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Nov 18 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable L. Casey Manning

Circuit Court Case No. 2015-CP-40-07268
Appellate Case No. 2021-00898

Jimmy Helms.....Respondent,

v.

Debbie Willing,Appellant.

**PETITION FOR *EN BANC* REVIEW
of the
ORDER ON APPELLANT’S MOTION TO ENFORCE AUTOMATIC STAY**

On November 3, 2021, an individual judge of this Court issued an Order denying Appellant’s Motion to Enforce the Automatic Stay. Respectfully, the Order mistook the nature of Appellant’s motion and the applicable law.

Pursuant to Rule 241(d)(7), Appellant petitions the full appellate Court to rehear and reconsider the Order, which was apparently based on misunderstanding and

mistake. Appellant incorporates herein her Motion, filed on September 27, 2021,¹ which sought enforcement of the automatic stay under the General Rule, as well as her Reply, filed November 1, 2021.

This Court has the authority to decide whether the automatic stay applies. *Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (1985); *State v. Cooper*, 536 S.E.2d 870, 342 S.C. 389 (2000). Respondent contends that the stay does not apply, and he currently is undertaking to enforce the circuit court's order outside of court. Appellant requests an Order which finds the automatic stay applies in this instance and holds the circuit court's decision in abeyance, to preserve the status quo pending the determination of matters on appeal. A critical point is to stop Respondent from attempting to execute the lower court's order – either outside of court or in it – pending this appeal.²

This Court's Order, denying Appellant's motion, misapprehends that Appellant did not file a petition for supersedeas. (Order, Nov. 3, 2021) ("the petition for supersedeas is denied."). Appellant did not file such a petition, which would be unnecessary under the rules and the common law – because the automatic stay applies. The South Carolina Supreme Court has made this holding in similar circumstances. *See Chris v. Chris*, 337 S.E.2d 209, 287 S.C. 161 (1985) ("Appellant Chris seeks supersedeas of the order to the

¹ Possibly, the mistake germinated in a clerical error, which marked Appellant's motion in the court's filing system as "Motion - Stay/Supersedeas (including lifting of automatic stay". *See* <https://ctrack.sccourts.org/public/caseView.do?csIID=74098>

² Among other things, counsel for Respondent has telephoned and written Appellant's tenant to tell tenant that Appellant no longer owns the property that tenant leases from Appellant. By showing the order to Appellant's tenant and raising the specter of contempt, Respondent's attorney has convinced tenant to make lease payments to Respondent. The detriment to Appellant is further discussed in Appellant's Motion to Enforce Automatic Stay.

extent it requires her to vacate the home . . . we deny this relief as unnecessary. The appeal automatically stayed the equitable division award.”).

For context, the circuit court’s order on appeal characterizes its ruling as “an equitable division of disputed property” “during the period of co-habitation by Plaintiff and Defendant.” (Order, p. 3) (emphasis added). Moreover, the Respondent himself argues that the purpose of the lower court’s order is to “equitably divid[e]” the couple’s property. (Return, p. 2). **The South Carolina Supreme Court holds that equitable division awards are automatically stayed by the filing of a Notice of Appeal.** See *Chris*, 337 S.E.2d 209, 287 S.C. 161 (1985) (order requiring appellants to vacate marital home automatically stayed because it was a part of the equitable division award); *Lassiter v. Lassiter*, 352 S.E.2d 486, 291 S.C. 136 (1987) (Petitioner not required to file an appeal bond to maintain possession of truck awarded to Respondent because an appeal automatically stays the enforcement of an equitable division award).

Further, this Court’s Order mistakenly finds that S.C. Code § 18-9-170³ applies as an exception to the enforcement of the automatic stay in this case. This is contrary to the plain language of the circuit court’s order, which (1) does not direct the sale of the property at issue and (2) does not direct the delivery of possession of real property. Indeed, it is unclear just *how* the lower court’s order should be carried out, which is precisely why Appellant seeks an automatic stay of the order pending this appeal – to prevent Respondent from insisting that he can execute on the order in a “wild west”

³ S.C. Code Ann. § 18-9-170 applies “[i]f judgment appealed from direct[s] the sale or delivery of possession of real property”

manner, outside of court, by sending letters to Appellants' tenant telling the tenant that Appellant does not own the property she leases to tenant. (See the exhibits filed with Appellant's Motion to Enforce Automatic Stay and Appellant's Reply to Return, which include letters from Respondent's attorney to Appellant's tenant, enclosing the circuit court order and informing tenant that Appellant does not hold title to the property). Indeed, those improper actions by Respondent have the improper effect of (a) depriving Appellant of needed rent from the tenant operating the gas station on the property, while at the same time (b) continuing to burden her with the responsibilities of ownership – DHEC requirements, permitting, liability, maintenance, etc. – because she is the title holder to the property.

Significantly, this Court's Order, which cites S.C. Code § 18-9-170, misconstrues the Legislative purpose of the section. "[T]he intention was to embrace appeals from judgments of **foreclosure**, for that is a judgment directing the sale of real property...." *C-Sculptures LLC v. Brown*, 393 S.C. 27, 32 709 S.E.2d 705, 708 (Ct. App. 2011) (emphasis added) (holding that the master correctly found that an order confirming an arbitration award "did not direct the payment of money or the sale or delivery of real property," although foreclosure proceedings were contemplated in the arbitration award). Here, the circuit court's order on appeal (like the arbitration award in the *C-Sculptures* case) plainly does not direct the sale or delivery of the subject property. The General Rule therefore applies to automatically stay the circuit court's findings, pending this appeal. *State v. Cooper*, 536 S.E.2d 870, 342 S.C. 389 (2000) (this Court has the authority to resolve disputes regarding whether the automatic stay applies).

CONCLUSION

For the reasons set forth in Appellant's Motion to Enforce Automatic Stay, and in her Reply, and because an individual judge mistakenly denied her motion, Appellant respectfully requests that this Court would issue an Order holding that the automatic stay applies to the lower court's findings, pending this appeal.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Review en Banc on Respondent Jimmy Helms by sending the same to his attorney of record S. Jahue Moore, Esquire, at his email address of record with AIS, pursuant to the Supreme Court's Order regarding Electronic Filing and Service:

jake@mbmlawsc.com

Respectfully submitted,

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