

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

FILED
HORRY COUNTY

2016 APR 13 PM 1:55

MELANIE HUGGINS-WARD
CLERK OF COURT

IN THE FAMILY COURT
FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO. 2011-DR-26-1135

Deborah A. Frye,

Plaintiff,

vs.

Jackey R. Frye,

Defendant.

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OCT 04 2017

SC Court of Appeals

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.

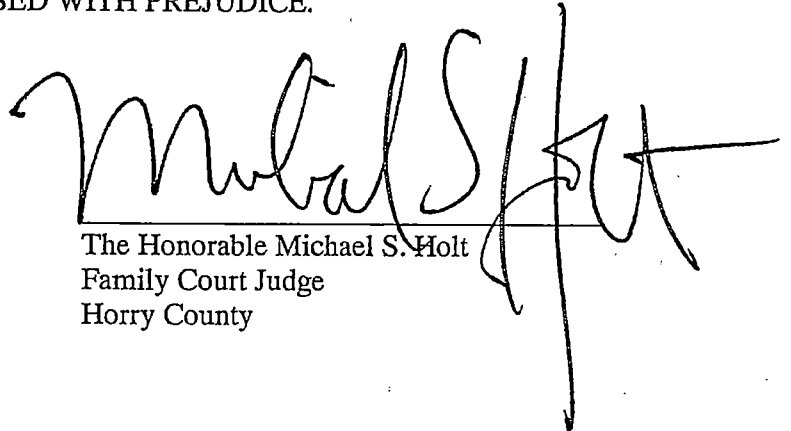
Defendant has been given abundant opportunity to litigate his action, and has failed to do so. See Georganne Apparel, 303 S.C. at 92.

As a result of Defendant's failure to prosecute his action, under Rule 41, SCRCP, this Court may and hereby does dismiss the Defendant's action with prejudice. Georganne Apparel, 303 S.C. at 92. Further, because two of Defendant's claims were frivolous, not properly before the Court, and not prosecuted by Defendant, this Court may and hereby does award attorneys' fees and costs to Plaintiff in the amount of Fifteen Thousand Two Hundred and Ninety-Eight and 63/100 (\$15,298.63).

IT IS THEREFORE ORDER that:

- A. Plaintiff's Motion to Dismiss is Granted;
- B. This action is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.



The Honorable Michael S. Holt
Family Court Judge
Horry County

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/or by Electronic Mail, to the Counsel of Record, and/or Pro Se Parties, on this the 13th day of March, 2016, as follows:

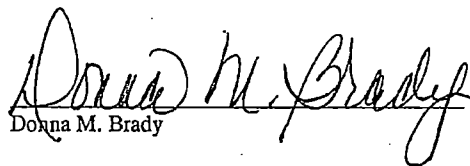
- Letter to Judge Michael S. Holt;
- Proposed Order on Plaintiff's Motion to Dismiss for Failure to Prosecute Pursuant to Rule 41, SCRPC; and
- Certificate of Service.

Addressee(s):

Robert Maring, Esq.
Laura M. Moyer, Esq.
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Attorneys for Defendant


Donna M. Brady

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MELANIE HOGGINS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

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Plaintiff,)
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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:

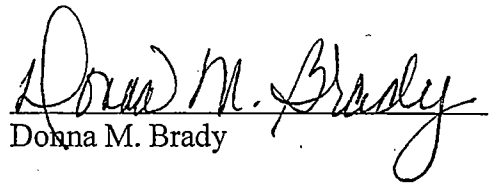
- Order on Plaintiff's Motion to Dismiss for Failure to Prosecute Pursuant to Rule 41, SCRPC; and
- Certificate of Service.

Addressee(s):

Robert Maring, Esq.
Laura M. Moyer, Esq.
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Attorneys for Defendant


Donna M. Brady

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SC Court of Appeals

October 2, 2017

V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

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SC Court of Appeals

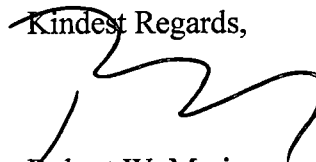
Re: Deborah A. Frye vs. Jackey R. Frye
Appellate Case No: 2017-001894

Dear Ms. Allen:

Pursuant to your letter of September 29, 2017, please find enclosed herewith the complete copy of the Order dated April 13, 2016, which includes the missing pages 4 and 5.

With kindest regards, I am

Kindest Regards,



Robert W. Maring
Attorney at Law

Enclosures

CC: Mr. Jackey R. Frye
Henrietta U. Golding, Esquire



**MARING &
MOYER, LLC**
ATTORNEYS AT LAW

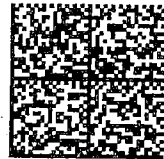
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