Rule to Show Cause in which he alleged that Plaintiff had violated three provisions of the Final Order. A hearing was set for April 22, 2015, before Judge Jan Bromell Holmes.
4. Defendant did not serve a clocked copy or a courtesy copy of the Petition on Plaintiff's Counsel or on Plaintiff on February 11, 2015.
5. On March 26, 2015, Defendant served the Rule to Show Cause upon Plaintiff's Counsel despite having filed it over a month and half prior.

MSU copy

6. On March 27, 2015, Plaintiff's Counsel wrote to Defendant's Counsel and explained why the claims against the Plaintiff were frivolous and should be dismissed.

7. On April 1, 2015, Plaintiff's Counsel requested that the hearing be rescheduled because it conflicted with Plaintiff's week-long business trip to the west coast, which had been on the Plaintiff's schedule for many weeks, and which would cost the Plaintiff a great deal of money to cancel.

8. On April 6, 2015, Plaintiff's Counsel once again requested that the hearing be rescheduled so that the Plaintiff would not suffer the cost of cancelling her long-planned business trip.

9. On April 8, 2015, Defendant's Counsel declined to reschedule the hearing.

10. On April 9, 2015, Plaintiff cancelled her long-planned business trip at great expense in order to attend the April 22, 2015 hearing.

11. On April 21, 2015, Plaintiff filed a Return to Order and Rule to Show Cause, which explained why Defendant's claims were without merit and/or not properly before the Court.

12. On April 22, 2015 a hearing on this matter was held, during which Judge Bromell Holmes determined that Defendant's allegations as to two of the three provisions of the Final Order were not properly before the Court. The Court heard testimony from the Defendant as to the third allegation. Due to a lack of time, the Judge Bromell Holmes continued the hearing for an indefinite time, and instructed Defendant's Counsel to submit an Order of Continuance as well as a Request for Hearing.

13. On July 15, 2015 Plaintiff filed a Motion to Dismiss for Failure to Prosecute Pursuant to Rule 41, SCRCP, along with an Affidavit of Attorneys' Fees in the amount of Fifteen



Thousand Two Hundred and Ninety-Eight and 63/100 (\$15,298.63) and served a copy of the same on Defendant.

14. On December 3, 2015, this Court set a hearing on Plaintiff's Motion to Dismiss for January 11, 2015 and served Notice of the same on Defendant.

15. On an unknown date prior to January 7, 2016, Defendant engaged new Counsel. Defendant's new Counsel advised Plaintiff's Counsel on January 7, 2016 via email that Defendant's new Counsel had obtained an Order of Substitution of Counsel *ex parte*, and without first informing Plaintiff's Counsel.

CONCLUSIONS OF LAW AND FINDINGS

The hearing on Plaintiff's Motion to Dismiss was held before this Court on January 11, 2016. Defendant did not attend.

This matter concerns a dispute between ex-spouses, which resulted in a Rule to Show Cause being filed under the caption of the divorce action between the parties. The Rule to Show Cause was brought against the ex-wife by the ex-husband, who is the Defendant in the divorce proceeding. Because the Defendant brought the Rule to Show Cause, the Defendant has the burden of prosecuting it. McComas v. Ross, 368 S.C. 59, 62 (Ct. App. 2006). Further, there is a limit to the amount of "time, effort, and costs" to the Plaintiff and this Court which the Defendant should be allowed to consume by unnecessarily prolonging this litigation. Georganne Apparel, Inc. v. Todd, 303 S.C. 87, 92 (Ct. App. 1990).

After thorough consideration of the factual findings above, as well as the arguments of Counsel, I find that the Defendant has not met his burden to prosecute his action, and he has passed the limit for consuming the resources of this Court and the Plaintiff. I find that the

A handwritten signature in black ink, appearing to be 'MSA', is located at the bottom right of the page.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO. 2011-DR-26-1135

Deborah A. Frye,)
)
Plaintiff,)

vs.)

Jackey R. Frye,)
)
Defendant.)
_____)

CERTIFICATE OF SERVICE

I, Donna M. Brady, an employee of McNair Law Firm, P.A., certify the foregoing document was served via United States Mail, postage prepaid, and by Electronic Mail, to the Counsel of Record, and/or Pro Se Parties, on this the 13th day of April, 2016, as follows:

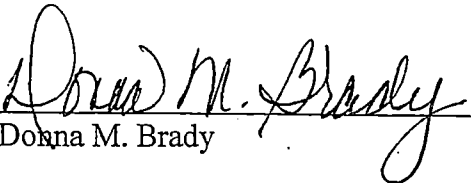
- Order on Plaintiff's Motion to Dismiss for Failure to Prosecute Pursuant to Rule 41, SCRPC; and
- Certificate of Service.

Addressee(s):

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Attorneys for Defendant


Donna M. Brady

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO. 2011-DR-26-1135

Deborah A. Frye,

Plaintiff,

vs.

Jackey R. Frye,

Defendant.

RECEIVED

SEP 25 2017

SC Court of Appeals

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION

This matter came before the Court on Defendant's Motion for Reconsideration pursuant to Rule 59(e), SCRCPC. For the reasons set forth, Defendant's Motion for Reconsideration is denied.

FILED
HARRIS COUNTY
2017 SEP 11 PM 2:47
RENEE M. ELVIS
CLERK OF COURT
HARRIS COUNTY, TEXAS

FACTS AND PROCEDURAL HISTORY

1. On May 4, 2011, Plaintiff filed a Summons and Complaint for Separate Support and Maintenance.
2. On June 9, 2011, Judge Timothy H. Pogue signed the Final Order, which incorporated a Separation and Property Settlement Agreement signed by Plaintiff and Defendant.
3. On February 11, 2015, Defendant filed a Petition in Support of Rule to Show Cause in which he alleged that Plaintiff had violated three provisions of the Final Order. A hearing was set for April 22, 2015, before Judge Jan Bromell Holmes.
4. Defendant did not serve a clocked copy or a courtesy copy of the Petition on Plaintiff's Counsel or on Plaintiff on February 11, 2015.
5. On March 26, 2015, Defendant served the Rule to Show Cause upon Plaintiff's Counsel despite having filed it over a month and half prior.
6. On March 27, 2015, Plaintiff's Counsel wrote to Defendant's Counsel and explained why the claims against the Plaintiff were frivolous and should be dismissed.

copy

MSU

7. On April 1, 2015, Plaintiff's Counsel requested that the hearing be rescheduled because it conflicted with Plaintiff's week-long business trip to the west coast, which had been on the Plaintiff's schedule for many weeks, and which would cost the Plaintiff a great deal of money to cancel.

8. On April 6, 2015, Plaintiff's Counsel once again requested that the hearing be rescheduled so that the Plaintiff would not suffer the cost of cancelling her long-planned business trip.

9. On April 8, 2015, Defendant's Counsel declined to reschedule the hearing.

10. On April 9, 2015, Plaintiff cancelled her long-planned business trip at great expense in order to attend the April 22, 2015 hearing.

11. On April 21, 2015, Plaintiff filed a Return to Order and Rule to Show Cause, which explained why Defendant's claims were without merit and/or not properly before the Court.

12. On April 22, 2015 a hearing on this matter was held, during which Judge Bromell Holmes determined that Defendant's allegations as to two of the three provisions of the Final Order were not properly before the Court. The Court heard testimony from the Defendant as to the third allegation. Due to a lack of time, the Judge Bromell Holmes continued the hearing for an indefinite time, and instructed Defendant's Counsel to submit an Order of Continuance as well as a Request for Hearing.

13. Defendant failed to submit an Order of Continuance or Request another Hearing.

14. On July 15, 2015, Plaintiff filed a Motion to Dismiss for Failure to Prosecute Pursuant to Rule 41, SCRPC and Motion for Attorneys' Fees requesting a fee in the amount of Fifteen Thousand Two Hundred and Ninety-Eight and 63/100 (\$15,298.63). In Plaintiff's Counsel's Motion for Attorneys' Fees, Plaintiff's Counsel provided an Affidavit for Attorneys'

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Fees. Plaintiff's Counsel's Affidavit for Attorneys' Fees stated that Plaintiff's Counsel provided approximately 77.7 hours of legal services to Plaintiff. The legal services included: communications with the client, reviewing documents provided by client, corresponding with opposing counsel by phone, email, and letter, negotiation with Defendant's counsel for dismissal of procedurally defective Rule, phone interviews with witnesses including police officers, generation of Freedom of Information Act ("FOIA") requests, reviewing documents received pursuant to FOIA requests, communications with Defendant's counsel regarding lack of good ground to support Defendant's claims, legal research concerning insufficiency of Defendant's claims, preparation of witness affidavits, drafting of Return to Order and Rule to Show Cause, preparation for April 22, 2015 hearing, representation of Plaintiff at April 22, 2015 hearing, multiple communications with Defendant's counsel to encourage Defendant to either prosecute the action or dismiss it, and drafting a Motion to Dismiss for Failure to Prosecute.

15. On December 3, 2015, this Court set a hearing on Plaintiff's Motion to Dismiss for Failure to Prosecute for January 11, 2015 and served Notice of the same on Defendant.

16. On an unknown date prior to January 7, 2016, Defendant engaged new Counsel. Defendant's new Counsel advised Plaintiff's Counsel on January 7, 2016 via email that Defendant's new Counsel had obtained an Order of Substitution of Counsel *ex parte*.

17. On January 11, 2015, a hearing was held on Plaintiff's Motion to Dismiss for Failure to Prosecute. Defendant failed to appear. Judge Michael S. Holt requested a proposed Order dismissing Defendant's action and awarded attorneys' fees.

18. On April 13, 2016, Judge Michael S. Holt signed an Order dismissing Defendant's action with prejudice and awarded attorneys' fees to Plaintiff in the amount of fifteen-thousand, two hundred ninety-eight dollars and sixty-three cents (\$15,298.63).

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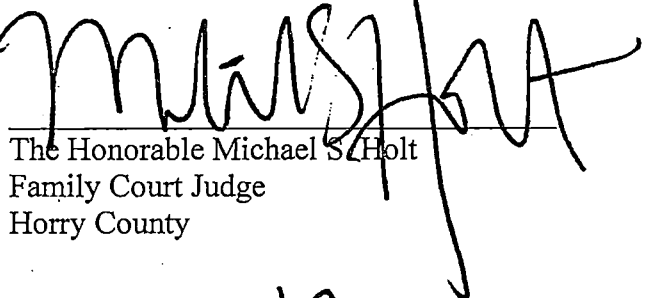
19. On April 29, 2016, Defendant filed a Motion for Reconsideration of Judge Holt's April 13, 2016 Order awarding attorneys' fees to Plaintiff.

CONCLUSIONS OF LAW

After thorough consideration of the factual findings above and the Court's file, I find that Plaintiff's Counsel's attorneys' fees for 77.7 hours of legal services provided to Plaintiff in the amount of fifteen-thousand, two hundred ninety-eight dollars and sixty-three cents (\$15,298.63) were reasonable based upon "the nature, extent, and difficulty of the case; time necessarily devoted to the case; professional standing of counsel; contingency of compensation; the beneficial results obtained; and the legal fees were customary for similar services." *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

IT IS THEREFORE ORDERED that Defendant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.



The Honorable Michael S. Holt
Family Court Judge
Horry County

8-17-17

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

Deborah A. Frye,)
)
Plaintiff,)
)
vs.)
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Jackey R. Frye,)
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Defendant.)
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IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO. 2011-DR-26-1135

CERTIFICATE OF SERVICE

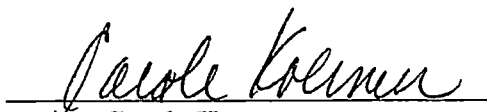
I, Carole Koerner, an employee of McNair Law Firm, P.A., certify the foregoing document was served via United States Mail, postage prepaid, and/or by Electronic Mail, to the Counsel of Record, on this the 1st day of September, 2017 as follows:

- Order Denying Defendant’s Motion for Reconsideration; and
- Certificate of Service.

Addressee(s):

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Attorneys for Defendant



Carole Koerner