

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Jefferson Davis, Jr.,)
)
Plaintiff,)

C.A. No.: 2018-CP-40-02425

vs.)

Ellen Weaver, Chad Connelly, Oran P.)
Smith, Neil J. Mellen, Howard S. Rich, Rick)
Reames, Stephen D. Kirkland, Palmetto)
Promise Institute, Palmetto Family Council,)
Palmetto Family Action, South Carolinians)
for Responsible Government, SCRG)
Foundation, Access Opportunity South)
Carolina, Friedman Foundation for)
Educational Choice, Inc., Cato Institute,)
South Carolina Educational Credit for)
Exceptional Needs Children Fund, South)
Carolina Education Oversight Committee,)
South Carolina Department of Revenue,)
South Carolina Department of Labor,)
Licensing and Regulation, First Impressions,)
Inc. d/b/a/ Richard Quinn & Associates, First)
Tuesday Strategies, LLC, Bill Wilson, Jason)
Bedrick, Jim DeMint, Randy Page, Tony)
Denny, Phillip Cease, Melanie Barton, Doris)
Cubitt, Susan Thomas, John McCormick,)
Nate Leupp, Institute of Management)
Consultants USA, and John Doe(s) 1-40,)
)
Defendants.)

ORDER

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SC Court of Appeals

This matter comes before the Court on multiple defendants' Motions to Dismiss. The Complaint was originally filed on May 3, 2018, and asserted nine causes of action against an individual defendant (Ellen Weaver), a corporate defendant (Palmetto Promise Institute or "PPI") and 20 pseudonymous defendants (Does 1-20). On June 7, 2018, counsel for Weaver and PPI filed a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP.

Judge DeAndrea Benjamin heard arguments on the motion on October 1, 2018. On October 29, 2018, Judge Benjamin filed an Order granting in part the Motion to Dismiss. The following day Judge Benjamin filed an Amended Order that, among other things, ordered plaintiff to amend his Complaint to name and serve each of the pseudonymous "John Doe" defendants, and gave him 15 days to do so. Plaintiff did not move to alter or amend that ruling, nor did he request any extension of the time period ordered by Judge Benjamin.

On November 19, 2018, plaintiff filed an Amended Complaint naming 31 new defendants in addition to Weaver and PPI. He did not, however, serve the new defendants within the time period established by Judge Benjamin's Amended Order. The newly-named defendants filed Motions to Dismiss raising numerous bases for dismissal. The Court heard arguments on the motions on February 12, 2019.¹ At the hearing, the Court noted the requirement in Judge Benjamin's Amended Order that plaintiff serve the newly-added defendants within 15 days of the Amended Order, and inquired whether plaintiff had done so. Plaintiff acknowledged none of the new defendants had been served within the time period set by Judge Benjamin's Amended Order.²

The timely service of a Summons and Complaint is a prerequisite to the commencement of a civil action. *See generally* Rule 3, SCRCP. In the absence of service within the time period ordered by Judge Benjamin, no civil action was commenced against the new defendants. *See Doe v. City of Duncan*, 417 S.C. 277, 286, 789 S.E.2d 602, 606 (Ct. App. 2016) (noting that where

¹ Thirteen motions were scheduled to be argued at this hearing. Many other of the new defendants' Motions to Dismiss had not yet been set for argument. As explained more fully above, however, the basis upon which this Court is ruling applies to all the newly-added defendants, including those whose motions had not yet been scheduled for hearing, and renders the remaining Motions to Dismiss moot.

² Even allowing for an additional five days provided by Rule 6(e), SCRCP when an Order is served by mail, none of the new defendants were served within 20 days after the date of Judge Benjamin's Amended Order.

the plaintiff had failed timely to serve the summons and complaint, “Doe failed to commence a civil action and dismissal was warranted”); *see also Sealy v. Dodge*, 289 S.C. 543, 544, 347 S.E.2d 504, 505 (1986) (noting that in a prior proceeding, “Appellants failed to timely amend their complaints and the actions were dismissed”).

At the hearing on the instant motions, plaintiff acknowledged he had not complied with Judge Benjamin’s Amended Order, but he argued the time limits imposed by that order were insufficient for the task at hand. His argument that more time was needed, however, falls short. Plaintiff did not seek to alter or amend Judge Benjamin’s Amended Order, nor did he move for an extension of time to comply with it. Accordingly, the time limit imposed by the Amended Order is the law of the case, and it is well established that a judge of this Court cannot reverse or overrule a prior order of another judge of this Court. *See Charleston Cnty. Dep’t of Soc. Servs. v. Father, Stepmother, & Mother*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) (“There is a long-standing rule in this State that one judge of the same court cannot overrule another.”).

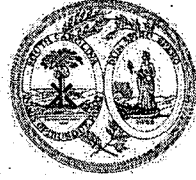
CONCLUSION

Because the Amended Complaint was not timely served in compliance with Judge Benjamin’s Amended Order, this Court strikes the Amended Complaint and dismisses this suit with prejudice as to all the defendants who were first named in the Amended Complaint. Because dismissal is warranted for the foregoing reason, the Court does not address the other arguments for dismissal made by the moving defendants, and any pending motions they have filed are now moot.

AND IT IS SO ORDERED.

The Honorable Doyet A. Early

February 13, 2019
Columbia, South Carolina



Richland Common Pleas

Case Caption: Jefferson Davis Jr vs Ellen Weaver , defendant, et al
Case Number: 2018CP4002425
Type: Order/Dismissal

So Ordered

s/D.A. Early III 2136