

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Jun 25 2020

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Honorable William A. McKinnon, Circuit Court Judge
Case No.: 2017-CP-32-04435

Appellate Case No.: 2020-000770

Jada Garris,.....Respondent,

v.

Lexington County School District One, Appellant.

**RETURN TO RESPONDENT’S MOTION AND PETITION TO
REQUIRE APPELLANT TO OBTAIN SUPERSEDEAS OR
ALLOW TRIAL COURT TO ENFORCE ORDER**

Appellant Lexington County School District One (hereinafter, the “District”), hereby responds to the motion/petition (hereinafter, “Motion”) by Respondent Jada Garris (“Garris”) requesting that this Court require the District to obtain a supersedeas to stay the lower court’s order awarding attorney’s fees to Garris, or allow the trial court to enforce its order directing the payment of the attorney’s fee award. Garris’s motion includes the relevant orders, decisions, motions, briefs and communications, the authenticity of which are not in dispute. The District attaches one additional pleading as Exhibit A.

PROCEDURAL HISTORY

This appeal involves the trial court’s award of attorney’s fees pursuant to the South Carolina Freedom of Information Act (“FOIA”) to Respondent Garris. The instant Motion involves a

continuing dispute between the parties as to whether the District's notice of appeal of the trial court's award stays the obligation to pay those fees.

Following a bench trial before the Honorable William A. McKinnon regarding five claims that the District violated the FOIA on five separate occasions, the circuit court found the District violated the FOIA on only one occasion. Thereafter, Garris's attorneys filed a motion for all of her attorney's fees and costs totaling \$48,995.80.

On April 6, 2020, the lower court issued an order awarding Garris the full amount of her requested fees, despite finding that Garris had prevailed only in limited part. On April 16, 2020, the District filed and served a Rule 59, SCRCR, motion to alter or amend the judgment, asking the lower court to reconsider its April 6 order.

Also on April 16, Garris filed a "Motion to Clarify and Order Deadline for Payment." Garris's motion referred the trial court to a brewing dispute between counsel for the parties over whether the notice of appeal would stay the court's order directing the payment of the attorney's fees. The District's position was that the general rule applied and thus that the award order would be automatically stayed upon appeal. Garris disagreed, citing Rule 241(b)(1), (2) & (8), SCACR as possible exceptions, and requested a ruling from the circuit court as to the stay issue.

The next day, April 17, 2020, before the District could respond (and apparently before the court was aware of the District's Rule 59 motion (*see* Exhibit A)), the lower court granted Garris's motion in part, stating: "The award of attorney's fees and costs addressed in the Court's prior order shall be paid electronically within twenty (20) days of the date of this Order. The Court declines to issue an advisory opinion as to the effect of any possible appeal."

On May 1, 2020, the circuit court denied the District's motion to reconsider and established a new payment deadline of May 15, 2020. Thereafter, on May 5, 2020, Defendant's Board voted 5-1

to appeal the April 6 order and subsequent May 1 decision denying the District's Rule 59 motion. On May 6, the District's counsel informed Garris's counsel via email of the Board's decision and the anticipated filing of the notice of appeal. The District's Notice of Appeal was filed on May 12, 2020.

On May 25, Garris filed a "Motion and Petition for Rule to Show Cause Why Defendant Should Not Comply with Order or Be Held In Contempt." In that motion and contemporaneous memorandum, Garris argued that the trial court should issue a rule to show cause as to why the District should not be held in contempt for failing to pay the attorney's fee award by the payment deadline of May 15, 2020. Garris's counsel took the position that the automatic stay does not apply to the award of attorney's fees because attorney's fees are either "Judgments directing the assignment or delivery of documents or personal property, as provided in S.C. Code Ann. § 18-9-150," under the Rule 241(b)(2), or is "an injunction or temporary restraining order" under Rule 241(b)(8). Regarding those grounds, Garris argued that it was the District which was required to obtain a supersedeas in order to stay the court's award order.

The District asserted several arguments in reply. First, the District maintained that there was no ground for a contempt ruling because the District followed counsel's advice that the general rule imposing an automatic stay under Rule 241, SCACR, applied to Judge McKinnon's order awarding attorney's fees. Accordingly, there was no willful violation of the court's order that would support a contempt action. Second, the District asserted that the automatic stay rule applied because no exception was clearly applicable, including the exceptions cited by Garris. Finally, the District asserted that any dispute over the application of Rule 241 or its exceptions was a matter to be decided by the Court of Appeals.

The trial court issued a Form 4 order on May 27, 2020, stating in its entirety as follows:

“Plaintiff’s Rule to Show Cause is DENIED and DISMISSED for lack of jurisdiction. *See* Rules 205 and 241, SCACR. Defendant’s request for attorney’s fees for responding to the Rule to Show Cause is similarly DENIED for lack of jurisdiction.”

On June 5, Garris filed the instant Motion with this Court. The District responds as follows.

ARGUMENT

Initially, it is unclear whether Garris’s Motion is proper under the Court’s rules, or whether it should be considered in the nature of an appeal of the trial court’s May 27, 2020 Form 4 Order. Paragraph 16 of Garris’s Motion states: “The trial court erred in denying the motion and refusing to issue a rule to show cause.” Paragraph 17 states, in relevant part, the trial court erred in “determining that it did not have jurisdiction to rule on Garris’ motion.”

The District agrees that the trial court had jurisdiction to rule on the rule to show cause /contempt issue, as well as the District’s request for attorney’s fees based on having to respond to Garris’s improper and baseless motion. The District’s decision not to pay the attorney’s fees by the May 15 deadline was based upon advice of the District’s counsel that the automatic stay applied to this case, and therefore there was no willful violation of the Court’s order. Since contempt may only issue from a party’s “willful disobedience of a court order” *see Am. Fed. Bank, FSB v. Kateman*, 335 S.C. 273, 276–77, 516 S.E.2d 1, 2 (Ct. App. 1999), the court should have easily determined that the rule to show cause should have been denied.

The proper and true issue before this Court is whether the automatic stay from Rule 241 applies in this case, a question which is not within the circuit court’s jurisdiction to decide. As stated in the publication Appellate Practice in South Carolina, Third Edition, co-authored by former Chief Justice Jean Hoefler Toal, it is stated at page 344: “Rule 241(b) SCACR, does not provide a procedure for settling disputes over the applicability of an exception to the Rule. When no procedure

is specified, authority to resolve such a dispute is vested in the appellate court in which the appeal is pending, not the circuit court.”

Here, neither party filed a motion to lift the stay or for supersedeas because the parties’ dispute the applicability of the automatic stay rule. Contrary to Garris’s position, the District asserts that because automatic stay is the general rule, there must be a clear exception. There is none here. Garris’s arguments as made to the lower court, and now repeated to this Court, are as follows:

First, Garris contends that the District did not appeal the intermediate April 17 order directing the payment of attorney’s fees by May 7. This is true – the District has only appealed the Court’s April 6 order awarding attorney’s fees and the court’s subsequent decision on May 1 to deny the District’s Rule 59(e) motion to reconsider. These are the orders which establish the grounds for the decision to award Plaintiff her full fees. The April 17 two-sentence order is clearly an intermediate order which does nothing more than set a date for payment; it does not address the merits of the court’s decision to award fees. Moreover, that order was then overridden by the court’s May 1 decision denying the District’s Rule 59(e) motion, which also set a new date for payment of May 15. Accordingly, the fact that the District did not appeal an interim order is of no relevance or importance.

Second, Garris contends that at least one, but possibly two, exceptions to the automatic stay rule apply here. First, Garris posits that Rule 241(b)(2), which specifically exempts “Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150” is applicable. Section 18-9-150 states:

If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal unless the things required to be assigned or delivered be brought into court or placed in the custody of such officer or receiver as the court shall appoint or unless an undertaking be entered into on the part of the

appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the appellant will obey the order of the appellate court upon the appeal. [Emphasis added.]

S.C. Code Ann. § 18-9-150. There are no recent cases interpreting this statute, and the decisions available do not involve an award of attorney’s fees. Additionally, Garris cites two cases, *Mattison v. Stone*, 99 S.C. 151, 82 S.E. 1046, 1047 (1914), and *Gordon v. Busbee*, 397 S.C. 119, 139, 723 S.E.2d 822, 833 (Ct. App. 2012), for the proposition that money is “personal property.” Neither of these cases involve an awarding of attorney’s fees or costs as an “assigning or delivering” of personal property. Even if money is “personal property” within the meaning of § 18-9-150, a judicial “awarding” of fees is not what is meant by an “assignment or delivery.”

Moreover, South Carolina case law draws a distinction between “money judgements” of the type contemplated by S.C. Code Ann. § 18-9-130 and attorney’s fees. *See Woodside v. Woodside*, 290 S.C. 366, 378, 350 S.E.2d 407, 415 (Ct. App. 1986) (“Historically, in this state an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal; *see also State v. Cooper*, 342 S.C. 389, 399, 536 S.E.2d 870, 876 (2000) (finding expert fees are not money judgments “not within the contemplation of 18-9-130” because they are “incidental to the case and do not constitute a traditional [money] judgement”).¹

Garris further argues that the April 17 order is effectively an injunction, such that a court should apply the exemption in Rule 241(b)(8), which states there is no automatic stay for “an order granting an injunction or temporary restraining order.” However, it is apparent

¹ Garris has apparently conceded that attorney’s fees are not money judgments, such that Rule 241(b)(1) would apply, and rightly so.

that the District is not appealing the granting of injunctive relief, but rather the awarding of statutory attorney's fees. Additionally, as noted above, the April 17 order had no independent legal effect other than establishing a date for payment, and that date was subsequently superseded by the court's May 1 order, which reset the date for payment.

In sum, neither of the exceptions to the automatic stay rule cited by Garris apply. Since there is no clearly applicable exception, the automatic stay rule governs, and, accordingly, the District was not and is not required to seek a supersedeas. Garris's Motion should be denied.

To the extent the Court views Garris' Motion as a request to lift the automatic stay, the District maintains there are no grounds for such. Rule 241(c)(2), SCACR, directs that, in determining whether the automatic stay should be lifted, the Court "should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." In this case, lifting the automatic stay is not necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot. Additionally, Garris has presented no grounds for why a stay should issue. Perhaps because there are none, Garris attempts to establish that the automatic stay does not apply in this case, thereby shifting the burden to the District to request and establish a need for supersedeas.

CONCLUSION

For the reasons stated above, the District respectfully requests that the Court deny Respondent Garris's Motion and award any additional relief the Court deems necessary.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully Submitted:

s/David N. Lyon

David T. Duff, (SC Bar #1768)

David N. Lyon, (SC Bar #100676)

DUFF, FREEMAN, LYON

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Attorneys for Appellant

June 25, 2020

EXHIBIT “A”

From: [McKinnon, William A.](#)
To: [David Lyon](#); [Drew Radeker](#)
Cc: [McKinnon, William A. Law Clerk \(Dakota Knehans\)](#); [Rhonda Schaub](#); [Taylor Smith](#); [Dave Duff](#)
Subject: RE: Garris v. Lexington Sch. Dist. One
Date: Thursday, April 23, 2020 3:12:17 PM
Attachments: [image002.png](#)

Counsel,

I was not aware of this motion until I got this email on Monday. I will issue a decision on the motion shortly – likely early next week.

/WAM

From: David Lyon [mailto:dlyon@dfi-lawfirm.com]
Sent: Monday, April 20, 2020 10:48 AM
To: Drew Radeker; McKinnon, William A.
Cc: McKinnon, William A. Law Clerk (Dakota Knehans); Rhonda Schaub; Taylor Smith; Dave Duff
Subject: RE: Garris v. Lexington Sch. Dist. One

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge McKinnon,

I realized that we did not send a courtesy copy of our Rule 59(e) Motion to Alter or Amend the court's attorney's fees award (with exhibit) in the above case. As you may already know, we e-filed these on April 16, 2020 with the Lexington County clerk.

I see that Plaintiff's counsel has already filed their memo in opposition and emailed it to you. Thank you for your consideration.

David

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From: Drew Radeker <Drew@harrisonfirm.com>

Sent: Friday, April 17, 2020 1:53 PM

To: McKinnon, William A. <wmckinnonj@sccourts.org>

Cc: McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; Dave Duff <dduff@df-lawfirm.com>; David Lyon <dlyon@df-lawfirm.com>

Subject: RE: Garris v. Lexington Sch. Dist. One

Judge McKinnon:

I attach a copy of the memorandum we filed today in opposition to the defendant's motion to alter or amend filed yesterday.

Thank you.

Drew Radeker



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From: Drew Radeker

Sent: Thursday, April 16, 2020 4:51 PM

To: McKinnon, William A. <wmckinnonj@sccourts.org>

Cc: McKinnon, William A. Law Clerk (Dakota Knehans) <wmckinnonlc@sccourts.org>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Taylor Smith <Taylor@harrisonfirm.com>; Dave Duff <dduff@df-lawfirm.com>; David Lyon <dlyon@df-lawfirm.com>

Subject: Garris v. Lexington Sch. Dist. One

Judge McKinnon:

Please see the attached motion, its exhibit, and a proposed order that would grant it. It is certainly appropriate for the Defendant to file a response to this motion, but we ask that the defendant not be given a long time to do so, as that might defeat the principal aim of the motion.

Thank you. Of course, if you or your staff have any questions or concerns, please do not hesitate to contact us.

Drew Radeker



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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Honorable William A. McKinnon, Circuit Court Judge  
Case No.: 2017-CP-32-04435

Appellate Case No.: 2020-000770

Jada Garris,.....Respondent,

v.

Lexington County School District One, ..... Appellant.

PROOF OF SERVICE

I certify that on June 25, 2020, I served the Respondent with the Appellant's Return to Respondent's Motion and Petition to Require Appellant to Obtain Supersedeas or Allow Trial Court to Enforce Order, in this case by providing opposing counsel with a copy, via electronic mail only, addressed as follows:

Taylor M. Smith, IV, Esquire  
Andrew S. Radeker, Esquire  
Harrison & Radeker, P.A.  
[Taylor@Harrisonfirm.com](mailto:Taylor@Harrisonfirm.com)  
[Drew@Harrisonfirm.com](mailto:Drew@Harrisonfirm.com)

*s/Kim Chatman*  
\_\_\_\_\_  
Kim Chatman, Paralegal  
DUFF | FREEMAN | LYON, LLC  
P.O. Box 1486  
Columbia, SC 29202  
Telephone: 803-790-0603



# DUFF | FREEMAN | LYON

A TTORNEYS AND COUNSELORS AT LAW

ATTORNEYS: David T. Duff \*† | William C. Freeman | David N. Lyon | Tiffany L. Butler | Suzanne L. Hawkins

e-mail address:  
[dlyon@dfi-lawfirm.com](mailto:dlyon@dfi-lawfirm.com)

June 25, 2020

**VIA ELECTRONIC MAIL ONLY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate St.  
PO Box 11629 (29211-1629)  
Columbia, SC 29201

**RECEIVED**  
**Jun 25 2020**  
**SC Court of Appeals**


**Re: Jada Garris, Respondent vs. Lexington County School District One, Appellant**  
**Appellate Case No.: 2020-000770**

Dear Ms. Kitchings:

Enclosed herewith for filing is the Appellant's Return to Respondent's Motion and Petition to Require Appellant to Obtain Supersedeas or Allow Trial Court to Enforce Order, which I would appreciate you date stamping and returning a copy to our office.

Thank you for your time and assistance in this matter.

Sincerely,



David N. Lyon

DNL/kc  
Encls

c: Taylor M. Smith, IV, Esquire  
Andrew S. Radeker, Esquire  
David T. Duff, Esquire