

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

CIVIL ACTION NO.: 2020-CP-36-00093

Jefferson Davis, Jr.,

RECEIVED

Plaintiff,

Oct 07 2020

v.

SC Court of Appeals

Chad Connelly, Tom Persons & South Carolina
Educational Credit for Exceptional Needs
Children Fund,

**ORDER DENYING
PLAINTIFF'S MOTION FOR
RECONSIDERATION OF ORDER,
PLAINTIFF'S MOTION TO STAY
30 DAYS & SUBSTITUTE
PLAINTIFF WITH STANDING,
AND PLAINTIFF'S MOTION FOR
PERJURY, CONTEMPT, AND
SANCTIONS FOR FALSE
AFFIDAVIT**

Defendants.

This matter came before the Court upon Plaintiff's Motion for Reconsideration of this Court's Order Denying Plaintiff's Motion for Preliminary Injunction and Dismissing Plaintiff's Summons and Complaint with Prejudice and Denying Motion for Sanctions filed on July 13, 2020 ("Motion for Reconsideration"),¹ Plaintiff's Motion to Stay 30 Days & Substitute Plaintiff with Standing filed on July 15, 2020 ("Motion for Stay"), and Plaintiff's Motion for Perjury, Contempt, & Sanctions for False Affidavit filed on May 14, 2020 ("Motion for Sanctions"). As the parties filed detailed motions, memoranda, and other submissions, this Court did not conduct a hearing on the motions.² After careful review and consideration of the parties' submissions, this Court denies Plaintiff's Motion for Reconsideration, Plaintiff's Motion to Stay, and Plaintiff's Motion for Sanctions.

ORDER

South Carolina's Rules of Civil Procedure "contemplate two basic situations in which a party should

¹ Order Denying Plaintiff's Motion for Preliminary Injunction and Dismissing Plaintiff's Summons and Complaint with Prejudice and Denying Motion for Sanctions filed on June 30, 2020.

² See South Carolina Supreme Court Order No. 2020-04-22-01(c)(4) ("A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers.").

consider filing a Rule 59(e) motion.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). “A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Id. “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Id. “A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Hickman v. Hickman, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990).

Plaintiff’s motion fails to identify any issue or argument raised but not ruled upon or which this Court has misunderstood or failed to consider. Plaintiff, instead, revisits the previously raised argument that this Court should apply foreign common law to accord him standing where South Carolina law expressly denies him such standing.³ Accordingly, this Court denies Plaintiff’s Motion for Reconsideration because Plaintiff’s motion fails to identify any issue or argument raised but not ruled upon or which this Court has misunderstood or failed to fully consider and South Carolina law does not accord Plaintiff standing to assert the subject claims.

In the alternative, Plaintiff requests an order staying this action and leave to substitute an unidentified party who would have standing to serve as the plaintiff in this action. A South Carolina court may order substitution of parties upon the death of a party, the incompetency of a party, the transfer of interest, or upon the separation from office of a public officer. Rule 25, SCRC. In order to effect such a substitution, an action must be commenced by a real party in interest for whom a proper prosecuting party is substituted. Plaintiff is not a real party in interest because Plaintiff does not have standing to assert the

³ The South Carolina Nonprofit Corporation Act expressly circumscribes standing to challenge the conduct of a nonprofit corporation such as Exceptional SC to the Attorney General, a director, or by a member or members in a derivative proceeding. S.C. Code § 33-31-304; S.C. Code § 33-31-810; Davis v. Hamm, 300 S.C. 284, 288, 387 S.E.2d 676, 678 (Ct. App. 1989).

subject claims and, therefore, this Court does not have jurisdiction over Plaintiff's allegations. "Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause." Limehouse v. Hulsey, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (quoting 32A Am.Jur.2d Federal Courts § 581 (2007)). Plaintiff also fails to identify a real party in interest to prosecute the allegations. Instead, Plaintiff seeks an order allowing this action to proceed without a proper plaintiff despite its dismissal with prejudice. While this Court has discretion whether to grant a stay of a matter pending before the court, City of Spartanburg v. Belk's Dep't Store of Clinton, 199 S.C. 458, 480, 20 S.E.2d 157, 167 (1942), such a stay in this matter would serve only to maintain an already dismissed action brought by a party without standing while that party seeks a proper party to pursue his cause.

Plaintiff also seeks an order granting sanctions against Defendants and compelling the production of certain information and documentation used in support of Defendants' argument that this Court should require Plaintiff to post a security bond in the event that this Court granted Plaintiff's request for injunctive relief enjoining further administrative expenses in operation of the South Carolina Educational Credit for Exceptional Needs Children Fund. This Court, however, denied Plaintiff's motion for injunctive relief and dismissed Plaintiff's claims with prejudice upon jurisdictional grounds and, therefore, did not need to consider, and did not, consider arguments regarding the extent to which Plaintiff would have been required to post such a security bond. Accordingly, this Court makes no findings regarding the veracity of the information and documentation used in support of Defendants' argument. Moreover, this Court's lack of jurisdiction over this matter prohibits it from proceeding beyond announcing its dismissal with prejudice. Limehouse v. Hulsey, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (quoting 32A Am.Jur.2d Federal Courts § 581 (2007)).

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that

Plaintiff's Motion for Reconsideration of this Court's Order Denying Plaintiff's Motion for Preliminary Injunction and Dismissing Plaintiff's Summons and Complaint with Prejudice and Denying Motion for Sanctions, Plaintiff's Motion to Stay 30 Days & Substitute Plaintiff with Standing, and Plaintiff's Motion for Perjury, Contempt, & Sanctions for False Affidavit are **DENIED** in accordance with the above order.

AND IT IS SO ORDERED.

The Honorable Donald B. Hocker

September ____, 2020



Newberry Common Pleas

Case Caption: Jefferson Davis Jr VS Chad Connelly , defendant, et al

Case Number: 2020CP3600093

Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

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