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May 25 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Case No. 2015-CP-04-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,
In Re: Greg Battersby,

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., All State Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A.,

Respondents.

APPELLANT'S REPLY TO RESPONDENTS' RETURN

Anderson. SC
May 25, 2021

s/Donald L. Smith
Donald L. Smith (Bar No. 6699)
122 N. Main Street
Anderson SC 29621
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On May 13, 2020, Appellant moved to hold appeal in abeyance based on his belief the judgment at the Circuit Court was void due to jurisdictional issues. In their Return, Respondents argue that Appellant’s motion is improper and should be denied.

Respondents allege they “find no authority to support Appellant’s assertions that this matter should or can be held in abeyance pending further adjudication by the Circuit Court”. (Respondents’ Return to Appellant’s Motion to Hold Appeal in Abeyance (hereinafter referred as “Return”, p. 1).

Appellant asserts that his Motion is proper and based upon law. The Court’s ability to hold a case in abeyance – or to stay a rule – derives from the Court’s inherent equitable power to “preserv[e] rights” and “to save the public interest from injury or destruction while an appeal is being heard.” See *Scripps-Howard Radio v. F.C.C.*, 316 U.S. 4, 15 (1942).

In this case, Appellant moved to stay the instant appeal to give the Circuit Court a chance to rectify its failure to enter a Formal Order. Appellant reiterates his position that there was no Formal Order denying Appellant’s Motion for Reconsideration, dated February 18, 2016. The Order granting Respondents’ Motion to Enter Monetary Sanctions in the Judgment Roll should not be considered the formal order addressing Appellant’s challenge to the imposition of sanctions upon him.

While a final judgment or order does not have to take any particular form, it has been said that “[t]o be final, that is, binding and determinative of litigation, a judgment must do more than indicate the judge’s opinion as to the outcome of an action and must be ‘rendered.’” A Michigan Pleading and Practice (2d ed), § 53:7. As explained in 3 Longhofer, Michigan Court Rules Practice, Text (7th ed), § 2602.2.

Indeed, “judgment” is defined as “[a] court’s final determination of the rights and obligations of the parties in a case.” See Black’s Law Dictionary (7th ed), p 846. In this case, the Circuit Court clearly did not intend Form 4 to function as the “final determination of the rights and obligations of the parties.”

Furthermore, Appellant maintains the Circuit Court has lost personal jurisdiction over Appellant. A lawyer who has entered an appearance in court "continues to appear for all purposes until the judgment is satisfied, unless he retires in the meantime by leave of court". Culberson v. Clemens, 322 S.C. 20 (S.C. 1996). This is to say that a lawyer whose withdrawal in the case was approved by the court, loses his standing in the court and therefore is not within the court’s jurisdiction.

Subject matter jurisdiction is the authority or power that each court has over certain types of legal disagreements (disputes). For a court to hear a particular case, it must have subject matter jurisdiction over the issue or issues that you are asking the court to decide on. The sanctionable conduct the Circuit Court sought to deter is the maintenance and continuation of a lawsuit, which was rendered meritless with the Court-approved withdrawal of claims and Complaint even before the Respondents filed their motion for sanctions. It should also be noted the 1993 Amendment to Rule 11 eliminates a court’s ability to impose monetary sanctions on a party *sua sponte* if the case has already been voluntarily dismissed or settled. Rule 11(c)(2)(B).

Accordingly, Appellant’s motion to stay the present appeal will not prejudice either parties and in the interest of resolving the procedural challenges in the instant, Appellant reiterates its request for this Honorable Court to suspend and/or hold this appeal in abeyance, pending the resolution of Appellant’s motion to vacate.

{SIGNATURE TO FOLLOW}

Anderson, SC
May 25, 2021

s/Donald L. Smith

Donald L. Smith (SC Bar No. 6699)

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**FORM 7
PROOF OF SERVICE**

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And Allstate Northbrook Indemnity Company,

Defendants,

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A.,

Respondents.

PROOF OF SERVICE

Pursuant to Supreme Court of South Carolina's Amended Order 2020-05-29-02, I certify that I have served a copy of Appellant's Reply to Respondent's Return to the Motion to Hold Appeal in Abeyance and Certificate of Counsel, and Proof of Service of same, upon The Honorable Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals, through the AIS, and the Respondents, by and through their respective counsel of record, via electronic mail in the addresses as follows:

Ms. Jenny Abbott-Kitchings

ctappfilings@sccourts.org

Attorney for Respondents

Mr. Steven M. Krause, Esquire

steve@krauselaw.org

Mr. Daniel I. Draisen, Esquire

daniel@injuredSC.com

The above-mentioned documents have been served on May 25, 2021.

s/Donald L. Smith

Donald L. Smith (Bar No. : 6699)

Attorney for Appellant

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Anderson, South Carolina

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SC Court of Appeals

**FORM 8
LETTER TO THE APPEALS COURT CLERK
FILING APPELLANT'S REPLY TO RESPONDENTS' RETURN TO THE
MOTION TO HOLD APPEAL IN ABEYANCE**

May 25, 2021

The Honorable Jenny Abbott Kitchings
Clerk of Court South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

**RE: Ex Parte: Donald L. Smith (In Re: Battersby v. Kirkman)
Appellate Case No. 2020-000070**

Dear Ms. Kitchings:

Please find attach the following documents for filing:

- (1) Appellant's Reply to Respondents' Return to the Motion to Hold Appeal in Abeyance; and,
- (2) Proof of Service.

Sincerely,

s/Donald L. Smith

Donald L. Smith, (Bar#6699)

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cc: Mr. Steven M. Krause, Esquire
Mr. Daniel L. Draisen, Esquire