

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS
Hon. Gordon G. Cooper, Master in Equity

Case No. 2014-CP-42-03846

Appellate Case No.: 2019-001762

RECEIVED
DEC 05 2019
SC Court of Appeals

Paula Rose, Respondent,

v.

Charles Homer Rose, III, Appellant.

MEMORANDUM

In the present case the respondent initiated supplemental proceedings in an attempt to collect on a judgment that the appellant contends is subject to a general release approved, adopted, and merged into an order of the family court. Based on the parties' family court agreement the appellant moved to dismiss the supplemental proceedings on the ground of release. In what appears to be a final order on the issue of release the master in equity issued a written order denying the appellant's motion. To the extent that the master's order constitutes a final ruling on the appellant's defense of release, it is appealable.

The master identified the issue raised by the appellant as whether "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." (Order p. 1). The master therefore addressed the motion based on the relief sought:

Rule 1, S.C.R.Civ.P., provides the Rules of Civil Procedure govern procedure in all South Carolina courts in all suits of a civil nature. Rule 1 further directs the Rules shall be construed to secure the just, speedy, and inexpensive determination of every action. Rule 61, S.C.R.Civ.P., mandates: "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Rule 7(b), S.C.R.Civ.P., provides an application to the court for an order shall be by written motion. Rule 8(f), S.C.R.Civ.P., requires all pleadings to be so construed as to do substantial justice to all parties.

Standard Fed. Sav. & Loan Ass'n v. Mungo, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App. 1991).

Rule 60(b)(5) expressly allows a party to petition the court to set aside compliance with an order if a judgment has been released or satisfied. The judgment at issue was outstanding at the time of the parties' family court agreement and issuance of the Amended Divorce Decree. The judgment at issue was listed by the appellant in his financial declaration at the final hearing when the agreement was put on record and adopted by the family court. The agreement as adopted by the family court included a general release of all other claims:

8. *Both Paula Rose and Homer Rose waive any and all other claims they have against one another including inheritance or any other interests and they will execute any and all claims they have against one another including inheritance or any other interests and they will execute any and all documents necessary to carry forth the terms of the agreement.*

Amended Decree of Divorce, page 4, paragraph 8. *emphasis added*.

Here the master's ruling addressed the issue of release on the merits without any apparent contemplation of further proceedings on the issue. The master's ruling therefore appears to constitute a final determination on the issue of release, which is a substantial matter forming a part of the Appellant's defense to the judgment under Rule 60(b)(5).

Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within § 14-3-330. Baldwin Const. Co., Inc. v. Graham, 357 S.C. 227, 593 S.E.2d 146 (2004). Intermediate orders involving the merits may be immediately appealed pursuant to § 14-3-330(1). An order which involves the merits is one that "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." Mid-State Distribs., Inc., 310 S.C. at 334, 426 S.E.2d at 780. Interlocutory orders affecting a substantial right may be immediately appealed pursuant to § 14-3-330(2). Orders affecting a substantial right "discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." *Id.* at 335 n. 4, 426 S.E.2d at 780 n. 4.

Ex parte Wilson, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005).

South Carolina Code Ann. § 14-3-330 addresses appellate jurisdiction:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed

from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-33.

Supplementary proceedings are equitable in nature. Ex Parte Roddey, 171 S.C. 489, 172 S.E. 866 (1934); Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 207 (2005).

Section 14-3-330 has been held to apply to equity cases. See Charleston County Dep't Soc. Servs. v. Father, Stepmother, and Mother, 317 S.C. 283, 287, 454 S.E.2d 307, 309 (1995). The supreme court has defined "involving the merits" as a ruling which finally determines some substantial matter forming the whole or a part of some cause of action or defense. Jefferson by Johnson v. Gene's Used Cars, Inc., 295 S.C. 317, 368 S.E.2d 456 (1988). Here it appears that the master made a final ruling on the issue of release which, under Rule 60(b)(5), is the appellant's defense in the supplemental proceedings.

The master's denial of relief on the appellant's claim of release was based on two stated reasons. First, on a finding that the parties' subsequent agreement containing the mutual release of all claims did not expressly identify the default judgment. In its analysis the master interpreted the scope of the release based on the language of the parties' family court agreement. The scope of the agreement and release is a matter of

contract law. Despite the clear language of Paragraph 8, as set forth above, the master found that the release did not apply to the prior judgment between the parties. The master's order does not appear to contemplate any further evidentiary proceedings as to the scope of the agreement or applicability of the release. The master's order therefore appears final in this regard.

The master's second stated basis for denying the appellant relief is based on a finding as to the intent of the appellant as to the scope of the release. The master found that the appellant's failure to abandon his appeal from the default judgment immediately upon entry of the parties' agreement in family court constituted evidence that the appellant never intended to release the default judgment. This however overlooks the fact that the January 31, 2017 family court order adopting the agreement was under appeal at the time the petition for certiorari in the default judgment case was filed. The agreement was therefore unenforceable when the petition for certiorari in the circuit court case was filed on February 15, 2017. The appellant could not enforce the family court agreement until the family court appeal concluded September 25, 2019. Appellant filed his motion in the present case two weeks later on October 7, 2019. The appellant's filing of the petition of certiorari and continuing that appeal through to its conclusion therefore fails to support the master's findings as to the appellant's belief as to the agreement's ultimate application to the judgment. The master's order finds that the filing of the petition for certiorari conclusive proof and does not appear to contemplate any further evidentiary proceedings on the issue of the intent of the

parties. To the extent that the master's order constitutes a final ruling on the appellant's defense of release based on the intent of the parties, the Appellant should be entitled to proceed on appeal.

Underlying Issue of Release

It is uncontested that subsequent to the judgment the parties executed a mutual release as part of their family court case. It is a matter of record that the appellant included the judgment as a debt in his financial declaration at the final hearing in the family court. The plain language of paragraph 8 of family court order constitutes a general release. A release is a contract and contract principles of law should be used to determine what the parties intended. See Bowers v. Dept. of Transp., 360 S.C. 149, 153, 600 S.E.2d 543, 545 (Ct.App.2004) (stating "The Release is a contract" and applying South Carolina's rules of contract construction); see also Lowery v. Callahan, 210 S.C. 300, 300, 42 S.E.2d 457, 458 (1947) (noting that the "same principles of adequacy of consideration which apply to other contracts, govern as to releases"); Hyman v. Ford Motor Co., 142 F.Supp.2d 735 (D.S.C.2001) (applying South Carolina contract law principles to determine validity of a release); 18 S.C. Jur. Release § 2 (2003) ("Because a release is a contract, principles of law applicable to contracts generally are also applicable to releases."); 76 C.J.S. Release § 2 (1994) (stating that a release is contractual in nature).

"In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." Southern Atl. Fin. Servs., Inc. v. Middleton, 349 S.C. 77,

80-81, 562 S.E.2d 482, 484-85 (Ct.App.2002); accord D.A. Davis Constr. Co., Inc. v. Palmetto Props., Inc., 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984); Williams v. Teran, Inc., 266 S.C. 55, 59, 221 S.E.2d 526, 528 (1976); RentCo., a Div. of Fruehauf Corp. v. Tamway Corp., 283 S.C. 265, 267, 321 S.E.2d 199, 201 (Ct.App.1984). "Contracts should be liberally construed so as to give them effect and carry out the intention of the parties." Mishoe v. Gen. Motors Acceptance Corp., 234 S.C. 182, 188, 107 S.E.2d 43, 47 (1958).

The parties' intention must, in the first instance, be derived from the language of the contract. Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003); C.A.N. Enters., Inc. v. S.C. Health & Human Services Fin. Comm'n., 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) ("In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties."); Jacobs v. Service Merch. Co., 297 S.C. 123, 375 S.E.2d 1 (Ct.App.1988). To discover the intention of a contract, the court must first look to its language-if the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect. Superior Auto. Ins. Co. v. Maners, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973). "Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions." Blakeley v. Rabon, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976); Ellie, Inc. v. Miccichi, 358 S.C. 78, 93-94, 594 S.E.2d 485, 493-94 (Ct.App.2004); accord Kable v. Simmons, 217 S.C. 161, 166, 60 S.E.2d 79, 81 (1950). See Moody v. McLellan, 295 S.C. 157, 367 S.E.2d 449, 451 (Ct.App.1988) (courts must

interpret contracts based on their plain language). Here, there is no ambiguity as to the general nature of the parties' mutual release contained in their agreement which was approved, adopted and merged into an order of the family court.

The respondent is attempting to collect on a debt that is subject to a release. The master's order appears to have entered a final ruling on the merits of the appellant's defense in the proceedings and therefore, the appellant should be entitled to proceed with the appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Falkner Wilkes", written in a cursive style.

J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Counsel for Appellant

December 2, 2019.

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CERTIFICATE

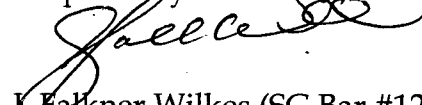
I certify that on December 2, 2019, I served the Appellant's Memorandum on the Respondent, and others if so indicated, by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record, and by other means if indicated below:

T. Ryan Langley
229 Magnolia St.
Spartanburg, SC 29306

Jenny Abbott Kitchings
Clerk of the Court of Appeals
P.O. Box 11629
Columbia, SC 29211

[signature page to follow]

Respectfully submitted,



J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)
Counsel for Appellant

December 2, 2019.



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J. Falkner Wilkes
Attorney at Law
114 Whitsett Street
Greenville, SC 29601

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

