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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In The Court of Common Pleas
L. Casey Manning, Circuit Court Judge

Opinion No. 4997 (S.C. Ct. App. filed July 11, 2012)

Allegro, Inc., ... Respondent-Petitioner,

v.

Emmett J. Scully, Synergetic, Inc.,
George C. Corbin, and Yvonne Yarborough,. .... Petitioners-Respondents.

RESPONDENT-PETITIONER'S REPLY TO PETITIONER-RESPONDENT'S RETURN TO RESPONDENT-PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Robert L. Widener
Richard J. Morgan
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
ATTORNEYS FOR RESPONDENT-PETITIONER

Other Counsel of Record
C. Mitchell Brown
William C. Wood
Brian P. Crotty
NELSON MULLINS RILEY & SCARBOROUGH, LLP
Post Office Box 11070
Columbia, SC 29211
(803) 790-2000

Amy L. Gaffney
GAFFNEY LEWIS & EDWARDS, LLC
3710 Landmark Drive, Ste. 304
Columbia, SC 29204
(803) 790-8838
ATTORNEYS FOR PETITIONER-RESPONDENTS

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REPLY ARGUMENTS

I. The issue of admitting the temporary injunction order into evidence was not preserved for appeal.

The Defendants argue that a single opinion from this Court (or the Court of Appeals) declaring a type of evidence is inadmissible triggers the rule in *Dunn v. Charleston Coca-Cola Bottling Co.*, 426 S.E.2d 756 (S.C. 1993) and allows a general objection to preserve the issue for appeal. (Pet-Resp. Cert. Ret. at 3). This argument highlights the error in the Court of Appeals' ruling – according to the Defendants, an objecting party need not state any grounds for an objection if there is a single case stating that the challenged evidence is improper. In other words, the only time an objecting party must state specific grounds is when there is no case law on the admissibility of the evidence. Nothing in *Dunn* indicates this Court intended any such sweeping exception to the error preservations rules.[1]

The Defendants mis-state the Plaintiff's argument on the issue of "latent v. patent" errors, contending the Plaintiff has argued that "the admission of the preliminary injunction order could not be patent because the jury *may* not have read the order " (Pet-Resp. Cert. Ret. at 4, 4-5) (emphasis in original). The Plaintiff has never made this argument. Rather, since any prejudice from the injunction order necessarily became apparent only upon a reading of the injunction order, it was incumbent upon the Defendants to point this out to the trial judge, *i.e.*, the question of whether an error was latent or patent is viewed from the perspective of the trial judge. Here, the Defendants never argued to the trial judge that there was any danger the jury would give

[1] The Defendants complain that the Plaintiff advocates a rule that general objections are insufficient unless there is a certain number of existing cases making the evidence inadmissible. The Plaintiff, however, simply and only relies upon and quotes the exact language used by this Court in *Dunn*, *i.e.*, that the general objection was sufficient because there was a "legion" of cases of making it clear that any mention of liability insurance was reversible error. It was this "legion" of cases that made the grounds for the objection in *Dunn* patent to the trial judge and, therefore, there was no need to state specific grounds. There is no such "legion" of cases on the issue presented here and, therefore, nothing made the grounds of the objection to the trial judge in this case. Thus, the Defendants were required to state specific grounds in support of their objection, which they manifestly and admittedly failed to do in this case.

undue weight to the factual findings in the injunction order – indeed, the Defendants never told the trial judge that the injunction order contained factual findings. Thus, when the Defendants made their admittedly general objection with no specifically stated grounds, in violation of the longstanding rules of law, nothing in that objection or the very nature of the challenged evidence itself alerted the trial court to any "patent" ground for the objection or any "inherent" prejudice.

The Defendants argue that *Dunn* rule is not limited to any particular circumstance, because this Court did not expressly limit it to the admission of evidence regarding the existence of liability insurance. The Defendants, however, make no response to the Plaintiff's arguments that, after the ruling in *Dunn*, this Court has continued to apply the general rules on the sufficiency of objections and steadfastly refused to adopt a "plain error" rule in South Carolina. If the Appellants' reading of *Dunn* is correct, then this Court would have allowed general objections to preserve issues for appeal if there was a single case holding that the evidence was inadmissible. This Court has done the exact opposite. Moreover, if this Court had intended *Dunn* to announce a sweeping exception to the error preservation rules, which is how the Court of Appeals has applied it, this Court undoubtedly would have said so in *Dunn*.

The Defendants argue that the Court of Appeals did not adopt a "plain error" rule, because there was an objection. A general objection simply is not an objection. Moreover, as this Court most recently noted in rejecting the notion of adopting a "plain error" rule in South Carolina, "a party must have a contemporaneous *and specific* objection to preserve an issue for appellate review." *State v. Sheppard*, 706 S.E.2d 16, 19 (S.C. 2011) (emphasis added).

Finally, the Defendants cite Rule 103(a)(1), SCRE, for the proposition that objections to evidence need not be state specific grounds if the grounds are "apparent from the context," and they contend the admission of the injunction order meets this rule because the error and prejudice

in admitting the injunction order into evidence was "plain and apparent." (Pet-Resp. Cert. Ret. at 6). The Defendants, however, never made this argument to the trial court or the Court of Appeals until their petition for rehearing. Thus, the argument comes too late to reverse the trial court. Moreover, the Defendants have misread the rule. Under Rule 103(a)(1), SCRE, the admission of evidence is not error unless there is an objection "stating the specific grounds of objection." The rule creates an exception to this requirement and provides there need not be any specifically stated grounds if the grounds are "apparent from the context." Here, there is no "context" to support a failure to state specific grounds, *e.g.*, there was no discussion of the injunction order or its contents – there was no discussion of any danger that the jury would rule based on the factual findings in the injunction order rather than the jury's view of the evidence in the case – indeed, there was no discussion about the contents of the injunction or anything else. Thus, there was no "context" as envisioned by Rule 103(a)(1), SCRE.

II. Assuming the Defendants' general objection was sufficient to preserve the issue of admitting the temporary injunction order into evidence, the Defendants' appeal is nevertheless barred by the law of the case doctrine.

As demonstrated in the Plaintiff's certiorari petition, the trial court held the injunction order was admissible based on three separate rulings, which the Defendants did not challenge on appeal, thereby making each of those rulings the law of this case that requires affirmance. (Resp-Pet. Cert. Pet. at 5-6).

First, the trial court ruled that the preliminary injunction was admissible "to show what was in the record." The Defendants dismiss this ruling as simply being a statement of relevancy that does not impact the question of admissibility. The Defendants have misread the trial court's order, which stated that the injunction order "was properly admitted to show what was in the record and that an injunction had been issued." (Appx. 16) (emphasis added). Thus, the trial

court's ruling was on admissibility, not simply relevance and, therefore, the Defendants' argument fails. This is their only argument against this ruling being the law of the case and, it is factually (and legally) incorrect. Thus, the trial court's ruling remains the law of this case and, right or wrong, requires affirmance. *Buckner v. Preferred Mut. Ins. Co.*, 177 S.E.2d 544, 544 (S.C. 1970).

Second, the trial court ruled that the Defendants failed to object to prior testimony regarding the injunction order and, therefore, they could not challenge the later admission of that evidence. The Defendants concede they did not object to this testimony but argue that their failure to do so did not prevent them from later challenging the admission of the temporary injunction into evidence. Assuming this argument has any merit, and it does not, the Defendants did not make this argument to the Court of Appeals in their Brief of Appellant. Thus, the trial court's ruling is the law of the case and requires affirmance.

Third, the trial court ruled that the Defendants failed to state a specific ground for their objection and, therefore, the issue was not properly before the court. The Defendants argue that since no specific grounds were needed in their objection, the trial court's ruling is not the law of the case. The Defendants misunderstand the law of the case doctrine. It was incumbent upon them to argue on appeal that the trial court erred in this ruling, because no specific objection was necessary. They never made this argument to the trial judge, and they never made it to the Court of Appeals in their Brief of Appellant. Thus, the trial court's ruling is the law of the case and, right or wrong, requires affirmance.

Finally, the Defendants complain that the Plaintiff is being "hyper-technical" and attempting to rely on "statements" (*i.e.*, the trial court's rulings) that do not relate to the issue of admitting the preliminary injunction order into evidence. The Defendants are simply wrong.

The trial court's rulings relate directly to the admission of the preliminary injunction order. It was incumbent upon the Defendants to challenge these rulings in their Brief of Appellant. They did not and, therefore, each of these rulings is the law of this case and, right or wrong, each ruling requires affirmance.

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in the Plaintiff's Certiorari Petition, it is respectfully submitted that this Court should grant certiorari, reverse the Court of Appeals, and reinstate the appealed judgment.

Respectfully Submitted,

Robert L. Widener
Richard J. Morgan
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Attorneys for Respondent-Petitioner

May 21, 2013
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
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L. Casey Manning, Circuit Court Judge

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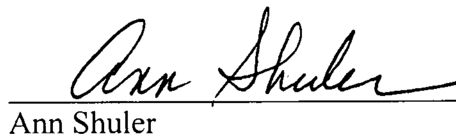
CERTIFICATE OF SERVICE

I certify that I have served a copy of the Respondent-Petitioner's Reply to Petitioner-Respondent's Return to Respondent-Petitioner's Petition for Writ of Certiorari by depositing a copy of same in the United States Mail, sufficient postage prepaid, on May 21, 2013 addressed to the attorneys for the Petitioners-Respondents, as follows:

Amy L. Gaffney, Esquire
Gaffney, Edwards & Lewis
3710 Landmark Drive, Suite 109
Columbia, SC 29204

C. Mitchell Brown, Esquire
Brian Crotty, Esquire
Nelson Mullins Riley & Scarborough LLP
P. O. Box 11070
Columbia, SC 29211



Ann Shuler

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