

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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OCT 27 2017

APPEAL FROM THE ADMINISTRATIVE LAW COURT SC Court of Appeals
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 IN SUPPORT OF MOTION FOR
CLARIFICATION OF AUTOMATIC STAY APPLICABILITY**

The Town submits this Reply in support of its Motion seeking clarification that the matters on appeal in this case are automatically stayed under Rule 241 of the South Carolina Appellate Court Rules. The Town's response to Roper Pond's arguments in opposition to that Motion are as follows:

This Motion is Necessary and Appropriate.

Roper Pond first argues that the Town's Motion should be denied because this Court has already ruled on the applicability of the automatic stay by denying supersedeas. This argument ignores the posture of the issues presented to the Court.

As stated in Roper Pond's Return, it is true that the Town petitioned for supersedeas with

this Court and that Judge McDonald denied that petition. It is also true that the Town has now sought review of that denial by the full court, as is permitted under Rule 401(d)(7). However, neither the Town's original petition, denied by Judge McDonald, nor the present petition for review of that denial, provide a vehicle whereby the Court could order that supersedeas is not necessary because Rule 241's automatic stay applies. Rather, the premise underlying both of those filings is that supersedeas is necessary because the automatic stay does not apply. This Motion is necessary to properly raise the issue of whether that premise is correct.

Rule 241(c) provides that "[a]fter service of notice of appeal ... any party may move for an **order imposing a supersedeas** of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal." (emphasis added). Consequently, when the Town petitioned for supersedeas under Rule 241, the extent of relief it could request (and the extent of relief the Court could grant) was "for an order imposing a supersedeas." The only issue properly presented to the Court in the Town's petition was whether supersedeas should be ordered, and the only possible resolution of that issue was a grant or denial of supersedeas. The issue of whether supersedeas is even necessary has never been before the Court, and it would have been improper for the Court to rule on that issue in the context of a petition for supersedeas, even if it had occurred to a member of the Court to consider the question.

The Town's objective is to stay its obligation to pay \$405,000 in fees and sanctions until such time as this Court considers the dual appeals of that award. That objective can be accomplished through alternative relief in the form of an order of supersedeas or an order that the automatic stay applies. The Town's petition for supersedeas is the proper mechanism for accomplishing the former, and this Motion is the proper mechanism for accomplishing the latter.

Roper Pond's Analysis of "Judgment" Inverts the Weight and Breadth of Relevant Holdings.

While legal principles are necessarily laid down within the factual context of a specific case, it does not always follow that the principles are bound to that context. Roper Pond ignores this truism in attempting to apply artificial constraints to the broad legal principle stated in Woodside and Cooper. Those cases resoundingly establish that fee/sanction awards are incidental to a judgment on the merits and are therefore automatically stayed pending appeal. That clear precedent is not changed by a passing statement in the Parker case, to which Roper Pond attempts to assign ultimate significance.

Roper Pond's attempt to distinguish Cooper is especially unavailing. Roper Pond acknowledges that the Supreme Court in that case contrasts "judgment," which "connotes a final decision of the court that **addresses the merits of the cause of action** and disposes of the cause as to all," and fees, which "are **matters incidental to the case and do not constitute a traditional judgment** as contemplated by the statute." See Return, p. 4; State v. Cooper; 342 S.C. 389, 399, 536 S.E.2d 870, 876 (2000) (emphasis added). Yet, Roper Pond asserts without explanation that, while the expert fees ordered in Cooper were not a judgment, the attorneys' fees ordered in this case somehow constitute the final decision on the merits of the cause of action.¹ See Return, p. 4. On the contrary, the merits in this case are of course related to the stormwater authorizations that were challenged by the petitioners prior to these fee proceedings. The judgment on those merits was finalized prior to the ALC's consideration of fees and sanctions. Roper Pond's arguments to the contrary are illogical in light of the post-judgment nature of these proceedings. Roper Pond

¹Roper Pond's exact language is as follows: the "orders on appeal in this case fully addresses the merits of the cause of action—i.e., Roper Pond's petition for attorney's fees and sanctions."

does not distinguish Cooper in any way, and the holding of Cooper establishes decisive precedent that fee awards do not fall under the “money judgments” exception to Rule 241's automatic stay.

Woodside states the exact same legal principle as Cooper, and the Town therefore will not belabor the shortcomings in Roper Pond’s attempt to minimize Woodside on the basis that it occurred in a domestic action. It is self evident, though, that the decisive quote from Woodside—that “in this state an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal”—is stating a ubiquitous principle of law, not some peculiarity of the domestic law context. See Woodside v. Woodside, 290 S.C. 366, 378, 350 S.E.2d 407, 414 (Ct. App. 1986). The manner in which that ubiquitous principle of law interacts or intersects with procedures or rules specific to domestic actions is irrelevant, and Roper Pond is correct to that extent. However, the principle of law itself, which is also stated and applied in the entirely different context of Cooper, exists wholly apart from the divorce proceedings in Woodside, and the best Roper Pond can do is attempt to confuse that point.²

Finally, contrary to the framing Roper Pond attempts to provide, Parker v. Shecut is not a case about whether fee awards constitute “judgments.” It is also not a case about whether fee awards are automatically stayed on appeal. In these ways, Parker is decidedly different than Cooper and Woodside and is decidedly less relevant to the issues before the court. The question in Parker was whether post-judgment interest accrued on an attorney’s fee award. 359 S.C. 143, 153,

²Roper Pond’s reference to amendments in the family court jurisdictional statute subsequent to Woodside actually provides strong support for the Town’s position here. (See Return, pp. 3-4) The General Assembly amended the family court statute to make clear that, within the particular context of domestic actions, an award of fees and costs must not be stayed by appeal. (Id.). This amendment, which is very much context specific, works to overcome the general rule as to the automatic stay of fee awards. However, the fact that the General Assembly has not taken similar action in relation to other types of cases, including this administrative case, underscores the continuing strength of the ubiquitous principle stated in Woodside.

597 S.E.2d 793, 799 (2004) (“Anne argues that the master erred in awarding post-judgment interest on Win’s attorney’s fees.”). More particularly, the issue was whether an attorney’s fee award fell within the statutory decree that “[a]ll **money decrees and judgments** of court enrolled or entered shall draw interest according to law.” *Id.*; S.C.Code Ann. § 34-31-20(B) (emphasis added). In holding that a fee award did fit that language, the Supreme Court stated incidentally that “[a]n award of attorney’s fees may be considered part of a monetary judgment and draw interest accordingly.” 359 S.C. at 153, 597 S.E.2d at 799. In context, such statement is clearly meant to convey only that fee awards accrue interest under this particular statute, not that fee awards are judgments for all purposes under the law. Even the most tortured reading of this statement could not construe it as a reversal of the Supreme Court’s unequivocal holding in *Cooper*, within the particular context of Rule 241’s automatic stay.

Roper Pond’s Analysis of the Administrative Tribunal Exception Misses the Point.

As discussed in the Town’s Motion, an exception to Rule 241’s automatic stay applies to “[a]ppeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2) and § 1-23-600 (G)(5).” Both § 1-23-380(A)(2) and § 1-23-600(G)(5) relate only to appeals from the ALC’s “final decision **in a contested case.**” (emphasis added). However, in arguing this issue, Roper Pond ignores the critical language, treating those sections as if they apply to appeals from any final decision of the ALC. (*See*, Return, pp. 5-6).³ The Town submits that such distinction is

³For example, Roper Pond’s characterization is as follows: “Section 1-23-600(H)(5) provides that final decisions of the ALC are not stayed ‘except by order of the Administrative Law Court or the court of appeals.’” (Return, p. 5). However, Roper Pond manipulates the quote in order to exclude the critical language. Section 600(H)(5) actually says: “A **final decision** issued by the Administrative Law Court **in a contested case** may not be stayed except by order of the Administrative Law Court or the court of appeals.” (emphasis added).

critical.

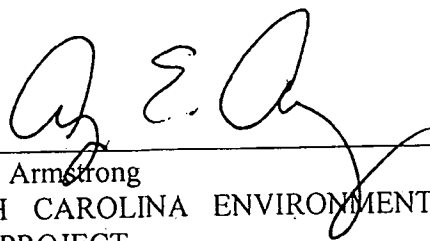
An ALC order awarding post-judgment fees and sanctions, written years after the ALC issued its "Final Order and Decision" in the contested case challenge to stormwater authorizations, and paying Roper Pond for proceedings before the Court of Appeals and Supreme Court, can hardly be said to constitute a "final decision in a contested case." Certainly the ALC's orders on appeal here express final decisions, but those post-judgment/post-appeal decisions do not make up the ALC's resolution of a contested case. If Rule 241, and by extension sections 380(A)(2) and 600(G)(5), had intended that appeals from all final decisions of the ALC be excepted from the automatic stay rule, such language was within easy grasp. As it stands, the administrative tribunal exception is not written so broadly as to encompass a post-judgment award of attorneys' fees and sanctions, just because that decision originates in the ALC.

The ALC's decision to affirm, deny, or modify the permitting or licensing decision at issue in a contested case challenge constitutes the "final decision in a contested case." Nearly every appeal that originates from the ALC will be an appeal of such a decision, and the ALC's permitting/licensing decisions are given immediate affect through the administrative tribunal exception. Under the peculiar circumstances here, though, there is no permitting or licensing decision at issue in this appeal from the ALC, and no "final decision in a contested case," and there is no reason in law or logic for the ALC's orders on fees and sanctions to be treated differently than similar orders from other courts.

Conclusion:

The Town has provided sound arguments for this Court to declare that the Town's obligation to pay \$405,283.84 in fees and sanctions is automatically stayed pending resolution of

this appeal, and Roper Pond's Return does little to offset those arguments.



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Georgetown, South Carolina

October 27, 2017

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SC Court of Appeals

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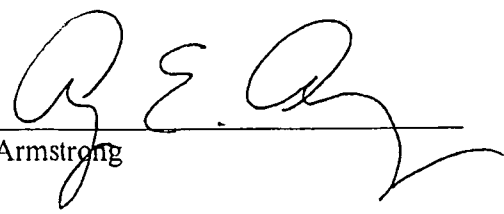
South Carolina Department of Health and Environmental Control, Respondent, and Roper Pond, LLC, Respondent/Appellant.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served Roper Pond, LLC and SCDHEC with the Town of Arcadia Lakes' Reply in Support of Petition for Supersedeas and Reply in Support of Motion for Clarification 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.
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Columbia, SC 29201



Amy Armstrong

Georgetown, South Carolina

October 27, 2017

Greene, Diane

From: Kitchings, Jenny
Sent: Monday, October 30, 2017 8:35 AM
To: Greene, Diane
Cc: Carter, Elizabeth A.; Howard, Patricia; Crater, Kate
Subject: FW: Appellate Case No. 2017-001554
Attachments: Replies to Supersedeas and Clarification Motions.pdf

-----Original Message-----

From: Amy Armstrong [mailto:amy@scelp.org]
Sent: Friday, October 27, 2017 4:29 PM
To: Kitchings, Jenny <jkitchings@sccourts.org>
Cc: J Hartley <jhartley@nexsenpruet.com>; Tommy Lavender <TLavender@nexsenpruet.com>; Stephen Hightower <hightosp@dhec.sc.gov>; Michael Corley <michael@scelp.org>; Terry Richardson <trichardson@rpwb.com>; Janet Delaney <janet@scelp.org>
Subject: Appellate Case No. 2017-001554

Dear Ms. Kitchings,

I am attaching electronic copies of the Town of Arcadia Lakes' replies to the Petition for Supersedeas Review and Motion for Clarification in the above-referenced matter.

Thank you,
Amy

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