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Jan 03 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2018-CP-10-4083

Appellate Tracking No.: 2022-001114

Charleston Carriage Works, L.L.C.,

Appellant,

v.

Charleston Animal Society, Ellen Harley and
Charleston Carriage Horse Advocates, Inc.,

Respondents.

MOTION FOR LEAVE TO AMEND INITIAL BRIEF

Appellant moves for an Order of the Court allowing the Appellant to amend his initial brief by altering the heading of Argument 3 as follows:

From:

3. The Master-in-Equity erred in dismissing the plaintiffs causes of action for conspiracy and intentional interference in business relations because there is overwhelming evidence to support both.

To:

3. The Master-in-Equity erred in dismissing the plaintiffs causes of action for conspiracy, intentional interference in business relations, and violation of the Appellant's civil rights because there is overwhelming evidence to support all causes of action.

The appellant also seeks leave of Court to supplement the brief to include a citation (and a sentence stating the citation) to *Dennis v. Sparks* 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980). This motion is based on the ground that Rule 208(b)(5) allows parties to file amended or supplemental pleadings with leave of Court, and on the following grounds:

On November 11, 2022, appellant filed a 66-page Initial Brief .

On November 14, 2022, appellant filed a motion requesting leave of Court to exceed the page limitation of 50 pages for the reasons set forth in the motion. (Appellant filed an amended motion on November 14, 2022.

On December 8, 2022, the respondents filed a joint Motion seeking a Court Order requiring the appellant to delete or modify delineated portions of the initial brief.

On December 16, 2022, appellant filed a Return.

In the Respondents' December 8, 2022, joint motion to strike, the respondents contend "Appellant has appealed that order as to the defamation, civil conspiracy, and tortious interference with business relations claims (but not as to the civil rights claim)." Motion at page 3.

Appellant disputes that he did not appeal the civil rights claim (because an analysis of the legal error is the same for all the causes of action), but concedes that the respondents could argue the heading to Argument 3 on page 50 of the Initial Brief is ambiguous, and any putative ambiguity is resolved by a minor amendment to make clear that appellant appeals the Master-in-Equity's dismissal of all causes of action, which appellant asserts was legal error for the same reasons set forth in the Initial Brief. (This application to amend/supplement is discussed fully in Appellant's December 16th Return, but the Return does not make a proper request for affirmative relief, which requires a filing fee.)

Therefore, in an abundance of caution, pursuant to Rule 208(b)(7) (supplemental citation) and Rule 212(b) (leave of Court to supplement record) *South Carolina Appellate Court Rules*, appellant seeks an Order of the Court allowing appellant to amend the heading of Argument 3 on page 50 as set forth above. Appellant also shows that the omission is a mere scrivener's error resulting from editing to reduce page length. The Statement of Issues on Appeal and the heading of Argument 1 on page 9—and the supporting argument—make clear that appellant placed all the causes of action before the appellate Court, and the respondents' contention otherwise is mere flyspecking. See the Table of Contents: “The Master-in-Equity improperly construed the evidence and the inferences drawn from the evidence in the light most favorable to the defendants **as to all of the plaintiff's causes of action.**” See also: “The overarching factual legal error permeating the Order under review is the erroneous inversion of the summary judgment standard, **and this error applies to the analysis of all of the plaintiff's causes of actions**, although the Master-in-Equity placed the emphasis on the cause of action for defamation.” (Initial Brief at page 9, emphasis added) Scrivener's errors can be corrected without leave of Court. Rule 211(b)(2). To be fair, characterizing the slight omissions/ambiguities respondents jointly identify as fatal procedural flaws to a scrivener's error may be too generous to permit correction without a separate request for affirmative relief made here.

In addition to the foregoing, appellant also requests leave of Court to insert an additional citation to the decision of the United States Supreme Court, *Dennis v. Sparks*, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980), for the proposition that non-governmental citizens can be held accountable for violating the rights of others. A single sentence inserted in the Appellant's Brief in Argument 3 will cure the omission, which was an oversight inadvertently lost in the editing of appellant's Initial Brief. Since the Respondents have not filed briefs in response, they cannot

identify any prejudice from this minor amendment. Moreover, it is well-settled in South Carolina case law that Courts prefer to address cases on their merits and not on technicalities:

"When this court comes to construe an exception, it will make its construction as liberal as the language will allow, in order to decide the question involved, unless it is satisfied that the statement has misled the respondent to his injury." *McMahan v. Walhalla Light and Power Company*, 102 S.C. 57, 86 S.E. 194; *Zorn v. Crawford*, 252 S.C. 127, 165 S.E.2d 640 (1969)
Toole v. Toole, 260 S.C. 235, 195 S.E.2d 389 (1973)

This principal of liberal construction is also true at the trial court level (Rule 8(f), *S. C. Rules of Civil Procedure*), especially where trial courts dismiss cases prior to all the evidence being presented:

A judgment on the pleadings is in the nature of a demurrer. *Brown, supra*. All properly pleaded factual allegations are deemed admitted for purposes of the consideration of a demurrer. *Crowe v. Domestic Loans, Inc.*, 242 S.C. 310, 130 S.E.2d 845 (1963). When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. *Crowe, supra*. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. *Baldwin v. Sanders*, 266 S.C. 394, 223 S.E.2d 602 (1976). Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. *Manning v. Dial*, 271 S.C. 79, 245 S.E.2d 120 (1978). Further, a judgment on the pleadings is considered to be a drastic procedure by our courts. *U. S. Casualty Company v. Hiers*, 233 S.C. 333, 104 S.E.2d 561 (1958). *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (S.C. 1990)

Conclusion

It is impossible to view this large record, perhaps starting with appellant's May 20, 2021, memorandum of law provided to the Master-in-Equity to support reconsideration of his blanket Order of dismissal, and fail to see that the appeal raises a basic legal question: what standard does the trial court apply in deciding if appellant has raised a genuine issue of material fact? All the tort actions, conspiracy, defamation, tortious interference, and violation of the plaintiff's civil rights fall under the same summary judgment analysis; to wit, has appellant raised a genuine issue of material fact? (And whether the court could even address summary judgment when discovery is incomplete.) On appeal, it matters very little that appellant's Initial Brief failed to include the

words, “civil rights,” in the Statement of Issue on Appeal or in Argument 3. Likewise, the appellant is afforded an opportunity to supplement the citations with *Dennis v. Sparks* at any time. Appellant’s failure to include the “magic words” is nothing more than scrivener’s error, something almost inevitable in the high-pressure time demands of any lawyer’s practice. Neither the *Rules of Civil Procedure* nor the *Appellate Court Rules* elevate the hyper-technical form over substance to the extent respondents urge this Court to adopt. Moreover, as the parties wait for this Court to determine if the appellant’s 66-page will be accepted as filed or whether the Court will require that it be culled down to 50 pages, the respondents’ briefing is being held in abeyance and therefore by allowing the appellant a minor editing correction and supplemental citation will not prejudice the respondents in the slightest but will allow all appellant’s appeal being collaterally attacked on procedural grounds to prevent an adjudication on its merits. For these reasons, appellant respectfully requests leave of court to correct the heading on Argument 3 on page 50 and to add a supplemental citation (and a sentence referencing it) to *Dennis v. Sparks*.

Respectfully submitted,

January 2, 2023

/s/Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar No. 2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554 4291 (843) 554 5566 (fax)
tgoldstein@cobblaw.net
Attorneys for Appellant)

Other counsel of record:

Elizabeth J. Palmer
Saxton & Stump
151 Meeting Street
Suite 350
Charleston, South Carolina 29401
ep@saxtonstump.com

Joseph D. Thompson, III
Spencer C. Gill
Hall Booth Smith, P.C.
111 Coleman Boulevard
Suite 301
Mt. Pleasant, S. C. 29464
jthompson@hallboothsmith.com
sgill@hallboothsmith.com

Jenkins M. Mann
Rogers, Lewis, Jackson, Mann & Quinn, L.L.C.
P. O. Box 11803
Columbia, South Carolina 29211
jmann@rogerslewis.com

DUTY OF CONSULTATION

I certify that prior to making this request, I consulted with opposing counsel who do not consent to Appellant's request.

January 2, 2023

/s/ Thomas R. Goldstein
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Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Amend Initial Brief upon the Charleston Animal Society, Charleston Carriage Horse Advocates and Ellen Harley by depositing a copy of it in the United States Mail (and by providing an electronic copy), postage prepaid on January 2, 2023, addressed to their attorneys of record, Elizabeth Palmer at her office Saxton & Stump at 151 Meeting Street, Suite 350, Charleston, South Carolina 29401 and to Joseph Thompson and Spencer Gill at their office Hall Booth Smith, P.C. at 111 Coleman Boulevard, Mt. Pleasant, S. C. 29464, and to Jenkins Mann at his office, Mann Blake & Jackson at 1901 Main Street, Suite 1205, Columbia, South Carolina 29201.

January 2, 2023

/s/Thomas R. Goldstein

Thomas R. Goldstein, S. C. Bar No. 2186
Belk, Cobb, Infinger & Goldstein, P.A.

P. O. Box 71121

N. Charleston, S. C. 29415-1121

(843) 554 4291 (843) 554 5566 (fax)

tgoldstein@cobblaw.net

Attorneys for Appellant)

Ms. Elizabeth Palmer
Saxton & Stump
151 Meeting Street
Suite 350
Charleston, South Carolina 29401

Mr. Joseph Thompson
Spencer Gill
Hall Booth Smith, P.C.
111 Coleman Boulevard
Mt. Pleasant, S. C. 29464

Jenkins Mann
Mann Blake & Jackson
1901 Main Street
Suite 1205
Columbia, South Carolina 29201

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)
Dale T. Cobb, Jr.

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405
January 2, 2023

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

Hon. Jenny A. Kitchings
Clerk of Court
S. C. Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

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RE: Appellate Case No. 2022-001114
Charleston Carriage Works, LLC v. Charleston Animal Society, *et. al.*

Dear Ms. Kitchings,

I enclose (electronically and by regular mail) the Appellant's Motion for Leave to Amend Initial Brief. I also include a Proof of Service and our firm's check to cover the filing fee. Please let me know if I need to do anything further to perfect the filing. I thank you in advance. With kind regards I am

Very truly yours,



Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

enclosure: Motion to Amend Brief, check No. 20170, Proof of Service

Other counsel of record:
Elizabeth J. Palmer
Saxton & Stump
151 Meeting Street
Suite 350
Charleston, South Carolina 29401

Jenkins M. Mann
Rogers, Lewis, Jackson, Mann & Quinn, L.L.C.
P. O. Box 11803
Columbia, South Carolina 29211

Joseph D. Thompson, III
Spencer C. Gill
Hall Booth Smith, P.C.
111 Coleman Boulevard
Suite 301
Mt. Pleasant, S. C. 29464