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Jun 29 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2020-000770

Jada Garris,.....Respondent,

v.

Lexington County School District One, Appellant.

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

Respondent (hereinafter “Garris”) hereby submits this reply to the Appellant (hereinafter “the District”)’s return to Garris’ motion and petition to this court pursuant to Rule 241, SCACR, for an order 1) stating that this appeal does not relieve the District of its obligation to comply with an unappealed order of the trial court or 2) that requires the District to obtain a supersedeas (and sets out the required steps for it to do so) and, if the District does not take the required actions to obtain the supersedeas, provides that the trial court has the power and authority to enforce its order. Garris replies to the return as follows:

1. The District argues that Garris’ petition is somehow not properly before this court. It is properly before this court.

2. In pertinent part to this procedural question, Rule 241, SCACR, provides as follows:

(d) Procedure for Obtaining Lift of Stay or Supersedeas.

(1) Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal. The issuance of an ex parte order or decision, or an unnecessary delay by the lower court or administrative tribunal in ruling on this application shall constitute an extraordinary circumstance.

(2) After the lower court or administrative tribunal has ruled, any party may petition the appellate court where the appeal is pending or an individual judge or justice for review of this order. The individual judge or justice may grant or deny the relief on a temporary basis, and refer the matter to the full appellate court to hear and determine the matter, or he or she may issue a final order. Upon the issuance of a final order by an individual judge or justice, an aggrieved party may petition the full appellate court for review of that decision.

...

(7) Any party aggrieved by the decision of the lower court, the administrative tribunal, or an individual judge or justice may petition under this Rule for a review of that decision.

Rule 241(d), SCACR.

3. The lower court denied Garris' motion that sought, among other things, to require the District to obtain a supersedeas if it was not going to comply with the relief the lower court ordered.
4. The very crux of Garris' motion to the lower court was the question of whether the appellate stay was in effect, and such questions are to

be addressed by the trial court in the first instance. Rule 241(d)(1), SCACR. Once the lower court rules on such a question, a party aggrieved by that ruling may petition this court for review of that decision and obtain a ruling from this court about stay or supersedeas. Rule 241(d)(2)&(7), SCACR.

5. The District relies on scholarly commentary, not law, for its procedural argument, citing former Chief Justice Toal's Appellate Practice in South Carolina: Third Edition for the proposition that "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." Most respectfully to former Chief Justice Toal, her book is simply wrong on this point. Now that we have the South Carolina Appellate Court Rules, Rule 241(d), SCACR, provides a procedure for settling disputes about whether the automatic appellate stay is in effect or whether supersedeas is required to stay an order on appeal. Precedent reflects this. Bunkum v. Manor Properties, 321 S.C. 95, 98, 467 S.E.2d 758, 760 (Ct. App. 1995) ("[o]nce the notice of appeal was served, the Supreme Court had exclusive jurisdiction over the appeal, except the lower court retained jurisdiction to entertain petitions for supersedeas").
6. But even if the District were right that Garris should have bypassed the trial court and brought this matter first to this court, that would be

of little moment to the outcome of the instant petition. All that would mean would be that Garris has now sought for the correct court to rule on this. It would not be a reason to deny Garris' petition.

7. Turning to substantive merits of what is at issue, Garris points out that the District acknowledges it did not appeal the April 17, 2020, order that directs the District to deliver money to Garris. The District provides this court with no citation to any authority for the proposition that the trial court's April 17 order is stayed despite it not being appealed.
8. Even when the automatic appellate stay is in effect, the scope of that stay applies only to the order or orders appealed, not to other, unappealed orders in the case. "As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay *matters decided in the order, judgment, decree or decision on appeal*, and to automatically stay *the relief ordered in the appealed order, judgment, or decree or decision*." Rule 241(a), SCACR (emphasis added). The District did not appeal the April 17 order. Accordingly, that order is definitely not stayed.
9. The District, again citing nothing, contends that the April 17 order is "intermediate" and "an interim order" that "had no independent legal effect other than establishing a date for payment[.]" (Appellant's Return pp. 5, 7.) The District thus contends that its failure to appeal this order "is of no relevance or importance[.]" implying that the

directive to the District in the April 17 order is somehow stayed despite it not being appealed. (Appellant's Return p. 5.)

10. The District is incorrect in its characterization of the April 17 order, as is seen by reading that order. As discussed in Garris' instant petition, that order does more than merely set a date for payment: it, for the first time in this case, enjoins the District to deliver the awarded fees and costs to Garris, ordering substantive relief that required no further action by the court, just compliance by the District.
11. The unappealed April 17 order is decidedly not an "interim" or "intermediate" order. (Appellant's Return p. 5.) It contains nothing indicating a more formal order is to follow. Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 604-05, 567 S.E.2d 514 (S.C. App. 2002). Form 4 orders can be final orders, and, if they are not, the Form 4 order is to so state. See id. at 605. Here, the April 17 order has the boxes checked to indicate it contains the "decision of the court" and that it sets forth the trial court's "Statement of Judgment[.]" It nowhere indicates that any further order is to come. Indeed, it states that it ends the case. As this court observed in Cheap-O's Truck Stop, these are features of a final order. See id. at 604-05.
12. The fact that the District did not appeal the April 17 order makes any question about whether it is stayed by this appeal unnecessary. Rule 241(a), SCACR. It is not stayed. Id.

13. But the automatic appellate stay is not in effect even with regard to what the District did appeal. The April 17 order clarified that the court was enjoining the District to deliver money to Garris, thus putting this matter within the scope of the appellate stay exceptions for orders that grant an injunction and that direct the delivery of personal property. Rule 241(b)(2)&(8), SCACR; S.C. Code Ann. § 18-9-150.
14. The District cites State v. Cooper, 342 S.C. 389, 399, 536 S.E.2d 870, 876 (2000), and Woodside v. Woodside, 290 S.C. 366, 378, 350 S.E.2d 407, 415 (Ct. App. 1986), for the proposition that the trial court did not issue a money judgment. First, whether the order is a money judgment is not the issue; the District makes a straw man argument. Woodside is not about either of the exceptions to the automatic appellate stay at issue here: the exceptions for orders directing the delivery of personal property and for orders granting an injunction. Rule 241(b)(2)&(8), SCACR; S.C. Code Ann. § 18-9-150. The district offers nothing to the effect that *those* exceptions do not apply here.
15. Second, Woodside was decided under the law as it was before the adoption of the South Carolina Appellate Court Rules, as that was the law in effect at the time of the family court rulings in that case. 290 S.C. at 366-78.
16. Third, Cooper is also not on all fours with this case, as it was about the payment of fees directly to an expert. 342 S.C. at 399. The

Cooper opinion expressly distinguishes between an order directing payment to a non-party and an order that directs payment to a party – the latter of which is what we have here. Id. As noted in Garris’ petition, we have Supreme Court precedent that provides that orders directing one party to pay money to another party are not automatically stayed by an appeal. Pelzer Mfg. Co. v. Cely, 40 S.C. 430, 18 S.E. 790 (1894)¹. The Supreme Court, 106 years later in Cooper, noted the difference between the Cooper situation, in which the automatic stay was in effect, and a situation like the instant one, in which it is not. 342 S.C. at 399. The District does not argue that this distinction is not present.

17. The law does not allow the District simply to act (and to be treated) as if a stay of its ordered obligations were in effect when it is not. That is what the District has done so far, and that is what it seeks for this court to allow it to continue to do.

18. The undersigned has served this document on opposing counsel by email to registered AIS email address on the date given below.

WHEREFORE Respondent prays for an order 1) stating that this appeal does not relieve the Appellant of its obligation to comply with the unappealed April 17, 2020, order of the trial court or 2) that requires the Appellant to obtain a supersedeas (and sets out the required steps for it to do so) and, if the Appellant does not take the required actions to obtain the supersedeas, provides that the trial court has the power and authority to enforce its order.

¹ Garris’ petition, through a typographical error, incorrectly stated that Pelzer was a decision from the late 1900s instead of the late 1800s.

Respectfully submitted,

/s/ Andrew S. Radeker
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PROOF OF SERVICE

I certify that I served the respondent’s reply to the appellant’s return to motion and petition to require appellant to obtain supersedeas or allow trial court to enforce order in this case by providing a copy of it by email to opposing counsel at the email addresses shown below and on the date shown below:

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Respectfully submitted,

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