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Jan 10 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Debra R. McCaslin, Circuit Court Judge

Civil Action No.: 2021-CP-26-05745

Appellate Case No.: 2023-00822

Joseph A. Stagar,Appellant,

v.

Deborah Cole,Respondent.

INITIAL BRIEF OF RESPONDENT

Luther O. McCutchen, III, Esquire
McCUTCHEM VAUGHT GEDDIE & HUCKS, P.A.
4610 Oleander Drive, Ste. 203
Myrtle Beach, SC 29577
(843) 449-3411
Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

The trial court properly granted Respondent's Motion to Dismiss on the grounds that 1) Appellant failed to file and serve an amended summons with His Amended Complaint as directed in a September 2, 2022 Order filed by the Honorable William H. Seals (granting Respondent's Motion to Dismiss pursuant to Rule 12, SCRCF); 2) lack of subject matter jurisdiction; and 3) failure to state a claim pursuant to Rule 12(b)(6), SCRCF.

STATEMENT OF THE CASE

Appellant filed his initial Summons and Complaint and Requests for Admissions on August 26, 2021. As it relates to Civil Action No.: 2021-CP-26-05745 no proof of service containing a return receipt showing the acceptance by the Respondent has been filed on the record of the Court of Common Pleas for Horry County. The Summons and Complaint were sent by Certified Mail, without restricted delivery, addressed to "Pilot House," and signed for on August 30, 2021 by someone with the initials RW. The Respondent/ Defendant in the Common Pleas action, is Deborah Cole. On September 30, 2021, Appellant filed a Motion for Default Judgment and sent a copy of same by Certified Mail addressed to "Pilot House." The return receipt was signed by David Carlson.

The Respondent / Defendant was personally served with a copy of the Notice of Motion and Motion for Default Judgment on October 7, 2021 by a Sheriff's Deputy. Upon being served by Sheriff, Respondent contacted the office of the undersigned, and the Answer of Deborah Cole and Motion to Dismiss and/or Motion to Strike were filed on October 21, 2021, with same being served upon Appellant by U.S. Mail that same day. Appellant filed a Motion to Compel Default Judgment on October 29, 2021.

Respondent filed a Motion to Dismiss and/or Strike and Amended Motion to Dismiss and/or Strike the Summons and Complaint pursuant to Rule 12(b)(2), SCRCPP for lack of personal jurisdiction over the person, Rule 12(b)(5), SCRCPP for insufficiency of service of process, Rule 12(b)(6), SCRCPP for the failure to state a cause of action and Rule 12(f), SCRCPP to strike statements referencing South Carolina criminal statutes, the U.S. Code, and any references to slander for the failure to plead any elements of slander.

A hearing was held before the Honorable William H. Seals, Jr. on September 2, 2022. At that hearing, the Court heard Appellant/Plaintiff's Motion for Default and Motion to Enforce Default. The Court also heard Respondent/Defendant's Motions to Dismiss the case pursuant to South Carolina Rule 12 SCRCPP and a Motion for Sanctions Pursuant to Rule 11 SCRCPP. The Court denied Appellant/Plaintiff's Motion for Default and Motion to Enforce Default due to the failure of Appellant/Plaintiff to properly serve Respondent/Defendant pursuant to Rule 4(d)(8), SCRCPP. Respondent/Defendant's Motion for Sanctions Pursuant to Rule 11 was denied; however, her Motion to Dismiss was granted. The Court did allow the Appellant thirty (30) days to "promptly amend his summons and complaint to state a proper cause of action." Additionally, upon request of the Appellant, the Court granted Appellant an additional ten (10) days to amend his summons and complaint.

Appellant filed a Motion and Order Information Form and Amended Complaint on September 21, 2022 and had same served upon Respondent, together with a Subpoena, by Sheriff on September 28, 2023. The Subpoena commanded Respondent to allow Appellant to inspect her cash register receipts and "bartenders book of sales," together with video tapes, for the dates of July 24, 25, August 7 and 8, 2021 within ten (10) days of the date of service. Respondent filed an

Objection to Subpoena pursuant to Rule 12, SCRPC, Rule 26, SCRPC and Rule 45, SCRPC, and no motion to compel was filed by Appellant.

On October 24, 2022, Respondent filed her Answer to Amended Complaint, together with a Motion to Dismiss and/or, Strike the Complaint pursuant to Rule 4(a), SCRPC and Rule 4(d), SCRPC for failure to issue a summons to the Amended Complaint and for failure to serve a Summons with the Amended Complaint; Rule 12(b)(2), SCRPC for lack of jurisdiction over the person for failure to serve a Summons; Rule 12(b)(4), SCRPC for insufficiency of process for failure to serve a Summons; Rule 12(b)(1), SCRPC for lack of subject matter jurisdiction over the person due to allegations pursuant to Title 16, Code of Laws of South Carolina and Federal 28US, Code x 4101 [sic]; and Rule 12(b)(6), SCRPC for failure to state a cause of action.

The matter came before the Honorable Debra R. McCaslin on April 24, 2023 for a hearing on Respondent's Motion to Dismiss or, in the Alternative, Strike the Complaint. The Court dismissed the action pursuant to Rules 4(a), 4(d), 12(b)(2) and 12(b)(4) for the failure to serve a summons with the Amended Complaint. The Court further stated that it did not have jurisdiction pursuant to the criminal and/or federal laws cited in the Complaint and found that the Complaint failed to state facts sufficient to constitute a cause of action and that Appellant failed to cite with specificity what Respondent said that might support his allegations of slander. Based on the foregoing, the Court dismissed the action by Order dated April 27, 2023.

Respondent filed his Notice of Appeal on May 9, 2023, and in his Initial Brief, he states his exceptions to the judgment as Judge McCaslin not having recused herself and that Judge McCaslin erred in failing to apply Rule 9(h), Rule 5(b)(1) or Rule 4(j), SCRPC.

Appellant goes on, in a page with the heading "Statement of Issues on Appeal," to state the original Summons and Complaint was answered 57 days late; that "In the clock in papers the judge

does not take in consideration a copy of the SOUTH CAROLINA SEXUAL CONDUCT SC 16-3-656 Section Verbal Assault with intent to commit sexual conduct shall be punishable as if the SEXUAL ACT WAS COMMITTED [sic]” and the Judge failed to read any of his answers in the “replies to Plaintiff from Cole.” The Appellant requests the Court of Appeals to grant him a jury trial.

ARGUMENT

Appellant’s First Exception to the Judgment – Should Judge McCaslin have recused herself?

STANDARD OF REVIEW

Judge McCaslin had no duty to recuse herself from the case due to the alleged bias alleged by Respondent. Respondent cannot simply allege bias or prejudice but must show some evidence of that bias or prejudice. *State v. Jackson*, 353 S.C. 625, 578 S.E.2d 744 (S.C. App. 2003), citing *Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 504 S.E.2d 311 (1998). Further, “[t]he alleged bias or prejudice must stem from an extra-judicial source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge.” *Jackson*, 353 S.C. at 627, citing *Payne v. Holiday Towers, Inc.*, 283 S.C. 210, 321 S.E.2d 179 (S.C. App. 1984). “If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal.” *Id.*, citing *Ellis v. Procter & Gamble Distrib. Co.*, 315 S.C. 283, 433 S.E.2d 856 (1993).

Respondent alleges that the Honorable Debra McCaslin erred in failing to recuse herself from this matter. His Initial Brief states as follows:

The trial Judge err [sic] in failing to recuse herself for a personal relation with Defendants attorney family [sic]. (The Judge and Mr. McCutchen were taking [sic] about there [sic] family wear [sic] they live, his uncle for at least 10 minutes before case started [sic].

Judge McCaslin had no “personal relation” with the undersigned or his family. Prior to the hearing on April 24, 2023, the undersigned had never met, nor seen, Judge McCaslin, and was not aware of her. Judge McCaslin is an “At Large” Judge with her office in Lexington, South Carolina. Judge McCaslin is, however, from or familiar with Bishopville, the same town where the undersigned grew up, and was aware of the undersigned’s family. Upon seeing last name of the undersigned and seeing the spelling of his name, Judge McCaslin inquired if the undersigned was from Bishopville and mentioned that she knew of the undersigned’s uncle. As evidenced in Appellant’s Brief, Appellant heard this brief exchange prior to the start of the case. At no time either before the hearing began or during the hearing did Appellant move for Judge McCaslin to recuse herself.

Further, this matter was before Judge McCaslin not for trial but for a hearing on Respondent’s Amended Motion to Dismiss and/or Strike [Appellant’s Amended Complaint]. Respondent’s Amended Motion to Dismiss and/or Strike was made based on the following:

1. Appellant’s failure to file and serve a Summons to his Amended Complaint pursuant to the Order of the Honorable William H. Seals, Jr. which dismissed Appellant’s original Summons and Complaint and allowed the Appellant an additional thirty (30) days to amend his Summons and Complaint to assert a proper cause of action (Sept. 2, 2022 Order, ¶3); and
2. Appellant’s failure to properly assert subject matter jurisdiction of the Court of Common Pleas. In his Amended Complaint, Appellant asserted references to Title 16 of the Code of Laws of South Carolina, which contains the criminal code, as well as references to Federal laws; and

3. Appellant's failure to state a cause of action upon which relief can be granted. In his Amended Complaint, Appellant failed to assert any statements made by the Respondent that constituted slander.

Judge McCaslin's ruling was sound and was based upon the Appellant's failure to file a Summons with his Amended Complaint, his failure to assert proper subject matter jurisdiction, and his failure to state a cause of action upon which relief could be granted for slander. (April 27, 2023 Order, p. 2, ¶ 1). The April 24, 2023 Hearing Transcript contains substantial evidence supporting the judge's consideration of the factual findings (Tr., p. 6, l. 8-16; p. 6., l. 25 – p. 7, l. 20; p. 8, l. 3-23; p. 9, l. 1-5, 11-24, p. 10, l. 23 – p. 11, l. 18). Appellant offered no legal basis for the Judge to deny the Respondent's Motion to Dismiss and/or Strike the Amended Complaint of Plaintiff; he continued to argue issues that were brought up related to his initial Summons and Complaint, which were dismissed by the Order of Judge Seals dated September 2, 2022 (Sept. 2, 2022 Order, ¶ 2). As evidenced in the transcript of the hearing, the Judge's findings were based solely on the information she learned from her participation in the April 24, 2023 hearing. The transcript reflects that Judge McCaslin asked questions of both parties to the case during the proceeding and offered insight to Appellant as to why a Summons is required and how a party has no duty to answer until the party is properly served. The transcript of the Hearing and the Order on Defendant's Motion to Dismiss contain substantial evidence supporting the judge's factual findings, and Judge McCaslin's ruling reflects no judicial bias or prejudice.

Appellant's Second Exception - Rule 9(h), Rule 5(b)(1) or Rule 4(j), SCRPC are moot as to the hearing on Respondent's Motion to Dismiss and/or Strike Held on April 24, 2023

The April 24, 2023 hearing was a hearing on Respondent's Motion to Dismiss and/or Strike the Appellant's Amended Complaint. Rule 9, SCRPC is entitled "Pleading Special Matters," and Rule 9(h), SCRPC reads as follows:

(h) Libel or Slander. In pleading libel or slander it is not necessary to state in the pleading any extrinsic facts for the purpose of showing the application to the pleader of the defamatory matter out of which the action arose; but it is sufficient to state generally that the same was published or spoken concerning the pleader. In such case, the opposing party may in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances reducing the amount of damages and, whether he prove the justification or not, he may give in evidence the mitigating circumstances.

The April 24, 2023 hearing was a hearing on Respondent's Motion to Dismiss and/or Strike; it was not a hearing on a Motion for Judgment on the Pleadings, and Judge McCaslin's role was to evaluate the merits of Respondent's Motion to Dismiss based on Rule 4(a) SCRPC, Rule 4(d), SCRPC, Rule 12(b)(2), SCRPC, Rule 12(b)(4), SCRPC and Rule 12(b)(6), SCRPC. Rule 9(h) was moot in this hearing.

Rule 5(b)(1), SCRPC relates to the service and filing of pleadings and is also moot in that Appellant refers to the alleged failure of Respondent to timely answer or otherwise plead to Appellant's original Summons and Complaint, which were dismissed pursuant to the Order of Judge Seals dated September 2, 2022. The Seals dismissal was based on for Appellant's failure to properly serve the original Summons and Complaint on Respondent as well as for Plaintiff/Appellant's failure to state a cause of action in his Complaint. Plaintiff/Appellant was granted thirty (30) days in which to amend and serve his Summons and Complaint. Additionally, Rule 59(e), SCRPC provides a party ten (10) days after receipt of the written notice of the entry of the order to file a motion to alter or amend. Appellant failed to file a motion to alter or amend and, as a result, any argument of Appellant related to the matter before the issuance of the September 2, 2022 Order is moot, and Judge McCaslin had no duty to apply Rule 5(b)(1) at the April 24, 2023 hearing.

Appellant's argument regarding Rule 4(j), SCRPC is in relation to matters occurring before the September 22, 2022 Order and is moot. Notwithstanding the lack of relevance of the assertion,

no acceptance of service has ever been presented to or signed by Respondent. Again, Judge McCaslin had no duty to apply Rule 4(j) at the April 24, 2023 hearing.

All three (3) of these Rules of Civil Procedure are moot as they relate to the April 24, 2023 hearing and April 27, 2023 Order and should not be reviewed by this Honorable Court.

#3 Under Appellant's Statement of Issues on Appeal lists an additional argument related to the original Summons and Complaint

Appellant's apparent third exception once again contains an argument related to his original Summons and Complaint and, most likely, Appellant's Motion for Default Judgment and Motion to Compel Default Judgment, both of which were dismissed by the September 2, 2022 Order due to Appellant's failure to properly serve respondent. This point is moot and should not be an issue for this Court.

The Court of Common Pleas lacks subject matter jurisdiction over matters of criminal sexual conduct and § 16-3-656

Appellant's apparent fourth exception, regarding the Judge's failure to consider criminal sexual conduct and/or § 16-3-656, Code of Laws of South Carolina (1976), as amended, is a criminal statute, and the Court of Common Pleas lacks jurisdiction over criminal matters, as was set forth in Judge McCaslin's April 27, 2023 Order on Defendant's Motion to Dismiss and/or Strike (Apr. 27, 2023 Order, ¶ 2, l. 5-6). This should not be a matter for review by this Honorable Court.

There was no duty to review the Pleadings in the April 24, 2023 hearing on Respondent's Motion to Dismiss.

Appellant's apparent fifth exception deals with Judge McCaslin's failure to read the pleadings in the matter. However, the pleadings were not at issue in the Motion to Dismiss and/or Strike. The Common Pleas action was dismissed by Order on related to Defendant's Motion to Dismiss and/or Strike. The only matters to be determined at that hearing were the merits of

Defendant's Motion to Dismiss. The judge had no duty to read the Answer of the Defendant, and Appellant's statements regarding same are irrelevant.

The Judge further had no duty to rule on any issues regarding production or lack of production of video tapes. At the time Appellant served his Amended Complaint, he also served a Subpoena requesting copies of Respondent's cash register receipts and of video tapes of security footage to be produced within 10 days of service; however, Respondent filed and served an objection pursuant to Rule 45(c)(2)(B), SCRPC and objected on the grounds that the Subpoena was not timely served, Appellant's original case had been dismissed, and Respondent had not had the opportunity to answer or otherwise plead to the Amended Complaint that had just been served. Plaintiff failed to file a Motion to Compel production, and this issue is moot.

Pro se parties are held to the same standards as are applied to attorneys.

Appellant, in his Designation of Matters to be included in the Record on Appeal, alleges that the Honorable Debra McCaslin held a bias toward him because he is a pro se party. However, South Carolina case law is clear that although Appellant is appearing pro se and appeared pro se in the Common Pleas action, Appellant is still required to comply with the substantive and procedural requirements of the Court. *State v. Burton*, 356 S.C. 259, 265 n. 5, 589 S.E.2d 6, 9 n. 5 (2003) ("A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with the substantive and procedural requirements of the law."). Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney. *Goodson v. American Bankers Ins. Co. of Florida*, 368 S.E.2d 687, 295 S.C. 400 (S.C. App. 1988). *See also, McCall v. A-T-O-, Inc.*, 276 S.C. 143, 276 S.E.2d 529 (1981) ("This Court has never held a layman to a lesser standard than attorneys.").

During the April 24, 2023 hearing on Respondent's Motion to Dismiss and/or Strike, Appellant informed Judge McCaslin that the Court was supposed to show leniency upon him, and Judge McCaslin acknowledged same and informed Appellant that she likewise was required to hold him to the same standard that she would an attorney. (Tr., p. 5, l. 18-24). Judge McCaslin did not show bias toward the Appellant in dismissing the action; she held him to the same standard she would an attorney with regard to complying with the Orders of the Court and following the South Carolina Rules of Civil Procedure.

CONCLUSION

Judge McCaslin properly reviewed the Respondent's Motion to Dismiss and/or Strike for 1) Appellant's failure to file and serve a Summons with his Amended Complaint as was ordered in the September 2, 2022 Order which dismissed his original Complaint; 2) lack of subject matter jurisdiction over the federal and criminal statutes asserted in Appellant's Amended Complaint; and 3) Appellant's failure to state a cause of action. She heard the arguments of the parties and made appropriate factual findings based upon what she learned from the parties at trial and held the parties to the same standards of civil procedure. Appellant's assertions of any matters related to his original Complaint dismissed by Order dated September 2, 2022, are not properly before this Honorable Court as Appellant failed to file a Motion to Alter or Amend that Order. Further, any matters as to the Amended Complaint are not relevant as this was an Order based Respondent's Motion to Dismiss. No Summons was filed served with the Amended Complaint, and the April 27, 2023 Order dismissing the Common Pleas action should be affirmed.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

McCUTCHEN VAUGHT GEDDIE &
HUCKS, P.A.

s/ Luther O. McCutchen, III

Luther O. McCutchen, III (SC Bar #3763)
4610 Oleander Drive, Ste. 203
Myrtle Beach, SC 29577
(843) 449-3411 (telephone)
(843) 449-2317 (facsimile)
lom@lawyersatthebeach.com

Attorneys for Respondent

January 10, 2024
Myrtle Beach, SC