

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Honorable G.D. Morgan
Case No. 2023-CP-23-01388

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SC Court of Appeals

William Glenn Yarborough III, Esquire;
Lisa Cherry; John Doe, Contract
Attorney; John Doe, Paralegal,

Respondent,

v.

John Alexander, #194748,

Appellant.

INITIAL BRIEF OF APPELLANT

John Alexander, #194748
Tyger River Correctional Institution
200 Prison Road, U2
Enoree, South Carolina

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STATEMENT OF ISSUES ON APPEAL

1. Did the lower Court err in failing to grant the appellant's timely Request / Motion For Discovery where the documents / information sought were material to establishing proof conducive to sustaining a cause of action?
2. Did the lower Court err in failing to grant the appellant's Motion For Default Judgment where the Record establishes that the respondent failed to make a prima facie showing of a meritorious defense pursuant to Rule 55, SCRPC within (30) days?
3. Did the lower Court err in granting the respondent's Motion To Dismiss For Failure Of Service?
4. Did the lower Court err in granting the respondents Motion To Dismiss For Failure To State Facts Sufficient To Constitute A Cause of Action where the appellant submitted facts sufficient to constitute a cause of action in the Complaint, presented additional facts to constitute a cause of action during the Motion Hearings on July 24, 2023, in appellant's Reply, Amendment To Complaint, Motion to Alter or Amend Judgment, and Amendment to Motion To Alter or Amend Judgment?
5. Did the lower Court err in denying and depriving the appellant due process and equal protection of law under the 14th Amendment to present two eye witnesses on the witness stand to testify to and corroborate facts sufficient to constitute a cause of action?

STATEMENT OF THE CASE

The appellant states that on February 15, 2023, he submitted a Cover Letter, copies of Cover Letters to each respondent, Civil Action Coversheets for each respondent, Motion And Order Information Form And Coversheets for each respondent, Summons for each respondents, a Complaint, and a Motion For A Lien before the Court of Common Pleas. Also, exact and complete copies of all the above mention was sent to each respondent on February 15, 2023,

Later, on March 30, 2023, the appellant Filed its Motion For Default Judgment. Well, on April 27, 2023, the Court issued a Notice Of Motion Scheduling on appellant's Motion For A Lien as well as Motion For Default Judgment. Then, on May 5, 2023, the Court issued a Notice Of Motion Scheduling on respondents Motion to Dismiss For Failure of Service of Process and Motion to Dismiss For Failure to State Facts. All for hearing were set For July 24-27, 2023.

Afterwards, on April 24, 2023 the appellant Filed a Request For Discovery. On ~~March 9~~ March 9, 2023, appellant's Summon, Complaint and motion were returned because appellant have not signed the Summons or, payed the motion filing fee. On March 21, 2023 all discrepencies were corrected and the Proof of Service, Civil Action Coversheets, Motion And Order Information Form And Coversheets, Summons, Complaint and Request / Motion For A Lien were filed and given a docket Case No. 2023-CP-23-01388,

Subsequently, on May 12, 2023, the appellant received the respondent's SCDC Office of General Counsell Memorandum Answer To

Complaint, Notice of Motion And Motion To Dismiss For Failure Of Service of Process And Insufficient Process, Exhibit #1, Exhibit #2, and Notice of Motion And Motion To Dismiss For Failure To State Facts Sufficient To Constitute a Cause of Action. Thereafter, on June 9, 2023, the appellant filed a Reply and Motion To Amend Complaint. So, on July 24, 2023 the Motion Hearings were held before the Honorable G. D. Morgan Jr. Following, On July 27, 2023, Judge G. D. Morgan Jr. denied appellant's Motions and granted the respondent's motions.

Finally, on August 8, 2023 the appellant submitted a Motion To Alter or Amend Judgment and Motion For Fact Finding And Conclusions of Law. Plus, on October 2, 2023, the appellant filed its Amendment to Motion To Alter or Amend Judgment. Latterly, on September 5, 2023, Judge G. D. Morgan Jr. filed an Order Granting Defendants Motion To Dismiss. And on October 27, 2023 denied appellant's Motion To Alter or Amend Judgment.

Important, the appellant filed a timely Notice of Appeal. However, on November 29, 2023 the Court of Appeals gave the appellant ten (10) days to file a proof of service in the format shown by Form 7 in Appendix C to part II of the SCACR, and correct other deficiencies. On December 12, 2023 appellant filed its Amended Notice of Appeal, and Motion To Proceed in Forma Pauperis. But, again on December 18, 2023 the Court of Appeals Ordered the appellant to Amend the Notice of Appeal listing all of the respondents in the title / caption with ten (10) days. So, on January 1, 2024 appellant filed an Amendment To Notice of Appeal listing all the respondents in the title / Caption. Last, January 11, 2024, the appellant received the respondent's Motion To Dismiss.

ARGUMENT

The appellant asserts that the facts and evidence within the Record on Appeal establishes that on February 15, 2023 the appellant placed into the Tyger River Correctional Institution Postal Mailroom Service a Summons, Complaint, Civil Action Coversheet, etc. to be sent to the Greenville County Court of Common Pleas. And the exact same to all the Respondents. See Record on Appeal pages 1 through 23. However, on March 2, 2023 the Clerk of Court Office returned appellant's Summons, Complaint and other Motions. For the following reasons: 1.) The Summons were not sign; and 2.) A motion fee was required.

Significant, technically appellant's Summons and Complaint was filed on March 21, 2023 as a result of the appellant correcting all deficiencies. Later, on April 24, 2023 the appellant filed a Request For Discovery seeking any proof that John Doe, Contract Attorney, respondent exists, and was hired by the Law Office of William Glenn Yarborough III, Esquire. See Record on Appeal page 33 lines 7, 8 and 9. Likewise, the appellant sought copies of all tangible or otherwise reports, video and /or audio recordings, etc. delivered to the Law Office of William G. Yarborough III, Esq. See Record on Appeal page 33 lines 9-13.

Subsequent, during the appellant's Motion For Default Motion Hearing, the appellant presented evidence and argued the respondents had declined to honor or respect the Request For Discovery. And that the requested materials were material to establishing appellant's First and Third Cause of Action included within the Complaint:

(1) That William G. Yarborough III, Esq. knowingly, willfully and wanton engaged in conduct involving deceit, and dishonesty to defraud the appellant of \$2,800.00; and (2) That John Doe, Contract Attorney knowingly,

willing and wanton aided, abetted and conspired along with William G. Yarborough III, Esq. to defraud the appellant of \$2,800.00. See Record on Appeal page 51 lines 6, 7, 8, 14, 15 and 16. But, the Honorable G. D. Morgan adamantly refused to entertain or consider the reasons or arguments in connection with the appellant's Request For Discovery. Consequently, the appellant was denied and deprived the 14th Amendment Right to discover and utilize supporting evidence that prove and substantiates that William G. Yarborough III, Esq. did not hire any contract attorney to assist him in appellant's PCR case.

The appellant claims that he was unduly prejudiced where the respondent refused to disclose even a scintilla of the evidence sought in the appellant's Request. Today, were the Court of Appeals to Reverse the lower Court's ruling. And remand the case back to the lower Court with instructions to order the respondents to disclose to the appellant all the materials sought in the Request, the appellant would prevail in a court of law in proving that William G. Yarborough III, Esq. engaged in conduct involving dishonesty and deceit to defraud the appellant of \$2,800.00 where he never hired any contract attorney to assist him in appellant's PCR case.

Second, based on the evidence contained in the Record on Appeal pages 2, 3, 4, 5 and 6 the appellant served its Summons and Complaint on the respondent on 15 February 2023. Also see pages 42 and 43 "Proof of Service." However, the appellant did not receive the respondent's Answer To Complaint until May 5, 2023. Clearly well past thirty (30) days. See Record on Appeal page 56. To be sure, The lower Court of Common Pleas even recognized; "The Proof of Service was dated on "this 15 day of February 2023." See Record on Appeal page 98 lines 4 and 5.

Additional, during the July 24, 2023 Motion For Default Judgment Hearing, the appellant appeared and testified that the Summons and Complaint served on the respondent on 15 February 2023 is identical to the Summons and Complaint Served on the respondents on June 9, 2023, with the exception of the clock, date, stamp and case numbers. Thereto, during the same motion hearing the respondents conceded that it was not prejudiced in any manner. See Record on Appeal page 74 lines 12, 13 and 14.

Essentially, the Court can and should find that the appellant served the Summons and Complaint on the respondents seventy-nine (79) days before the respondents filed an Answer To Complaint. That the respondents never alleged or produced any evidence showing prejudice by not receiving the secondary Summons and Complaint. And, find that the lower Court erred by denying the appellant's Motion For Default when clearly the facts and evidence supported a favorable Just ruling.

Third, herein the appellant resubmits that he served the initial Summons and Complaint on the respondents on 15 February 2023. And served the secondary Summons and Complaint on the respondents on 9 June 2023. Ultimately, the appellant cured all defects relating to Service of Process in the Amended Complaint and /or Response to the Defendant's Motion To Dismiss filed on June 19, 2023, more than thirty (30) days prior to the motion hearings. See Record on Appeal pages 73, 74 and 75 .
Thus, at the time of the July 24, 2023 Motion To Dismiss For Failure of Service Hearing no deficiencies existed in connection with service of the summons, complaint, etc. Plus, the respondents did not introduce evidence that they suffered or would suffer prejudice at a Jury Trial due to the mechanics of how appellant served the Summons and Complaint upon them.

Pursuant to Karlsson v. Rabinowitz, 318 F.2d 666, 68-69 (4th Cir. 1963) "Noncompliance with Rule 4 does not 'mandate dismissal' where the necessary parties have received actual notice of the suit and have not been prejudiced by the technical defect in service." Clearly then, the lower Court erroneously found, "The Plaintiff failed to serve the Summons and Complaint filed on March 21, 2023 on Defendants," and "Finds any attempt by Plaintiff to remedy the failure of Service of Process or the insufficiency on the face of the Complaint inconsequential as any amendment would be futile or result in material prejudice to the Defendants. See Record on Appeal page 99 lines 14, 15 and 16.

The appellant contends that the Court of Appeals can and should find that the respondents were timely and properly served with the Summons and Complaint. That the respondents did not or could not be prejudiced because they received actual notice of the suit on February 15, 2023 and on June 9, 2023. And, find that the lower Court lacked evidentiary support to justify or warrant granting the respondents Motion To Dismiss For Failure of Process.

Fourth, the appellant asserts that the lower Court erroneously granted the respondent's Motion To Dismiss For Failure To State Facts Sufficient To Constitute A Cause Of Action. In the main, the appellant presented and argued in his Reply that the five (5) Cause of Action submitted in the Complaint are cognizable under the South Carolina Tort Claims Act ("SCTCA"). That appellant's Complaint set forth causes of action where relief can be granted. Also, that there exists a genuine issue of material fact requiring the case to go forward. And, that appellant has stated facts sufficient to constitute a cause of action in the Amended Complaint which he is likely to

to succeed on the merits. See Record on Appeal page 75 lines 16, 17, 18, 19, 20, 21 and 22.

Specifically, in the Amendment to Complaint, the appellant gave a thorough and detailed account of all the facts which led up to his being defrauded of \$2,800.00 by the respondents. See Record on Appeal pages 79, 80 and 81. However, the lower Court turned a blind eye on all the facts inside the Amendment To Complaint that clearly constitute a cause of action. Likewise, the appellant pointed out in the Motion To Alter or Amend Judgment; the lower Court overlooked and/or refused to consider all the testimonial facts and documents submitted during the motion hearing setting out substantial facts and evidence sufficiently constituting fraud... a cause of action. See Record on Appeal page 89 lines 14, 15, 16, 17, 18 and 19

In the instant case, the Court of Appeals can and should determine that the lower Court saddled the appellant with an unreasonable burden of persuasion on facts which constitute a cause of action. For example, during the Motion to Dismiss For Failure To State Facts Hearing the appellant stated:

(1) William G. Yarborough III, Esq, in whole neglected and failed to honor or respect his contractual agreement to represent the appellant in his PCR proceeding;

(2) That William G. Yarborough III, Esq, falsely claimed under oath that he hired a contract attorney to assist him with the appellant's PCR case.

In spite of the respondents failing to produce a shred of evidence or other

facts to refute or deny appellant's facts, the lower Court again turned its back on appellant's clear and convincing facts that constitute a cause of action. Wherefore, the Court of Appeals can and should Reverse the lower Court's decision. And remand the case with instructions to allow a Jury Trial to determine whether or not the appellant was unlawfully defrauded of \$2,800.⁰⁰.

Fifth, the appellant contends that the lower Court erred in denying and depriving him of due process and equal protection of law under the 14th Amendment of the United States Constitution. Concisely, the lower Court repeatedly declined the appellant's requests to present two (2) material eye witnesses who had appeared and wanted to testify to and corroborate facts that constitutes a cause of action. Each of the two (2) witnesses were material because they: (1) directly participated in the pre-contractual discussions between the appellant and respondents; (2) witnessed William G. Yarborough III, Esq. agree to represent the appellant in his 2018 Post-Conviction Relief proceeding; (3) provided the funds to the respondents for the sole contractual agreement to represent appellant in his 2018 PCR action; and (4) possessed first hand knowledge that William G. Yarborough III, Esq. never took any actions on the appellant's behalf on his 2018 PCR Action.

Certainly, the facts appellant's witnesses were / are willing to testify to constitute a cause of action. Consequently, where the lower Court denied appellant's witnesses the opportunity to appear and defend against respondent's Motion to Dismiss For Failure to State a Cause of Action, the appellant was unduly prejudice.

CONCLUSION

For the reasons stated, this Court can and should reverse the Judgment of the Court of Common Pleas. Remand the case back to the lower Court with instructions to Order a date for a Jury Trial.

Dated 1/17/2024.

Respectfully Submitted,
John Alexander

John Alexander, #194748

Tyger River Correctional Institution

200 Prison Road, U2

Enoree, South Carolina 29335

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the (pleading) Initial Brief of the Appellant has been served on:

(Name) William Glenn Yarborough III, Esquire

(Address) Counsel for All Respondents

(Address) 308 West Stone Avenue,

Greenville, South Carolina 29609

(Name) _____

(Address) _____

(Address) _____

(Name) South Carolina Court of Appeals

(Address) Clerk's Office

(Address) Post Office Box 11629

Columbia, South Carolina 29211

(Name) _____

(Address) _____

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on the 17 day of January, 2024.

John Alexander
Signature

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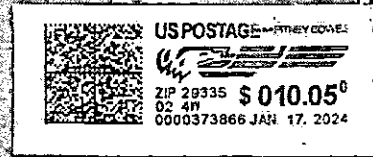
Appellant.

PROOF OF SERVICE

I, John Alexander, certify this 17 day of January 2024 that I sent the Initial Brief of Appellant, Record on Appeal, Certificate of Counsel, Designation of Matter To Be Included In The Record on Appeal, Certificate of Service and Proof of Service United States Postal Services, prepaid, to William Glenn Yarborough III, Esquire, Counsel for All Respondents, 308 West Stone Avenue, Greenville, South Carolina 29609. And the same to State of South Carolina, South Carolina Court of Appeals, Clerk's Office, Post Office Box 11629, Columbia, South Carolina 29211.

John Alexander 155748
Tiger River Court Inst
200 Prison Road, U6-29
Epsom, SC 29335

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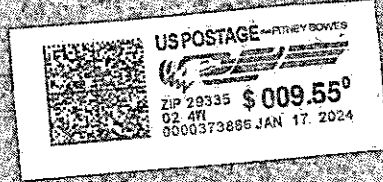
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