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Dec 15 2021

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge
Civil Action No. 2020-CP-21-02831

Appellate Case No. 2021-000899

Candace Dowell, individually and as the PR of the Estate of Roger Alan Dowell,
Appellant,

v.

Putzmeister America, Inc.; Concrete & Materials Placement, LLC; R.E. Goodson
Construction Co., Inc; Mead & Hunt, Inc.; Benton Concrete & Utilities, LLC; and
Thomas Concrete, Inc., Defendants.

Of Whom Benton Concrete & Utilities, LLC is the Respondent.

APPELLANT'S UNOPPOSED MOTION TO REMAND TO THE LOWER COURT FOR
PURPOSES OF EFFECTUATING SETTLEMENT AND TO STAY THIS APPEAL PENDING
THE LOWER COURT'S APPROVAL OF SETTLEMENT

Appellant and Respondent have reached a proposed settlement of all matters pending before the appellate court in this action. Thus, pursuant to Rules 240 and 261 of the South Carolina Appellate Court Rules and S.C. Code § 15-51-42(C)(3), Appellant hereby requests, with Respondent's consent, that this Court conditionally remand this matter back to the lower court for purposes of effectuating the proposed settlement.

On August 28, 2018, Roger Alan Dowell was fatally injured while operating a concrete pump truck at a construction site on the South Pamplico Highway, near Pamplico, South

Carolina. On December 8, 2020, Appellant filed a wrongful death/survival action against several defendants, including, but not limited to, R.E. Goodson Construction Co., Inc., the highway project's general contractor, and Respondent, a full-service concrete construction contractor. On March 5, 2021, Respondent moved to dismiss the Complaint for lack of subject matter jurisdiction and pursuant to the workers' compensation exclusivity doctrine. On July 23, 2021, the lower court granted Respondent's motion, thereby dismissing it from the case. Appellant continued to litigate this matter in the lower court against the remaining defendants, including R.E. Goodson Construction Co., Inc.

On August 19, 2021, Appellant filed this appeal of the lower court's dismissal of Respondent, and on October 20, 2021, Appellant filed its Initial Brief and Designation of Matter. Currently, Respondent's Initial Brief is due on December 20, 2021. However, on or about December 10, 2021, Appellant reached an agreement to settle her claims against Respondent and R.E. Goodson Construction Co., Inc., including the claims that are the subject of this appeal.

Now, to effectuate the proposed settlement, Appellant respectfully requests that this Court stay this appeal and remand the case back to the lower court so that the lower court may consider the proposed settlement agreement. Because the underlying case is a wrongful death/survival action, South Carolina law requires that the lower court consider any settlement agreement for approval. *See* S.C. Code Ann. § 15-51-42(C) ("If a wrongful death or survival action has been filed in state court and ... (3) the settlement agreement is reached after notice of appeal is filed, the personal representative shall petition the appellate court before which the matter is pending to remand the case to the circuit court for consideration of the settlement agreement in accordance with the procedure outlined in (2) above."). Therefore, in light of the proposed settlement between the settling parties, and because the proposed settlement involves

more than just the parties to this appeal, Appellant respectfully requests that this Court conditionally remand this matter to the lower court for consideration of the proposed settlement. Appellant also requests that this Court stay any and all deadlines on appeal, including Respondent's deadline to file its Initial Brief and Designation of Matter, pending the lower court's approval of the Settlement Agreement. If the Court so desires, Appellant can provide the Court with a copy of the proposed, confidential settlement agreement. Appellant further requests that the Court hold all pending deadlines in abeyance during the Court's consideration of this motion.

Respectfully submitted,

/s/Nina Fields Britt

Michael J. Brickman (SC Bar No. 00874)

Nina Fields Britt (SC Bar No. 68294)

Caleb M. Hodge (SC Bar No. 104874)

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Attorneys for Appellant

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Construction Co., Inc.; Mead & Hunt, Inc.; Benton Concrete & Utilities, LLC; and
Thomas Concrete, Inc., Defendants,

of which Benton Concrete & Utilities, LLC is the Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on December 15, 2021, the foregoing Appellant's Unopposed Motion to Remand to the Lower Court for Purposes of Effectuating Settlement and to Stay this Appeal Pending the Lower Court's Approval of Settlement was served on all counsel of record in this action by mailing a copy of the pleading by United States Mail, postage prepaid, and electronic mail to the following addresses:

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/s/ Nina Fields Britt

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Counsel for Appellant

December 15, 2021



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Elizabeth Middleton Burke · J. David Butler · Aaron R. Dias · D. Charles Dukes
Jerry Hudson Evans · Theodore (T.A.C.) Hargrove II · Caleb M. Hodge
Gregory A. Lofstead · Christiaan A. Marcum · Karl E. Novak · Matthew A. Nickles
Misty Black O'Neal · Kimberly Keevers Palmer · Charles W. Patrick, Jr.
Thomas D. Rogers · A. Hoyt Rowell, III · T. Christopher Tuck · Kenneth J. Wilson
Robert S. Wood
Of Counsel: Gordon C. Rhea (CA, DC & USVI only) · Edward J. Westbrook

December 15, 2021

Via Email & US Regular Mail

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**Re: Candace Dowell, et al. v. Benton Concrete & Utilities, LLC
Appellate Case No. 2021-000899**

Dear Counsel:

Enclosed for service please find Appellant's Unopposed Motion to Remand to the Lower Court for Purposes of Effectuating Settlement and to Stay this Appeal Pending the Lower Court's Approval of Settlement.

December 15, 2021

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Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Nina Fields Britt", with a long horizontal flourish extending to the right.

Nina Fields Britt

Enclosures

cc via email only: Plaintiff's Attorneys

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Via Electronic Mail For Filing

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
Email: ctappfilings@sccourts.org

Re: Candace Dowell, et al. v. Benton Concrete & Utilities, LLC
Appellate Case No. 2021-000899

Dear Ms. Kitchings:

Attached for filing in the above-referenced matter is Appellant's Unopposed Motion to Remand to the Lower Court for Purposes of Effectuating Settlement and to Stay this Appeal Pending the Lower Court's Approval of Settlement.

Appellant is separately sending the applicable motion filing fee of \$50.00 via Federal Express Overnight Mail to Court's physical address.

Very Truly Yours,



Nina Fields Britt

Attachment
cc via email only: All Counsel of Record