STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

Appellate Case No. 2017-001554

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutton Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown, Petitioners,

Of Which Town of Arcadia Lakes is the Appellant/Respondent,

vs.

South Carolina Department of Health and Environmental Control, Respondent, and Roper Pond, LLC, Respondent/Appellant.

REPLY TO RESPONDENT/APPELLANT'S RETURN TO PETITION FOR WRIT OF SUPERSEDEAS

The Town of Arcadia Lakes (the "Town") submits this Reply in support of its Petition for Writ of Supersedeas (the "Petition"), responding to the issues raised in the Return of Respondent Roper Pond, LLC ("Roper Pond").

I. Rule 241(d)(4)(C) Provides That a Party May Seek Supersedeas in This Court When the Administrative Tribunal Fails to Grant Relief

Appellate Court Rule 241(d) provides that "except where extraordinary circumstances make it impracticable, an application for an order . . . for supersedeas must first be made to the . . . administrative law court." SCACR 241(d)(1). Rule 241 then describes what must be contained in the petition, including "a showing that an application for this relief was made to the lower court or

administrative tribunal, and was unjustifiably denied ***or*** that the relief granted failed to afford the relief which the petitioner requested." SCACR 241(d)(4)(C) (emphasis added). Roper Pond's return cites this requirement, but neglects to address the phrase after "or," instead focusing on whether the administrative tribunal unjustifiably denied relief. While the Town asserts that the relief was unjustifiably denied, at base Rule 241 serves the important purpose of allowing the trial court to determine whether to grant a stay in the first instance before brining the issue to this Court. Rule 241 cannot be read, as Roper Pond implies, to preclude a party from seeking supersedeas in this Court simply because the lower court or administrative tribunal explained in writing its reasons for denying relief. Indeed, the phrase following "or" specifically allows for a party to take the next step of seeking relief from this Court after the administrative tribunal failed to provide the relief sought. That is exactly the situation here.

The fact that the administrative tribunal issued a ten-page order denying relief has no import: that order is not on review by this Court and this Court need only note that the sought-for relief was denied, putting the issue of supersedeas squarely before this Court.

II. Fee Award on Appeal is not a "Money Judgment."

Citing to the Woodside case, the Town has explained in its Petition that "[t]he monetary award on appeal here would be automatically stayed if it was coming from any other court." (Petition, p. 5). The Town bases such conclusion on broad, unequivocal language from this Court in Woodside, stating that attorney fee awards do not constitute "money judgements" and that such awards are therefore automatically stayed under Rule 241. See 290 S.C. 366, 378, 350 S.E.2d 407, 414 (Ct. App. 1986). In its Return, Roper Pond attempts to apply an artificial constraint to the Woodside holding, arguing that it applies only in divorce cases, despite the fact that no such

limitation is apparent in the opinion. At the same time, Roper Pond assigns great significance to an incidental statement in the Parker case, that is a far cry from the direct analysis of Rule 241 in Woodside. The Town submits that a plain reading of both cases speaks for itself in terms of which provides legal principles and analysis directly transferable to the case a hand. Any doubt in that regard, however, is totally neutralized by our Supreme Court's echoing of the Woodside principles.

In State v. Cooper, 342 S.C. 389, 536 S.E.2d 870 (2000), the Supreme Court considered the applicability of Rule 241's automatic stay within the context of civil commitment proceedings. In particular, the state had been ordered to pay expert fees that the defendant had incurred in the underlying case, and the issue before the Court was whether such order was automatically stayed under Rule 241 while on appeal. Id. at 399, 536 S.E.2d 876. The Supreme Court noted S.C. Code § 18-9-130, as relied upon by Roper Pond, which provides that a notice of appeal does not act as a stay of a judgment directing the payment of money unless the presiding judge before whom the judgment was obtained grants a stay of execution. Id. The Court concludes, though, that "[t]he term 'judgment' used in [§ 18-9-130] and [Rule 241] connotes a final decision of the court that **addresses the merits of the cause of action** and disposes of the cause as to all." Id. (emphasis added). In contrast, the Court concludes, these "fees **are matters incidental to the case and do not constitute a traditional judgment as contemplated by the statute**." Id. In short, the state did not have to pay the fees while its appeal of those fees was pending, because the Rule 241 automatic stay applied. This is the exact same conclusion, by the exact same logic, reached in Woodside. Roper Pond's attempt to narrowly confine the principles of Woodside have no basis.

The proposition stated in the Town's Petition is beyond dispute under state precedent: the monetary award on appeal in this court would not be due if it was originating from any court. *If* it

is due here, by virtue of the award arising from an administrative tribunal,[1] that result represents a perversion of the intent behind Rule 241's terms, which should be corrected by this Court's issuance of supersedeas.

III. Roper Pond's Arguments on Rule 67 Are Inapplicable.

The arguments advanced by Roper Pond in relation to SCRCP Rule 67, which permits funds to be deposited with a court during the pendency of appeal, are moot, misdirected, or otherwise beyond the scope of this Court's consideration.

Roper Pond first contends that "the Town's arguments on the ALC's ruling on the alternative of depositing funds with the ALC pursuant to Rule 67, SCRCP, are not properly before this Court." (Return, p. 5). The gist of Roper Pond's argument is that because the Town moved to have the ALC amend its Order Denying Motion to Stay, so as to remove reference to Rule 67, any matters relating to Rule 67 cannot be considered by this Court until the ALC decides the Town's motion to amend. (Id.). Momentarily putting aside the flaws in such argument, it has been rendered moot by the ALC's recent decision on the motion to amend. On September 27, 2017, the ALC denied the Town's motion to amend, on the basis that it lacked jurisdiction to consider the

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[1]As explained in the Petition, the Town believes that cases like Woodside and Cooper, as well as the plain language of Rule 241, stand for the proposition that the automatic stay applies here, irrespective of the fact that the order on appeal arises from the ALC. The Court can accomplish the relief requested by the Town either by granting the Petition or by clarifying that the automatic stay is already in place.

motion.[2] (Order attached as Exhibit A). There are no motions relating to Rule 67 pending before the ALC, and the ALC's denial of access to the Rule 67 process, as previously highlighted in the Town's Petition, remains standing as a final decision. Roper Pond's argument that all matters related to Rule 67 "are not properly before this Court" has lost its underlying basis.

Moreover, Roper Pond's treatment of the Town's Rule 67 arguments as if they constitute an appeal of the ALC's decision under that Rule is a significant misconstruction. As made clear in its Petition, the Town has raised Rule 67 in its arguments to this Court only to illustrate that the denial of access to that process heightens the Town's risk in this context: "Without the protection of Rule 67, this Court's consideration of supersedeas takes on a heightened importance." (Petition, p. 9). Even if the ALC was still considering Rule 67, it doesn't follow that any mention or discussion of that Rule is precluded within the context of this Court's supersedeas analysis. Likewise, it doesn't follow that the Town has "to demonstrate that the ALC abused its discretion in denying leave to deposit the funds with the ALC," as Roper Pond contends in its Return. (Return, p. 6). This Court is not sitting in review of the ALC's Rule 67 decision, and invocation of the "abuse of discretion" standard of review is inappropriate. Roper Pond's appellate-style arguments on Rule 67 miss the point entirely and do nothing to counter the arguments related to that Rule that are raised in the Petition.

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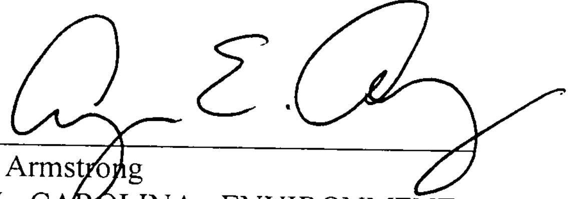
[2]Roper Pond simultaneously argued: (1) to the ALC that it did not have jurisdiction to consider the Town's motion to amend, because of the Petition for supersedeas pending in this Court; and (2) to this Court that it could not consider any arguments related to Rule 67 because of the motion to amend pending in the ALC. In other words, Roper Pond argued to both courts at the same time that consideration of Rule 67 was outside of its purview because of the other court's consideration of that Rule. The ALC adopted this argument.

IV. Conclusion:

For the reasons stated herein, the Town requests an order imposing a supersedeas of matters decided in the Order for Attorneys' Fees and Costs and for Sanctions Pursuant to SCALC Rule 72, or clarifying that the content of such order is subject to the automatic stay in Rule 241.



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Georgetown, South Carolina

October 2, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

Appellate Case No. 2017-001554

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutton Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown, Petitioners,

Of Which Town of Arcadia Lakes is the Appellant/Respondent,

vs.

South Carolina Department of Health and Environmental Control, Respondent, and Roper Pond, LLC, Respondent/Appellant.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served Respondents Roper Pond, LLC and SCDHEC with the Reply to Roper Pond's Return to Petition for Supersedeas by placing copies of same in the U.S. Mail addressed to:

Stephen Hightower, Esquire
DHEC Office of Counsel
2600 Bull Street
Columbia, SC 29201

Joan Hartley, Esq. & Tommy Lavendar, Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201

Amy Armstrong

Georgetown, South Carolina

October 2, 2017

Exhibit A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus and L. Marcus, and Steven Brown, Petitioners,	)	Docket No. 09-ALJ-07-0069-CC
vs.	)	**ORDER**
South Carolina Department of Health and Environmental Control and Roper Pond, LLC Respondents.	)	FILED SEP 27 2017 SC ADMIN LAW COURT

Before the Administrative Law Court (Court or ALC) is a Motion to Alter or Amend (Motion) that was filed on September 8, 2017 by Petitioner Town of Arcadia Lakes. Petitioner's Motion seeks to alter or amend the Court's order dated August 22, 2017, in which this Court denied Petitioner's Motion to Stay an Order For Attorney's Fees And Costs and for Sanctions Pursuant to SCALC Rule 72.

Respondent Roper Pond filed a Response to the Motion on September 25, 2017, in which it argues that this Court may no longer rule on the Motion to Alter or Amend because Petitioner has filed a Petition for Writ of Supersedeas in the South Carolina Court of Appeals.[1]

SCALC Rule 29(D)(1) states the following:

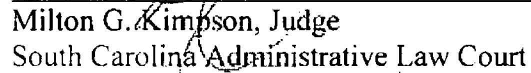
> **Motion for Reconsideration**. Any party may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRCP, as follows:
>
> (1) Within ten (10) days after notice of the order concluding the matter before the administrative law judge, a party may move for reconsideration of the decision, *provided that a notice of*

[1] The South Carolina Court of Appeals on-line records indicate that Petitioner Town of Arcadia Lakes filed its Petition for Writ of Supersedeas (Petition) on September 12, 2017.

appeal from the decision has not been filed. The opposing party may file a response to the motion within ten (10) days of the filing of the motion. (Emphasis added).

Pursuant to SCALC Rule 29(D)(1), this Court finds that by filing a Petition for Writ of Supersedeas in the Court of Appeals, Petitioner has appealed the August 22, 2017 Order Denying Motion to Stay and has deprived this Court of jurisdiction to rule on Petitioner's Motion to Alter or Amend.[2]

AND IT IS SO ORDERED.



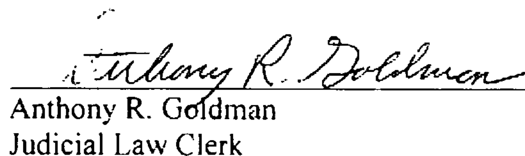
Milton G. Kimpson, Judge
South Carolina Administrative Law Court

September 27, 2017
Columbia, S.C.

[2] See SCACR Rule 241(d)(4)(c) (the Petition [Supersedeas] must contain " a showing that an application for this relief was made to the lower court or administrative tribunal, and was unjustifiably denied....")

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



September 27, 2017
Columbia, S.C.

Anthony R. Goldman
Judicial Law Clerk

South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

a 501c3
non-profit organization

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October 2, 2017

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OCT 04 2017

SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk, S. C. Court of Appeals
P. O. Box 11629
Columbia, SC 29211

RE: Town of Arcadia Lakes, et al. v. Roper Pond, LLC, et al.
Appellate Case No. 2017-001554

Dear Ms. Kitchings:

Enclosed for filing, please find the original and seven (7) copies of the Town of Arcadia Lakes' Reply to Roper Pond, LLC's Return to the Petition for Supersedeas, along with my certificate of service.

Please return a clocked-in copy in the enclosed, postage-paid envelop. Thank you for your assistance.

Yours very truly,

Amy Armstrong

cc: Stephen Hightower, Esq.
Joan Hartley, Esq.
Tommy Lavender, Esq.