The Supreme Court of South Carolina

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February 22, 2019

The Honorable Cheryl L. Graham
Clerk of Court, Dorchester County
5200 E Jim Bilton Blvd
St George SC 29477-8020

REMITTITUR

Re: Innovative Waste v. Crest Energy
Lower Court Case No. 2012-CP-18-01227
Appellate Case No. 2018-001528

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc:
David B. Marvel, Esquire
William Michael Gruenloh, Esquire
Patrick Aulton Chisum, Esquire
Brian Ross Holmes, Esquire
Frederick John Jekel, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Innovative Waste Management Inc., Crest Energy Partners LP, Edward H. Girardeau, Plaintiffs,

Of Whom Innovative Waste Management, Inc. is the Appellant,

v.

Crest Energy Partners GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants,

Of Whom Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products LP, Henry Wuertz, and Edward H. Girardeau are the Respondents.

Appellate Case No. 2015-002024

Appeal From Dorchester County
Maité Murphy, Circuit Court Judge

Opinion No. 5561
Submitted December 5, 2017 – Filed May 23, 2018

REVERSED AND REMANDED

Frederick John Jekel, of Jekel Law, LLC, of Columbia, Patrick Aulton Chisum and William Michael Gruenloh, both of Gruenloh Law Firm, of Charleston, and Brian Ross Holmes, of Green Law Firm, LLC, of Columbia, all for Appellant.

David B. Marvel, of Charleston for Respondents.

HILL, J.: After mediation, Innovative Waste Management (IWM) and Respondents signed an agreement promising to settle their claims and dismiss their lawsuit in exchange for Respondents paying IWM $450,000.00 within 30 days. The agreement further stated the parties "hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice" once payment was received.

A few days later, Respondents' counsel emailed the circuit court's law clerk and copied an employee at the Dorchester County clerk of court, advising of the settlement and noting "we will file a stipulation of dismissal once the settlement is consummated." Less than a week later, the clerk of court generated and filed a Form 4 dismissal order, which reflected: "It is Ordered and Adjudged: ☒See attached order, (formal order to follow)", and "This order ☒ends . . . the case." The Form 4, entitled "Judgment in a Civil Case," was signed by the clerk of court, not a circuit judge. No order was attached, but the Form 4 was accompanied by the mediator's "Proof of ADR" form, which indicated: "As a result of the ADR, this case should be considered . . . ☒Fully Settled . . . ☒Voluntary Dismissal to be filed by [counsel for Respondents]."

After Respondents failed to meet the payment deadline, IWM's counsel contacted the clerk of court to restore the case to the active roster, only to learn the lawsuit had been dismissed. IWM then filed a Rule 60(b), SCRCP, motion to vacate the settlement and restore the case to the active docket, which the trial court denied after hearing. After the trial court denied its motion to alter or amend, IWM filed this appeal.

I.

Rule 60(b)(4), SCRCP, provides a court may, "upon such terms as are just," relieve a party from a void judgment or order. "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." *Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray*, 419 S.C. 605, 617, 799 S.E.2d 310, 316 (Ct. App. 2017) (quoting *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002)). Void judgments are defined as those from courts that lacked personal or subject matter jurisdiction, or failed to provide due process. *Id.* at 617–18, 799 S.E.2d at 316.

A void judgment is far different from one merely "voidable." *Thomas & Howard Co., Inc. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). A voidable judgment is nothing more than one made in error by a court with jurisdiction, as our facts can show.

Given the stage of IWM's case, it could have been voluntarily dismissed only by a stipulation of dismissal signed by all parties. Rule 41(a)(1), SCRCP. Consequently, even if, after notice and hearing, a circuit judge had signed the Form 4 purportedly ending the case pursuant to Rule 41(a), it would have been error. But it would have been an error fixable by the trial court on reconsideration, or by this court on appeal: the error not being one of jurisdiction, the judgment would have been voidable, not void. *See Thomas & Howard Co.*, 318 S.C. at 291, 457 S.E.2d at 343 ("Irregularities which do not involve jurisdiction do not render a judgment void."); *Piana v. Piana*, 239 S.C. 367, 372, 123 S.E.2d 297, 299 (1961) ("There is a wide difference between a want of jurisdiction in which case the court has no power to adjudicate at all, and a mistake in the exercise of undoubted jurisdiction in which case the action of the trial court is not void although it may be subject to direct attack . . . ." (citation omitted)). But the Form 4 ending IWM's case was signed without notice or hearing and by the clerk of court, who had no authority to do so. The tasks of the clerk of court are ministerial, always subject to judicial control and the rules of court. *See* S.C. Code Ann. § 14-7-220 (2017); Rules 58 and 77(c), SCRCP. A clerk of court may only sign and enter judgment without court direction and approval when the judgment merely confirms a jury's general verdict, or upon the court's decision "that a party shall recover only a sum certain or costs or that all relief shall be denied . . . ." Rule 58(a)(1), SCRCP.

Lyles v. Bolles, 8 S.C. 258 (1876) endorsed the following language: "A sentence professing on its face to be the sentence of a judicial tribunal, if rendered by a self-constituted body, or a body not empowered by its government to take cognizance of the subject it had decided, could have no legal effect whatever." *Id.* at 262 (quoting *Rose v. Himely,* 8 U.S. 241, 268–69 (1808) (Marshall, C.J.)). Both *Lyles* and *Rose* used the traditional term of art, *coram non judice,* "'before a person not a judge' —meaning, in effect, that the proceeding in question was not a *judicial* proceeding because lawful judicial authority was not present, and could therefore not yield a *judgment.*" *Burnham v. Superior Court of California, Cty. of Marin*, 495 U.S. 604, 609 (1990).

The record discloses no action of the court authorizing the Form 4 dismissal, much less after notice and hearing, as due process required. It is therefore void, and "is, in legal effect, nothing." *Turner v. Malone*, 24 S.C. 398, 401 (1886). "All acts performed under it, and all claims flowing out of it, are void." *Id.*; *see also Burke*

v. C. I. R., 301 F.2d 903 (1st Cir. 1962) ("[C]ourts render judgments; clerks only enter them on the court records. What is determinative therefore is the action of the court, not that of the clerk . . . ."); *Downing v. O'Brien,* 325 A.2d 526, 528 (Me. 1974) *overruled on other grounds by Architectural Woodcraft Co. v. Read*, 464 A.2d 210 (Me. 1983)("It seems obvious that since the Clerk is performing only a ministerial function and is not empowered to perform a judicial function, whenever a Clerk acts in excess of the authority granted by the Rule and purports to enter a judgment in a case where he has no authority to do so, the judgment so entered is void.").

Although we typically review denials of Rule 60, SCRCP, motions for abuse of discretion, a court has no discretion to perpetuate a void judgment. The Form 4 is vacated, and the order of the trial court denying IWM relief from the void judgment is

REVERSED AND REMANDED.

LOCKEMY, C.J., and HUFF, J., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Innovative Waste Management Inc., Crest Energy Partners LP, Edward H. Girardeau, Plaintiffs,

Of Whom Innovative Waste Management, Inc. is the Respondent,

v.

Crest Energy Partners GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants,

Of Whom Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products LP, Henry Wuertz, and Edward H. Girardeau are the Petitioners.

Appellate Case No. 2018-001528

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Dorchester County
Maité Murphy, Circuit Court Judge

Opinion No. 27862
Submitted January 15, 2019 – Filed February 6, 2019

AFFIRMED AS MODIFIED

David B. Marvel, of Charleston, for Petitioners.

Frederick John Jekel, of Jekel-Doolittle, LLC, of Columbia; and William Michael Gruenloh, of Gruenloh Law Firm, of Charleston; for Respondent.

PER CURIAM: Petitioners seek a writ of certiorari to review the court of appeals' decision in *Innovative Waste Management, Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 815 S.E.2d 780 (Ct. App. 2018). We grant the petition, dispense with further briefing, and affirm the court of appeals' decision as modified.

We have no quarrel with the court of appeals' holding that the Form 4 order of dismissal signed by the clerk of court was void, and the circuit court erred by failing to restore the case to the docket once the settlement fell through. However, in its discussion of Rule 41(a), SCRCP, the court of appeals included the following observation:

> Given the stage of IWM's case, it could have been voluntarily dismissed only by a stipulation of dismissal signed by all parties. Rule 41(a)(1), SCRCP. Consequently, even if, after notice and hearing, a circuit judge had signed the Form 4 purportedly ending the case pursuant to Rule 41(a), it would have been error.

Innovative Waste Mgmt., 423 S.C. at 614, 815 S.E.2d at 781-82. We conclude this is an incorrect statement of the law insofar as Rule 41(a) and the procedural posture of this case are concerned. It is true that one of the ways this action could have been dismissed was by stipulation of dismissal signed by all parties who had appeared in the action. Rule 41(a)(1)(B). However, that was not the only way, as Rule 41(a)(2) would have allowed the circuit court to dismiss this action "upon such terms and conditions as the court deems proper." Rule 41(a)(2), SCRCP. Therefore, the application of Rule 41(a) to the procedural posture of this case is correctly stated as follows:

> Given the stage of IWM's case, the dismissal referenced in the email communication to the circuit court and clerk of

> court and in the ADR report could not have been finalized under Rule 41(a) except in one of two ways. First, under Rule 41(a)(1)(B), the case could have been dismissed by a stipulation of dismissal signed by all parties who had appeared in the action. Second, pursuant to Rule 41(a)(2), the action could have been dismissed "at the plaintiff's instance . . . upon order of the court and upon such terms and conditions as the court deems proper." Rule 41(a)(2), SCRCP. If the dismissal had been entered in either of these two ways, the judgment would have been voidable, not void. However, neither scenario contemplated by Rule 41(a) occurred.

Trial courts frequently use the second option to maintain an accurate and current docket. When a party notifies the court a case has settled, a Rule 41(a)(2) order of dismissal may be entered to take the case off the docket while the parties consummate the settlement. In our Federal Courts this is referred to as a "*Rubin*" order.[1] If the settlement falls through, the court may either restore the case to the docket, or if asked, consider whether to enforce the settlement.

We agree the Form 4 order of dismissal signed by the clerk of court was void, the circuit court erred by not restoring the case to the roster, and the court of appeals correctly vacated the order. Accordingly, we affirm the court of appeals' opinion as modified.

AFFIRMED AS MODIFIED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

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[1] The name "*Rubin*" order apparently comes from *In re Corrugated Container Antitrust Litigation*, 752 F.2d 137 (5th Cir. 1985), an opinion written by the late Honorable Alvin Rubin. In the opinion, the Fifth Circuit held that when a settlement is incorporated into a court order, "The court retained jurisdiction . . . 'for the purpose of effectuating the settlement.'" 752 F.2d at 141.