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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Perry M. Buckner, Circuit Court Judge
R. Markley Dennis, Circuit Court Judge

Civil Action No. 2019-CP-10-03739

Shirley M.B., Williams, individually, and as Personal Representative of the Estate of Jason Lynn Williams, deceased, ... Respondent,

v.

Lyft, Inc., Lyft Drives South Carolina, Inc., Kaitlyn Meadows

Of whom Lyft, Inc. d/b/a Lyft Drives South Carolina, Inc. ("Lyft") is the .... Appellant.

MOTION FOR LIMITED REMAND

Pursuant to Rules 240 and 241 of the South Carolina Appellate Court Rules, Appellant Lyft, Inc. d/b/a Lyft Drives South Carolina, Inc. ("Lyft") moves for a limited remand in this appeal for the sole purpose of allowing Judge R. Markley Dennis or a successor judge to rule on Lyft's pending Rule 52(b), 59(e), and 60(b) motion to alter or amend the lower court's August 19, 2021 order granting a default judgment against Lyft.

Judge Dennis was the presiding judge at the default damages hearing. Judge Dennis entered the order granting Plaintiff's motion for a default judgment on August 19, 2021. Lyft timely filed and served its Rule 52(b), 59(e), and 60(b) motion on August 30, 2021.[1] That same

[1] Ten days from August 19, 2021 fell on a Sunday, which placed the operative deadline at Monday, August 30, 2021.

day, Lyft provided a copy of the motion to Judge Dennis pursuant to Rule 59(g), SCRCP. Lyft also provided a copy to the Chief Administrative Judge for Common Pleas, Ninth Judicial Circuit, Judge Roger M. Young, Sr.

Judge Dennis retired at the end of June 2021. Lyft's understanding is that under recently amended court administration procedures, active-retired judges are no longer being assigned any terms of court. Judge Dennis confirmed this in his communications with the parties, noting that he did not anticipate being assigned a future term of court and that the default damages order would be one of his final acts.

Rule 63, SCRCP is the applicable rule governing the "disability" of the trial judge, which applies any time a judge is "unable to proceed." *Id.* The Rule only expressly addresses the scenario where "[i]f at any time after a trial or hearing has been commenced, but before the final order or judgment has been issued, the judge is unable to proceed," and provides that in this situation a successor judge may be assigned. Rule 63, SCRCP. However, authorities examining the analogous federal rule 63 have found that a successor judge may also hear post-trial motions where the trial judge becomes "unavailable" post-trial. *See, e.g.*, *Chemfree Corp. v. J. Walter, Inc.*, No. 1:04-CV-3711 (CRW), 2011 WL 13161995, at *3 (N.D. Ga. June 6, 2011) (explaining that the successor judge may "amend, confirm, or reverse findings of fact, reconsider previous rulings, and even grant a new trial if the final order as entered is incorrect, in whole or in part"); *see also* 12 Moore's Federal Practice - Civil § 63.05 ("[I]t is clear that a successor judge has the power to reconsider the legal conclusions of a predecessor judge to the same extent that the predecessor could have . . . on a party's timely and proper motion to reconsider.").

In *Mergentime Corp. v. Washington Metro. Area Transit Auth.*, 166 F.3d 1257, 1263 (D.C. Cir. 1999), the court explained that it was ***erroneous*** for a successor judge to refuse to consider

post-trial motions, explaining that "[a]fter all, the original judge could not have refused to consider them." *Id.* Thus, although courts enjoy wide discretion "to grant or deny post-trial motions, . . . they cannot refuse to exercise that discretion." *Id.* Rule 63 ***requires*** a successor judge "to stand in the shoes of the original judge" and assume the original judge's "obligation to exercise his discretion with respect to . . . post-trial motions." *Id.* This is because it would be "unfair" to deny a litigant's right to "persuade the court that it has erred simply because the judge who rendered the original decision is unavailable and cannot be called on to reconsider the matter." *Id.* (quoting 12 Moore's Federal Practice § 63.05[1]).

In *Ness v. Eckerd Corporation*, 350 S.C. 399, 566 S.E.2d 193 (Ct. App. 2002), the Court of Appeals addressed a situation where a circuit judge denied a motion to set aside default but then later issued an order both granting the defendant's Rule 59(e) motion to reconsider that motion and recusing himself. The Court of Appeals explained that the recusal qualified as a "disability" under Rule 63, and a successor circuit judge should have heard the Rule 59(e) motion to reconsider the original judge's order. *See id.* at 403, 566 S.E.2d at 196. Although the language of Rule 63 differed at the time the decision was issued, *Ness* appears to still be good law.

Here, the lack of any assigned term of court where Judge Dennis may hear motions would appear to satisfy Rule 63 and render him "unable to proceed" with hearing Lyft's post-trial motions. Due to the uncertainty of his role and the proper mechanism for having a successor judge assigned, Lyft provided Judge Young with a copy of its motion and requested clarification and guidance. Lyft requested that Judge Dennis or a successor judge be assigned to hear its motion. However, as of the filing of this notice of appeal, no judge has been assigned to hear Lyft's motion or taken any action on it.

Therefore, Lyft has appealed out of an abundance of caution to avoid any timeliness questions. Lyft's service and filing of a notice of appeal and motion for limited remand is ***necessary*** here to ensure Lyft's appellate rights are protected. Lyft did not cavalierly serve and file the notice, nor did it simply act out of "expedience" with regard to its Rule 59(e) motion filing. *See Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004) (cautioning parties not to avoid their responsibility to attempt to determine whether a Rule 59 motion or notice of appeal is appropriate under the facts of the case "by the simple expedient of filing both").

Elam reinforced the catastrophic consequences if a party incorrectly believes its Rule 59(e) motion is proper, but an appellate court ultimately determines that it was not. *See* i*d.* at 25, 602 S.E.2d at 780 (noting that if an appellate court determines that a Rule 59(e) motion as unnecessary, the party may "unwittingly forfeit the right to an appeal"). Due to the uncertainty surrounding Judge Dennis's authority post-retirement, Lyft had no choice but to serve and file a notice of appeal since there is the possibility the lower court could erroneously find that ***no judge*** can hear a Rule 59(e) motion to reconsider Judge Dennis's rulings. Lyft could not allow the notice of appeal deadline to pass and risk losing its appellate rights. *See id.* at 15-18, 602 S.E.2d at 775-77 (citing cases in which appellate courts found a Rule 59 motion was improper and did not stay the time to appeal). Consequently, in an abundance of caution and to protect its rights to appeal, Lyft served and filed a notice of appeal.

Lyft now respectfully requests that the Court issue a limited remand for the sole purpose allowing Judge R. Markley Dennis or a successor judge to rule on Lyft's pending Rule 52(b), 59(e), and 60(b) motion. Lyft further requests that the Court instruct the circuit court to consider and rule on Lyft's pending motion.

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Columbia, South Carolina
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