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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

G. D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2023-000461
Circuit Court Case No. 2022-CP-23-05634

Alicia Ruffin, Appellant,

v.

Dr. David Mitchell, and Carolina
Orthopaedic and Neurological
Associates, Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF THE ISSUE ON APPEAL

- I. Whether the Circuit Court properly dismissed Appellant's defamation claim, pursuant to Rule 12, SCRCP, where Appellant served insufficient process, was insufficient in the service of process, failed to adequately state a claim for defamation, and where the statute of limitations for the defamation claim had expired.

STATEMENT OF THE CASE

On July 25, 2022, Appellant filed a Complaint against Respondents alleging defamation.

In her Complaint, Appellant alleged:

On July 26, 2019, Dr. David Mitchell document in the Plaintiff's medical record, "I asked her to stand up and her husband helped her and just touching her clothes caused her to have excruciating pain symptomatology and yelling and screaming saying she is very disappointed in me. Her husband became very abusive and also complained, raising his voice ... " "I certainly apologized that I was sorry that she is having so much pain, but I do not feel like we can maintain a doctor-patient relationship with the animosity and the confrontational attitude they have portrayed today. At this point in in time, I would like to have her released from our practice and if she has any emergencies for the next 3 days, she can come back but otherwise, she is discharged from this practice secondary to failure of the doctor-patient relationship." The above Defamatory remarks about the Plaintiff and her husband was *Intended to inflict harm*

(Complaint).

Attached to the Complaint was a Certificate of Service that indicated that Appellant had served Dr. Mitchell with an "order" on July 22, 2022. (Complaint).

In response, Respondents filed a motion to dismiss and a memorandum in support. (Motion to Dismiss, Memorandum in Support). Appellant filed a Response to Respondents' Motion for Dismissal in which she alleged that Dr. Mitchell's allegedly defamatory statements were "first published on December 10, 2019; when Commissioner T Scott Beck used the exact terms that Dr. David Mitchell when charting the events of that date of the Plaintiff."

(Appellant's Response to Respondents' Motion for Dismissal). Attached to Appellant's Response to Respondents' Motion for Dismissal was an order from Commissioner T. Scott Beck, of the South Carolina Worker's Compensation Commission, in which the incident involving Dr. Mitchell was referenced. (Appellant's Response to Respondents' Motion for Dismissal.). In this Order, it states that:

Following her IME with Dr. Kanos, Claimant saw Dr. Mitchell on July 26, 2019. Dr. Mitchell reviewed Dr. Kanos' IME report. Dr. Mitchell felt he could not maintain a doctor-patient relationship with Claimant due to the animosity and confrontational attitude that she displayed during the visit. He released her from his practice. This finding of fact is based on the medical evidence, including Defendants' APA #7.

(Order of the Worker's Compensation Commission).

Also attached to Appellant's Response to Respondents' Motion for Dismissal was a letter sent to a Jimmy Winders from a Liberty Mutual Insurance employee named Honna Williams. In this letter, it states that:

Mrs. Ruffin was seen Dr. Mitchel on 07/26/19. Dr. Mitchell notes that on her physical examination she seems to be neurologically intact. When asked to stand up, her husband helped her and just touching her clothes caused her to have excruciating pain symptomatology and telling and screaming. Her husband became very abusive, and complained, raising his voice. Dr. Mitchell discharged Mrs. Ruffin due to the animosity and the confrontational attitude that was portrayed at the appointment.

(Liberty Mutual Letter).

On February 17, 2023, a hearing was held before the Honorable G.D. Morgan, Jr. Appellant did not appear at the hearing. (Hearing Transcript p. 4). After hearing argument from Respondents' counsel, the Circuit Court indicated that it would grant Respondents' motion to dismiss and asked counsel to draft an order. (Hearing Transcript p. 15).

On February 27, 2023, the Circuit Court entered an order granting Respondents' motion to dismiss. (Order of the Circuit Court). In its order, the Circuit Court held that 1) Appellant served insufficient process and was insufficient in the service of process, 2) Appellant failed to adequately plead her defamation claim, and 3) that the statute of limitations on her defamation claim had expired. (Order of the Circuit Court). This appeal followed.

STANDARD OF REVIEW

“When reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC, the appellate court applies the same standard of review as the trial court.” *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 494, 497 (2014). “A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” *Fleteau v. Harrelson*, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003). “The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law.” *Id.* at 202, 584 S.E.2d at 416.

“The trial court's findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard.” *Graham L. Firm, P.A. v. Makawi*, 396 S.C. 290, 294–95, 721 S.E.2d 430, 432 (2012).

ARGUMENT

I. The Circuit Court’s Order of Dismissal Should be Affirmed.

In her brief, Appellant does not challenge any of the Circuit Court’s rulings. The Circuit Court’s rulings are therefore the law of the case. All the arguments Appellant makes on appeal are also unpreserved as they were neither raised to nor ruled upon by the Circuit Court. On the merits, the Circuit Court also correctly found that 1) Appellant served insufficient process and was insufficient in the service of process, 2) Appellant failed to adequately plead her defamation claim, and 3) that the statute of limitations on her defamation claim had expired.

A. The Circuit Court’s Rulings are the Law of the Case.

The Circuit Court granted Respondents’ motion to dismiss on three distinct legal grounds: 1) insufficient process and service of process; 2) failure to adequately plead the

elements of defamation; and 3) that the statute of limitations for Appellant’s defamation claim had expired. In her brief, however, Appellant does not appear to argue against any of these rulings. Accordingly, this Court should affirm the Circuit Court’s rulings as these rulings are the law of the case. *See First Union Nat. Bank of S.C. v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) (holding that an “unchallenged ruling, right or wrong, is the law of the case and requires affirmance.”); *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (“Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case.”), *abrogated on other grounds by Repko v. County of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018).

B. Appellant’s Arguments are not Preserved for Appellate Review.

The arguments Appellant makes in her brief are unrelated to the Circuit Court’s order that, at least ostensibly, is the subject of this appeal. None of Appellant’s arguments on appeal were properly raised to or ruled upon by the Circuit Court. Accordingly, they are unpreserved for appellate review. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”).

C. The Circuit Court Correctly Found that Appellant Served Insufficient Process and was Insufficient in the Service of Process.

“The summons and complaint shall be filed before service.” Rule 5(d), SCRPC.
“Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party.” Rule 5(d), SCRPC. “Service of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen

(18) years of age, not an attorney in or a party to the action.” Rule 4, SCRPC. “The trial court’s findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard.” *Graham L. Firm, P.A.*, 396 S.C. at 294-95, 721 S.E.2d at 432.

When Plaintiff filed her Complaint on July 25, 2022, attached to the Complaint was a Certificate of Service that indicated that Appellant had served Dr. Mitchell with an “order” on July 22, 2022. (Complaint). The Circuit Court therefore properly found that Appellant had failed to serve a copy of the filed Summons and Complaint on Respondents. (Order of the Circuit Court pp. 3-4). The Circuit Court also correctly found that even if Appellant did serve Respondents with a filed copy of the Summons and Complaint, that service was ineffectual because it was performed by the Appellant herself. (Order Granting Motion pp. 3-4). Appellant submitted nothing to the Circuit Court to indicate otherwise. Accordingly, the Circuit Court’s findings that Appellant served insufficient process and was insufficient in the service of process should be affirmed.

D. The Circuit Court Correctly Found that Appellant Failed to Adequately Plead her Defamation Claim.

“The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Murray v. Holnam, Inc.*, 344 S.C. 129, 139, 542 S.E.2d 743, 748 (Ct. App. 2001).

Appellant alleged in her Complaint that on July 26, 2019, Dr. Mitchell documented in her medical record that:

I asked her to stand up and her husband helped her and just touching her clothes caused her to have excruciating pain symptomatology and yelling and screaming saying she is very disappointed in me. Her husband became very abusive and also

complained, raising his voice...I certainly apologized that I was sorry that she is having so much pain, but I do not feel like we can maintain a doctor-patient relationship with the animosity and the confrontational attitude they have portrayed today. At this point in time, I would like to have her released from our practice and if she has any emergencies for the next 3 days, she can come back but otherwise, she is discharged from this practice secondary to failure of the doctor-patient relationship.

(Complaint).

Appellant alleged in her Complaint that this language Dr. Mitchell entered into her medical record was defamatory. (Complaint). While Appellant did not state in her Complaint where, when, or to whom this language was published, in her Response to Respondents' Motion to Dismiss, Appellant alleged that "[t]he statement was first published on December 10, 2019, when Commissioner T. Scott Beck used the exact terms that Dr. David Mitchell when charting the events of that date of the Plaintiff." (Appellant's Response to Respondents' Motion to Dismiss).

Appellant attached Commissioner Beck's "publication" to her Response to Defendants' Motion to Dismiss. (Appellant's Response to Respondents' Motion to Dismiss). This "publication" is a Decision and Order of the South Carolina Workers' Compensation Commission, signed by Commissioner T. Scott Beck. In this Order, it states that:

Following her IME with Dr. Kanos, Claimant saw Dr. Mitchell on July 26, 2019. Dr. Mitchell reviewed Dr. Kanos' IME report. Dr. Mitchell felt he could not maintain a doctor-patient relationship with Claimant due to the animosity and confrontational attitude that she displayed during the visit. He released her from his practice. This finding of fact is based on the medical evidence, including Defendants' APA #7.

(Appellant's Response to Respondents' Motion to Dismiss).

Respondents cannot be liable for this "publication" because, according to Appellant's own allegations, it was Commissioner T. Scott Beck who made the "publication," and not Respondents. This alleged "publication" is also not an unprivileged publication, because it is a

judicial finding of fact contained in an order of the South Carolina Worker's Compensation Commission.

Respondents cannot be liable for the alleged "publication" contained in the Liberty Mutual letter for similar reasons. It was a Liberty Mutual representative who made the alleged "publication," and not Respondents. (Liberty Mutual Letter).

Appellant also failed to plead any facts showing any fault on the part of any of the alleged "publishers." Accordingly, the Circuit Court's determination that Appellant had not adequately plead its defamation claim against Respondents should be affirmed.

E. The Circuit Court Correctly Found that Appellant's Defamation Claim was Barred by the Statue of Limitations.

The statute of limitations for libel and slander is two years. S.C. Code Ann. § 15-3-550 (2005). "The limitations period begins when the alleged defamatory statement is made, not when the plaintiff learns of the statement." *Harris v. Tietex Int'l Ltd.*, 417 S.C. 533, 542, 790 S.E.2d 411, 416 (Ct. App. 2016).

In all of the materials Appellant submitted to the Circuit Court, the only statement or potential "publication" that Appellant attributes to Respondents were the remarks Dr. Mitchell made in Appellant's medical record on July 26, 2019. Accordingly, the statute of limitations began to run on July 26, 2019, when Dr. Mitchell allegedly entered the allegedly defamatory remarks in Appellant's medical record. Because Appellant did not file her Complaint until July 25, 2022, the Circuit Court correctly found that her Defamation claim against Respondents was time-barred by the statute of limitations.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Honorable Court affirm the judgment of the Circuit Court.

Respectfully Submitted,

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondents on all parties of record, by mailing it
via first class mail on February 12, 2024, to the following:

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