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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

J. Cordell Maddox, Circuit Court Judge

Case No.: 2019-CP-04-01212

Glenn Mechanical.....Appellant,

v.

Sihierh Smith.....Respondent.

APPELLANT'S FINAL BRIEF

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June 22, 2023

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT?

STATEMENT OF THE CASE

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. A Restraining Order was filed July 22, 2019. The Respondent filed an Answer on August 30, 2019. The Appellant filed a Motion for Miscellaneous Relief on September 25, 2019. The Court denied the Appellant's Motion by Order filed February 3, 2020. The Respondent filed a Motion for Summary Judgment on February 16, 2022. A virtual motion hearing was held before the Honorable J. Cordell Maddox, Jr., on June 1, 2022. An Order granting Respondent's Motion for Summary Judgment was filed July 8, 2022. The Appellant, filed it's Motion to Reconsider on July 18, 2022. Judge Maddox denied the Appellant's Motion to Reconsider in an Order filed August 23, 2022. Appellant filed its Notice of Appeal on September 21, 2022.

STATEMENT OF FACTS

John Glenn, Jr. is the managing partner for the Appellant, Glenn Mechanical, LLC (hereinafter referred to as "Glenn Mechanical"), located and doing business in Anderson County, State of South Carolina. The Respondent, Sihierh Smith (hereinafter referred to as "Smith") was employed as the Office Manager for Glenn Mechanical beginning in 2016. As part of her job, Glenn Mechanical purchased and provided Smith with a White 2016 Toyota 4-Runner with VIN# JTEZU5JR4G5134086. (R. pp. 217-222).

On or about July 27, 2016, John Glenn and Smith went to Ralph Hayes Toyota and looked at the 2016 Toyota 4-Runner. John Glenn did communicate with Scott Jason Brown, a salesman for Ralph Hayes Toyota, and did sign a Bill of Sale with Ralph Hayes Toyota for the 2016 Toyota 4-Runner, with the purchaser listed as Glenn Mechanical. The finance agent for Ralph Hayes Toyota at the time was Stanley C. Ukadike. (R. p. 409). Also a Power of Attorney for Odometer Disclosure for the vehicle was signed by John Glenn on July 27, 2016 for the purchaser Glenn Mechanical, LLC. (R. p. 410). An Affidavit of Notification of Sale of Motor Vehicle for Smith's 2011 Kia Optima was filled out for Glenn Mechanical, LLC and signed by John Glenn, on behalf of Glenn Mechanical, for that vehicle's trade-in. (R. p. 411). John Glenn provided Ralph Hayes Toyota with a copy of his driver's license. (R. p. 412).

On August 1, 2016, John Glenn also provided a check to Ralph Hayes Toyota in the amount of $36,400.00 for the purchase of the 2016 Toyota 4-Runner. (R. p. 413). Smith subsequently decided not to trade her vehicle in and John Glenn provided to Ralph Hayes Toyota a check in the amount of $6,000.00 for the remaining purchase price of the 2016 Toyota 4-Runner. (R. p. 414).

During that time Smith lived with Matthew Pierce and Pierce testified that Smith had arrived

at their home with the Bill of Sale for the 2016 Toyota 4-Runner, which was in the name of Glenn Mechanical. Pierce further testified that he and Smith had an argument regarding her trading in her 2011 Kia Optima for a vehicle that would not be in her own name. Pierce testified that Smith went back to Ralph Hayes Toyota without John Glenn present and when she returned the Bill of Sale was in her own name and not Glenn Mechanical's name. Pierce testified that Smith said John did not know because he did not do the paperwork. (R. pp. 32-193, R. p. 408, R. pp. 365-366 and R. pp 29-31). Also, Pierce had previously provided an affidavit stating "Sihierh told me that John told her that the 4-Runner would be put in his name. Sihierh also told me that she had all of the paperwork for the vehicle and that she was going to put it in her name anyway." (R. p. 408)

Scott Brown testified in his deposition that he dealt with Smith by himself and when he asked her specifically, "I said, whose name is this deal going to be in because I know there's a company? I know there's you. And she couldn't give me a straight answer." He then testified, "And so I was like, well, I'm going to do this in your name because you're here right now." (R. p. 383). Brown further testified, "I asked whose name it would be in because I knew the company was paying for the vehicle. She told me it would be in her name, so my paperwork listed her name. After doing my paperwork and deal was being loaded in finance office, we found out it was going to be in Glenn Mechanical." He testified, "...at that point, Mr. Glenn had to come back in and sign the final contracts. To my knowledge and belief, the vehicle was to be titled in Glenn Mechanical." (R. p. 389). Brown testified that:

> "Mr. Glenn was not there when she was initially there, so I'm like, as,– still – I mean, I had been doing it for a couple of years at that point, of selling cars, but at that time, I wanted to make sure that the customer – I have this customer in front of me. Okay. We're going to do it this way until we know otherwise. So I wanted to get the process going because you – last thing you want to do in sales is – and I'm sure in

everybody's field here, time is money, and I'm just trying to do as fast as possible to get through the process."

"And then that's why, when it was in the business office and there was a hang-up, I'm like – because I can't do anything. Once a customer is in the business office, all I can do is get the car gassed up, get it cleaned up, and them I'm – it's a waiting game. I can't grab another customer. I can't talk to another customer until that happens. So that's why I'm sitting there like, well, what's going on? Why is this taking so long?"

"And that's when I found out that it was being – had to be switched to Glenn Mechanical's name. And that's why the hold- up. And then I was told, okay, everything was good a little while later. And, obviously, you can see where he came in and made a copy of his driver's license, and they printed up the paperwork in Glenn Mechanical." (R. pp. 400-401).

Stanley C. Ukadike was the finance agent in the business office and he was responsible for transferring the paperwork for the 2016 Toyota 4-Runner to the title clerk, Tonya Marie Davis. When this action was filed, on June 28, 2019, Stanley C. Ukadike was no longer an employee of Ralph Hayes Toyota.

The title clerk, Tonya Marie Davis, testified in her deposition that she was employed by Ralph Hayes Toyota and her duties were to go through the paperwork and register the vehicles. (R. p. 306 and R. p. 308). Davis is not involved in the sales transaction and never speaks to the customers unless she's processing paperwork and has to change an address. (R. p. 309). In this matter, Davis did not speak to Glenn or Smith and only processed the paperwork she received from the finance department. (R. p. 309 and R. p. 316) Davis received paperwork from Stanley Ukadike in the finance department and she did process the paperwork to have the 2016 Toyota 4-Runner titled in the name of Smith. (R. pp. 303-359). Davis testified that she was the final step in the purchase of the vehicle from Ralph Hayes Toyota and that she never spoke to Glenn, nor did she know Glenn, nor did she speak to Smith. (R. p. 346). No documents regarding the sale of this vehicle were signed

by Smith or Glenn in the presence of Davis. (R. p. 347).

At her deposition, Davis was asked whether it was unusual to have a set of paperwork made out to Glenn Mechanical and have the same set of paperwork made out to Smith regarding the subject vehicle. Davis testified that it was unusual, however, it was only her job to register the car. (R. p. 352). Davis also testified that as to the paperwork that would be something that you would have to ask Stan U. He would have been the one to have generated all of the forms. (*Id.*) Davis was not with Smith when she signed any documentation pertaining to the subject vehicle. She testified that the paperwork would have been signed in the finance office and that Smith would have been in the finance office with Mr. Stanley when these documents were signed. (R. pp. 353-355). Davis had no knowledge of anything that transpired prior to her receiving the documentation from the finance office. (R. p. 355). As set forth above, Stanley Ukadike was no longer an employee of Ralph Hayes Toyota when this action was filed and he has not been deposed by either party.

Glenn maintains that at the time of purchase, Smith had wrongly placed the title of the vehicle in her name personally. (R. p. 407). Smith was terminated from her position as office manager on June 17, 2019, at which time Glenn requested that she return the vehicle. After initially agreeing to its return, despite repeated requests, Smith failed and refused to return the 2016 Toyota 4-Runner. (R. p. 407).

Smith filed a Motion for Summary Judgment on February 16, 2022. (R. pp. 194-216). Glenn Mechanical filed his Memorandum in Opposition to Defendant's Motion for Summary Judgment on May 31, 2022. (R. pp. 32-193). A virtual hearing on Smith's motion was held on June 1, 2022. (R. pp 258-278). The trial court granted Smith's Motion for Summary Judgment by Order filed July 8, 2022. (R. pp. 1-26). Glenn Mechanical filed his Notice of Motion and Motion to Reconsider

and/or Alter or Amend on July 18, 2022. (R. pp. 29-31). The trial court denied Glenn Mechanical's Motion to Reconsider by Order filed August 23, 2022. (R. pp. 27-28). This appeal followed.

ARGUMENTS

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.,* 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). See *Hancock v. Mid-South Management Comp., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009) (South Carolina State Supreme Court holding that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment).

II. THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Glenn Mechanical's cause of action is one for claim and delivery. The trial court erred in finding that Glenn Mechanical did not meet its burden of proof to establish title or a right of possession to the white 2016 Toyota 4-Runner and in granting summary judgment to Smith. (R. pp. 1-26). There were genuine issues of material fact regarding how the vehicle title came to be in Smith's name and if Glenn Mechanical had a right to possession of the vehicle, which precluded summary judgment.

The trial court in ruling Glenn Mechanical did not meet the burden of proof to establish proof of title or right to possession requisite for a claim and delivery action, effectively elevated the standard of review for summary judgment. That contrary to the trial court's ruling, in cases

with which the preponderance of evidence burden of proof is applied such as this case, the non-moving party need not meet the burden of proof, but rather the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *See Hancock* at 673 S.E.2d 803. Therefore, Glenn Mechanical is only required to present a scintilla of evidence that raises a question of triable facts as to the proof title or right of possession to Glenn Mechanical in order to meet the standard to defeat summary judgment and is not required to meet the burden of proof standard that was applied by the trial court in its order granting Smith's motion for summary judgment. Whether or not Glenn Mechanical meets it's burden of proof is for the jury to decide.

That further, Glenn Mechanical, as the non-moving party, meets the scintilla of evidence standard necessary to withstand a motion for summary judgment, and, when viewed in the light most favorable to it, raises triable issues of material facts and inferences that can be reasonably drawn from those facts. John Glenn, managing partner of Glenn Mechanical attests that Smith wrongfully placed the title to the Toyota 4-Runner in her name personally, while Smith attests that Glenn Mechanical intended the vehicle as a gift for her sole use and benefit. This is a disputed genuine issue of material fact.

Glenn Mechanical's position is corroborated by the affidavit and testimony of Matthew Pierce, who lived with Smith at the time of the purchase of vehicle, when he testified, that Smith had arrived at their home with the Bill of Sale for the 2016 Toyota 4-Runner, which was in the name of Glenn Mechanical. He further testified that he and Smith had an argument regarding her trading in her 2011 Kia Optima for a vehicle that would not be in her own name. Pierce testified that Smith went back to Ralph Hayes Toyota without John Glenn present and when she returned

the Bill of Sale was in her own name and not Glenn Mechanical's name. Pierce testified that Smith said John did not know because he did not do the paperwork. (R. pp. 32-193, R. p. 408, R. pp. 365-366 and R. pp 29-31). Pierce also provided an affidavit stating "Sihierh told me that John told her that the 4-Runner would be put in his name. Sihierh also told me that she had all of the paperwork for the vehicle and that she was going to put it in her name anyway." (R. p. 408.) This is a disputed genuine issue of material fact.

John Glenn, managing partner of Glenn Mechanical paid the entire purchase price for the vehicle in the amount of $42,400.00. (R. p. 413) and (R. p. 414). This was no gift. It's disputed whether Smith gave John Glenn, $8,000.00 from the sale of her car, but that is only a fraction of the cost of the vehicle. This is a disputed genuine issue of material fact.

On or about July 27, 2016, John Glenn and Smith went to Ralph Hayes Toyota and looked at the 2016 Toyota 4-Runner. John Glenn did communicate with Scott Jason Brown, a salesman for Ralph Hayes Toyota, and did sign a Bill of Sale with Ralph Hayes Toyota for the 2016 Toyota 4-Runner, with the purchaser listed as Glenn Mechanical. The finance agent for Ralph Hayes Toyota at the time was Stanley C. Ukadike. (R. p. 409). Also a Power of Attorney for Odometer Disclosure for the vehicle was signed by John Glenn on July 27, 2016, for the purchaser Glenn Mechanical, LLC. (R. p. 410). An Affidavit of Notification of Sale of Motor Vehicle for Smith's 2011 Kia Optima was filled out for Glenn Mechanical, LLC and signed by John Glenn, on behalf of Glenn Mechanical, for that vehicle's trade-in. (R. p. 411). John Glenn provided Ralph Hayes Toyota with a copy of his driver's license. (R. p. 412).

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The trial court relied heavily on the deposition testimony of the title clerk for Ralph Hayes Toyota, Tonya Marie Davis. (R. pp. 1-26). Davis testified in her deposition that she was employed by Ralph Hayes Toyota and her duties were to go through the paperwork and register the vehicles. (R. p. 306 and R. p. 308). Davis is not involved in the sales transaction and never speaks to the customers unless she's processing paperwork and has to change an address. (R. p. 309). In this matter, Davis did not speak to Glenn or Smith and only processed the paperwork she received from the finance department. (R. p. 309 and R. p. 316). Davis received paperwork from Stanley Ukadike in the finance department and she did process the paperwork to have the 2016 Toyota 4-Runner titled in the name of Smith. (R. pp. 303-359). Davis testified that she was the final step in the purchase of the vehicle from Ralph Hayes Toyota and that she never spoke to Glenn, nor did she know Glenn, nor did she speak to Smith. (R. p. 346). No documents regarding the sale of this vehicle were signed by Smith or Glenn in the presence of Davis. (R. p. 347).

At her deposition, Davis was asked whether it was unusual to have a set of paperwork

made out to Glenn Mechanical and have the same set of paperwork made out to Smith regarding the subject vehicle. Davis testified that it was unusual, however, it was only her job to register the car. (R. p. 352). Davis also testified that as to the paperwork that would be something that you would have to ask Stan U. He would have been the one to have generated all of the forms. (*Id.*) Davis was not with Smith when she signed any documentation pertaining to the subject vehicle. She testified that the paperwork would have been signed in the finance office and that Smith would have been in the finance office with Mr. Stanley when these documents were signed. (R. pp. 353-355). Davis had no knowledge of anything that transpired prior to her receiving the documentation from the finance office. (R. p. 355). Davis is exactly right when she says you need to ask Stanley Ukadike about the identical paperwork made out to both Glenn Mechanical and Smith. As set forth herein, Stanley Ukadike was no longer an employee of Ralph Hayes Toyota when this action was filed and he has not been deposed by either party. The wrongful conduct by Smith alone in the finance office with Ukadike in placing the title to the Toyota 4-Runner in her name without the knowledge or consent of Glenn Mechanical is a disputed genuine issue of material fact.

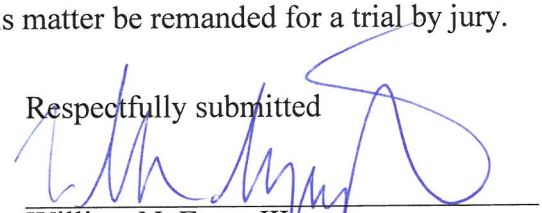
As set forth herein, the question of the Glenn Mechanical's right to possession of the Toyota 4-Runner is raised with more than a scintilla of evidence. This was no gift to Smith and that is a contested issue of material fact that needs to be determined by a jury, at a jury trial that was demanded in Smith's answer. How the title came to be in Smith's name is a contested issue of material fact. Viewed in a light most favorable to Glenn Mechanical as the non-moving party, Glenn Mechanical, through raising an issue as to the material facts that establish proof of title or how that title came to be and it's right to possession, meets the scintilla of evidence standard to

preclude summary judgment. *Hancock v. Mid-South Management Comp., Inc.*, 381 S.C. 326, 673 S.E.2d 801, 803 (2009).

CONCLUSION

Based on the above, Appellant respectfully asks that the trial court's order granting summary judgment be reversed and that this matter be remanded for a trial by jury.

Respectfully submitted



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June 27, 2023

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellant's Final Brief is in compliance with Rule 211(b) SCACR.

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June 22, 2023