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S.C. SUPREME COURT

The State of South Carolina
In The Supreme Court

Appeal from Charleston County
Hon. Deadre Jefferson, Circuit Court Judge

Case No. 2014-CP-10-4591
Appeal 2017-002392

The Estate of Jane Doe 202, by John Doe MM and John Doe HS, each of whom holds power of attorney for Jane Doe,

Appellant

v.

City of North Charleston,
Leigh Anne McGowan, individually,
Charles Francis Wholleb, individually,
Anthony M. Doxey, individually,

Respondents

APPENDIX
Volume Three of Four

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Volume Three

Respondents' Appendix to Record on Appeal

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2014-CP-10-4591

Jane Doe 202, by John Doe MM and John Doe HS, each of whom holds power of attorney for Jane Doe,

Plaintiffs,

v.

City of North Charleston; Leigh Anne McGowan, individually, Charles Francis Wholleb, individually, and Anthony M. Doxey, individually,

Defendants.

ORDER GRANTING DIRECTED VERDICT AS TO PLAINTIFF'S INVASION OF PRIVACY CAUSE OF ACTION

FILED
2018 JAN 12 PM 4:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Presiding Judge:	Hon. Deadra L. Jefferson
Counsel for Plaintiff:	Gregg Meyers, Esq.
Counsel for Defendants:	Sandra Senn, Esq. Christopher Dorsel, Esq.
Date of Hearing:	October 11, 2017
Court Reporter:	Joyce Rueger

THIS MATTER came before the Court for a trial by jury on October 2, 2017 through October 13, 2017. Present at the trial were Gregg Meyers, Esquire on behalf of the Plaintiff and Sandra Senn, Esquire and Christopher Dorsel, Esquire on behalf of the Defendants. At the close of Plaintiff's case on October 10, 2017, Defendants made an oral Motion for Directed Verdict pursuant to Rule 50 of the South Carolina Rules of Civil Procedure as to all causes of action asserted by Plaintiff, including Plaintiff's invasion of privacy claim against Defendant City of North Charleston.[1] The Court heard oral argument from counsel for both parties at that time.

[1] Plaintiff asserted eleven (11) separate causes of action against Defendants in their Second Amended Summons and Complaint, filed on September 22, 2014. Only three causes of action remained at trial: (1) deprivation of civil rights by Defendant City of North Charleston under 42 U.S.C. § 1983; (2) deprivation of civil rights by Defendants McGowan, Wholleb, and Doxey under 42 U.S.C. § 1983; and (3) invasion of privacy against the City of North Charleston.

Following oral argument, Defendants tendered an unfiled Memorandum in Support of their Motion for Directed Verdict to the Court.[2] The Court took the Motion for Directed Verdict under advisement, and gave Plaintiff the opportunity to respond to the motion in writing. Plaintiff subsequently filed a Memorandum in Opposition to Defendant's Motion for a Directed Verdict on October 11, 2017.

Defendants proceeded with their case-in-chief on October 10, 2017, and rested on October 11, 2017. Defendants renewed their Motion for Directed Verdict as to all remaining causes of action at the close of their case-in-chief. The Court once again heard argument from counsel on the Motion for Directed Verdict. The Court, having viewed the evidence and all reasonable inferences in the light most favorable to the Plaintiff, granted the Defendants' Motion for Directed Verdict as to Plaintiff's state law cause of action for Invasion of Privacy on October 11, 2017.[3]

STANDARD OF REVIEW

Rule 50(a) of the South Carolina Rules of Civil Procedure states that the court may direct a verdict when upon a trial the case presents only questions of law. "A motion for directed verdict goes to the entire case and may only be granted when the evidence raises no issue for the jury as to liability." Winters v. Fiddie, 394 S.C. 629, 644, 716 S.E.2d 316, 324 (Ct. App. 2011). When ruling on a motion for directed verdict, the trial court is required to view the evidence and the inferences which can reasonably be drawn therefrom in the light most favorable to the non-moving party, and if the evidence is susceptible of more than one reasonable inference, the court must submit the case to the jury. See, e.g., Roddey v. Wal-Mart Stores East, LP, 415 S.C. 580, 588, 784

[2] The Defendants later filed their Memorandum in Support of Motion for Directed Verdict with the Clerk of Court on October 13, 2017.

[3] On October 11, 2017, the Court ruled contemporaneously on the record on the Motion for Directed Verdict. Those findings of fact and conclusions of law are incorporated as if stated verbatim herein. The Court further indicated at that time that the record would be supplemented with a formal Order.

S.E.2d 610, 675 (2016); Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002). In so considering, the trial court does not have the authority to decide credibility issues or resolve conflicts in the testimony or evidence. Harvey, 350 S.C. at 308, 566 S.E.2d at 532. "It is not the province of the court to weigh the testimony, but simply to determine if there is any relevant, competent testimony reasonably tending to establish the material elements of plaintiff's cause of action." Chaney v. Burgess, 246 S.C. 261, 266, 143 S.E.2d 521, 523 (1965). "In essence, [the court] must determine whether a verdict for a party opposing the motion would be reasonably possible under the facts liberally construed in his favor." Harvey, 350 S.C. at 309, 566 S.E.2d at 532. However, if the evidence does not yield more than one inference, a directed verdict in favor of the moving party is proper. American Fire and Casualty Co. v. Johnson, 332 SC 307, 504 S.E.2d 356, 358 (Ct. App. 1998).

LEGAL ANALYSIS

The Court hereby grants Defendants' Motion for a Directed Verdict as to Plaintiff's claim for Invasion of Privacy. Three different causes of action can arise under the tort of invasion of the right of privacy: (1) appropriation or exploitation of one's personality; (2) publicizing of one's private affairs with which the public has no legitimate concern; or (3) the wrongful intrusion into one's private activities, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities. Meetze v. Assoc. Press, 230 S.C. 330, 335, 95 S.E.2d 606, 608 (1956). "A necessary element of each of these claims is damages." Rycroft v. Gaddy, 281 S.C. 119, 123, 314 S.E.2d 39, 43 (Ct. App. 1984). "An invasion of privacy is actionable only where the defendant's conduct is such that it would cause mental injury to a person of ordinary feelings and intelligence in the same circumstances." Id. at 337, 95 S.E.2d at 610.

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The alleged invasion of privacy here is the entry of City of North Charleston police officers into Plaintiff's home. However, Plaintiff did not present any evidence at trial to support a finding that Defendants intruded upon Plaintiff's privacy under South Carolina law. Plaintiff has not alleged that her personality was appropriated or exploited or that her private affairs were publicized, nor is there any evidence in the record to support such a finding. Plaintiff's invasion of privacy claim is solely based on the wrongful intrusion of Defendant City of North Charleston into her private affairs. Plaintiff contended both in her Complaint and at trial that the officers of the City of North Charleston wrongfully intruded into her private affairs by entering her home without a warrant, thereby causing injury to her.

The privacy tort of wrongful intrusion into private affairs consists of the following elements, which must be pleaded and proved: (1) an intrusion; (2) into that which is private, which was (3) substantial and unreasonable and (4) intentional. Snakenberg v Hartford Cas. Ins. Co., 299 S.C. 164, 171, 383 S.E.2d 2, 6 (Ct. App. 1989). "The intrusion upon the plaintiff must concern those aspects of himself, his home, his family, his personal relationships, and his communications which one normally expects to be free from exposure" and the intrusion itself "may consist of watching, spying, prying, besetting, overhearing, or other similar conduct." Id. However, "the law does not provide a remedy for every annoyance that occurs in everyday life." Id. "In order to constitute an invasion of privacy, the defendant's conduct must be of a nature that would cause mental injury to a person of ordinary feelings and intelligence in the same circumstances." Id. Indeed, "plaintiff must show a blatant and shocking disregard of his rights and serious mental injury to himself as a result thereof." Rycroft, 281 S.C. at 124–25, 314 S.E.2d at 43.

The Plaintiff here has failed to set forth any evidence in support of a finding that the Defendant City of North Charleston, by and through its officers, wrongfully intruded into her

private affairs by entering her home without a warrant. While Plaintiff disputed the necessity of the officers' actions in entering the home, she did not present any evidence indicating that the officers engaged in an intrusion as defined by South Carolina law. Specifically, Plaintiff did not raise any factual questions as to whether the police officers "watched, spied, pried, besotted, or overheard" her. See Snakenberg, 299 S.C. at 171, 383 S.E.2d at 6. Nor did Plaintiff prove a "blatant and shocking disregard" of her rights by the Defendant. See Rycroft, 281 S.C. at 124, 314 S.E.2d at 43. The undisputed testimony presented at trial was that Plaintiff met the officers upon entry into her home, spoke with them, confirmed that she was okay, advised that her daughter was upstairs, and led the officers upstairs to her daughter's room. Further testimony revealed that Plaintiff was "calm" "cogent" and "clear" when the responding officers interacted with her upon entry. Moreover, the uncontroverted testimony indicates that Plaintiff was the most "calm" person in the residence as the alleged events transpired. This response by Plaintiff to the officers does not indicate "outrage, shame, or humiliation" on her part, nor could a reasonable juror draw that inference therefrom, even when viewing the facts in the light most favorable to the Plaintiff. See Meetze, 230 S.C. at 335, 95 S.E.2d at 608.

Plaintiff has also failed to offer a scintilla of evidence of any damages suffered relative to this alleged intrusion as a result of the warrantless entry at trial. Damages are a necessary element of an invasion of privacy cause of action. See Rycroft, 281 S.C. at 123, 314 S.E.2d at 42. A plaintiff alleging invasion of privacy based on intrusion alone must show "serious mental or physical injury or humiliation to himself resulting therefrom." Id. at 124–25, 314 S.E.2d at 43. The Plaintiff may also meet its burden on damages once the Plaintiff establishes proof of all four (4) elements necessary to prove the cause of action. In other words the damage consisting of the unwanted exposure resulting from the intrusion. However, in this instance, the Plaintiff has failed to establish

an unwanted exposure resulting from the intrusion. Plaintiff has alleged that the "wrongful intrusion" by the City of North Charleston caused her to suffer injury resulting in an initial hospitalization at MUSC from March 29, 2014 to April 18, 2014 for treatment of her dementia as well as a urinary tract infection, and a subsequent hospitalization at the Senior Care Unit of the MUSC Institute of Psychiatry from March 21, 2015 to June 1, 2017 for further treatment of Plaintiff's advancing dementia. However, beyond these conclusory allegations, Plaintiff has failed to offer any evidence, that this event was most likely one among the possible causes of her injury, to support her assertions that the police intrusion caused "serious mental or physical injury or humiliation to her." See id. at 124–25, 314 S.E.2d at 43. While there is evidence that the Plaintiff did suffer from a urinary tract infection subsequent to this incident, there is no evidence in the form of expert medical testimony to support the assertion that Plaintiff's infection was caused by or related to the alleged intrusion by the City of North Charleston.[4] Considering this evidence in the light most favorable to the Plaintiff the evidence is only susceptible of one conclusion. This conclusion is the only one supported by the testimony and evidence presented at trial. Plaintiff's treating physician, Jessica Lynn Broadway, M.D. explicitly stated that she "could not say" what caused Plaintiff to suffer from a urinary tract infection. Dr. Broadway further testified that she "could not say" that this incident or any particular event caused Plaintiff to suffer a cognitive decline. In fact, Dr. Broadway concluded that there was no medical evidence to prove that the police intrusion caused any injury to Plaintiff, caused any decline in her dementia, or directly caused the need for her hospitalization. Dr. Broadway was the only expert on causation and

[4] Expert medical testimony is not required where the situation is one within the ambit of the common knowledge and experience of laypersons. However, in this instance the specialized education, training and experience of a doctor is necessary to evaluate the Plaintiff's condition to support such a factual assertion. The inception of a urinary tract infection as well as the exacerbation of dementia cannot be ascertained or within the reasonable knowledge of the average juror without a medical diagnosis to that effect.

medical damages presented by the Plaintiff. Likewise the Plaintiff has failed to present any proof, in the light most favorable to her, on any remaining elements of damages relating to humiliation and embarrassment; fright, fear, nervousness, and anxiety; damage to reputation; loss of income; medical expenses related to the incident; and any other out of pocket expenses. See Restatement (Second) of Torts § 652H (1977); 62A Am. Jur. 2d Privacy §§ 255-57 (1964).

The Court thus finds that Plaintiff did not satisfy the elements necessary to prove a claim for Wrongful Intrusion into Private Affairs at trial, even when viewing the evidence presented in the light most favorable to Plaintiff, as it must. The Court hereby grants Defendants' Motion for Directed Verdict as to the cause of action for Invasion of Privacy.

CONCLUSION

In conclusion, the Court finds that Plaintiff has not presented evidence at trial to support a cause of action for Invasion of Privacy against Defendant City of North Charleston. **THEREFORE**, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT Defendants' Motion for a Directed Verdict is hereby GRANTED as to Plaintiff's cause of action for Invasion of Privacy against Defendant City of North Charleston.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

January 12, 2018
Charleston, South Carolina

Q. Because --
A. Somebody --
Q. You wouldn't want somebody taking care of your sister who acted like Parker was acting that night, would you?
A. No.
Q. No. So let's get to when you finally went -- you said something about you got a phone call from the sergeant. He told you what the charge was and your first instinct was to go check on your sister?
A. Correct.
Q. I think I heard you today say oh, she was bad off, terrible when you got there. She was just a wreck; is that right?
A. Correct.
Q. Okay. You didn't say that in deposition, did you? You said she was fine, fine enough for you to leave and you gave her some ice cream?
A. I don't think I said she was fine.
Q. We can see.
MR. MEYERS: Your Honor, this was asked and answered. We talked about this two hours ago.
THE COURT: If it's an inconsistent

answer then overruled.
BY MS. SENN:
Q. Three different places in your deposition.
MR. MEYERS: Your Honor, I was going to ask the sequence and be shown his response.
THE COURT: Please approach.
(Off-the-record conference.)
BY MS. SENN:
Q. In the deposition that I took can you turn to page 65 line 1.
A. (Witness complies with request.)
Q. And therein we are talking about what you did at your sister's house when you went to check on her, right?
A. Correct.
Q. Did you give any indication that she was bad off or that she was not able to be left alone?
A. No, but I don't see it being asked.
Q. Wouldn't that be something that would be important as you're describing what was going on? You gave her ice cream, she was appropriately dressed, all that. You never mentioned that she's in bad shape, right?

A. Again, I wasn't asked in the deposition the question I was asked earlier so I don't see where -- I don't understand what you are saying.

Q. We asked the question of did you feel like your sister needed medical attention at that point and what did you say?

A. No, she didn't.

Q. She did not. So when you got there that day she was fine -- she had some ice cream. Now you're saying she was totally mentally discombobulated, but when I took your deposition that just wasn't something that you said?

A. I did not say it and it was not asked. Again when I left her I had calmed her down. When I got there what condition -- I believe the question was earlier what was her condition when I got there. I don't see that being asked in this deposition.

Q. So if you will take a look at page 71.

A. (Witness complies with request.)

Q. Line 10, and there you make clear that there was no urgency in dealing with your sister, that the urgency was in dealing with your niece?

A. Correct.

Q. And so that's your position today.

There was no urgency with your sister when you fed her the ice cream. The urgency was with her daughter?

A. The urgency -- I put my sister first. Obviously that was the most important.

Q. Right. But when you checked on her that was fine, she didn't need medical attention, you didn't call the ambulance, you felt like you were -- you could leave her alone again?

A. After I had taken care of her mental state and made sure she had something to eat and water.

Q. Were you aware that Parker had been at a party that night before?

A. At that time, no. I have heard that. I think it was in the deposition somewhere that she had gone to a bridal shower or something.

Q. Would you or your wife have been willing to sit or your son have been willing to sit so she could go out to that shower for a while?

A. Sure.

Q. And, in fact, you're aware, aren't you, that your sister at that stage was having what's called sundowning?

A. Yes.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Deadra L. Jefferson, Circuit Court Judge

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Appellate Case No. 2017-002392

Jane Doe 202, by John Doe MM and John Doe HS, each of whom holds power of attorney for Jane Doe, ... Appellant,

v.

City of North Charleston; Leigh Anne McGowan, individually, Charles Francis Wohlleb, individually, and Anthony M. Doxey, individually, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that *Respondents' Appendix to Record on Appeal* contains no matter which is irrelevant to the appeal. Counsel further certifies that he has consulted with counsel for Appellant and in accordance with Rule 212(b), SCACR, Appellant's counsel has given written consent to Respondents supplementing the Record on Appeal.

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November 20, 2018
Charleston, South Carolina