

**Jun 02 2022**

IN THE COURT OF COMMON PLEAS

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Morningstar Fellowship Church,

Plaintiff,

vs.

York County, South Carolina,

Defendant.

Civil Action No. 2022CP4600161

**ORDER DENYING  
PLAINTIFF'S MOTION TO STRIKE  
RESTORATION OF CASE TO THE  
ACTIVE DOCKET; MOTION FOR  
SANCTIONS; MOTION TO STRIKE;  
AND MOTION TO SET ASIDE  
ORDER/JUDGMENT/MOTION**

This matter comes before the Court on the following motions filed by Plaintiff, Morningstar Fellowship Church ("Morningstar"): Motion to Strike Restoration of Case to the Active Docket; Motion for Sanctions; Motion to Strike; and Motion to Set Aside Order/Judgment/Motion (collectively, the "Motions").

A hearing was held in this matter on May 20, 2022. At the hearing, Brian A. Autry appeared as counsel on behalf of York County, and Donald M. Brown, Jr. appeared as counsel on behalf of Morningstar.

**FINDINGS**

This matter was previously styled "Morningstar Fellowship Church vs. York County, South Carolina, C.A. No. 2013CP4600246" (the "Initial Suit"). The parties filed a Stipulation Pursuant to Rule 40(j) S.C.R. Civ. P. on August 31, 2020, to remove the Initial Suit from the active docket (the "Stipulation"). On August 30, 2021, less than one year after the Stipulation was filed, York County filed a Notice and Motion to Restore Case to the Active Roster. As stated in York County's Motion to Restore, counsel for York County, Michael K. Kendree, did not consult with counsel for Morningstar. Mr. Kendree certified that he did not consult with

counsel for Morningstar because consultation would serve no useful purpose. Counsel for Morningstar received notice of the Motion to Restore via electronic means.

On January 19, 2022, at the request of the Court, York County submitted a proposed order restoring this case to the active docket, which the Court signed and filed on January 19, 2022, without a hearing. The matter was then restored to the active docket and given the above-captioned case number. Morningstar's Motions followed entry of the Court's order restoring this matter to the active docket.

### **RULING**

Upon consideration of the Motions, memoranda, exhibits, affidavits, oral argument, and applicable law, the Court rules as follows:

1. Morningstar has no grounds for contesting the restoration of this matter to the active docket because York County's Motion to Restore was timely filed within one year of the date the Stipulation was filed. Therefore, the restoration of the case to the active docket is automatic pursuant to the Stipulation and Rule 40(j) SCRPC, and no hearing was required prior to restoration. The legal authorities cited by Morningstar providing that a hearing is necessary before restoring a 40(j) matter are all limited to the situation – not present here – where the motion to restore was filed more than one year after the Rule 40(j) dismissal. Under Morningstar's purported interpretation, that a hearing is required before restoring any 40(j) matter, no Plaintiff would ever consent to a 40(j) dismissal because such consent would offer the defendant a free opportunity to have the case dismissed (i.e., not restored).

2. Since the restoration of this matter to the active docket is automatic, counsel for York County, Mr. Kendree, had no duty under Rule 11 SCRPC to consult with counsel for Morningstar prior to filing the Motion to Restore, because consultation would have served no

useful purpose. Mr. Kendree's affirmation that consultation with opposing counsel in advance of filing the County's Motion to Restore would serve no useful purpose obviates any purported obligation to consult, should one have existed.

IT IS THEREFORE ORDERED THAT the restoration of this case to the active docket is appropriate, and the following Motions made by Morningstar are DENIED:

1. Motion to Strike Restoration of Case to the Active Docket;
2. Motion for Sanctions;
3. Motion to Strike; and
4. Motion to Set Aside Order/Judgment/Motion.

**AND IT IS SO ORDERED.**

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Honorable William A. McKinnon  
Judge – Sixteenth Judicial Circuit

May \_\_\_\_, 2022



York Common Pleas

**Case Caption:** Morningstar Fellowship Church VS York County Of

**Case Number:** 2022CP4600161

**Type:** Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge