

FILED FROM CIVIL BY FILED - 2019 OCT 17 09:57 AM - SPARTANBURG CLERK - COMMON PLEAS - CASE# 2019-0000000000

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Paula Rose,)
)
 Plaintiff,)
)
 vs.)
)
 Charles Homer Rose, III,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

C.A. NO. 2014-CP-42-3846

Order Denying Defendant's Motion to Dismiss

RECEIVED

OCT 18 2019

SC Court of Appeals

This matter came before the Court on October 1, 2019 for supplemental proceedings on a Circuit Court Judgment entered in the case by Final Order on February 24th, 2015. Defendant made an oral motion to dismiss the supplemental proceedings at the outset of the hearing and later filed a written motion and memorandum with the Court. The gravamen of the Defense argument is that an Agreement of the Parties included in Paragraph 8 of an Amended Decree of Divorce entered on January 31, 2017 (hereinafter "Paragraph 8") released the judgment entered by the February 24, 2015 Circuit Court Final Order. This argument is without merit for two reasons.

First, Paragraph 8 did not mention the Final Order that was entered in this case on February 24, 2015; which was in existence at the time of the entry of the Decree of Divorce. Nor did Paragraph 8 mention anything about the satisfaction of judgment that Paula Rose would be required to execute to release such a judgment. Paragraph 8 of the Agreement dealt only with the matters before the Family Court related to support, inheritance and other marital interests of the parties. This is evident from language in the Agreement limiting the scope to "issues in this [Family Court] litigation" and is also dictated by South Carolina law. Meehan v. Meehan, 407 S.C. 471, 476, 756 S.E.2d 398, 401 (Ct. App. 2014) ("The family court has exclusive jurisdiction to hear and determine actions for separate support and maintenance, legal separation, other marital

litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions related to the real and personal property of the marriage.”); S.C. Code Section 20-3-630(B) (noting the limited jurisdiction of the family court); Gilley v. Gilley, 327 S.C. 8, 11, 488 S.E.2d 310, 312 (1997) (holding family court had no jurisdiction over husband and wife’s prior circuit court action and any such non-martial property claims must be asserted in circuit court).

Second, it is apparent from the actions of the parties that there was no intention that the Family Court Decree of Divorce release the Circuit Court Judgment. “In construing [a] release, the court must seek to ascertain and give effect to the intention of the parties.” S. Glass & Plastics Co. v. Duke, 367 S.C. 421, 428, 626 S.E.2d 19, 22 (Ct. App. 2005). The Family Court Order at issue was signed and entered on January 31, 2017. Subsequently, on February 15, 2017 Defendant filed a Petition for Certiorari requesting that the South Carolina Supreme Court set aside the Circuit Court Judgment. By signing the Petition for Certiorari, Defendant’s legal counsel (the same counsel now appearing before this Court) pledged under Rule 11 S.C.R.C.P. that there was “good ground to support [the Petition].” SCRCP 11. At no time did Defendant or his counsel ever inform the South Carolina Supreme Court in any way that the issue was moot or that the Court need not rule on the Petition for Certiorari but rather waited for the Court to issue its ruling. Certainly, there was ample time to do so as nearly six months elapsed after the filing of the Petition before the Supreme Court denied it on September 8, 2017. If the parties had actually intended for the Family Court Order to release the Circuit Court Judgment, there would have been no need to file and seek a ruling on a Petition for Certiorari seeking to have the Circuit Court Judgment set aside.

WHEREFORE, it is hereby ORDEREDED that Defendant’s Motion to Dismiss is DENIED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Spartanburg Common Pleas

Case Caption: Paula Rose VS Charles Homer Rose II
Case Number: 2014CP4203846
Type: Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

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