

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Appeal from Florence County
Court of Common Pleas

JAN 28 2019

D. Craig Brown, Circuit Court Judge

SC Court of Appeals

Appellate Case Number 2018-001620

Sally K. Favaloro, Appellant,

v.

Robert Colones, Ronald Boring, Marie Segars, Debbie Locklair, Shannon Carr, Michael Rose, and McLeod Regional Medical Center, Respondents.

APPELLANT'S PETITION FOR REHEARING AND MEMORANDUM IN SUPPORT

A. Points Overlooked Or Misapprehended By The Court.

1. Regarding the Court's January 15, 2019 order, and following Rule 221(a), Appellant states with particularity the points overlooked or misapprehended by the Court as follows:

2. The Court did not overlook: the fact that Appellant filed a document titled "First Amended Complaint"; and the fact that Appellant served a notice of appeal from the June 26 order; and the fact that Appellant served a notice of appeal from the July 30 order.

3. Otherwise, the following points have been overlooked or misapprehended by the Court: the fact that the filed document titled "First Amended Complaint" was a first amended complaint filed upon and following SCRPC, Rule 15(a); the fact that the notice of appeal from the June 26 order was timely; the fact that there is no motion to dismiss challenging the

timeliness of the notice of appeal from the June 26 order; the fact that the notice of appeal from the July 30 order was timely; the fact that there is no motion to dismiss challenging the timeliness of the notice of appeal from the July 30 order; the fact that the June 26 and July 30 orders were the exact opposite of the May 7 order; every one of the Court's findings of fact, findings of law, and conclusions, which are further stated below; the fact that Appellant filed a timely Return opposing Respondents' Motion to Dismiss; every fact, law, rule, argument, conclusion, paragraph, sentence, and word of Appellant's Return; and the fact that Respondent did not oppose or challenge any fact, law, rule, argument, conclusion, paragraph, sentence, or word, of Appellant's Return.

B. The South Carolina Rules Of Civil Procedure.

4. On or before January 15, 2019, the Court looked at South Carolina Rules of Civil Procedure.

5. In Rule 1, the Court found, as a matter of law, that the South Carolina Rules of Civil Procedure govern the procedure in all South Carolina courts in all suits of a civil nature, and they shall be construed to secure the just, speedy, and inexpensive determination of every action. In Rule 1, the Court found, as a matter of law, that if a Rule of Civil Procedure and a judicial order or decision provide contradictory procedures, then it is the Rule of Civil Procedure, and not the order, that governs the procedure.

6. In Rule 12, the Court found, as a matter of law, that: under Rule 12(b)(6) a judge is not allowed to take any action whatsoever (except that in one circumstance the judge is required to stop treating a motion under Rule 12(b)(6) and start treating it under Rule 56); and under Rule 12(b), a judge is not allowed to dismiss anything -- "with prejudice", or without prejudice, or

otherwise; and under Rule 12, a judge is not allowed to do anything at all "with prejudice"; and a complaint, original or otherwise, cannot be dismissed "with prejudice" in any circumstance.

7. In Rule 15(a), the Court found, as a matter of law, that so long as defendant has not filed an answer thirty days earlier, plaintiff has the right to file a First Amended Complaint -- even if a prior order claims to have dismissed the Original Complaint "with prejudice". If the Court read *Schreiber Dist. Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393 (9th Cir. 1986), then the Court found, as a matter of law, that Rule 15(a) prevents, or renders void and of no legal effect, any ^{Original}~~First Amended~~ Complaint dismissal claiming to be made "with prejudice".

8. We know that these are the Court's objective observable and verifiable findings of law because anyone who actually looks at these Rules, and or without reading the *Shreiber* case, makes the same objective observable and verifiable findings of law.

C. The Orders Of May 7 and June 26 and July 30.

9. On or before January 15, 2019, the Court read or reviewed: the South Carolina Appellate Court Rules; and the orders of May 7 and June 26 and July 30.

10. In Rule 201, the Court found, as a matter of law, that a party aggrieved by an order, judgment, or decision may appeal, and the appeal may be taken from any final judgment, appealable order, or decision.

11. In the June 26 judgment and order and decision, the Court found, as a matter of fact, that: (a) the June 26 order, and only the June 26 order, struck from the record Appellant's entire First Amended Complaint; and (b) Appellant was aggrieved by the June 26 order. Therefore, the Court concluded that appeal may be taken by Appellant from the June 26 order.

12. In the July 30 judgment and order and decision, the Court found, as a matter of fact, that: (a) the July 30 order, and only the July 30 order, denied Appellant's Rule 59 motion; and (b) Appellant was aggrieved by the July 30 order. Therefore, the Court concluded that appeal may be taken by Appellant from the July 30 order.

13. We know that these are the Court's objective observable and verifiable findings of law, findings of fact, and conclusions because anyone who actually looks, at these Rules and these orders, makes the same objective observable and verifiable findings of law, findings of fact, and conclusions.

D. The South Carolina Appellate Court Rules.

14. On or before January 15, 2019, the Court read: the South Carolina Appellate Court Rules; the August 28, 2018 Notice of Appeal; and the September 18, 2018 Motion to Dismiss.

15. In the Rules, the Court found, as a matter of law, that the Rules do not allow a Court to grant a motion that does not exist.

16. In the Notice, the Court found, as a matter of fact, that: (a) there is a timely Notice of Appeal regarding the order of June 26; and (b) there is a timely Notice of Appeal regarding the order of July 30.

17. In the Motion, the Court found, as a matter of fact, that: (a) there is no motion or claim or suggestion that the Notice of Appeal was untimely regarding the order of June 26; and (b) there is no motion or claim or suggestion that the Notice of Appeal was untimely regarding the order of July 30; and (c) those motions simply do not exist.

18. Therefore, the Court concluded that the Rules do not allow the Court to grant the motions, which do not exist, to dismiss the appeal of the orders of June 26 and July 30.

Furthermore, the Court concluded that the Rules do not allow the Court to grant any motions, even if they did exist, to dismiss the appeal of the orders of June 26 and July 30, because: (a) regarding the order ~~of~~^{of} June 26, the Notice of Appeal is timely; and (b) regarding the order of July 30, the Notice of Appeal is timely.

19. We know that these are the Court's objective observable and verifiable findings of law, findings of fact, and conclusions because anyone who actually looks, at these Rules and the Notice and the Motion, makes the same objective observable and verifiable findings of law, findings of fact, and conclusions.

E. Appellant's Compliance With The South Carolina Appellate Court Rules.

20. On or before January 15, 2019, the Court read or reviewed: the South Carolina Appellate Court Rules; and the record in this case. In Rule 260(a), the Court found, as a matter of law, that if it appears that Appellant has failed to comply with these Rules, the clerk shall issue an order of dismissal. In the record in this case, the Court found, as a matter of fact, that the clerk did not issue an order of dismissal. Therefore, the Court concluded that it does not appear that Appellant has failed to comply with these Rules. Instead, it appears that Appellant has complied with the Rules. We know that these are the Court's objective observable and verifiable findings of law, findings of fact, and conclusions because anyone who actually looks, at these Rules and the record in this case, makes the same objective observable and verifiable findings of law, findings of fact, and conclusions.

F. The June 26 And The July 30 Orders Were The Exact Opposite Of The May 7 Order.

21. On or before January 15, 2019, the Court reviewed the orders of May 7, June 26, and July 30. In those orders, the Court found, as matters of fact, that:

(a) The Original Complaint was not dismissed, except by the May 7 order. The May 7 order, and only the May 7 order, dismissed the Original Complaint. 100% of the words of the May 7 order dismissed the Original Complaint. 0% of the words of the May 7 order denied or dismissed or struck a document other than the Original Complaint.

(b) The orders of June 26 and July 30 did not merely reiterate the order of May 7. Instead, what the June 26 and July 30 orders did was the exact opposite of what the May 7 order did.

(c) The First Amended Complaint was not stricken, except by the June 26 order. The June 26 order, and only the June 26 order, struck the First Amended Complaint. 100% of the words of the June 26 order struck the First Amended Complaint -- but 0% of the May 7 order did so. 0% of the words of the June 26 order denied or dismissed or struck a document other than the First Amended Complaint -- but 100% of the May 7 order did so. In this way, what the June 26 order did was the exact opposite of what the May 7 order did.

(d) The Rule 59 motion was not denied, except by the July 30 order. The July 30 order, and only the July 30 order, denied the Rule 59 motion. 100% of the words of the July 30 order denied the Rule 59 motion -- but 0% of the May 7 order did so. 0% of the words of the July 30 order denied or dismissed or struck a document other than the Rule 59 motion -- but 100% of the May 7 order did so. In this way, what the July 30 order did was the exact opposite of what the May 7 order did.

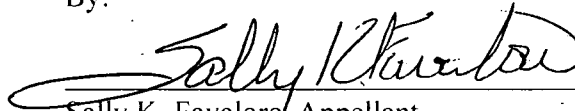
22. We know that these are the Court's objective observable and verifiable findings of fact because anyone who actually looks at those orders makes the same objective observable and verifiable findings of fact.

G. Petition For Rehearing Conclusion.

23. The Court's January 15, 2019 order overlooked or misapprehended the Court's objective observable and verifiable findings of law, findings of fact, and conclusions. That result continued the obvious and troubling failure in this case to achieve the mandate of Rule 1: Secure the just, speedy, and inexpensive determination of the uncontested claims in Appellant's fully law-abiding, but inexplicably wrongfully stricken, First Amended Complaint. Applying the Court's findings and conclusions compels denial of Respondents' Motion to Dismiss. Appellant requests that the Court now apply those findings and conclusions, set aside the January 15 order, deny the Motion to Dismiss, and finally begin achieving the mandate of Rule 1 in this case.

Date: January 26, 2019

By:



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H. Service and Filing. I certify that on January 26, 2019, this document is being:

(a) served, by regular mail, on counsel for Respondents, Michael M. Shetterly, of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 300 North Main Street, Suite 500, Greenville SC 29601; and (b) filed, under original signature, along with six copies and a \$50 check for the Petition for Rehearing fee, by regular mail, with The South Carolina Court of Appeals, 1220 Senate Street, Columbia SC 29201.

By:



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