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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 Perry H. Gravely
Case No.: 2023-CP-23-03267

Appellate Case No. 2023-001585

Bruce Wilson

Appellant,

v.

Joseph Hunter Bledsoe

Respondent.

RESPONDENT'S INITIAL BRIEF

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INTRODUCTION

Appellant Bruce Wilson filed a Claim and Delivery action (the "Complaint") in the Gantt Summary Court against three defendants, one of which was the Respondent, Joseph Bledsoe. See Claim and Delivery Complaint. In the Complaint, Appellant claimed that various items had been taken from him and he attached a list which included numerous items of clothing, a wireless public announcement system, and two landscape trimmers. See id.

After a trial was held in January of 2023, the jury found in favor of the Plaintiff. See Order of Hon. Perry Gravely, dated March 21, 2023, p.1. However, the court then ruled – on its own motion pursuant to Rule 16(b) of the Magistrate's Court Rules – that the matters at hand were law and not fact and therefore entered judgment for the Defendant. See id. The basis for the court's ruling was that the Plaintiff had failed to provide sworn evidence to establish the specific items taken and their value. See id.

Appellant appealed the magistrate's ruling to the Court of Common Pleas. See Order of Hon. Perry Gravely, dated March 2023, p.1. After a hearing, Judge Perry Gravely agreed that Appellant "was deficient in establishing what specific items were to be returned" and noted "the Court does not have sworn testimony of the specific items subject to claim and delivery." See id., p.5. Nonetheless, Judge Gravely remanded the matter to the magistrate "to hold a hearing for Appellant to establish the specific items and/or value of those items to be recovered." See id.

The magistrate therefore held a hearing on remand. See Return to Second Appeal, dated July 7, 2023, p.1. Yet, at this hearing, Appellant still failed to provide any sworn testimony or evidence to establish the items taken or their values. See Order of Hon. Perry Gravely, dated October 3, 2023, p.2. Instead, he argued generally about the items, stating they were all new or like-new yet explaining he did not have any receipts, documents, photos, or other evidence to support the assertion. The magistrate

therefore again entered an order finding that Appellant failed to establish the items taken or their values. See id. Appellant again appealed to the circuit court and the appeal was again heard by Judge Gravely. See id. Judge Gravely reviewed the Return from the magistrate as well as the audio recording of the recent hearing. See id. He then affirmed the magistrate's ruling, noting that "[a]lthough given numerous opportunities at the initial trial and the hearing on remand, Mr. Wilson has not provided any evidence to support his claim for the alleged items taken or their value." See id. This appeal followed.

STATEMENT OF THE CASE

A. Initial Filing

Appellant instituted this action by filing the Complaint. See Claim and Delivery Complaint. In the Complaint, Appellant named three defendants, including Respondent, and claimed that various property was wrongfully removed from his residence. See id. These items included clothing, lawn equipment, and a mobile public address system. See id. As part of the filing, Appellant signed a document entitled "Affidavit and Complaint" but the notary section of the Complaint was not completed and so, the document was not notarized.[1] See id. Appellant attached to the Complaint a list of various items he claimed had been taken by the defendants. See id.

B. Trial

Following a mistrial, a trial was held in January of 2022. See Order of Hon. Perry Gravely, dated March 21, 2023, p.1. Appellant appeared *pro se* and presented his case. See id. At the

[1] The lack of a notary signature on the affidavit can be something of a red herring in this matter. As explained below, the key fact in this appeal, and the reason for Judge Gravely's affirmance of the dismissal, is the Appellant's failure to produce any evidence as to ownership, specificity, and value of the allegedly-taken items. Judge Gravely looked to the affidavit document attached to the Complaint merely as a possible source of such evidence, but as the document was not notarized, it did not constitute sworn testimony, as noted by Judge Gravely.

conclusion of the Appellant's case, Respondent moved for a directed verdict based, in part, upon the fact that Appellant had failed to establish the specific items taken and their value, as required by statute. See id., p.2. The magistrate denied the motion and submitted the case to the jury, which returned a verdict in favor of Appellant. See id.

Following the verdict, the magistrate – "upon motion of the Court" – determined that "the matters at hand were law and not fact, therefore entry of judgment as if a directed verdict had been granted was entered, and case ruled dismissed." See id. In the return, the magistrate noted that the basis for the ruling was that Appellant failed to state specific items and/or values from which the jury could reasonably award relief. See id.

C. The First Appeal

Appellant appealed the magistrate's ruling to the circuit court and the appeal was heard by Judge Perry Gravely. See Order of Hon. Perry Gravely, dated March 21, 2023. The appeal was based multiple grounds, including Appellant's claim that the magistrate improperly set aside the jury verdict based on the Appellant's failure to establish the items taken and their value.[2] See id., p.3.

In considering this issue, the Court noted that, at the trial, Appellant testified generally that he was missing numerous items of clothing and other personal items and that he had submitted a list with the Complaint, though the Court noted that the list was not submitted with a notarized affidavit.[3] See id., p.4. Judge Gravely then concluded:

[2] Appellant also appealed on grounds that the magistrate erred in setting aside the verdict based on its own motion. This is addressed in the third section of this appeal.

[3] In examining the pleadings and affidavit, Judge Gravely was seeking to discover sworn testimony on the issue of ownership and value to remedy the fact that Appellant had failed to present evidence or sworn testimony on this issue at trial. As the affidavit was not notarized, this did not provide a solution.

> Based on the jury verdict and pleadings, this Court finds that Appellant established that he was entitled to the return of his property although he was deficient in establishing what specific items were to be returned. The referenced list was attached to the Affidavit and Complaint, but the Affidavit was not notarized, so the Court does not have sworn testimony of the specific items subject to claim and delivery.

See id., p.5.

The Court therefore remanded the case to the Magistrate's Court "to hold a hearing for Appellant to establish the specific items and/or value of those items to be recovered." See id.

D. Remand

The Magistrate's Court then held a hearing on June 7, 2023. See Return to Second Appeal, dated July 7, 2023. Following the hearing, the magistrate issued an order finding that Appellant had failed to establish the items taken or their values. See Order of the Hon. Perry Gravely, dated October 3, 2023, p.2. Appellant filed another appeal from this order. See Notice of Civil Appeal dated June 27, 2023.

E. Second Appeal

The second appeal was again heard by Judge Gravely, who noted in his order that he reviewed the Return and also requested and then reviewed the audio recording of the June 7th hearing. See Order of the Hon. Perry Gravely, dated October 3, 2023, p.2. Based on this review, the Court affirmed the findings of the magistrate and ordered that Appellant's appeal and claim be dismissed. See id.

The Court agreed with the magistrate that, despite being given the chance at a new hearing to provide the necessary evidence, Appellant had again failed to do so:

> Although given numerous opportunities at the initial trial and the hearing on remand, Mr. Wilson has not provided any evidence to support his claim for the alleged items taken or their value. The original list attached to his complaint was not notarized. At the remand hearing on June 7, 2023, he argued his case, but failed to present any sworn testimony. Nor did Mr. Wilson provide a copy of any credit

> card receipts, credit card statements, store receipts, photographs, internet research, witnesses from any store, or any proof of purchase of a single item claimed. Mr. Wilson only provided a list of items showing the amount he claim[ed] he paid for each item and then reduced the amount by an arbitrary figure for depreciation, but still did not testify to the actual value of the items in question. Mr. Wilson, as the Plaintiff has the burden to prove his case by a preponderance of the evidence and to establish the items taken and/or their values, but he failed to do so. Since Mr. Wilson failed to establish the items taken or their value, then the Court has no avenue to enforce the jury's verdict or issue any judgment based on the jury verdict.

Id. Appellant then filed the instant appeal.

ISSUES PRESENTED

I. DID THE CIRCUIT COURT ERR IN AFFIRMING THE RULING OF THE MAGISTRATE AND DISMISSING THE APPEAL?

II. DID THE MAGISTRATE ERR IN NOT ENTERING JUDGMENT IN FAVOR OF APPELLANT ON REMAND?

III. DOES S.C. CODE ANN. § 22-3-1460 REQUIRE ANY FORM OF PROOF AFTER A JURY VERDICT?

STANDARD OF REVIEW

While a circuit court judge may make its own findings of fact in considering an appeal from the magistrate's court, the scope of review of the Court of Appeals is more limited. See Parks v. Characters Night Club, 345 S.C. 484, 490, 548 S.E.2d 605 (Ct. App. 2001). "The Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the magistrate's judgment and there are no facts that show the affirmance was influenced by an error of law." See id., citing Hadfield v. Gilchrist, 343 S.C. 88, 538 S.E.2d 268 (Ct. App. 2000). The Court of Appeals will therefore "look to whether the Circuit Court order is controlled by an error of law or is unsupported by the facts." See id.

DISCUSSION

I. DID THE CIRCUIT COURT ERR IN AFFIRMING THE RULING OF THE MAGISTRATE AND DISMISSING THE APPEAL?

A. Pro Se Litigant Must Comply With Law

"A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." State v. Burton, 356 S.C. 259, n.5, 589 S.E.2d 6, 9, n.5 (2003). Among the basic requirements of litigation is that, in order for a party to prevail, he must meet his burden to prove each element of a cause of action. See Cole v. South Carolina Electric and Gas, Inc., 355 S.C. 183, 194, 584 S.E.2d 405, 411 (Ct. App. 2003), citing Slack v. James, 614 S.E.2d 636, 364 S.C. 609 (2005).

B. Plaintiff Bears Burden to Prove All Elements by Preponderance of the Evidence

"The burden is on a party pleading a fact to prove it." See Jackson v. Frier, 146 S.C. 322, 144 S.E. 66 (1928). "'The rule as to the burden of proof is important and indispensable in the administration of justice and constitutes a substantial right of the party upon whose adversary the burden rests. It should therefore be jealously guarded and rigidly enforced by the courts.'" See id., citing 22 C.J. 69. An appellate court will affirm a directed verdict when there is no evidence on any one element of the alleged cause of action. See Guffey v. Columbia/Colleton Reg'l Hosp., Inc., 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005).

C. Testimony Must be Sworn

All testimony at a trial shall be given under oath or affirmation. See Rule 13(d), Magistrate Court Rules; Rule 603, South Carolina Rules of Evidence. This is particularly true in a Claim and Delivery Action, where the legislature has required that the pleadings be supported by an affidavit, indicating the legislature's intent that such claims be supported by sworn testimony. See S.C. Code Ann. § 22-3-1320; Singletary v. South Carolina Dep't of Educ., 316 S.C. 153, 447 S.E.2d

231 (Ct. App. 1994) (the primary concern in interpreting a statute is to determine the intent of the legislature). Of course, an affidavit is a statement that is sworn-to by the affiant. See Black's Law Dictionary 71 (11th ed. 2019). Our courts have noted, with regard to other statutes, that in requiring an affidavit, "the legislature intended to preclude false statements by making such a false statement subject to criminal laws." See Collins v. Doe, 343 S.C. 119, 124, 539 S.E.2d 62 (Ct. App. 2000).

D. Magistrate Found Lack of Evidence at Trial

At the conclusion of the trial of the case, the magistrate directed judgment for the defendant and dismissed the case based on her finding that "[t]he plaintiff failed to state specific items and/or values (§ 22-3-1460) for which the jury could reasonable award relief." Return to Initial Appeal, dated November 4, 2022, p.6. Later, even after the hearing on remand, the magistrate still found that the Appellant had still failed to prove the ownership and value of the items. See Return to Second Appeal, dated July 7, 2023, p.2. Instead, Appellant had merely argued that the items in question were all new or like-new yet could produce no evidence of any sort – receipts, photos, credit card statements, or the like – to support his assertions. See audio of June 7, 2023 hearing.

E. Circuit Court Affirmed

In the appeal from the remand, the circuit court affirmed the findings of the magistrate, yet also noted that – even on remand – Appellant still failed to produce evidence to support his claim for the alleged items taken or their value[4]:

[4] This is the key distinction between this matter and the case law cited by Appellant, such as Bossard v. Vaughn, 68 S.C. 96, 46 S.E. 523 (1904). The pleadings referenced in Brossard would have been made per the affidavit requirement of the statute. Judge Gravely considered this in his initial order yet – for this reason – found the pleadings in this matter did not satisfy the elements. See Order of Hon. Perry Gravely, dated March 21, 2023, p.4. The Plaintiff bears the burden to prove all elements by evidence and unsworn statements do not suffice.

> At the remand hearing on June 7, 2023, he argued his case, but failed to present any sworn testimony. Nor did Mr. Wilson provide a copy of any credit card receipts, credit card statements, store receipts, photographs, internet research, witnesses from any store, or any proof of purchase of a single item claimed. . . . Mr. Wilson, as the Plaintiff, has the burden to prove his case by a preponderance of the evidence and to establish the items taken and/or their values, but he failed to do so.

See Order of Hon. Perry Gravely, dated October 3, 2023.

Under this Court's standard of review, this affirmance will be reversed only if it is unsupported by the facts or based upon errors of law. Neither applies here. To the contrary, the evidence is clear that Appellant gave no evidence in the form of exhibits or sworn testimony and simply failed to meet his burden, despite multiple opportunities. Therefore, under this Court's standard of review, the circuit court decision must be affirmed.

F. Even If Sworn, Evidence Inadequate

Moreover, even if we were to pretend – for the sake of argument – that the statements made by Appellant on remand were given under oath – though they were not – such bare assertions would not necessarily warrant judgment in Appellant's favor. In his initial order, Judge Gravely remanded the case to the magistrate's court "to hold a hearing for Appellant to establish the specific items and/or value of those items to be recovered."[5] See Order of Hon. Perry Gravely, dated March 21, 2023, p.5. Judge Gravely does not say in the order that any evidence or testimony given by Appellant is to be automatically accepted or believed, instead he says that Appellant must meet his burden to "establish" the specific items and value of those items. See id. A finder of fact could believe or disbelieve his testimony and might plausibly find that the bare assertions did not rise to the level of a preponderance of the evidence.

[5] As evidence on these elements was not presented to the jury, their verdict cannot have constituted a finding on these points.

Quite simply, even if Appellant's arguments had been sworn statements, it cannot be said that the magistrate would have erred in finding them insufficient. After all, as Judge Gravely noted, Mr. Wilson did not present "a copy of any credit card receipts, credit card statements, store receipts, photographs, internet research, witnesses from any store, or any proof of purchase of a single item claimed." See Order of Hon. Perry Gravely, dated October 3, 2023, p.2. Judge Gravely concluded: "Mr. Wilson, as the Plaintiff has the burden to prove his case by a preponderance of the evidence . . . but he failed to do so." See id.

G. Conclusion

Both at the trial and on remand, Appellant "has not provided any evidence to support his claim for the alleged items taken or their value." See id. And even considering unsworn statements, he has failed to provide anything to the court other than bare assertions, unsupported by any evidence. Given this, there was certainly no error in the circuit court's ruling.

II. DID THE MAGISTRATE ERR IN NOT ENTERING JUDGMENT IN FAVOR OF APPELLANT ON REMAND?

In addition to the above, Appellant raises two procedural grounds for his appeal, which are addressed in this section and the next. First, Appellant alleges that the magistrate erred in not simply entering judgment for Appellant on remand. This constitutes a basic misunderstanding of the first order issued by Judge Gravely as well as the law.

To begin with, Appellant states in the transcript of the second hearing before Judge Gravely and in his brief that he was not required to prove ownership of the items alleged to have been taken. In the Initial Brief, Appellant states: "Once Appella[nt] testified to the value of the property the magistrate judge should have entered judgment as stated by the Appella[nt], as Appella[nt] would have been correct to state the value of said property *without the need to prove ownership by*

sales receipts or credit card receipts." Initial Brief of Appellant, p.13 (emphasis added). Appellant further argued at the hearing:

> [The magistrate] talked about the fact that I couldn't even prove that I had ownership of the property which, in fact, I think once the jury came back in my favor, that's the ownership. I don't think I had to prove that or should have to prove that.

Transcript of August 29, 2023 hearing, pp. 6-7, ll. 22-25, 1.

Of course, in every case, "the burden of proof is on the plaintiff to prove the allegations in his complaint." Bennett v. Ott, 141 S.C. 397, 402, 139 S.E. 853 (1927). A key and necessary element of the complaint is to prove ownership of the items to which the plaintiff alleges he is entitled. See Jackson, supra, 146 S.C. at 327, 144 S.E. at 68 ("The burden of proof is upon the plaintiff in replevin to show that at the time of the commencement of the action he was the owner, that he was entitled to the immediate possession of the property, and that the defendant wrongfully detains it.") (internal citations omitted) (emphasis omitted). And, as with any other element, the claims of the Plaintiff could be contested by the Defendant who may contend that the Plaintiff has not met his burden to establish the element by a preponderance of the evidence.

Appellant's acknowledged failure to prove this basic element of his claim supports the decision of the magistrate, affirmed by the circuit court, to dismiss the case.

III. DOES S.C. CODE ANN. § 22-3-1460 REQUIRE ANY FORM OF PROOF AFTER A JURY VERDICT?

Appellant's second procedural argument is that the magistrate court and circuit court erred in holding "that receipts were necessary to prove ownership of property . . . ." See Initial Brief of Appellant, p.14. This argument simply mis-states and misunderstands the rulings of both judges.

Nowhere in the October 3rd order of Judge Gravely is it stated that Appellant's claim failed due to a failure to produce receipts. Instead, Judge Gravely is clear that the fatal flaw in

Appellant's case is not that he failed to produce a specific type of evidence as to ownership and value but that he failed to produce any evidence on these essential points. As the Court wrote:

> Although given numerous opportunities . . . Mr. Wilson has not provided ***any evidence*** to support his claim for the alleged items taken or their value. The original list attached to his complaint was not notarized. At the remand hearing on June 7, 2023, he argued his case, but failed to present any sworn testimony. Nor did Mr. Wilson provide a copy of any credit card receipts, credit card statements, store receipts, photographs, internet research, witnesses from any store, or any proof of purchase of a single item claimed.

Order of Judge Gravely, dated October 3, 2023 (emphasis added). Given this, Appellant's repeated complaint that the statute in question "does not specify the particular document types or methods required" is a red herring. Appellant was not required to give a specific type of evidence to prove ownership and value – but he was required to give evidence on these points. Having failed to provide any evidence, the court could not reasonably find that Appellant had met his burden to establish the element by a preponderance of the evidence. In short, the weighing of the evidence did not take place – the court could not even reach this step – given that Appellant failed to present any evidence on this point.

CONCLUSION

It is the most basic principle of law that the plaintiff bears the burden of proving the elements of his case. At the magistrate court trial, Appellant failed to produce any evidence to prove the essential elements of ownership and value. Though not required to do so, the circuit court remanded the case to give Appellant a second opportunity to provide such evidence, yet he again failed to do so. Given this, the magistrate had no choice but to dismiss the claim and the circuit court had no choice but to affirm. Respondent respectfully asks this Court to affirm the order of the circuit court.

Respectfully Submitted,

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