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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Judicial Circuit

Hon. Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2018-002170

Steven Craig Molloy and Island Group, Inc., d/b/a Carolina
Cleaning Plaintiffs

Of which Steven Craig Molloy is the Appellant

v.

Beaufort County; Gary Kubic, Individually, and as Beaufort
County Administrator; Josh Gruber, Individually and as former
Beaufort County In-House Attorney; Bryan Hill, Individually and
as former Beaufort County Deputy Administrator; Shannon Loper,
Individually, and as Employee of the Beaufort County Parks and
Leisure; Stu Rodman, as finance Chair of Beaufort County
Council; and Dave Thomas, Procurement Director for Beaufort
County, South Carolina; Disabilities and Special Needs (Non-
Profit); and Beaufort County DSN Board,..... Respondents

**RETURN TO APPELLANT'S SECOND REQUEST FOR
MOTION TO STAY FOR FILE OF RULE 60(b)**

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AND NOW COME Respondents Beaufort County, Gary Kubic (Individually, and as Beaufort County Administrator), Josh Gruber (Individually and as former Beaufort County In-House Attorney), Bryan Hill (Individually and as former Beaufort County Deputy Administrator), Shannon Loper (Individually, and as employee of the Beaufort County Parks and Leisure), Stu Rodman (Finance Chair of Beaufort County Council), Dave Thomas (Individually and as Procurement Director for Beaufort County), and Disabilities and Special Needs (NON-PROFIT) Beaufort County DSN Board (collectively "Respondents"), by and through their undersigned counsel, and file this Return to Appellant's Second Request for Motion to Stay for File (sic) of 60(b) ("Second Motion for Stay"):

INTRODUCTION

This is an appeal from a November 27, 2018 order of the trial court granting summary judgment in favor of Respondents as to all claims asserted by the plaintiffs below (including Appellant Steven Craig Molloy ("Mr. Molloy" or "Appellant")). The *only* Appellant in this appeal is Mr. Molloy. None of the corporate defendants — against whom the trial court entered summary judgment — appealed from the entry of summary judgment against them. Mr. Molloy is appearing *pro se* and, as a non-lawyer, is unable to represent any corporate entity in this Court.

After Mr. Molloy filed his Initial Appellant's Brief, on or about March 22, 2019, Respondents filed their Initial Respondents' Brief and Designation of Matter for Inclusion in the Record on Appeal. On or about April 24, 2019, Appellant Mr. Molloy filed his Initial Reply Brief. Under South Carolina Rule of Appellate Procedure 210(a), Appellant was required to serve the Record on Appeal (including all materials designated by Respondents) by May 24, 2019. Respondents' counsel did not receive a Record on Appeal until June 13, 2019 ("First Record on Appeal"). Appellant's First Record on Appeal did not comply with the Rules of Appellate Procedure, in a number of respects. On July 2, 2019, Respondent filed its first Motion to Strike Record on Appeal, because of the deficiencies in the First Record on Appeal.

On or about August 22, 2019, Respondents received a new version of the Record on Appeal ("Second Record on Appeal"). While the Second Record on Appeal corrected *some* of

the deficiencies of the First Record on Appeal, it was still materially deficient, in part because it did not include numerous documents that Respondents properly identified in their Designation of Matter for Inclusion in the Record on Appeal. As a result, on or about September 10, 2019, Respondents filed their Second Motion to Strike Record on Appeal.

On or about December 20, 2019, this Court granted Respondents' First and Second Motion to Strike Record on Appeal, stating (emphasis added):

Within thirty days, Appellant shall serve and file an amended record on appeal, which *includes all documents listed by the parties in their designations of matter* and excludes any matter that was not presented to the master in equity. The amended record shall include an index, shall be numbered consecutively beginning with the index, and shall be arranged in the order set forth in Rule 210(c) of the South Carolina Appellate Court Rules.

This Order also granted Appellant 30 days to obtain counsel. In response, on January 17, 2020, Appellant served a document upon counsel for Respondent entitled "Brief of Appellant," was actually an attempted Record on Appeal ("Third Record on Appeal"). Unfortunately, the Third Record on Appeal did not comply with the Rules of Appellate Procedure and the December 20, 2019 Order and did not include all of the items identified by Respondents. In fact, it appears that Appellant did not even include all of the items *he* designated for inclusion. Because Appellant Mr. Molloy did not include all designated matters (including filings and their exhibits), Respondents were unable to prepare their Final Brief. Respondents were forced to again seek the Court's assistance and guidance. So, on February 10, 2020, Respondents filed their Third Motion to Strike Record on Appeal. On or about March 16, 2020 (months after the deadline in this Court's December 20, 2019 Order), Appellant Mr. Molloy filed a "Supplement to Appellant's Record on Appeal" ("Fourth Record on Appeal").¹

On March 27, 2020, this Court entered an Order dismissing Appellant Mr. Molloy's appeal (the "Dismissal Order"):

¹ The Fourth Record on Appeal was much better than Appellant Mr. Molloy's prior efforts at compiling the Record on Appeal. It still had some deficiencies. One of these was that Mr. Molloy included a nearly five-page supplemental argument that was not included in his Initial Briefs and was, as a result, improper.

Appellant has filed an amended record on appeal that still does not include all matters designated by both parties. Because Appellant has failed to comply with this court's December 20, 2019 order and Rule 210 of the South Carolina Appellate Court Rules, this appeal is dismissed. The remittitur will be sent as required by Rule 221, SCACR.

On or about April 8, 2020, Appellant Mr. Molloy served a Motion for Rehearing, which sought relief from the Dismissal Order. Appellant devotes the vast majority of the Motion for Rehearing to rehashing the arguments on the merits, which he had made in his Initial Briefs. In addition, Appellant relies on evidence that was never presented to the trial court and that could not properly be included in the Record on Appeal. In addition to his Motion for Rehearing, on May 25, 2020, Appellant filed his first "Motion for Stay" (citing South Carolina Rule of Civil Procedure 60(B)) ("First Motion for Stay"), which seeks relief under Rule 60(b) from the trial court's grant of summary judgment against him.

On June 1, 2020, this Court entered an order as follows:

This appeal was dismissed due to Appellant's failure to comply with this court's December 20, 2019 order requiring an amended record on appeal that included all matters designated by both parties. Appellant has filed a petition for rehearing. Within thirty days of the date of this order, Appellant shall serve and file an amended record on appeal that includes all documents listed in both Appellant's and Respondents' designation of matter. This court will act on Appellant's petition for rehearing upon receipt of the corrected record on appeal or the expiration of thirty days.

(See June 1, 2020 Order, at 1). On August 12, 2020, the Court granted Appellant's Motion for Rehearing and entered an Order reinstating this appeal, stating: "[b]ecause Appellant has filed a supplemental record on appeal, the petition for rehearing is granted and this appeal is reinstated." Subsequently, Respondents filed their Final Brief of Respondents in this appeal, based on the most recent record filed by Appellant Mr. Molloy.

On September 3, 2020, Appellant filed the instant Second Motion for Stay, accusing Respondents and their counsel of fraud on the court, based upon evidence that was never properly presented to the trial court.

ARGUMENTS

Initially, Respondents note that this Court is not authorized to grant any relief under South Carolina Rule of Civil Procedure 60(b); instead, that is authority delegated to the trial court. However, "[d]uring the pendency of an appeal, *leave to make the motion* must be obtained from the appellate court." *See* S.C.R. Civ. P. 60(b) (emphasis added). Respondents will respond to the instant Second Motion for Stay as if it is a motion seeking leave to file a Rule 60(b) motion in the Court of Common Pleas of Beaufort County, South Carolina.

A. Appellant's Proposed Rule 60 Motion Would Be Untimely

South Carolina Rule of Civil Procedure 60(b) provides for the granting of relief from judgment in rare circumstances:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

In his Second Motion for Stay, Appellant urges relief from the entry of summary judgment against him because of alleged "fraud" and "newly discovered evidence."

A Rule 60(b) motion must be made "within a reasonable time, and for reasons (1), (2), and (3) not more than *one year after the judgment, order or proceeding was entered or taken.*" *See* S.C.R. Civ. P. 60(b) (emphasis added). The order granting summary judgment in this matter was entered on November 27, 2018, nearly two years ago. As a result, a Rule 60(b) motion

would be untimely at this time and futile. Therefore, this Court should deny Appellant leave to file a Rule 60(b) motion and should deny any relief under Rule 60(b).

Appellant suggests that a Rule 60(b) motion would be timely because the Second Motion for Stay was "first filed within one year of the new discovered information [June 10 and 17th 2019] public statements to Council in public meetings where Respondents 'accompanied by the County's Counsel to Keaveny' gave official reports directly conflicting" with Respondents' sworn statements and arguments to the Lower Court. (*See Mot. to Stay*, at 4). However, Rule 60(b) is plain that the one-year period is calculated not from the date of the discovery of "new" evidence, but from the entry of the order being challenged. It is beyond doubt that Appellant's Second Motion for Stay was filed more than a year after the entry of summary judgment against him.

B. Appellant Has Not Set Forth a Proper Potential Basis for Relief Under Rule 60(b).

Additionally, the Court should refuse to grant Appellant leave to seek Rule 60(b) relief, because the record discloses that Rule 60(b) relief would not be appropriate. Appellant should not be permitted to further delay this appeal and pursue a baseless Rule 60(b) motion in the trial court (or in this Court). Rather, the Court should deny Appellant's Second Motion for Stay.

Appellant's main argument surrounds statements that he believes relate to the issue of whether the Beaufort County Department of Special Needs is a department of the County or a separate legal entity:

It appears from the lower court order the Court believed that BC DSN was a 'complete' department of the County. Therefore, Lower Court Judge just found all of Appellant (Plaintiff) arguments baseless, and they are not, (sic) And that bids were not necessary and that the County could choose to do the cleaning in-house at any time. That is not true, and it cannot be true if BC DSN received the waivers and funding, which it did.

(*See Mot. to Stay*, at 5 (emphasis omitted)). Even assuming that everything Appellant argues is true, this is not a proper ground for relief under Rule 60(b).

The order granting summary judgment did not turn in any way on whether the Department of Special Needs was a separate entity from the County. To the contrary, the trial judge correctly held, *inter alia*, that: (a) the County's agreement with the corporate plaintiffs (who are not appellants) allowed for termination; (b) there is no evidence supporting a claim for misconduct in the procurement process, insofar as the corporate plaintiffs would not have obtained the new contract (even if the Department of Special Needs had not made a proposal); (c) none of the plaintiffs pursued their remedies under the County Procurement Code and contracts; (d) the tort claims were time-barred under the South Carolina Tort Claims Act; and (e) the Tort Claims Act barred any claims against the individual defendants. Nothing in the Second Motion for Stay would impact the trial court's grant of summary judgment in any way. Certainly the alleged "newly discovered evidence" would not require the extreme relief provided by Rule 60(b). As set forth in detail in Respondents' Final Brief, the trial court properly entered summary judgment against all Defendants, including Respondent. The Court should deny Appellant's Second Motion for Stay and should refuse to authorize Appellant to waste scarce judicial resources by filing a doomed motion for Rule 60(b) relief in any forum.

CONCLUSION

Therefore, for the foregoing reasons, Respondents respectfully request that the Court of Appeals deny Appellant's Second Motion for Stay.

September 14, 2020

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By: 

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Profit); and Beaufort County DSN Board,..... Respondents

PROOF OF SERVICE

I certify that I have served the Return to Second Request for Motion to Stay for File (sic) of 60(b) on the above-referenced Appellant by depositing a copy of it in the United States Mail, postage prepaid, on September 14, 2020, addressed to him at the following address:

Steven Craig Molloy
43 Big Woods Drive
Hilton Head, SC 29926
Appellant

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By: 

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John W. Fletcher, Esq.

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