

The Supreme Court of South Carolina

In the Matter of
Jayne G. Helm,

Respondent.

ORDER

Pursuant to Rule 31, RLDE, Rule 413, SCACR, the Commission on Lawyer Conduct has filed a Petition to Appoint Attorney to Protect Clients' Interests in this matter. This request is based on the current medical condition of the respondent. The petition is granted.

IT IS ORDERED that Nat B. Benson, Jr., Esquire, is hereby appointed to assume responsibility for Ms. Helm's client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) Ms. Helm maintained. Mr. Benson shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of Ms. Helm's clients. Mr. Benson may make disbursements from Ms. Helm's trust account(s), escrow account(s), operating account(s), and any other law office account(s) Ms. Helm maintained that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating accounts of Ms. Helm, shall serve as notice to the bank or other financial institution that Nat B. Benson, Jr., Esquire, has been duly appointed by this Court.

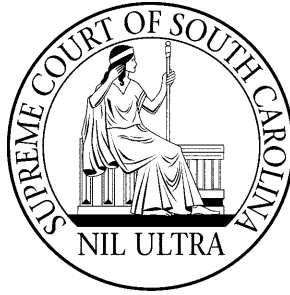
Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Nat B. Benson, Jr., Esquire, has been duly appointed by this Court and has the authority to receive Ms. Helm's mail and the authority to direct that Ms. Helm's mail be delivered to Mr. Benson's office.

This appointment shall be for a period of no longer than nine months unless request is made to this Court for an extension.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

October 15, 2010



OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA

ADVANCE SHEET NO. 42
October 18, 2010
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Dana Eugene Lanier,

Appellant.

Appeal From York County
Clifton Newman, Circuit Court Judge

Opinion No. 4751
Submitted October 1, 2010 – Filed October 13, 2010

AFFIRMED

Appellate Defender LaNelle C. DuRant, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
and Senior Assistant Attorney General Harold M.
Coombs, Jr., all of Columbia; and Solicitor Kevin S.
Brackett, of York, for Respondent.

PER CURIAM: Dana Eugene Lanier appeals his conviction for escape, arguing the trial court erred in failing to direct a verdict where Appellant was indicted for violating section 24-13-410 of the South Carolina Code (2007) and the indictment made no reference to section 24-3-50 of the South Carolina Code (2007). We affirm.¹

FACTS

In February 2006, Lanier, an inmate at the Catawba Correctional Institution (Catawba), began participating in the prison's work release program. Lanier attended a work release orientation and signed a community employment agreement prohibiting him from leaving his place of employment unless authorized by the warden and informing him he could be charged with escape if he did so. In May 2006, Lanier began working at Wise Masonry and Construction as a brick mason. On July 1, 2006, a City of York police officer detained Lanier at the residence of Lanier's sister after the prison reported Lanier missing from the work site and the prison. Subsequently, Lanier was charged with escape in violation of section 24-13-410. The indictments do not reference section 24-3-50.²

At trial, Ronald Wiseman, the owner of Wise Masonry and Construction, testified he hired Lanier from the Catawba prison work release program. Wiseman explained foreman Benny Hewlett was in charge of Lanier and brought Lanier to and from various work sites in York County. Wiseman stated his construction company was not working at the residence of Lanier's sister, and Lanier was not authorized to be there. Wiseman

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

² Section 24-13-410(A) states "it is unlawful for a person, lawfully confined in prison . . . to escape, [or] to attempt to escape." S.C. Code Ann. § 24-13-410(A) (2007). Section 24-3-50 states prisoners may be charged with escape under section 24-13-410 if they violate the limits of their designated work release location. See S.C. Code Ann. § 24-3-50 (2007).

testified the prison contacted him on July 1, 2006, when Lanier did not return to Catawba. Wiseman admitted he later discovered Hewlett had taken Lanier off the work site on prior occasions, but stated Hewlett no longer worked for his company.

Lieutenant Richard Caddell of the City of York Police Department testified he responded to a radio call on July 1, 2006, seeking to locate Lanier. Caddell explained he drove to the residence of Lanier's sister and observed Lanier sitting on the front porch with a beer in his hand. Caddell testified Lanier did not appear to be intoxicated and was cooperative when Caddell detained him.

South Carolina Department of Corrections Investigator Eddie O'Cain testified he transported Lanier back to Catawba shortly after Caddell detained Lanier. O'Cain conducted a five-minute interview with Lanier in which Lanier denied attempting to escape from prison custody. O'Cain testified he also attempted to contact Hewlett after interviewing Lanier, but was unable to locate Hewlett.

After the State rested, Lanier moved for a directed verdict. The trial court denied his motion:

I find that the evidence . . . in the light most favorable to the State if believed by the jury could result in [Lanier] being found guilty of escape. The statute provides that a person lawfully confined in a prison who attempts to escape is guilty of escape, and by extension the section 24-3-50 provides the failure of a prisoner to remain within the extended limits of his confinement constitutes an escape, and that's the issue before this court.

Lanier testified at trial in his own defense. He explained Hewlett drove him to and from the various work sites and also took him to his sister's home on several occasions. Lanier stated Hewlett took him to his sister's home on

July 1 after they completed work at a job site. Hewlett allegedly told Lanier he would be back in an hour or so and left Lanier alone. Lanier testified he became worried after a couple of hours when Hewlett failed to return and attempted to call Hewlett, but Hewlett did not answer his phone. Lanier stated he should have called Catawba prison officials at that point, but "was scared . . . and [that] would have gotten [Hewlett] in trouble." Lanier explained he was not attempting to escape from prison custody and would have returned to Catawba if Hewlett had returned, but admitted he did break prison rules by leaving the work site with Hewlett.

Lanier renewed his motion for directed verdict at the close of his case, arguing he was not guilty "under the indictment which references the statute that [he was] charged [with]" because he was not confined in prison at the time the prison official found him. The trial court denied his motion, stating: "My interpretation of the statute is different from counsel [in] that a person on work release is under extended confinement and can escape from extended confinement." The jury found Lanier guilty of escape, and the trial court sentenced him to one year of imprisonment. This appeal followed.

STANDARD OF REVIEW

"A defendant is entitled to a directed verdict when the [S]tate fails to produce evidence of the offense charged." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Id. at 292-93, 625 S.E.2d at 648. "When reviewing a denial of a directed verdict, this [c]ourt views the evidence and all reasonable inferences in the light most favorable to the [S]tate." Id. at 292, 625 S.E.2d at 648.

LAW/ANALYSIS

Section 24-13-410(A) of the South Carolina Code (2007) states, in pertinent part:

It is unlawful for a person, lawfully confined in prison or upon the public works of a county or while in the custody of a superintendent, guard, or officer, to escape, to attempt to escape, or to have in his possession tools or weapons which may be used to facilitate an escape.

Lanier argues the State did not offer sufficient evidence to prove he was guilty under this statute because when he was charged with escape: (1) he was outside of the prison on work release; (2) he was in the custody of Hewlett and relied on Hewlett to transport him to the prison; and (3) he did not possess any tools or weapons to facilitate an escape. We disagree.

Because no evidence in the record establishes Lanier was lawfully confined upon the public works of a county, in the custody of a prison official, or possessed tools to facilitate an escape, the dispositive issue for purposes of Lanier's directed verdict motion is whether the State failed to provide evidence that Lanier escaped while "lawfully confined in prison." Lanier contends he did not escape or attempt to escape from imprisonment because he was on work release and not on the prison grounds at the time of his escape. No South Carolina case law directly addresses whether a prisoner on work release is considered to be lawfully confined in prison for purposes of a violation of section 24-13-410. Accordingly, in the absence of any controlling case law, we "must ascertain and effectuate the actual intent of the Legislature." State v. McGrier, 378 S.C. 320, 328, 663 S.E.2d 15, 19 (2008).

Although section 24-13-410 does not define the phrase "lawfully confined in prison," the extent of a prisoner's lawful confinement in prison for purposes of the work release program is clarified in two other statutes that are part of the same general statutory scheme as section 24-13-410. See State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002) ("Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if

it can be done by any reasonable construction."). Section 24-3-20 sets forth the applicable features of prison work release programs:

When the director determines that the character and attitude of a prisoner reasonably indicates that he may be trusted, he may extend the limits of the place of confinement of the prisoner by authorizing him to work at paid employment or participate in a training program in the community on a voluntary basis while continuing as a prisoner.

S.C. Code Ann. § 24-3-20(B) (2007) (emphasis added). Section 24-3-50 of the South Carolina Code (2007) provides a penalty for prisoners who fail to remain within the limits of their work release program:

The willful[1] failure of a prisoner to remain within the extended limits of his confinement as authorized by § 24-3-20(B), or to return within the time prescribed to the designated place of confinement, shall be deemed an escape from the custody of the Department of Corrections and punishable as provided in § 24-13-410.

Read together, the legislative intent of sections 24-3-20(B) and 24-3-50 is unambiguous: the lawful confinement of a prisoner in a work release program is extended to the limits of a prisoner's designated work release location, but no further. See Morgan, 352 S.C. at 367, 574 S.E.2d at 207 ("When the terms of a statute are clear, the court must apply those terms according to their literal meaning."). Moreover, by incorporating section 24-13-410 into the text of section 24-3-50, our Legislature has expressly provided a punishment of escape under section 24-13-410 for a prisoner who violates the confines of their work release program. Thus, even if the State fails to reference section 24-3-50 in an indictment, for purposes of a directed verdict motion regarding section 24-13-410, the State may offer evidence that a prisoner has left the site of the work release program and has not returned

back to the prison to show the prisoner escaped or attempted to escape because the prisoner violated the extended limits of his lawful prison confinement.

This statutory analysis of section 24-13-410 is also consistent with the supreme court's holdings in two other cases involving section 24-13-410. In State v. Murray, the defendant was a prisoner at Goodman Correctional Institution who was permitted to leave the confines of the prison for seventy-two hours to visit his wife during Christmas. 273 S.C. 374, 375, 256 S.E.2d 543, 543 (1979). When he did not return to the prison from his Christmas furlough, he was indicted and convicted for escape.³ Id. at 375, 256 S.E.2d at 543. On appeal, the defendant argued "the evidence introduced by the State at trial varied materially from the allegations of the indictment." Id. In interpreting the crime of escape, the supreme court considered another section in the statutory code, section 24-3-210 of the South Carolina Code (2007), and held "the evidence introduced by the State established the very crime charged in the indictment" because the "[f]ailure to return from a furlough is deemed an escape by section 24-3-210." Id. at 375-76, 256 S.E.2d at 543-44 (quotation marks omitted). In Bing v. Harvey, the supreme court came to a similar conclusion in interpreting section 24-13-410 when it held "appellant's escape from lawful pretrial custody violated the statutory offense of escape." 274 S.C. 216, 218, 262 S.E.2d 42, 43 (1980).

Turning to the facts of the case at bar, we find the State offered direct evidence of Lanier's violation of the escape statute. Lanier was lawfully imprisoned at Catawba for a criminal conviction, and the prison extended the limits of Lanier's prison confinement by allowing him to participate in a work release program with Wise Masonry and Construction. On July 1, 2006, Lanier exceeded the limits of his prison confinement and escaped when a police officer found Lanier away from the work site at his sister's residence. Lanier admitted he broke the rules of the work release program when he left

³ Although the case does not cite to the specific statutory section Murray violated, it appears from the text of the indictment quoted in the case that Murray was convicted of a violation of section 24-13-410.

with Hewlett from the work site without returning to Catawba. Accordingly, the trial court did not err in denying Lanier's directed verdict motion.

CONCLUSION

Based on the foregoing, the decision of the trial court is

AFFIRMED.

SHORT, THOMAS, and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

James David Farmer, Respondent/Appellant,

v.

Florence County Sheriff's Office, Appellant/Respondent.

Appeal From Florence County
J. Ernest Kinard, Jr., Circuit Court Judge

Opinion No. 4752
Heard April 13, 2010 – Filed October 13, 2010

AFFIRMED IN PART AND REMANDED

James C. Rushton, III, of Florence, for
Appellant/Respondent.

Patrick J. McLaughlin, of Florence, for
Respondent/Appellant.

THOMAS, J.: This is a cross-appeal of an order in a civil action for damages allegedly arising from the retention by the Florence County Sheriff's

Office (the Sheriff's Office) of inventory from James David Farmer's retail business pursuant to a warrant asserting that Farmer was selling counterfeit merchandise. The trial judge ordered the Sheriff's Office to return to Farmer the seized inventory items that were not involved in any resulting criminal conviction and, based on that ruling, refused to allow Farmer to proceed on his claims for negligence, conversion, and civil conspiracy. In the primary appeal, the Sheriff's Office argues the trial judge erred in ordering the return of the contraband. In his cross-appeal, Farmer argues he should have been allowed to pursue several private causes of action for damages against the Sheriff's Office. We affirm in part and remand.

FACTS AND PROCEDURAL HISTORY

Farmer was the sole proprietor of "Top Gear Clothing," a retail business in Florence, South Carolina. On August 30, 2007, pursuant to a warrant issued the same day, agents of the Sheriff's Office initiated a raid of Top Gear Clothing, seizing Farmer's inventory of clothing, footwear, movie DVDs and music CDs.

Farmer was subsequently charged with trafficking in counterfeit goods in violation of section 39-15-1190 of the South Carolina Code (Supp. 2009) and distribution of pirated recordings in violation of sections 16-11-930 and 16-11-940 (2003). On January 23, 2008, Farmer negotiated a plea on the charge concerning the alleged distribution of pirated recordings. The charges concerning the counterfeit goods were dismissed.

By letter dated February 5, 2008, Farmer's attorney demanded that the Sheriff's Office return the clothing and footwear seized from Top Gear Clothing, noting these items were not the subject of any guilty plea. After receiving no response, counsel sent another letter on March 19, 2008, informing the Sheriff's Office he was making a "final demand" on Farmer's behalf for the return of the items referenced in the previous letter. Counsel further advised that if the items in question were not returned within ten days of the date of the letter, a lawsuit would follow.

On May 30, 2008, Farmer filed his summons and complaint in the present action against the Sheriff's Office, alleging various causes of action arising from the allegedly wrongful retention of his inventory, namely, (1) negligence per se, (2) general negligence, (3) conversion, and (4) civil conspiracy. In his prayer for relief, Farmer asserted he was entitled to actual and consequential damages, special damages, lost profits and interest, and punitive damages. In its answer, the Sheriff's Office denied Farmer was entitled to the relief he requested and also asserted (1) Farmer failed to state a cause of action upon which relief could be granted, (2) it was entitled to immunity under the South Carolina Tort Claims Act, (3) Farmer failed to exhaust his administrative remedies, and (4) Farmer's negligence exceeded its own negligence. The Sheriff's Office admitted that no forfeiture proceedings had been filed in the matter.

On June 24, 2008, Farmer moved for summary judgment, arguing (1) the Sheriff's Office had no legal basis to continue to deny him the return of his inventory and (2) he was entitled to the immediate return of his property as well as special damages. On August 20, 2008, the Sheriff's Office filed a notice and cross-motion for summary judgment. Accompanying the motion was a memorandum of law in opposition to Farmer's motion and in support of the cross-motion. In its memorandum, the Sheriff's Office argued (1) the applicable statute did not provide Farmer with a private right of action, (2) Farmer failed to avail himself of the means provided in the statute to recover his inventory, and (3) the South Carolina Tort Claims Act prevented Farmer from proceeding on his claim.

The trial judge heard both motions on September 2, 2008, and on September 26, 2008, issued the appealed order. In the order, the trial judge ruled Farmer was "entitled to the return of his inventory seized not related to his criminal convictions (i.e. clothes and shoes)" within ten days of the receipt of the order by the Sheriff's Office; however, the trial judge also cautioned Farmer that "if said items are, in fact counterfeit and he attempts to traffic such items after their return, he will, again, be subject to criminal charges." Based on this disposition of the matter, the trial judge further refused to grant a damages hearing, noting this decision was subject to the

condition "that the items are returned in substantially the same condition as when seized." Acknowledging his order was "obviously a reasonable compromise," the trial judge purported to dismiss Farmer's private causes of action. He qualified this ruling, however, by suggesting Farmer should pursue redress under the South Carolina Tort Claims Act, which he did not consider in disposing of the cross-motions, and explaining that "[t]he Sheriff's Office simply cannot hold [Farmer's] property unless it is being held for use in a criminal proceeding." Both the Sheriff's Office and Farmer appeal.

ISSUES

- I. Did the trial judge err in ordering the Sheriff's Office to return the confiscated items to Farmer? (Sheriff's Office appeal)

- II. Did the trial judge err in holding that Farmer's remedy was limited to recovery of his property and that Farmer did not have a private right of action against the Sheriff's Office for failing to return it? (Farmer's appeal)

STANDARD OF REVIEW

Both the primary appeal and the cross-appeal involve the interpretation of sections 39-15-1190 and 39-15-1195 of the South Carolina Code (Supp. 2009), which prohibit the sale of counterfeit goods, state the penalties for this offense, and set procedures for the seizure of counterfeit goods and institution of forfeiture proceedings by law enforcement agencies. Furthermore, although the matter came before the trial court on cross-motions for summary judgment, the facts are not in dispute; therefore, both issues to be decided in this appeal are to be reviewed de novo. See Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.").

LAW/ANALYSIS

I. Return of the Property (Sheriff's Office Appeal)

The Sheriff's Office argues the trial judge erred in ordering it to return the confiscated clothing and footwear to Farmer, contending it should have been allowed to retain possession of these items because (1) law enforcement agencies may hold allegedly counterfeit goods for purposes other than use in criminal proceedings, (2) inquiry into law enforcement's motives is not proper in a hearing for the return of the confiscated items, and (3) Farmer did not follow the statutory procedure available to him to obtain a forfeiture hearing.¹ We disagree.

The confiscated articles at issue in this appeal were seized pursuant to sections 39-15-1190 and 39-15-1195 of the South Carolina Code (Supp. 2009). Section 39-15-1190(B)(1) prohibits a person from "knowingly and wil[l]fully transport[ing], transfer[ring], distribut[ing], sell[ing], or otherwise dispos[ing] of" an item with a counterfeit mark. Section 39-15-1195(A)(1) authorizes the "seizure by and forfeiture to any law enforcement agency" of any property upon the violation of section 39-15-1190, and other paragraphs within this statute describe procedures that a law enforcement agency must observe for storing seized items in its custody. If a seizure is made "without process" pursuant to section 39-15-1195(B),² "proceedings pursuant to

¹ During oral argument before this court, counsel for the Sheriff's Office asserted the trial judge should have set the matter for a forfeiture hearing. Because, however, the Sheriff's Office made no argument to this effect in its appellant's brief, we do not consider whether it is entitled to this relief. See Bochette v. Bochette, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) ("An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant's brief.").

² Section 39-15-1195(B) allows seizure without process under various circumstances, among them, "if the seizure is incident to . . . a search

Section 44-53-530 regarding forfeiture must be instituted within a reasonable time." S.C. Code Ann. § 39-15-1195(C) (Supp. 2009) (emphasis added).

Although section 39-15-1195 does not indicate who is to institute a forfeiture proceeding, section 44-53-530 of the South Carolina Code (2002 & Supp. 2009), which is referenced within paragraph (C) of the statute, describes the procedures required to finalize a forfeiture of property seized in connection with the enforcement of laws regulating controlled substances. These procedures include a petition by the Attorney General, the circuit solicitor, or the appropriate designee, that identifies the seized property and all persons known by the petitioner to have interests in it. Farmer, then, could not have invoked section 39-15-1195(C) to obtain a forfeiture hearing.

Section 39-15-1195(C) also mandates that, when allegedly counterfeit property is seized pursuant to a warrant, "proceedings pursuant to Section 44-53-530 regarding forfeiture and disposition must be instituted within a reasonable time." We believe the South Carolina General Assembly included this requirement in recognition of due process concerns arising when the government deprives a claimant of the use of his or her property. See United States v. Eight Thousand Eight Hundred and Fifty Dollars (\$8,850) in United States Currency, 461 U.S. 555, 564 (1983) ("[T]he Fifth Amendment claim here—which challenges only the length of time between the seizure and the initiation of the forfeiture trial—mirrors the concern of undue delay encompassed in the right to a speedy trial."). Delays between the seizure and the institution of forfeiture proceedings must be reasonable, and unjustifiable delays have been, on due process grounds, recognized as reason to bar the government from further proceedings and to order the return of the seized property. United States v. \$62,972 in United States Currency, 539 F. Supp. 586, 593 (D. Nev. 1982).

As the trial judge observed, the items in dispute were not the subject of any criminal conviction and no hearing had taken place to determine whether

pursuant to a search warrant." S.C. Code Ann. § 39-15-1195(B)(1) (Supp. 2009).

or not they were in violation of section 39-15-1190. The Sheriff's Office has not provided any concrete reasons to justify its refusal to return Farmer's merchandise or any meaningful argument that its delay in instituting forfeiture proceedings was justified; indeed, it has even asserted that law enforcement need not provide any reason whatsoever to hold lawfully seized goods beyond the fact that a warrant had been issued for the seizure. In making these arguments, however, the Sheriff's Office appears to disregard the recognized purpose of a forfeiture hearing, which is "to confirm the state had probable cause to seize the property in question." Gowdy v. Gibson, 381 S.C. 225, 229, 672 S.E.2d 794, 796 (Ct. App. 2008) (emphasis added) (citing Medlock v. One 1985 Jeep Cherokee VIN 1JCWB7828FT129001, 322 S.C. 127, 131, 470 S.E.2d 373, 376 (1996)). Regardless of whether forfeiture of property is contingent on a criminal conviction involving that property, a post-seizure hearing is the means by which an individual deprived by the government of his or her property is able to be heard on the matter. See Moore v. Timmerman, 276 S.C. 104, 109, 276 S.E.2d 290, 293 (1981) ("[I]f . . . property seized is intended to be subject to forfeiture, then the parties claiming an interest in the property must be afforded the basic due process notice and hearing rights.").

The Sheriff's Office further argues that Farmer should have sought return of his property under section 39-15-1195(H). This section, however, only gives an aggrieved owner of items confiscated pursuant to section 39-15-1195 the option to "apply to the court of common pleas for the return of an item seized pursuant to the provisions of this chapter." Because section 39-15-1195(C) requires law enforcement to institute forfeiture proceedings "within a reasonable time," we hold that any failure on Farmer's part to exercise an option provided under section 39-15-1195(H) does not excuse the Sheriff's Office from discharging its statutorily mandated responsibility to commence forfeiture proceedings in a timely manner.

II. Private Right of Action (Farmer's appeal)

Farmer argues the trial judge erred in dismissing various private causes of action he asserted in his complaint, contending (1) the alleged

ineffectiveness of section 39-15-1195(H) as a remedy made it necessary for him to seek redress through a private action against the Sheriff's Office and (2) section 39-15-1195(C) gives rise to a private cause of action especially in light of the South Carolina Tort Claims Act. We decline to address these arguments.

The matter came before the trial judge on cross-motions for summary judgment; however, conspicuously absent from the trial judge's rulings on Farmer's private claims is any analysis that would support a determination that the Sheriff's Office is entitled to judgment as a matter of law on these claims. Rather, the trial judge simply declined to hold a damages hearing in regards to the items he ordered the Sheriff's Office to return, noting the refusal to grant a damages hearing would stand "provided that the items are returned in substantially the same condition as when seized," and, in the laudable interest of effecting "a reasonable compromise," purported to dismiss Farmer's private claims. The trial judge further explained his decision did not take into consideration the South Carolina Tort Claims Act and specifically noted that Farmer should pursue whatever redress was available through that legislation. Contrary to the arguments Farmer has made in his cross-appeal, the trial judge's order did not bar him from seeking additional recompense from the Sheriff's Office for its refusal to return his inventory. Without any indication as to why the evidence, when viewed in light most favorable to Farmer, does not entitle him to seek private redress of any kind against the Sheriff's Office, we are unable to engage in meaningful review of that portion of the appealed order addressing his claims. See Bowen v. Lee Process Sys. Co., 342 S.C. 232, 241, 536 S.E.2d 86, 90-91 (Ct. App. 2000) ("It is imperative . . . that the trial court state the material facts it found undisputed and the applicable law supporting its grant to summary judgment . . ."). Based on our uncertainty in discerning precisely how the trial judge intended to dispose of Farmer's private causes of action, we remand this issue for a definitive ruling on the matter.

CONCLUSION

We agree with the trial judge that the retention by Sheriff's Office of the items in dispute, without instituting forfeiture proceedings, warranted an order that the goods be returned to Farmer. We remand this matter to the trial judge for the necessary findings of fact and conclusions of law regarding whether or not the Sheriff's Office is entitled to judgment as a matter of law on Farmer's private causes of action.

AFFIRMED IN PART AND REMANDED.

FEW, C.J., and HUFF, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Margaret P. Ware, Respondent,

v.

Ralph D. Ware, Appellant.

Appeal From Berkeley County
Jocelyn B. Cate, Family Court Judge

Opinion No. 4753
Heard May 20, 2010 – Filed October 13, 2010

AFFIRMED

Gregory Samuel Forman, of Charleston, for
Appellant.

William J. Clifford, of North Charleston, for
Respondent.

LOCKEMY, J.: Ralph D. Ware (Husband) appeals the family court's order denying his motion to vacate its divorce orders. Husband argues the family court erred in failing to vacate its orders because Wife had a full and fair opportunity to challenge the personal jurisdiction of the circuit court of

Randolph County, Alabama (Alabama Court), which also entered divorce orders. We affirm.

FACTS

Husband and Margaret P. Ware (Wife) were married on September 24, 1986. Over the next fourteen years, the parties lived, worked, and purchased a home in South Carolina. In 2000, Husband joined the Military Sea Lift Command, which caused him to be at sea for long periods of time, sporadically returning to the marital home. Husband returned to the marital home for the last time in 2005.

On January 5, 2007, Husband filed for divorce in Alabama where he lived. Wife was served with the Alabama divorce action on January 13, 2007. A month later, Wife filed for divorce in South Carolina. Four days after Wife filed for divorce in South Carolina, Alabama attorney Kesa M. Johnson appeared on Wife's behalf before the Alabama Court "on the limited basis and for the sole purpose of filing a motion to dismiss" Husband's complaint. In her Limited Notice of Appearance, Wife explicitly stated she was not submitting to the jurisdiction of the Alabama Court.

Wife argued the Alabama Court lacked subject matter jurisdiction and personal jurisdiction over both parties. According to Wife, Husband did not satisfy Alabama's residency requirement to initiate a divorce action.¹ Wife attached a signed affidavit to her motion explaining she has been a resident of South Carolina her entire life and has only been to Alabama twice to visit Husband's family. Wife continued, "I have never resided there, I have never been registered to vote there, I have never had a driver's license from there, [and] I have never owned real or personal property there."

After a hearing in April 2007, the Alabama Court denied Wife's motion and specifically stated:

¹ Section 30-2-5 of the Alabama Code provides, "When the defendant is a nonresident, the other party to the marriage must have been a bona fide resident of this state for six months next [sic] before the filing of the complaint, which must be alleged in the complaint and proved."

A hearing was held on April 4, 2007, on [Wife's] Motion to Dismiss the Complaint for Divorce for [Husband's] failure to plead and prove residence as required by Alabama statu[t]e. At said hearing, [Husband] appeared and testified as to his domicile in Alabama since 2001. Furthermore, [Husband] has filed amended pleadings that denote the same domicile. While the Court notes that [Husband] spends most of his time at sea due to his profession, residency is based on more than w[h]ere he lays his head each night.

The Alabama Court's order failed to state whether it had personal jurisdiction over Wife, instead focusing on its jurisdiction over Husband based on his domicile in Alabama. Wife filed a motion to reconsider, noting the Alabama Court addressed personal jurisdiction over Husband but failed to address personal jurisdiction over her or jurisdiction over the marital property. Wife reiterated her argument that the Alabama Court lacked jurisdiction over her and the marital property and requested the Alabama Court reconsider its ruling.

The Alabama Court did not rule on Wife's motion to reconsider, and instead set a trial date for August 2007. Wife filed a motion for a continuance based on the Alabama Court's failure to rule on her motion to reconsider. Soon thereafter, Johnson filed a motion to withdraw as Wife's counsel, which the Alabama Court approved. Wife's motion for reconsideration remained pending until after the Alabama Court issued its final divorce order.

Meanwhile, Wife's divorce action continued in South Carolina. Wife attempted to serve Husband through certified mail, return receipt requested, but all certified mail was returned undelivered. Wife moved to serve Husband by publication, which the family court granted after Wife submitted an affidavit of publication at trial, manifesting service by publication in compliance with the South Carolina Code. Husband never responded to

Wife's attempts to serve process on him and was never involved in the South Carolina divorce action.

After a final hearing in June 2007, the family court issued a final divorce order and a supplemental Qualified Domestic Relations Order (QDRO) dividing Husband's military retirement. The family court specifically found it had both subject matter jurisdiction and personal jurisdiction over the parties. The family court equitably divided the parties' property, awarded Wife \$750 in monthly alimony, and awarded Wife \$2,867.91 in attorney's fees.

Two months later, the Alabama Court issued a final judgment of divorce. The Alabama Court declared the divorce decree and QDRO entered by the family court "null and void and of no effect." Further, the Alabama Court found Wife was served with legal notice of the divorce proceeding and was represented by counsel. Additionally, the Alabama Court averred:

Judge Jocelyn Cate was sent notice of this Court's Order May 13, 2007, and yet refused to abstain from further proceedings and even refers to the notice in her Final Order, dated July 13, 2007. Once this Court obtained jurisdiction of this proceeding, no other Court could proceed on any issues regarding a divorce between the parties and resolution of all issues of the divorce proceeding. Further, [Husband] is full time employed as a member of the Merchant Marine Service and is only home 30 days per year. [Wife] and her attorney in South Carolina, William J. Clifford, have to know these facts and yet they do not inform the South Carolina Court of these facts, as is reflected in the records, and attempted to have him served by notice in the Randolph Leader.

The Alabama Court granted Husband's request for a divorce and titled his retirement, 2005 Ford F-150, old uniforms, clothing and personal belongings into his name. Additionally, the Alabama Court titled Wife's retirement and disability, 2006 Jeep Liberty, household furnishings, and

home in Charleston in her name. The order did not mention alimony, attorney's fees, or life insurance.

After issuing its final divorce order, the Alabama Court denied Wife's motion to reconsider, finding "jurisdiction was proper [in Alabama] and that [Wife] was properly served in this matter and failed to appear." Additionally, the court noted, "this case was filed and [Wife] served prior to [Wife's] commencement of the divorce action in South Carolina."

After both the Alabama Court and the family court entered divorce orders, Husband requested the family court vacate its orders pursuant to Rule 60(b)(3)-(5), SCRCP.² In his motion, Husband argued jurisdiction attached in Alabama before Wife filed for divorce in South Carolina; thus, South Carolina never had jurisdiction.

The family court denied Husband's motion to vacate based on Rule 60(b)(3) and (b)(5), finding no evidence of fraud, misrepresentation, or other

² South Carolina Rule of Civil Procedure 60(b)(3)-(5) provides:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

...

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

misconduct of an adverse party, or evidence demonstrating any judgment was satisfied. The family court then addressed Husband's Rule 60(b)(4) argument at length. The family court found the Alabama Court had personal jurisdiction over Husband and his marital status. However, the family court concluded the Alabama Court lacked personal jurisdiction over Wife or in rem jurisdiction over the marital property in South Carolina which would have prevented the family court from exercising jurisdiction. The family court also found the Alabama Court's order denying Wife's motion to dismiss for lack of subject matter jurisdiction was not entitled to full faith and credit because it was not a final ruling on the issue and Wife did not submit to the jurisdiction of the Alabama Court. Ultimately, the family court denied Husband's motion to vacate and awarded Wife \$2,425 in attorney's fees that she requested. This appeal followed.

ISSUE ON APPEAL

Did the family court err in denying Husband's motion for relief from the final divorce orders pursuant to Rule 60(b)(4), SCRCP?

STANDARD OF REVIEW

The decision to grant or deny a motion for relief from judgment pursuant to Rule 60(b), SCRCP, is within the sound discretion of the family court and can be reversed only if the family court abused its discretion. Gainey v. Gainey, 382 S.C. 414, 423, 675 S.E.2d 792, 796-97 (Ct. App. 2009). "An abuse of discretion occurs when the [family court's] order [is] controlled by an error of law or the order is based on factual conclusions that are without evidentiary support." Id. at 423, 675 S.E.2d at 797.

LAW/ANALYSIS

Husband argues the family court erred in denying his motion to vacate the final divorce orders. Specifically, Husband contends the family court erred in determining its final divorce orders were not void because Wife had an opportunity to fully litigate the issue of personal jurisdiction before the Alabama Court. Thus, Husband contends the Alabama Court's determination it had jurisdiction over Wife is entitled to full faith and credit. We disagree.

Initially, we note neither party disputes the validity of the other party's divorce. Accordingly, that the parties are divorced is the law of the case. See Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 511, 598 S.E.2d 712, 715 (2004) (finding an unappealed ruling, right or wrong is the law of the case). The principal issue before this court is whether the division of the marital property ordered by the Alabama Court is entitled to full faith and credit.

Pursuant to article IV, section 1 of the United States Constitution, "Full Faith and Credit shall be given in each State to . . . judicial [p]roceedings of every other State." Thus, every state is required to give a judgment at least the res judicata effect it would be afforded in the state where it was rendered. Durfee v. Duke, 375 U.S. 106, 109 (1963); Hospitality Mgmt. Assocs., Inc. v. Shell Oil Co., 356 S.C. 644, 653, 591 S.E.2d 611, 616 (2004) (citing Durfee, 375 U.S. at 109). "A judgment of a court without jurisdiction of the person or of the subject matter is not entitled to recognition or enforcement in another state, or to the full faith and credit provided for in the federal Constitution." Fin. Fed. Credit Inc. v. Brown, 384 S.C. 555, 562-63, 683 S.E.2d 486, 490 (2009) (quoting 50 C.J.S. Judgments § 986 (1997)); see also Durfee, 375 U.S. at 110 ("[A] judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment."). However, when the issue of jurisdiction has been fully and fairly litigated and finally decided, further inquiry into the jurisdiction of the issuing court is precluded. Durfee, 375 U.S. at 111; see also Marshall v. Marshall, 547 U.S. 293, 297 (2006) (noting "Durfee stands only for the proposition that a state court's final judgment determining its own jurisdiction ordinarily qualifies for full faith and credit, so long as the jurisdictional issue was fully and fairly litigated in the court that rendered the judgment"). If the issue was not fully litigated, a court "may inquire into the jurisdictional basis of the foreign court's decree." Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n, 455 U.S. 691, 705 (1982). Consequently, "[i]f that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given." Id.

Under Alabama law, Wife's special appearance before the Alabama Court to contest the court's jurisdiction did not subject her to the jurisdiction

of the Alabama Court. See City of Albany v. Spragins, 93 So. 803, 805 (Ala. 1922) (finding a limited appearance to contest personal jurisdiction is not a waiver of the jurisdiction issue and does not submit the defendant to the jurisdiction of the court). Further, in Alabama the denial of a motion to dismiss for lack of personal jurisdiction is not a final ruling on the issue. Ex parte McInnis, 820 So. 2d 795, 798 (Ala. 2001) ("A denial of a . . . motion to dismiss for want of personal jurisdiction is interlocutory and preliminary only."). The avenues of answer, summary judgment, and trial were still available for Wife to challenge the personal jurisdiction of the Alabama Court. Id. ("After such a denial, the continuation of personal jurisdiction over a defendant who appropriately persists in challenging it in the defendant's answer to the complaint and by motion for summary judgment or at trial depends on the introduction of substantial evidence to prove the plaintiff's jurisdictional allegations in the plaintiff's complaint."). In fact, in his brief, Husband admits the denial of Wife's motion to dismiss for lack of jurisdiction was interlocutory.³ Accordingly, we conclude the family court properly determined the issue of the Alabama Court's personal jurisdiction over Wife was not fully and fairly litigated and finally decided.

Because we find the issue of the Alabama Court's personal jurisdiction over Wife was not fully litigated, we examine whether the Alabama Court had personal jurisdiction over Wife in order to determine whether the Alabama Court's marital property division was entitled to full faith and credit. See Underwriters Nat'l Assurance, 455 U.S. at 705 (noting that if the court issuing the order lacked jurisdiction over one of the parties, the order need not be afforded full faith and credit); Roy T. Stuckey, *Marital Litigation in South Carolina* 82-83 (Timothy L. Brown et al. eds., 3rd ed. 2001) ("When multiple states issue judgments in divorce cases, full faith and credit should be given to the orders of the first court to act after establishing personal jurisdiction over both parties.") (emphasis added). This determination requires us to examine Alabama law.

³ Husband argues the interlocutory nature of the Alabama Court's ruling is inconsequential because Wife failed to appeal after her motion to reconsider was denied. However, Husband's argument is unavailing and merely highlights that the issue of personal jurisdiction was not fully litigated.

Generally, Alabama's long arm rule authorizes the assertion of personal jurisdiction to the limits of due process. Leithead v. Banyan Corp., 926 So. 2d 1025, 1030 (Ala. 2005). Alabama courts employ a two-part test to determine whether the exercise of personal jurisdiction is proper: (1) the defendant must have minimum contacts with Alabama and (2) the exercise of jurisdiction must not offend traditional notions of fair play and substantial justice. Elliott v. Van Kleef, 830 So. 2d 726, 730-31 (Ala. 2002); Sena v. Sena, 709 So. 2d 48, 50 (Ala. Civ. App. 1998) (applying the same rule in a divorce action).

The record before us contains no evidence of contacts by Wife sufficient to establish personal jurisdiction over her. Other than visiting Husband's family twice, Wife had no contacts with Alabama. Thus, we find the family court properly determined the Alabama Court lacked personal jurisdiction over Wife. Furthermore, we note because the Alabama Court lacked personal jurisdiction over Wife, its division of the marital property outside Alabama is void under Alabama Law. Wannamaker v. Wannamaker, 976 So. 2d 1026, 1028 (Ala. Civ. App. 2007) (holding a default judgment purporting to adjudicate marital property was void because the court that issued the judgment lacked personal jurisdiction over wife); Burke v. Burke, 816 So. 2d 498, 501 (Ala. Civ. App. 2001) (holding "[b]ecause [the Alabama court] did not have in personam jurisdiction over the wife, that portion of the order dealing with the division of property is declared void"). Accordingly, we find the Alabama Court's division of the parties' marital property is not entitled to full faith and credit.⁴

CONCLUSION

For the foregoing reasons, we hold the family court did not abuse its discretion in denying Husband's motion to vacate its divorce orders pursuant to Rule 60(b)(4). Accordingly, the decision of the family court is

⁴ In so finding, we give the Alabama Court's division of marital property only the res judicata effect it would have in Alabama. Durfee, 375 U.S. at 109 (explaining the Full Faith and Credit Clause "requires every State to give to a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it").

AFFIRMED.

KONDUROS and GEATHERS, JJ., concur.