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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2023-000294

RONALD SOLES,.....Respondent,

v.

IOAN GHERMAN d/b/a USA AUTO TRANSPORT LLC, and
JASON BROCKMAN d/b/a JNJ TRANSPORT, LLCDefendants,

Of whom JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC is the.....Appellant.

BRIEF OF RESPONDENT

James Stone Craven, Esq.
Law Office of James Stone Craven
SC Bar # 69847
600 E. Washington Street, Ste 620
Greenville, SC 29601
(864) 729-8722
Attorney for the Respondent

W. Benjamin McClain, Jr., Esq.
W. Benjamin McClain, Jr., LLC
Attorney at Law
S.C. Bar. No.: 3740
2728 Poinsett Highway
Greenville, SC 29609
Mailing Address: P.O. Box 205
Greenville, SC 29602
Telephone: (864) 271-9097;
Facsimile: (864) 271-9099
Email: mclaiwnb@gmail.com
Attorney for the Appellant

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Court err in granting the Respondent's Proposed Order for Plaintiff's Motion for Summary Judgment against Defendant Jason Brockman d/b/a JNJ Transport, LLC, dated March 1, 2023?
- II. Did the Court err in its Order denying the Defendant Jason Brockman's Motion to Reconsider Pursuant to SCRCP Rule 59(e) dated February 28, 2023?
- III. Did the Court err in denying the Defendant's Motion for New Trial; In the Alternative, Motion to Amend/ Alter Judgment Under SCRCP 59(a)(2) and 59(e); & Motion to Set Surety and Stay Enforcement of the Order dated March 23, 2023?
- IV. Did the Court err in granting the Plaintiff's Motion to Enforce the Court's Order of March 23, 2023, and to Impose Further Sanctions dated April 4, 2023, and did the Court err in its Form 4 Order holding the Defendant in contempt of Court dated April 20, 2023?

STATEMENT OF THE CASE

Respondent Ronald Soles (hereinafter “Soles”) commenced this action by filing a Summons and Complaint on September 29, 2022, seeking to recover damages on the grounds of breach of contract, breach of contract accompanied by a fraudulent act, fraud and misrepresentation, conversion, implied warranty, negligence, bailment, breach of Unfair Trade Practices Act pursuant to S.C. Code Ann. §39-5-10 to 730, attorneys’ fees and damages seeking recovery of the Respondent’s 1969 Chevrolet Camaro from Appellant Jason Brockman d/b/a JNJ Transport, LLC (hereinafter “Brockman”). Brockman filed its Answer and Counterclaims on November 11, 2022. Respondent Soles timely filed and served upon Brockman a Reply to Defendant’s Answer and Counterclaims. On December 30, 2022, Soles filed a Motion for Summary Judgment and Attorneys Fees Against Defendant Jason Brockman d/b/a JNJ Transport, LLC. On February 10, 2023, Brockman filed and served upon Soles a Motion to Dismiss or in the Alternative Motion for Summary Judgment.

On February 24, 2023, both parties’ motions were heard before the Honorable Bentley Price. After hearing the presentation of arguments, assertions, affidavits, and the testimony of the parties, the Honorable Bentley Price found in favor of the Plaintiff, Soles, and granted Soles’ motion for Summary Judgment in the matter. The Honorable Bentley Price dismissed Brockman’s motions. On February 24, 2024, Defendant Brockman filed and served upon Soles Defendant’s Motion to Reconsider. On February 28, 2023, Brockman’s motion was heard before the Honorable Bentley Price and denied. On March 1, 2023, Brockman filed its Notice of Appeal. On March 17, 2023, Brockman filed a Motion for a New Trial; In the Alternative, Motion to Amend/Alter Judgment under SCRPC 59(a) (2) and 59(2); & Motion to Set Surety

and Stay Enforcement of the Order dated March 23, 2023. On March 23, 2023, the parties appeared before the Honorable Bentley Price. After the hearing of arguments, testimony, and consideration of affidavits presented, Brockman's motions were denied. After an extensive history of noncompliance with the court's orders, on April 4, 2023, Soles filed and served upon Brockman a Motion to Enforce the Court's Order dated March 23, 2023, and to Impose Further Sanctions. On April 20, 2023, the Honorable Bentley Price heard this motion, and after careful consideration of the parties' arguments, testimony, and affidavits, Soles' motion was granted. The following Orders are under appeal: The Proposed Order for Plaintiff's Motion for Summary Judgment dated March 1, 2023, Order Denying Defendant's Motion for Reconsideration, Order Denying Defendant's Motion for New Trial; In the Alternative, Motion to Amend/Alter Judgment Under SCRCP 59(a)(2) and 59(e); & Motion to Set Surety and Stay Enforcement of the Order dated March 23, 2023, Proposed Order granting Plaintiff's Motion to Enforce the Court's Order dated March 23, 2023 and to Impose Further Sanctions dated April 4, 2023 and the finding of Defendant Brockman in contempt of Court dated April 20, 2023.

STANDARD OF REVIEW

Rule 56 of the SCRPC

ARGUMENT

I. The Trial Court properly exercised its discretion in granting the Respondent's Proposed Order for Plaintiff's Motion for Summary Judgment Against Defendant Jason Brockman d/b/a JNJ Transport, LLC, dated March 1, 2023.

South Carolina Rules of Civil Procedure, Rule 56 allows for a party “seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment, *at any time* [emphasis added] after the expiration of 30 days from the commencement of the action”.... “...move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.” (SCRCP Rule 56). The judgment is to be rendered “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Id. The court has the discretion at the motion's hearing by examining the pleadings and evidence before it and by interrogating counsel, to “*practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted.*” Id. It is the adverse party's responsibility to “set forth specific fact showing that there is a genuine issue for trial.” Id. If the adverse party does not do so, “summary judgment, if appropriate, shall be entered against him.” Id. To determine if summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the *nonmoving party* [emphasis added]. (Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (S.C. 2003) quoting: Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d. 537, 545 (1990))

Though summary judgment is a drastic remedy and must not be granted until the

opposing party has had a full and fair opportunity to complete discovery, it is *the responsibility of the nonmoving party* [emphasis added] to demonstrate that there is a likelihood that further discovery will uncover additional relevant evidence and that the party is not “merely engaged in a ‘fishing expedition’” (*Id.* at 112, 410 S.E.2d at 544.) The purpose of summary judgment is to “expedite the disposition of cases which do not require a fact finder.” (*Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (S.C. 2003) quoting: *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)) The party opposing summary judgment is responsible for at least presenting affidavits “explaining why he needs more time for discovery.” (*Doe ex rel. Doe v. Batson*, 345 S.C 316, 321, 548 S.E.2d 854 (2001)).

A summary judgment motion is granted or denied at the trial judge's discretion. The Court of Appeals has held that “the rulings of a trial judge in matters of discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion.” (*Osborne v. Adams*, 338 S.C. 82, 525 S.E.2d 268 (S.C. App. 1999) citing: *Hook v. Rothstein*, 281 S.C. 541, 555, 316 S.E.2d 690, 699 (Ct. App. 1984)) An abuse of discretion occurs when the trial judge’s ruling is based upon an error of law or when based on factual conclusions, is without evidentiary support. (*Osborne v. Adams*, 338 S.C. 82, 525 S.E.2d 268 (S.C. App. 1999) citing: *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565 (1987)) It is the practice of the appellate court to make “*all reasonable presumptions*” to the effect that “*the discretionary powers of the trial court have been exercised properly, correctly, or without abuse..*” and “*will not presume or assume, that there has been an abuse of discretion,*” [emphasis added] (*Id.* citing: 5 C.J.S Appeal and Error §773 (1993)).

In our case, the Honorable Bentley Price heard extensive arguments from the Appellant

and Respondent's counsel, including affidavits and memorandums in support and opposition of the parties' positions and utilizing his discretion while applying the strict language of Rule 56 of the SCRCRCP determined that there was no genuine issue of material fact to be presented to a trier of fact. Upon the admission by the Appellant's counsel that his client had the Respondent's vehicle in his possession, that the contract did stipulate that payment was to be received upon delivery of the vehicle, and the text messages demonstrating the Respondent's repeated efforts to retain possession of his property with full intention to render the balance as required, Judge Price determined that the issue did not need to be litigated further and thus granted summary judgment. In his granting of Plaintiff's motion, he ordered that the vehicle be returned and that payment for delivery be made between the parties. (R. p. 000006, lines 11-14). Judge Price acted within his discretion to grant summary judgment, and he determined while looking more favorably upon the non-moving party, the Appellant.

The Appellant argues that granting the summary judgment was premature due to the parties not engaging in formal discovery. However, in Dawkins, the Supreme Court has held that it is the responsibility of the non-moving party to demonstrate that the likelihood of further discovery will unearth additional relevant evidence for the trier of fact. The Appellant was responsible for arguing the need for discovery at the motions hearing and failed to do so. In addition, the Appellant moved for summary judgment without the formal discovery process and argued in hopes of winning such a motion without that process. Thus, both parties believed they had the information necessary to bypass the trial process. Therefore, the trial court properly exercised its discretion in granting the Respondent's Proposed Order for Plaintiff's Motion for Summary Judgment Against Defendant Jason Brockman d/b/a JNJ Transport, LLC, dated March

1, 2023, and did not err in the granting such order.

II. The Trial Court properly exercised its discretion in denying the Defendant Jason Brockman’s Motion to Reconsider Pursuant to SCRCP Rule 59(e) dated February 28, 2023.

The South Carolina Rules of Civil Procedure Rule 59(e) states that “a motion to alter or amend the judgment shall be served not later than ten (10) days after receipt of written notice of the entry of the order.” There are three circumstances by which the court grants a Rule 59(e) motion: “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” [emphasis added] Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). The motion to reconsider pursuant to Rule 59(e) is not an avenue to “raise argument or present evidence that could have been presented prior to the entry of the judgment.” A party *cannot* use Rule 59(e) “to present to the court an issue the party could have raised prior to the judgment but did not.” Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). In addition, neither “[a] party’s mere disagreement with the court’s ruling.... warrant a Rule 59(e) motion” In re Pella Corp. Architect & Designer Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp.3d 685, 691 (D.S.C. 2017).

In our case, the Appellant argues that new evidence should have been weighed to determine whether the Respondent had standing to file the action because the vehicle in question was not registered in the Respondent’s name but rather in his mother’s name. The issue as to

whose name the subject vehicle was registered to is immaterial. The Respondent purchased the subject vehicle from his mother but was unable to register the vehicle in his name due to the non-delivery of the vehicle by the Appellant. (R. p. 000154, lines 15-20; p. 000156, lines 21-25; p. 000157, lines 1-3). The registration of the vehicle and who owned the vehicle in question is not a discovery issue that would cause the Respondent not to have a breach of contract action. The Appellant, through a third -party, agreed to pick up the subject vehicle and deliver that vehicle to the Respondent at a specified location. The Respondent signed this contract, and the pick-up and drop-off location was confirmed via numerous texts between the parties. The Appellant failed to deliver the vehicle, thus initiating this action. The Appellant's ordinary course of business does not stipulate that he is to only enter into contracts with the rightful owner of a vehicle but can also enter into contracts with authorized agents and those with the power to enter contractual regarding property in their possession. Even if the Appellant raised the issue of ownership in his argument, it would not have affected the granting of summary judgment as that issue lacks merit. The issue of who owned the car was not litigated at the summary judgment motions hearing, and thus, the court ruled properly when they denied the Appellant's motion to reconsider pursuant to Rule 59(e). Again, it is the non-moving party's responsibility to argue all reasoning as to why a summary judgment motion should be denied, and in our case, the reasoning as it pertains to ownership was not argued before a judgment was entered. Therefore, the trial court properly used its discretion and did not err in denying Defendant Jason Brockman's Motion to Reconsider Pursuant to SCRCF Rule 59(e) dated February 28, 2023.

III. The Trial Court properly exercised its discretion in denying the Defendant’s Motion for a New Trial; in the Alternative, Motion to Amend/ Alter Judgment under SCRCF 59(a)(2) and 59(e); & Motion to Set Surety and Stay Enforcement of the Order dated March 23, 2023.

The South Carolina Rules of Civil Procedure Rule 59(a)(2) states that:

in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court *may* [emphasis added] open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions, or make new findings and conclusions, and direct the entry of a new judgment.

(SCRCF Rule 59(a)(2))

The South Carolina Rules of Civil Procedure Rule 59(e) states that “a motion to alter or amend the judgment shall be served not later than ten (10) days after receipt of written notice of the entry of the order.” The Court has the discretion to grant a Rule 59(e) motion under the following three conditions: “*(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.*” [emphasis added] Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). The South Carolina Supreme Court has held that a party *cannot* [emphasis added] use Rule 59(e) “*to present to the court an issue the party could have raised prior to the judgment but did not.*” [emphasis added]” Stevens & Wilkinson of S.C., Inc. v. City of Columbia,

409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014)

The trial court has the discretion to reopen a case to grant a new trial, to amend or alter a judgment, or to reconsider a previous judgment or outcome. In our case, after hearing arguments from counsel and reviewing all affidavits and testimony, Judge Price properly utilized his discretion to decide that a new trial was neither necessary nor appropriate considering the circumstances. At this hearing, the Appellant raised the issue of who was the proper owner of the subject vehicle, and Judge Price found that the issue of ownership lacked merit. After the Appellate counsel's admission that the Appellant did not adhere to the previous court orders, which was to return the vehicle by a specified time in exchange for monetary consideration, Judge Price found that the Appellant's actions were a tactic to delay proceedings and to engage in frivolous litigation. (R. p. 000157, lines 14-17) Considering judicial economy and the fact at hand, Judge Price denied Appellant's motion.

In addition, South Carolina Code of Annotated Laws §18-9-150 stipulates that "if a judgment appealed directs the assignment or delivery of documents or personal property, that the execution of the judgment *shall not be* [emphasis added] stayed by appeal unless one of three things: (1) the things required to be assigned or delivered be brought into court; (2) the things assigned or delivered by placed into the custody of such officer or receiver as the court shall appoint; or (3) an undertaking be entered into on the part of the appellant with at least two sureties in such an amount as the court or judge directs." (S.C. Code Ann. §18-9-150). In our case, there was no reason for the judgment to be stayed by appeal since the Order as written caused both parties to be made whole. Judge Price's order granted the Respondent his vehicle, giving the Appellant monetary relief for delivery of the personal property. (R. p. 0004, lines

21-25). The delivery of the subject vehicle did not meet the statute's criteria. Thus, Judge Price properly used discretion to determine not to grant the Appellant's Motion for Surety and Set Enforcement reflected in the Order dated March 23, 2023. Therefore, the Trial Court did not err in denying Defendant Jason Brockman's Motion for New Trial; In the Alternative Motion to Amend/ Alter Judgment under SCRCF 59(a)(2) and 59(e); & Motion to Set Surety and Stay Enforcement of the Order dated March 23, 2023.

IV. The Trial Court properly exercised its discretion in granting the Plaintiff's Motion to Enforce the Court's Order of March 23, 2023, and to Impose further sanctions dated April 4, 2023. The Court did not err in its Form 4 Order holding the Defendant Jason Brockman in Contempt of Court dated April 20, 2023.

South Carolina Code of Annotated Laws §14-5-320 grants the circuit court the ability to “punish by fine or imprisonment, at the discretion of the court, all contempts of authority in any cause of hearing before the same.” (S.C. Code Ann. §14-5-320) On March 23, 2023, the Honorable Bentley Price denied the Appellant's Motion for a New Trial; in the Alternative; Motion to Amend/Alter Judgment Pursuant to SCRCF Rule 59(a)(2) and 59(e) and Motion for Surety and Stay Enforcement of the Order. Per Judge Price's Order, if the Appellant did not adhere to the terms of the Order, the Court was going to “entertain any and all motions by the Plaintiff to enforce the Court's Order and impose further sanctions.” (R. p. 00013, lines 34-35). The Appellant was ordered to return the vehicle to the Respondent by April 3, 2023, at 5 p.m. The Appellant did not do that. (R. p. 00013, line 34). The Appellant was ordered to appear in person

at the Motions Hearing on April 20, 2023, requesting sanctions and attorneys fees, but the appellant did not appear. The Appellant did not comply with any of the Court's orders dating back to February 24, 2023. In addition, the Appellant engaged in egregious behavior such as an ex parte communication attempt to Chief Justice Beatty, making multiple allegations of impropriety against opposing counsel, refusing to comply with the Court's order, incurring unreasonable amounts of costs such as hearing appearances and other costs associated with litigation. (R. p. 000125-000128). The Appellant's behavior was contempt of authority from the court, and his refusal to comply with the court's Orders allowed Judge Price the discretion to find him in contempt. (R. p. 000015- 000016, lines 1-13) Therefore, the trial court properly used its discretion to grant the Respondent's Motion to Enforce the Court Order of March 23, 2023, as well as to Impose Further Sanctions, and the court did not err in its finding that the Appellant was in contempt as reflected on the Form 4 Order.

V. Conclusion

In conclusion, the trial court properly used its discretion to grant the Respondent's Motion for Summary Judgment, to deny Appellant's Motion to Reconsider pursuant to Rule 59(e), to deny Appellant's Motion for New Trial in the Alternative; Motion to Amend/Alter Judgment Pursuant to SCRCR Rule 59(a)(2) and 59(e) and Motion for Surety and Stay Enforcement of the Order, and to grant Respondent's Motion to Enforce the Court's Order dated March 23, 2023 and to Impose Further Sanctions and did not commit an error of law or fact. Therefore, for the reasons set forth herein, the Appeal should be dismissed, with costs, and the Orders for Judgment of the trial judge should be affirmed, with costs.

THE LAW OFFICE OF JAMES STONE CRAVEN



James Stone Craven
SC Bar. No.: 69847
600 East Washington Street, Ste 620
Greenville, SC 29601
(864) 729-8722
stoney@stoneycraven.com
Attorney for the Respondent

December 4, 2023
Greenville, South Carolina

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APPEAL FROM GREENVILLE COUNTY
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RONALD SOLES,.....Respondent,

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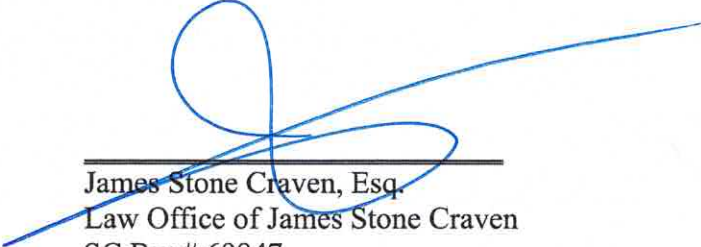
IOAN GHERMAN d/b/a USA AUTO TRANSPORT LLC, and
JASON BROCKMAN d/b/a JNJ TRANSPORT, LLCDefendants,

Of whom JASON BROCKMAN d/b/a JNJ TRANSPORT, LLC is the.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certify that this final Brief complies with Rule 211(b), SCACR.

Respectfully Submitted,


James Stone Craven, Esq.
Law Office of James Stone Craven
SC Bar # 69847
600 E. Washington Street, Ste 620
Greenville, SC 29601
Telephone: (864) 729-8722
Facsimile: (864) 236-8798
stoney@stoneycraven.com
Attorney for the Respondent, Ronald Soles

Dated December 4, 2023
Greenville, South Carolina

Other Counsel on Record:

W. Benjamin McClain, Jr., Esq.
W. Benjamin McClain, Jr., LLC
Attorney at Law
S.C. Bar. No.: 3740
2728 Poinsett Highway
Greenville, SC 29609
Mailing Address: P.O. Box 205
Greenville, SC 29602
Telephone: (864) 271-9097;
(864) 271-9098
Facsimile: (864) 271-9099
Email: mclaiwnb@gmail.com
Attorney for the Appellant, Jason Brockman

Adam C. Bach, Esq. S.C. Bar. No.: 74885
Emily R. Godwin, Esq. S.C. Bar. No.: 103708
Tonnsen Bach, LLC
1306 South Church Street
Greenville, SC 29605
Telephone: (864)239-5013
Facsimile: (864) 312-4191
abach@tonnsenbach.com
egodwin@tonnsenbach.com
*Attorneys for Defendant Ioan Gherman
d/b/a USA Auto Transport, LLC*