

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Appellate Case No: 2019-000051
Case No.: 2016-CP-02-02576

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JUL 30 2019

SC Court of Appeals

In the Matter of Albert D. Bone,
An Incapacitated Person, Respondent

Vivy Haynes Bone,

Appellant,

v.

Robert G. Bone, Conservator;
and Liberty Mutual Insurance
Company,

Respondents.

RESPONDENT LIBERTY MUTUAL INSURANCE COMPANY'S
MEMORANDUM

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Other Counsel of Record:

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Attorney for Appellant
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Respondent

Albert D. Bone
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STATUTES

11 U.S.C.A. § 362(a)6

MEMORANDUM

COMES NOW Respondent Liberty Mutual Insurance Company (“Liberty Mutual”), by and through its undersigned counsel, and at the direction of the Court offers the following Memorandum addressing the bankruptcy of Robert G. Bone.

FACTS

This case originates in the Probate Court of Aiken County. Appellant alleged that Robert G. Bone, acting as conservator for his incapacitated brother Albert D. Bone, misappropriated certain conservatorship assets. Liberty Mutual issued a conservator’s bond on behalf of Robert G. Bone and was named as a defendant in Appellant’s petition with the Probate Court. Thus, Appellant’s petition sought recovery of the allegedly misappropriated funds from Liberty Mutual as the probate bond surety.

The Probate Court found the petition to be meritless and it was dismissed. Petitioner then pursued an appeal in the South Carolina Court of Common Pleas of the Second Judicial Circuit.

Liberty Mutual moved to dismiss the Circuit Court appeal on March 8, 2017. Certain components of the appeal were dismissed by Order of the Honorable Doyet A. Early III dated May 2, 2017. Liberty Mutual moved to dismiss the remainder of the appeal for failure to prosecute on July 20, 2017. A hearing was conducted before the Honorable Edgar W. Dickson on September 25, 2017, and Liberty Mutual’s motion was granted by Order dated June 6, 2018.

While Judge Dickson held the Motion to Dismiss under advisement, Petitioner/Appellant filed a series of motions which Judge Early found to be frivolous and in violation of Rule 11, SCRPC. Judge Early awarded sanctions against Appellant’s counsel, John Cheatham, and in favor of Liberty Mutual in the amount of \$13,479.90 on April 26, 2018. Judge Early awarded an additional sanction of \$1,500.00 against Mr. Cheatham and found him in contempt of court for

failure to pay sanctions by Order dated November 19, 2018. On November 29, 2018, Appellant filed a Motion to Set Aside all proceedings from July 20, 2017 (four months before the bankruptcy petition) through June 6, 2018 (the date of Judge Dickson's Order dismissing the appeal from the Circuit Court). Judge Early denied the Motion to Reconsider by Order dated December 11, 2018. Appellant's January 14, 2019 Notice of Appeal now seeks to overturn Judge Early's December 11, 2018 Order and "any Court proceedings after [the November 11, 2017 bankruptcy petition]."

Arguments

I. A BANKRUPTCY STAY WOULD NOT IMPACT THE ISSUES SUBJECT TO THIS APPEAL.

The relief requested by Appellant would essentially wipe out the sanctions awarded to Liberty Mutual and the order finding Appellant's counsel in contempt of court.

The bankruptcy petition of Robert G. Bone does not impact this appeal because even if the stay had been entered in the Circuit Court upon filing of the petition, it would not have stayed those claims and defenses by and among Appellant and Liberty Mutual. The Orders subject to Appellant's Notice of Appeal do not impact or implicate the rights of the bankruptcy debtor.

When a debtor is one of several defendants in a lawsuit, the automatic stay prohibits the action from continuing against the debtor only, not against the other non-debtor defendants. 11 U.S.C.A. § 362(a); Bowman v. Computer Learning Ctrs., Inc., 73 Fed.Appx. 735 (5th Cir. 2003). "The automatic stay does not extend to actions against parties other than the debtor, such as codebtors and sureties." U.S. v. Dos Cabezas Corp., 995 F.2d 1486, 1491 (9th Cir. 1993).

In the Circuit Court appeal, the bankruptcy debtor took no action, filed no pleadings or motions, made no formal appearance, and took no part in the litigation. Each and every Order

now being appealed – along with every other motion or pleading brought in the Circuit Court appeal – was brought either by the Appellant or by Liberty Mutual. Each and every claim and defense now subject to this appeal was asserted by one of those two parties.

While the bankruptcy debtor is admittedly affected by those claims brought against him by Appellant in the underlying appeal to the Circuit Court, his substantive and procedural rights are not implicated or impacted by the specific orders that are the subject of this appeal. The only actions that took place in the Circuit Court appeal after the filing of the bankruptcy petition affected the rights of Appellant and Liberty Mutual; to wit, the orders now under appeal did the following: (1) dismissed the Circuit Court appeal for Appellant's failure to prosecute; (2) awarded sanctions against Appellant's counsel; (3) awarded additional sanctions against the Appellant's counsel; and (4) held Appellant's counsel in contempt of Court.

Instead, the appealed orders implicate Liberty Mutual's right to recover sanctions against the Appellant's counsel for his conduct found to be frivolous and in violation of Rule 11, SCRPC. By raising the bankruptcy petition, Appellant and her counsel seek a round-about way of circumventing the circuit court's finding of frivolity and wiping clean the slate of their previous bad acts, even though those bad acts took no step toward collection of a debt from Robert G. Bone.

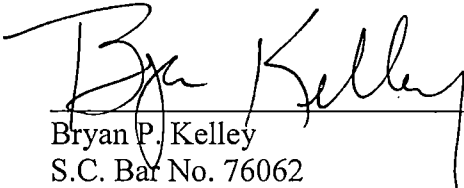
CONCLUSION

Essentially, Appellant contends that she, as a potential creditor, should enjoy the benefits of the automatic stay afforded to the bankruptcy debtor, and that Appellant's conduct should be excused due to the simple fact that she engaged in such conduct after the bankruptcy petition was filed.

Liberty Mutual contends that such a result would contravene the purpose of the automatic

stay afforded to the bankruptcy debtor under 11 U.S.C. § 362.

July 29, 2019


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July 29, 2019

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JUL 30 2019

SC Court of Appeals

Via Federal Express

V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Vivy Haynes Bone v. Robert Bone, et al.*
Appellate Case No. 2019-000051

Dear Ms. Allen:

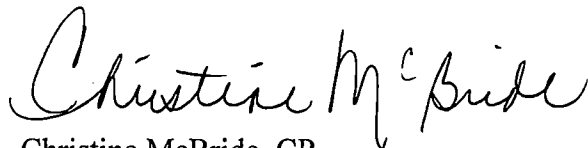
Enclosed please find one original and six copies of Respondent Liberty Mutual Insurance Company's Bankruptcy Memorandum in connection with the above-referenced matter. Please process according to your usual procedures, and return a filed copy to my attention in the enclosed return envelope.

By copy of this letter and enclosures, we are serving Appellant's counsel via facsimile and U.S. Mail, and Robert G. Bone, and Albert D. Bone via U.S. Mail.

Should you have any questions, please do not hesitate to contact this office.

Very truly yours,

ELMORE GOLDSMITH, P.A.



Christine McBride, CP
Certified Paralegal to Mason A. Goldsmith, Jr.
and Bryan P. Kelley

/cm

Enclosures

cc John E. Cheatham (*via facsimile and U.S. Mail w/enc.*)
cc Robert G. Bone (*via U.S. Mail w/enc.*)
cc Albert D. Bone (*via U.S. Mail w/enc.*)

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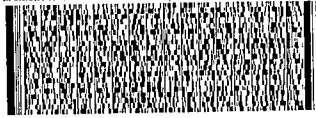
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 COLUMBIA SC 29201

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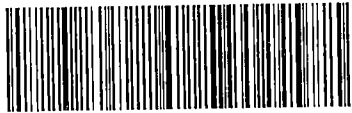
SC Court of Appeals



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