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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Common Pleas

J. Cordell Maddox, Circuit Court Judge

Case No. 2019-CP-04-01212
Appellate Case No.: 2022-001357

GLENN MECHANICAL..Appellant,

v.

SIHIERH SMITH ....Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court err in granting Respondent's Motion for Summary Judgment?

STATEMENT OF THE CASE

1. On June 28, 2019, the Appellant filed a Summons and Verified Complaint, Case No. 2019-CP-04-1212, in the Court of Common Pleas for Anderson County, State of South Carolina against the Respondent, Sihierh Smith. (ROA, p. ____).

2. A Restraining Order was filed June 22, 2019. (ROA, p. ____).

3. The Respondent filed an Answer on August 30, 2019. (ROA, p. ____).

4. The Appellant filed a Motion for Miscellaneous Relief on September 25, 2019. (ROA, p. ____).

5. The Court denied the Appellant's Motion by Order filed February 3, 2020. (ROA, p. ____).

6. The Respondent filed a Motion for Summary Judgment on February 16, 2022. (ROA, p. ____).

7. A virtual motion hearing was held before the Honorable J. Cordell Maddox, Jr., on June 1, 2022.

8. An Order granting Respondent's Motion for Summary Judgment was filed July 8, 2022. (ROA, p. ____).

9. The Appellant filed its Motion for Reconsideration on July 18, 2022. (ROA, p. ____).

10. Judge Maddox denied Appellant's Motion to Reconsider in an Order filed on August 23, 2022. (ROA, p. ____).

11. Appellant filed its Notice of Appeal on September 21, 2022. (ROA, p. ____).

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STATEMENT OF THE FACTS

John Glenn, Jr. ("Glenn") is the managing partner of the Appellant, Glenn Mechanical, LLC ("Glenn Mechanical"). The Respondent, Sihierh Smith ("Smith"), became an employee of Glenn Mechanical as office manager in 2016. Prior to Smith's employment with Glenn Mechanical, she had worked with Glenn at Glenn Plumbing beginning in 2013. As office manager at Glenn Mechanical, Smith was responsible for payments of accounts, payroll and filings.

At the time of her employment with Glenn Mechanical, Smith was the owner of a 2011 Kia, 4 Door Sedan ("Kia"). The project managers working for Glenn Mechanical drove Toyota vehicles purchased by Glenn Mechanical (approximately thirty (30) such vehicles) and she was in charge of paying the insurance and property taxes for those vehicles. Those payments would be presented to Glenn monthly for his review and authorization to pay. In July of 2016, Glenn asked her if she was ready to go and get a new car from Ralph Hayes Motors in Anderson, South Carolina, ("Ralph Hayes"), the local Toyota dealership from which Glenn and/or Glenn Mechanical had purchased numerous Toyota vehicles in the past. A Toyota Forerunner ("Toyota") was thereafter purchased in 2016 and titled in her name.

Smith's Kia, titled in her name since purchased by her, was, at first, to be shown on the Toyota sales documents as a trade-in valued at $6,000.00. Shortly thereafter, it was determined that the Kia was worth more than the trade-in value allowed by Ralph Hayes. The Kia was then removed from the Toyota dealership lot and placed in the parking lot of Glenn Mechanical with a "For Sale" sign on it. It thereafter sold for $8,000.00. As a result of that sale, Smith received a check from the purchaser drawn on

their account at GrandSouth Bank in Anderson which she cashed while at their bank. The cash from that sale was then given to Glenn by Smith to apply toward the purchase of the Toyota.

When she was approached in July, 2016 by Glenn concerning purchasing a new car, Glenn informed her that he considered her to be a valuable employee and intended to "gift" her a vehicle for her sole use and benefit. She and Glenn then went to Ralph Hayes Toyota and chose the Toyota which was thereafter titled in her name. Smith used the vehicle as her own personal vehicle and paid the insurance, taxes, gas and maintenance expenses for that vehicle in the amount of $13,711.95. Smith also contributed to that purchase by agreeing to allow the Kia that she owned to be used as a trade-in toward the purchase of the Toyota.

However, prior to the conclusion of this transaction, Smith and Glenn had a discussion about whether the vehicle would be titled in the name of Glenn Mechanical or in her name. Glenn stated to her that, if it was titled in the name of Glenn Mechanical, all of the taxes, insurance, gas, etc. would be paid by Glenn Mechanical. He also told her that if it was titled in her name, all of those expenses would have to be paid by her. She responded that, under the circumstances, she wanted it titled in her name since she was selling her only car, which was her only means of transportation for her and her two children and applying the proceeds of that sale to the purchase of the Toyota. Therefore, she needed the security for both her and her two children that she had the Toyota in her name especially since she had paid a significant portion ($8,000.00) of the purchase price.

Smith was not involved in any way in the creation of the paperwork at Ralph Hayes regarding the purchase of the Toyota as all of that was handled at the dealership that Glenn had used for years. The title to the Toyota was placed in her name and has been in her name since 2016. She has used that vehicle since then as her own personal vehicle and has paid for all of the taxes, insurance, gas and repairs concerning that vehicle.

No issues arose regarding her use of the vehicle until June of 2019 when she notified Glenn that she was terminating her employment with Glenn Mechanical. At that point, she testified that Glenn told her that, in view of her resignation, she had to return the vehicle to him even though she had paid $8,000.00 of the purchase price and paid all of the vehicle taxes, insurance, repairs and gas since 2016. She refused and this lawsuit was commenced in the name of Glenn Mechanical as Plaintiff and not in the name of Glenn.

In Glenn Mechanical's Complaint, which alleges only a claim and delivery action, Plaintiff asserts that he purchased and provided Smith with a vehicle in 2016, specifically a white 2016 Toyota Forerunner, from Ralph Hayes which Smith refused to return following her resignation on June 7, 2019. In Smith's Answer, she denied the allegations in the Complaint thereby contesting Glenn Mechanical's claim of ownership of said Toyota and referenced the title to the Toyota which was in her name. No title for the Toyota in either the name of Glenn Mechanical or Glenn has been produced.

In his testimony, Glenn was extremely inconsistent regarding several key matters:

1. Glenn Mechanical had purchased over 30 vehicles over the years from Ralph Hayes;

2. Glenn acknowledged that he wrote two (2) checks drawn on his "personal" (as opposed to business) account. One was for $36,400.00 (when the Kia was to be used as a trade-in reflecting a value of $6,000.00) and one for $6,000.00 when it was later determined that the Kia would be sold privately and, therefore, no longer used as a "trade-in" in the sales transaction. Significantly, Glenn's testimony and the fact that Glenn's personal checks were used in the sales transaction establish that Glenn Mechanical has no interest in the subject Toyota.

3. Glenn swore in his Affidavit attached to the Complaint that he terminated Smith from her position as office manager of Glenn Mechanical on June 17, 2019. However, he testified in his deposition, also under oath, that "I didn't terminate her" she terminated herself; he didn't want her to leave the company and tried to keep her as an employee, and, she left him. (Glenn Deposition, pp. 47-49);

4. Glenn does not dispute that Smith paid him money for the sale of her Kia, only the amount of $7,200.00 as opposed to $8,000.00 was questioned. (Glenn Deposition, p. 29).

5. Glenn said he now can't remember if Smith gave him cash from the sale of her vehicle (Kia) or not. (Glenn Deposition, p. 28);

6. Glenn states he wrote the check for $6,000.00 to Ralph Hayes since the Kia was not used as a trade-in but doesn't remember Smith giving him $8,000.00 (or $7,200.00) to apply toward the purchase. (Glenn Deposition, pp. 27-33).

7. Glenn admits that whether or not cash was paid for the sale of Smith's Kia, Smith was supposed to either use her car as a trade-in towards the purchase of the Toyota or, once the Kia sold, give him the cash from the sale. (Glenn Deposition, p. 33).

8. Glenn admitted that if the Toyota was a company vehicle, the company would have had the responsibility to pay for taxes, insurance and gas for use of that vehicle but doesn't know if those were paid by the company. (Glenn Deposition, p. 50).

9. Glenn acknowledges that neither Glenn nor Glenn Mechanical has a title to the Toyota nor does he recall ever seeing the title to that vehicle.

10. Glenn acknowledges receipt of a statement from Smith as to her costs/expenses, in addition to the amount she received ($8,000.00) and gave to him totaling $21,711.95.

ARGUMENT

As determined by the Lower Court, the sole cause of action in this Complaint is one for claim and delivery. Therefore, proof of title or right of possession is a prerequisite for Glenn Mechanical to prove since it has the burden of proof. *Manship v. Newsome*, 188 S.C. 6, 198 S.E. 428 (S.C. 1938). Glenn Mechanical, to meet that burden of proof, is required to present *prima facia* evidence for each element of his claim against Smith. *Parnell, et al, v. Foster, et al,* 338 S.C. 9, 524 S.E. 2d 630 (Ct. App. 1999). Further, the person in possession of the vehicle at the time of the commencement of this action is presumed to have title. *Jackson v. Frier,* 146 S.C. 322, 144 S.E. 60 (1928) and that presumption is evidenced by the certificate of title. (*Bankers Ins. Co. of Pa. v. Griffin,* 244 S.C. 552 (1964). Finally, the "owner" of a vehicle under S.C. Code Ann. §56-1-10 is defined as the "person, other than a lienholder, having the property interest in or title to a vehicle."

In the present matter, Glenn Mechanical failed to establish a *"prima facia"* case for ownership of the Toyota vehicle in question for the following reasons:

1. The Certificate of Title to the vehicle in question issued by the South Carolina Department of Motor Vehicles ("DMV") is in the name of Smith and has been since it was purchased in 2016. The Title Clerk for Ralph Hayes Toyota (19 years), from whom the vehicle was purchased, testified in her deposition as part of her job duties she is the only employee at Ralph Hayes charged with the responsibility of receiving sales documentation and issuing title documentation based upon that sales documentation; that she received sales documentation directly from the finance department at Ralph Hayes; and that, based upon said documentation, she applied for the title to said vehicle in the name of Smith. She also testified that the title was issued by the Department of Motor Vehicles ("DMV"), returned to the dealership, and then sent to Smith by her. She also testified that there was a subsequent re-issue of the title in 2019 due to an error by said agency in the "VIN" number on the original title. She also testified that she was never asked/directed to prepare and/or issue any documents showing the title in the name of any other person or entity than Smith and that she had no contact with Glenn or Smith during that process. She also testified that the documents she was shown in her deposition, for the first time, by Appellant's attorney, showing Glenn Mechanical as the purchaser, she had never seen before, and were not sufficient to send to the DMV to have a title certificate issued because a Form 400 was not included in those documents. However, when the title clerk received the sales documentation from the finance department of Ralph Hayes, it included a Form 400 that showed that the Toyota in question was to be titled in the name of Smith. She submitted that title documentation to the DMV.

2. The Title Clerk testified also that, to her knowledge, there was never a Certificate of Title issued showing the 2016 Toyota 4Runner titled in the name of Glenn Mechanical or Glenn and that she did not prepare and/or submit any request for such to the DMV. She also testified that she did not prepare or submit a Form 400 to the DMV regarding the issuance of a Certificate of Title in the name of Glenn Mechanical or Glenn which is required for the DMV to issue a title certificate.

3. As part of the transaction to purchase the Toyota, Smith testified that she personally paid John Glenn, Jr., the owner of Glenn Mechanical, eight thousand dollars ($8,000) to apply toward the purchase of the Toyota. She had received this $8,000 from the sale of her Kia which was originally to be used as a "trade-in" for the Toyota. However, since the dealership had only offered six thousand dollars ($6,000.00) for her car as a trade-in, she decided to sell her car in a private sale and received $8,000.00 for the Kia as a result of that sale. She then gave those funds to Glenn. Accordingly, the $6,000 trade-in allowance shown on the sales document(s) as a "Allowance on Trade-In" had to be refunded. A refund check for $6,000.00 was issued by Glenn from his personal account, since his personal check, not a check from Glenn Mechanical, had been used to pay the initial $36,400.00 "cash payment." As a result, Smith put more money into this deal than originally contemplated, i.e., $8,000.00 as opposed to $6,000.00. There is no question that she used the cash from the sale of her Kia to purchase the Toyota.

4. Neither Glenn Mechanical nor Glenn ever produced a Certificate of Title in either name regarding the Toyota nor alleged in the Appellant's Complaint any other legal theories on which either would be entitled to claim ownership or possession of the vehicle in question.

It must be remembered that Glenn has the burden of proof to present *prima facia* evidence – not just a "scintilla" of evidence - that the Toyota vehicle was to be titled in the name of Glenn Mechanical. However, Glenn is not in possession of the vehicle, nor does he have the title to said vehicle. On the other hand, Smith, who is the person in possession of the Toyota and has title to the Toyota, has presented *prima facia* evidence of ownership in this case, i.e., the Certificate of Title in her name.

While the law provides that possession of title constitutes *prima facia* evidence of ownership, this evidence can be rebutted by evidence establishing someone other than the titleholder is the owner. That begs the question – what is that evidence and has Glenn Mechanical provided even a scintilla of evidence to preclude the granting of summary judgment in favor of Smith?

In granting summary judgment, South Carolina Courts have provided that any evidence that a party throws up does not necessarily equate to a "scintilla" of evidence sufficient to defeat summary judgment. In *Lemmons v. Macedonia Water Works, Inc.*, 431 S.C. 186, 200, 847 S.E. 2d 471, 480 (Ct. App. 2020), the Court provided as follows:

> "[A] scintilla of evidence is any material evidence which, taken as true, would tend to establish the issue in the mind of a <u>*reasonable*</u> juror." *Crosby v. Seaboard Air Line Ry.*, 81 S.C. 23, 31, 61 S.E. 1064, 1067 (1908)(emphasis added). "[A]ny evidence, even a scintilla, that is useful to withstand a summary judgment motion must meet the prerequisite of being <u>probative</u>." *Bass v. Gopal, Inc.*, 384 S.C. 238, 246, n.6, 680 S.E. 2d 917, 921, n.6 (Ct. App. 2009), *aff'd* 395 S.C. 129, 716 S.E. 2d 910 (2011). The circuit court "<u>is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in vain attempt to create an issue of fact that is not genuine</u>." *Main v. Corley*, 281 S.C. 525, 527, 316 S.E. 2d 406, 407 (1984) (emphasis added). "Once the moving party carries its initial burden the opposing party must come forward with specific facts that show there is a <u>*genuine*</u> issue of fact remaining for trial." *Sims v. Amisub of S.C., Inc.*, 408 S.C. 202, 208, 758 S.E. 2d 187, 190-191 (Ct. App. 2014), *aff'd*, 414 S.C. 109, 777 S.E. 2d 379 (2015)(emphasis added) (quoting *Sides v. Greenville Hosp. Sys.*, 362 S.C.

> 250, 255, 607 S.E. 2d 362, 364 (Ct. App. 2004)) ... Further, viewing the evidence in the light most favorable to the party opposing summary judgment does not change this reality.

The South Carolina Supreme Court in *Main v. Corley,* 281 S.C. 525, 316 S.E. 2d 406 (1984) stated that: "a motion for summary judgment speaks in terms of 'no genuine issue as to material facts.'" It is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine." Finally, "a court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that *remain undisputed or are contested in a deficient manner*." *David v. McLeod Reg'l Med. Ctr.,* 367 S.C. 242, 250, 626 S.E. 2d 1, 5 (2006) (emphasis added).

Glenn Mechanical does not present even a scintilla of evidence sufficient to defeat summary judgment as the evidence it submits is not credible, not probative, does not create any genuine issue of material fact and does not establish any issue in the mind of a reasonable jury.

First, Appellant wants to rely on a personal check, not a company check, in the amount of $36, 400.00 paid to Ralph Hayes. However, not being a company check, the only person who could use this as evidence is the person/entity whose check was used. In this case, that person is Glenn, who is not a party to this case. Neither of the "personal checks" produced (i.e., $36,400.00 nor the $6,000.00) are evidence that Glenn Mechanical is entitled to possession of the Toyota. As previously stated, the only evidence is that at least $7,200.00 of Smith's own money was used to purchase the Toyota.

Second, while Glenn testified that taxes, insurance, gas, maintenance fees, repairs, etc., would have been paid by Glenn Mechanical if the Toyota was a company car, no evidence was presented by Glenn that those items were, in fact, paid by Glenn Mechanical pertaining to the Toyota. The only evidence is that Smith paid these significant expenses associated with her vehicle in the amount of $13,711.95.

Third, no reasonable juror will believe that a reasonably intelligent, single woman, with two young children, would sell her one and only personal vehicle (Kia) and give the proceeds of that sale to her boss without the title to the replacement vehicle being placed in her name. Without title in her name, she would risk losing that vehicle and her rights to it on the whim of her boss. To even ask that question points out the absurdity of the position taken by the Appellant. Even Respondent's former boyfriend, with whom she was unfortunately in an abusive relationship at the time, testified that he strongly encouraged her not to do this deal unless the title to the vehicle would be in her name.

Fourth, it has been established that all paperwork regarding the purchase of the Toyota was handled by the dealership, Ralph Hayes. The undisputed testimony is that the salesperson sent the paperwork to the finance department headed by Stanley C. Ukadike and then to the title clerk. In other words, neither the salesman nor the finance department issues the title certificate. The title clerk, Tonya Marie Davis, is the only person who handles the title work and that is based only upon the paperwork that comes to her from the finance office. The title clerk testified, to her knowledge, that she had no contact with Smith in this process (Davis Deposition, p. 47) and she prepared the paperwork to have the title issued in Smith's name because that is how the documents were prepared by the finance office and sent to her (Davis Deposition, p. 33). While

Appellant, in his Brief, claims that Stanley K. Ukadike, then head of the finance department at Ralph Hayes, is a person whose testimony is needed concerning the paperwork that was prepared by the finance department, no such person testified in this case. Respondent was simply told by the Appellant that he was no longer with Ralph Hayes. Further, Appellant produced no evidence that any effort was made by the Appellant to locate/contact this individual to obtain his testimony/affidavit in this case on that issue with full knowledge Glenn has the burden of proof. Therefore, there is no evidence from the finance department that contradicts the testimony presented by the title clerk or establishes that any wrongful conduct occurred in the finance department. All we do know is that the paperwork was sent by Scott Brown, the salesman (and not in the finance department), to the finance department showing Smith as the owner and that that paperwork then went from the finance department to the title clerk with Smith's name shown as the owner. Anything beyond that is pure "speculation" at best!

The salesman, Scott Brown, testified that he dealt only with Smith initially; that he asked Smith whose name this deal was going to be in; that she couldn't give a straight answer; and so he said well I'm going to do this in your name because you are here right now. (Deposition of Scott Brown, pp. 17-18). Therefore, the documentation he sent to the finance department showed title to be in the name of Smith.

While there is some <u>initial</u> paperwork showing this vehicle was to be titled in the name of Glenn Mechanical, there is no evidence that that paperwork came from the finance office. Further, what came out of the finance office, with whom Smith had no contact, conclusively establishes that title was to be placed in the name of Smith since the title clerk testified that when she received the paperwork from the finance department,

it showed that the title was to be placed in the name of Smith. Further, the transaction, of which Scott Brown was a party at the initial sales phase, occurred eight (8) years ago. Since that time, he has probably sold anywhere from 50 – 100 vehicles. What is conclusive, as stated above, is the testimony of the title clerk whose responsibility it was to actually issue the title and had to come back in later years and reissue the title because the VIN number on the original title was incorrect.

Finally, when you are dealing with a business that has purchased numerous vehicles from the same dealership over the years, it is beyond belief that they would process paperwork involving a vehicle that was to be titled in the personal name of someone who worked for that company, as opposed to the owner of the business, that the dealership would not first check with that business and/or its owner to see if that was indeed correct. The Appellant is asking this Court to accept a process that is unfathomable. Also, if such occurred without permission, the owner/business would have a perfect right to sue the dealership seeking a return of its money and, more than likely, would never have any further dealings with that dealership. In this case, there is absolutely no evidence that such occurred! The reason for this is obvious. This purchase was done as it was supposed to have been done. There may have been, at first, some confusion as to whose name it would be titled in due to the long relationship with Glenn and Glenn Mechanical but there is absolutely no evidence that that confusion, if any, was not resolved in favor of Smith. In other words, while there may have been some initial confusion at the salesman's level, there was no confusion on the part of the finance department and title clerk that the title was to be issued in the name of Smith. To suggest otherwise is contrary to the facts in this case.

The Appellant has failed to present *prima facia* evidence of ownership in the name of the Appellant that meets its burden of proof, as a matter of law. The only *prima facia* evidence presented in this case is that presented by the Respondent. Title of this vehicle is issued as it was supposed to be at the time of purchase and where it remains today.

CONCLUSION

The undisputed evidence in this case shows the following: (1) the title to the Toyota vehicle is and has always been in Smith's name; (2) Smith sold her personal vehicle (Kia) and applied the proceeds from the sale of her personal vehicle to the purchase of the Toyota; (3) Smith has always personally paid all taxes, insurance and maintenance costs for the Toyota vehicle; and, (4) there was never an issue regarding ownership of the Toyota until Smith decided to resign from Glenn Mechanical.

The evidence presented by Glenn Mechanical does not create a genuine issue of material fact or constitute even a scintilla of evidence that would preclude summary judgment in favor of Smith. "The purpose of summary judgment is to expedite disposition of cases that do not require the services of fact finder." *George v. Fabri,* 345 SC 440, 452, 548, S.E. 2d 868, 874 (2001). The Lower Court properly determined that this case should be disposed of at the summary judgment stage and there was no evidence which mandated the involvement of a jury. Based on the foregoing, it is respectfully requested that the Order of The Lower Court be affirmed.

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