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Nov 17 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

R. Ferrell Cothran, Jr., Circuit Court Judge
Case No. 2008-CP-43-02112

Appellate Case No. 2021-001293

The Estate of Fannie M. Champion, by
Evelyn Champion Ludd, Personal
Representative, Samuel Champion,
Evelyn C. Ludd, Sarah C. Evans,
Rachel C. Brown, Henry Champion, Jr.,
Janie M. Champion, Mary Johnson and
John L. Champion,

Appellants,

v.

Ronald L. Hallman, Marjorie J. Hallman,
Elton J. Hallman, Conswalla E. Hallman,
Oron J. Hallman, Hazelee C. Hallman,
Edward G. Hamilton, Helen D. Hamilton,
Edward E. Hamilton, Raymond Forbes
Davenport, II, and Mary Ellen Davenport,

Respondents.

APPELLANTS' RETURN TO RESPONDENTS' MOTION TO DISMISS

Appellants, the Estate of Fannie M. Champion, by Evelyn Champion Ludd, Personal Representative, Samuel Champion, Evelyn C. Ludd, Sarah C. Evans, Rachel C. Brown, Henry Champion, Jr., Janie M. Champion, Mary Johnson and John L. Champion, by and through their

undersigned Counsel hereby submit their Return to Respondents' Motion To Dismiss filed and served on November 8, 2021.

I. Appellants failed to file a timely Notice of Appeal within thirty (30) days after the receipt of written notice of entry of the order as required by Rule 203(b), SCACR.

Appellants incorporate their Notice of Appeal herein by reference as fully as if recited verbatim and would respectfully show that Respondents' Motion to Dismiss is without merit.

Appellants' appeal is governed by Rule 203(b)(1), SCACR, *Appeals From the Court of Common Pleas*, which states:

A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCPP), motion to alter or amend the judgment (Rules 52 and 59, SCRCPP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

Appellants received the written Order of the Honorable R. Ferrell Cothran, Jr. on September 15, 2021. On Monday, September 27, 2021, Appellants filed and served a Motion To Alter Or Amend Judgment pursuant to Rule 59(e), SCRCPP, subsection (b) of which requires that such a Motion be filed not later than ten (10) days after receipt of written notice of the entry of judgment. "In computing any period of time prescribed or allowed by these Rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday." *Rule 263(a), SCACR*. Ten days after September 15, 2021, fell on Saturday, September 25, 2021.

Therefore, Appellants' Motion to Alter or Amend was timely filed and served on Monday, September 27, 2021.

On October 4, 2021, Judge Cothran entered a Form 4 Judgment In A Civil Case which stated "Plaintiff's Motion To Alter Or Amend Judgement is Denied" and showed an "X" in the box indicating that the order ended the case.

On October 6, 2021, Judge Cothran entered an Amended Form 4 Judgment In A Civil Case which stated "Plaintiff's Motion To Alter Or Amend is Denied" and showed an "X" in the box indicating that the order ended the case.

Appellants filed their Notice of Appeal in the South Carolina Court of Appeals on November 4, 2021 – within thirty days of entry of the Form 4 Amended Judgment received by Appellants on October 6, 2021.

Because the Notice of Appeal was timely filed, Respondents' Motion to Dismiss must itself be dismissed as being without merit.

II. Appellants seek relief from an order granting relief which is an exception to the stay and supersedeas of Rule 241, SCACR.

Appellants assert that the September 15, 2021, Circuit Court Order is contrary to Court Rules and State Statute. For this reason, they implored the Court to reconsider its ruling. Having their motion denied, Appellants are threading a figurative needle to obtain appellate review. First, Appellants complied with the Rule 241(b)(3) exception. Second, Appellants have requested clarification of the bond requirement Ordered by the Court as a prerequisite to filing an appeal. Both were raised in the Motion to Alter or Amend; neither was addressed in the two Form 4 Judgments denying the Motion to Alter or Amend.

On June 2, 2020, Respondents filed a Motion for Specific Acts and Vesting Title Under Rule 70, SCRCF. Respondents moved the Court for an Order directing: (1) That the Appellants

execute a conveyance of land or to deliver deeds within 30 days of the filing of the motion; or in the alternative, (2) for an Order holding Appellants in contempt of court to include costs and attorneys' fees incurred in the filing of the motion and Appellants' failure to comply with the land swap settlement; and (3) for an Order directing the Clerk of the Sumter County Register of Deeds to enter conveyance of the subject property.

On July 21, 2020, Appellants filed a Memorandum in Opposition to Respondents' Motion for Specific Acts and Vesting Title under Rule 70, SCRPC. Appellants assert that the litigation was not ripe for the Rule 70, SCRPC, Motion because issues of fact were still unresolved, that the Respondents had breached the Settlement Agreement incorporated in the Court's Order by failing and refusing to comply with the plain language of the Settlement Agreement, which is treated as a contract under South Carolina Law. The Settlement Agreement was approved by the Court on April 25, 2017, and entered into the record on April 25, 2017. The two-year "Construction Period" approved by the Court was "not to exceed two (2) years from the date of this agreement," which was April 25, 2017. Thus, the Construction Period began on April 25, 2017, and ended on April 24, 2019.

On July 10, 2020, Appellants filed a Memorandum in Opposition to Defendants *ex parte* application for an Order Granting a Temporary Injunction Regarding Shingle Mill Road pursuant to Rule 65, SCRPC. Respondents e-filed the proposed order, submitted the document to Circuit Court Judge R. Ferrell Cothran, Jr., by email and copied Appellants' counsel with the email. Appellants' Memorandum was filed at 6:29 P.M. on July 10, 2020, and asserted that the allegations set forth in the proposed order, even if they were true, do not satisfy the requirements set forth in Rule 65, SCRPC, for the issuance of a temporary restraining order. The Order Granting Temporary Injunction Regarding Shingle Mill Road was filed at 4:37 P.M. on July 10,

2020. Appellants filed a Notice of Motion and Motion to Dissolve the Temporary Injunction on the grounds that the Injunction was unlawful because it did not comply with the prerequisites set forth in Rule 65, SCRCF; in particular with regard to the Notice provision and the absence of factual allegations to support the injunction.

On July 10, 2020, Appellants also filed a Notice of Motion to Implead Adjoining Landowners contending that they were necessary to a full and fair adjudication of the controversy.

On July 21, 2020, Appellants filed a Notice of Motion and Motion to Vacate the Settlement Order on the grounds that the Respondents did not comply with the two-year construction period time-line in the Settlement Order, and that Respondents negotiated in bad faith. Appellants recounted that the Respondents had contended during the negotiations that they had no other avenue of ingress and egress except through Appellants' property. While, in fact, during the two-year construction period when no work was done toward constructing the agreed-upon roadway, Respondents had established and used another road to travel back and forth to their property. As further grounds for their Motion to Vacate, Appellants asserted that the action originated due to the misconduct of the Appellants, that the track of the litigation had been marked by efforts of the Respondents to gain control over and use Appellants' property without regard for the rights of the property owners, and that Respondents were using the court system to harass, manipulate and to gain unfair advantages over the Appellants.

The case was on the Sumter County Court of Common Pleas Motions Roster to be heard by Judge Cothran on August 30, 2021. First on the roster was Respondents' Rule 70, SCRCF Motion. The Appellants' three Motions to Dissolve the Order Granting the Temporary

Injunction, Motion to Implead Adjoining Landowners and Motion to Vacate Settlement Order followed in the order of second, third and fourth.

Subsequent to the Motions Hearing term, the Court sent Respondents' Counsel an email authorizing him to draft the Order from the hearing on August 30, 2021. Appellants' Counsel received a copy of the Judge's email. The resulting Order on appeal here was filed and served on September 15, 2021. Appellants timely-filed Motion To alter or amend judgment was made on the following grounds:

- a. There were four motions before the Court for disposition on August 30, 2021. The Court's Order addresses only Defendants' Rule 70, SCRPC, Motion. First, it appears that the Court grants the Motion, sets out the manner of implementation, prescribes the sanctions for failure to comply, and chills the right of the litigants to seek redress by imposing a requirement for posting bond by any party who appeals and seeks a stay of any one of more of the Orders entered in this matter.
- b. The Order disposes of one motion, but does not make any findings of fact or conclusions of law to support the disposition reached.
- c. The Order does not address either of Plaintiffs' three pending Motions. Plaintiffs contend that the issues raised in these Motions must be ruled upon, and sufficient findings of fact and conclusions of law set forth as would allow an adequate review of the basis of the Court's ruling.

Finally, certain documents referenced in Respondent's Motion To Dismiss were mischaracterized. "Thereafter, Appellants filed a second motion to reconsider on October 18, 2021; a purported Notice of Appeal on November 2, 2021,"¹ The filing on October 18, 2021, was a Notice of Motion and Motion in Re Bond on Appeal. Both Form 4 Judgments left intact the Order dated September 15, 2021, in its entirety, which contained the following provision:

In the event any party appeals and seeks a stay of any one or more of the Orders entered in this matter, the appealing party shall be required to post with the Sumter County Clerk of Court **cash surety in an amount not to exceed Fifty Thousand and no/100 (\$50,000.00) dollars, or such other amounts as may be determined to be sufficient by the Court.** *South Carolina Code §18-9-130*, and

¹ Motion To Dismiss, pp. 2,4,5, 6

South Carolina Code §18-9-170. All limitations set forth in (7) above shall be immediately stayed until further Order of the court upon the filing of any appeal. *Order, P. 2, pa. 8.* (Emphasis supplied)

Appellants' Motion requested that the Court, in determining an amount of the bond and the nature of the undertaking, take into consideration the value of the land at issue, the likelihood of harm to the real estate, and the potential for damage or loss to which the Respondents could be exposed during the process of an appeal.

Furthermore, the Order requires that the appealing party shall be required to post a "cash surety" in an amount not to exceed \$50,000.00. For purposes of this Motion, Appellants draw a distinction between a cash bond and a surety bond. As commonly used a "cash bond" means the posting of actual legal tender in United States currency. A surety bond constitutes the promise of a person who assumes liability for a debt or performance of an action or actions; that is to say, a written undertaking. In view of the fact that the nature of the bond and what amount, if any, is not stated, clarification is needed in order to implement this portion of the Order.

With regard to the filing on November 2, 2021, referred to in the Motion To Dismiss as "a purported Notice of Appeal," the document is entitled "Filing of Executed Conveyance to Stay Judgment During Appeal." Under cover of the said document, the executed conveyances were filed with the Clerk of Court of the Sumter County Court of Common Pleas pursuant to §18-9-160.

The Circuit Court cites Section 18-9-130, which addresses the "Effect of notice of an appeal on execution of judgment; sale of defendant's property; appeal in civil action involving signatory of Master Settlement Agreement." *S.C. Code Ann. §18-9-130 (2014)* Appellants contend that this section is inapplicable to the facts of Champion v. Hallman, which is being litigated here. The judgment here is not for cash, or for the sale of defendant's property, and it does not involve the signatory of a Master

Settlement agreement. The phase now before the Court revolves around Respondents' failure to timely comply with the terms of the Settlement Agreement. Appellants assert that such failure constitutes a breach of contract and renders the Settlement Agreement void. Hence, the subject written Order itself is premature in that there is no adjudication of the issues resulting from the intervening events which occurred since the date of the Settlement Order. The issues of these intervening occurrences were raised in written motions to the Court and required dispositions of the pending motions as a prerequisite to the entry of any Order ending the case.

The written Order also relies upon Section 18-9-170, "Staying Judgment for sale or delivery of land," which provides as follows:

If the judgment appealed from directs the sale or delivery of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which the judgment was rendered and which shall be specified in the undertaking. ... *S.C. Code Ann. §18-9-170 (2014)*

Although this section does not apply to the instant case, Section 18-9-170 is illuminating with regard to the bond requirement set forth in the written Order. Appellants direct the Court's attention to that certain portion of Section 18-9-170 which requires two sureties upon "a written undertaking ..." There is no requirement for a "cash surety" as mandated in the Court's written Order, thus making it contrary to and in opposition to the statutory scheme of this legislation provided to protect parties from risk of incurring damages during the appellate process.

Specifically reserving their position that the disposition of this case is premature, and that the Court erred in its Order, Appellants cite, *arguendo*, the following Section 18-9-160, Staying judgment to execute conveyance, as the operative statute.

If the judgment appealed from directs the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellant court.
S.C. Code ann. §18-9-160 (2014)

This statute does not, on its face, require the execution of a bond in any form. It only dictates that the executed instrument be deposited with the Clerk “to abide the judgment of the appellant court.” The fact that the posting of a bond is mandated in this case, the point that a “cash surety” is required, and the excessive amount of the bond in relation to the value of the real estate, is punitive, appears to and does impose a chilling effect upon the Appellants’ right to seek legal redress in our judicial system.

The filing on November 2, 2021, was in compliance with S.C. Code of Laws Ann. § 18-9-160 (1976), Staying Judgment to execute conveyance, and Rule 241(b)(3), SCACR, Stay and Supersedeas in Civil Actions, (b) Exceptions, (3) Judgments directing the execution of conveyances or other instruments as provided in S.C. Code Ann. §18-9-160, whereby the Appellants deposited with the Clerk of the Court of Common Pleas for Sumter County the executed conveyances described as follows:

- Quitclaim Deed dated April 15, 2019, from the Estate of Fannie M. Champion, by Evelyn C. Ludd, Personal Representative, Samuel Champion, Evelyn C. Ludd, Sarah C. Evans, Rachel C. Brown, Henry Champion, Jr., Janie M. Champion, John L. Champion, and Mary Johnson to Mary Ellen Davenport; and
- Easement Quitclaim Deed dated April 15, 2019, from the Estate of Fannie M. Champion, Samuel Champion, Evelyn C. Ludd, Sarah C. Evans, Rachel C. Brown, Henry Champion, Jr., Janie M. Champion, Mary Johnson, and John L. Champion to Ronald L. Hallman and Marjorie J. Hallman, Elton J. Hallman and Conswalla E. Hallman, Oron J. Hallman and Hazelee C. Hallman, Edward G. Hallman, Helen D. Hamilton and Edward E. Hamilton, and Mary Ellen Davenport.


The said Quitclaim Deed and Easement Quitclaim Deed have been deposited with the Clerk of the Court of Common Pleas for Sumter County to enable a stay of the Judgment of the

aforementioned Orders during the appeal of this case to abide the judgment of the South Carolina Court of Appeals.

Wherefore, having made a full Return to Respondents' Motion to Dismiss, the Appellants pray that the Court find that their Notice of Appeal was timely filed, determine that the Appellants have complied with the applicable exceptions to stay judgment set forth in the Order dated September 15, 2021, dismiss Respondents' Motion to Dismiss, and Order Appellants' appeal to proceed according to State Statute, Court Rules and Case Law.

MOORE LAW FIRM, L.L.C.

November 17, 2021


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Davenport, II, and Mary Ellen Davenport,

Respondents.

PROOF OF SERVICE

I certify that I have served the Appellants' Return to Respondents' Motion To Dismiss in the above-referenced case upon the Respondents by electronic transmission and by depositing a

copy of the same in the United States Mail, postage prepaid, on November 17th, 2021,
addressed to Respondents' attorneys at the following addresses:

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