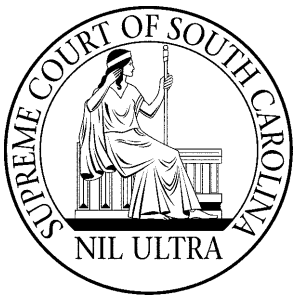

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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 28
July 11, 2018
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Gwendolyn L. Robinson, Respondent.

Appellate Case No. 2018-000546

Opinion No. 27824
Submitted May 30, 2018 – Filed July 11, 2018

DEFINITE SUSPENSION

John S. Nichols, Disciplinary Counsel, and Sabrina C. Todd, Senior Assistant Disciplinary Counsel, of Columbia, for Office of Disciplinary Counsel.

Gwendolyn L. Robinson, of Mount Pleasant, pro se.

PER CURIAM: In this attorney disciplinary matter, Respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, Respondent admits misconduct and consents to the imposition of a public reprimand or a definite suspension of no more than nine (9) months. We accept the Agreement and suspend Respondent from the practice of law in this state for nine (9) months. The facts, as set forth in the Agreement, are as follows.

Facts

The underlying child custody case began after the mother of several children was killed in an accident. Respondent represented the maternal grandmother (Client), who was a defendant in the custody action. Approximately two weeks after the family court granted custody to another relative, Respondent submitted a sworn

affidavit to the court in support of Client's request for an emergency hearing. The affidavit was signed with Client's name and notarized by Respondent.

After Respondent and Client dissolved their relationship, Client informed the court that the affidavit Respondent submitted was forged. Client stated she had no knowledge of the affidavit when it was filed but that its contents were true. Respondent admits she signed Client's name to the affidavit.

Law

Respondent admits that by her conduct she has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 3.3(a)(3) (lawyer shall not knowingly offer evidence the lawyer knows to be false); Rule 3.4(b) (lawyer shall not falsify evidence); Rule 8.4(d) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and Rule 8.4(e) (it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice).

Respondent also admits she has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (violating the Rules of Professional Conduct is a ground for discipline) and 7(a)(5) (conduct tending to pollute the administration of justice or to bring the legal profession into disrepute or conduct demonstrating an unfitness to practice law is a ground for discipline).

Conclusion

We accept the Agreement and suspend Respondent from the practice of law in this state for nine (9) months. Lawyer shall pay the costs incurred in the investigation and prosecution of this matter of ODC and the Commission on Lawyer Conduct within thirty (30) days of the date of this opinion. Lawyer understands she will be required to complete the Legal Ethics and Practice Program Ethics School in accordance with Rule 33, RLDE, Rule 413, SCACR.

Within fifteen days of the date of this opinion, Respondent shall file an affidavit with the Clerk of Court showing that she has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of William F. Gorski, Respondent.

Appellate Case No. 2018-000549

Opinion No. 27825
Submitted May 30, 2018 – Filed July 11, 2018

DEFINITE SUSPENSION

John S. Nichols, Disciplinary Counsel, and Ericka M. Williams, Senior Assistant Disciplinary Counsel, of Columbia, for Office of Disciplinary Counsel.

William F. Gorski, of Lexington, pro se.

PER CURIAM: In this attorney disciplinary matter, Respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, Respondent admits misconduct and consents to the imposition of a definite suspension not to exceed twelve (12) months. We accept the Agreement and suspend Respondent from the practice of law in this state for twelve (12) months. The facts, as set forth in the Agreement, are as follows.

Facts

The Agreement resolves four complaints against Respondent. The first two involve Respondent's failure to keep clients reasonably informed regarding their cases and failing to act with reasonable diligence and promptness in concluding the cases. The third one arose from Respondent's failure to pay $2,500 to his client

after the Resolution of Fee Disputes Board instructed him to do so. Finally, the fourth complaint was filed after Respondent took approximately a decade to have three Qualified Domestic Relations Orders (QDROs) prepared. He represented a client in a domestic matter that was resolved by a settlement agreement approved by the family court in 1999. The agreement provided that Respondent was to prepare the QDROs. Respondent was contacted by the Complainant's attorney in 2009 regarding the status of the QDROs. Respondent then hired a QDRO specialist to prepare the QDROs, which were submitted to the retirement plans in 2009 and 2010.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (lawyer shall act with reasonable diligence and promptness in representing a client), Rule 1.4 (lawyer shall keep the client reasonably informed about the status of a matter), Rule 1.5 (lawyer shall not charge or collect an unreasonable fee), Rule 1.15 (lawyer shall safe keep client funds), Rule 3.2 (lawyer shall make reasonable efforts to expedite litigation), and Rule 3.4(c) (lawyer shall not knowingly disobey obligation of a tribunal).

Respondent also admits he has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (violation of the Rules of Professional Conduct is a ground for discipline) and 7(a)(10) (willfully failing to comply with a final decision of Resolution of Fee Disputes Board is a ground for discipline).

Conclusion

We accept the Agreement and suspend Respondent from the practice of law in this state for twelve (12) months.[1] In addition, Respondent shall pay the costs incurred

[1] Respondent's disciplinary history includes a 2003 admonition, a 2006 public reprimand, *In re Gorski*, 370 S.C. 357, 635 S.E.2d 95 (2006), a 2007 letter of caution with no finding of misconduct, a 2009 letter of caution with a finding of minor misconduct, and a 2011 letter of caution. The conduct addressed in these matters is relevant to the misconduct in the current proceeding. *See* Rule 2(s), RLDE (fact that letter of caution has been issued shall not be considered in a

in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct within thirty (30) days of the date of this opinion.

Within fifteen days of the date of this opinion, Respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30 of Rule 413, SCACR.

DEFINITE SUSPENSION.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

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subsequent disciplinary proceeding unless the caution or warning contain in the letter of caution is relevant to the misconduct alleged in the new proceedings).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Skydive Myrtle Beach, Inc., Appellant,

v.

Horry County, Respondent.

Appellate Case No. 2015-001868

Appeal From Horry County
Larry B. Hyman, Jr., Circuit Court Judge

Opinion No. 5573
Heard March 5, 2018 – Filed July 11, 2018

DISMISSED

Robert Bratton Varnado and Alexis Mills Wimberly, both of Brown & Varnado, LLC, of Mt. Pleasant, for Appellant.

Michael Warner Battle, of Battle Law Firm, LLC, and Arrigo Paul Carotti, of Conway, for Respondent.

LOCKEMY, C.J.: In this appeal from a magistrate's order ejecting Skydive from a hangar at Grand Strand Airport, Skydive asserts the circuit court erred by denying its appeal of the ejectment order because: (1) ejectment was a mandatory counterclaim that should have been pursued in the pending circuit court case; (2) Rule 12(b)(8), SCRCP, required the ejectment be brought with the pending circuit court case; (3) the magistrate improperly applied its rules of court; (4) and the

Space Use Permit did not supersede the prior eight-year long lease. Skydive also asserts the circuit court erred in finding its ruling was not automatically stayed during the appeal. We dismiss this appeal as moot.

FACTS

Skydive is a skydiving business that operated out of the Grand Strand Airport (GSA) located in North Myrtle Beach, SC. On May 10, 2012, Skydive entered into an agreement with Ramp 66, the operator of the GSA, which allowed Skydive to operate its business at the GSA. Skydive would be allowed usage of a minimum of 2,500 square feet in the "bird hangar" for use during daylight hours, seven days a week. In exchange, Ramp 66 would collect all ticket fees from Skydive's customers and keep 14% of the total revenue. The parties also agreed, "This agreement remains in effect through [Ramp 66's] lease with Horry County Department of Airports through July 2020 unless both parties agree to any changes in writing."

Ramp 66's lease with Horry County (the County) terminated by agreement in 2013. On September 13, 2013, Skydive entered into a Space Use Permit (SUP) with the County. Pursuant to the SUP, the County agreed to allow Skydive to occupy and use 6,800 square feet in the bird hangar. In exchange, the County would receive a flat $1,200 per month fee. The SUP, by its terms, expired January 31, 2014. The SUP also contained a clause indicating: "This Permit constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations and understandings, concerning the same, whether written or oral."

After signing the SUP, Skydive requested several items at the bird hangar be repaired. According to Skydive, the County never responded to those requests. As a result of these and other actions, the relationship between Skydive and the County soured. Subsequently, the County provided Skydive with another SUP in February, 2014, but Skydive refused to sign it. On February 28, 2014, Skydive filed an action in the court of common pleas alleging sixteen causes of action including breach of contract, breach of contract accompanied by a fraudulent act,

and violation of the South Carolina Unfair Trade Practices Act. The County answered that complaint on March 18, 2014.[1]

On June 5, 2014, the County filed an application for ejectment in the magistrate's court. The County asserted, "[t]he term tenancy or occupancy has ended." On June 13, 2014, Skydive's attorney filed a motion to remove the case from the magistrate's court to the circuit court. Skydive asserted the same facts and issue were pending in the circuit court action and the case should be removed from the magistrate's court. On July 2, 2014, the magistrate heard argument on the motion to remove and denied it. The magistrate also notified both parties it would hear the rule to vacate on July 23, 2014.

On July 18, 2014, Skydive sent the magistrate a letter asking the magistrate to reconsider its ruling on the motion to remove. Skydive also requested, "[s]hould this [h]onorable [c]ourt deny [Skydive's] request for reconsideration, [Skydive] respectfully asks for thirty (30) days within which to file an Answer and Counterclaim . . . and a jury trial . . . and reasonable discovery." During the hearing on July 23, the magistrate denied Skydive's motion for reconsideration, motion for a continuance to file an answer and counterclaims, and motion for a jury trial. The magistrate found the request to file an answer and counterclaims and the request for a jury trial were not submitted within the proper time periods for them to be considered. The magistrate then held a hearing on the merits and found Skydive did not have a legal right to be on the property and ordered it be ejected.

Skydive appealed the magistrate's decision to the circuit court. On August 1, 2014, the magistrate issued an appellate bond, allowing Skydive to continue occupying the property and requiring Skydive to continue paying the County $1,200 per month in rent "until the action is heard on appeal and decided by the [c]ircuit [c]ourt."

The circuit court heard Skydive's appeal on May 6, 2015. The circuit court dismissed Skydive's appeal, finding the parties modified their previous agreement

[1] That case is currently on appeal after the circuit court granted a motion to dismiss certain parties from the action. *Skydive Myrtle Beach, Inc. v. Horry County*, Op. No. 2017-UP-118 (Ct. App. filed March 8, 2017), *cert granted, S.C. Sup. Ct. Order dated Mar. 7, 2018.*

when the parties signed the SUP and that the SUP expired by its terms on January 31, 2014. The circuit court also found the magistrate properly applied its rules in denying Skydive's requests for a continuance and for a jury trial as those requests were made out of time. Skydive requested the circuit court reconsider its decision, but that motion was denied.

On September 17, 2015, Skydive requested the circuit court stay its ejectment during the appeal to this court. Skydive argued the magistrate's court order stayed the proceedings to their final conclusion and the circuit court should issue a writ of supersedeas pursuant to Rule 241, SCACR. The circuit court noted the language in the magistrate's court order stated: "Upon execution of the above bond, execution on the Judgment of Ejection is hereby stayed until the action is heard on appeal and decided by the [c]ircuit [c]ourt." The circuit court found the magistrate's stay expired by its own terms after it dismissed Skydive's appeal, and the circuit court denied Skydive's request for a supersedeas pending appeal to this court. Skydive never requested this court stay its ejection pending appeal. In October 2015, Skydive vacated the bird hangar at GSA. This appeal followed.

STANDARD OF REVIEW

When reviewing a circuit court's adjudication of an appeal of an ejectment action in magistrate's court, this court reviews the order under a limited standard of review in which "(1) findings of fact are to be upheld if there is any supporting evidence and (2) absent an error of law, the circuit court's holding is to be affirmed." *McNair v. United Energy Distribs.*, 390 S.C. 44, 49, 699 S.E.2d 723, 726 (Ct. App. 2010).

ANALYSIS

"This court does not concern itself with moot or speculative questions." *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). "An appellate court will not pass judgment on moot and academic questions; it will not adjudicate a matter when no actual controversy capable of specific relief exists." *Id*. "A case becomes moot when judgment, if rendered, will have no practical effect upon the existing controversy." *Id*. "Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief." *Id*.

In 1951, our supreme court dismissed as moot an appeal of an ejectment action when the tenant notified the court it vacated the home. *Berry v. Zahler*, 220 S.C. 86, 87, 66 S.E.2d 459, 459 (1951). There, the property owner brought an ejectment action against the tenants "upon the allegation that they were holding over after the expiration of their lease." *Id*. The court determined, "Under the circumstances, the issue, which was the right to possession of the premises, has become moot, and the appeal will not be considered." *Id*.

In this ejectment case, the sole issue is the right to possession of the bird hangar. Skydive has not possessed the property in almost three years. As in *Berry*, there is nothing more for this court to consider once the party appealing has vacated the premises. Accordingly, we dismiss this appeal as moot.

CONCLUSION

Based on the foregoing, the appeal is

DISMISSED.

WILLIAMS and KONDUROS, JJ., concur.