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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Shannon M. Phillips, Presiding Circuit Court Judge

Case No. 2024-000160

Kaleb Jowers,
Appellant,

v.

Spartanburg Methodist College,
Respondent,

INITIAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

Did the Circuit Court err in finding that the electronic filing of a Notice of Appearance by Counsel for the Respondent was not a “voluntary appearance...equivalent to personal service” by the Respondent pursuant to Rule 4(d), SCRCPP, and thus, dismissing this case for failure of the Respondent to be served prior to the expiration of the applicable statute of limitations?

II.

Did the Circuit Court err in finding that an e-mail, sent on December 3, 2021, from Counsel for the Respondent to Counsel for the Appellant agreeing to accept service of the Summons of Complaint on behalf of the Respondent was not effective until the electronic signing of a formal Acceptance of Service form on May 4, 2022, and thus, dismissing this case for failure of the Respondent to be served prior to the expiration of the applicable statute of limitations?

STATEMENT OF THE CASE

The Appellant, a former student at Spartanburg Methodist College, filed this action on September 23, 2021, alleging gross negligence on the part of the Respondent, Spartanburg Methodist College, for injuries that the Appellant sustained while he was enrolled as a student of the Respondent. (Tr. p. 4, l. 24 – p. 5, l. 4). The Appellant's injuries occurred on April 11, 2019, so the three (3) year statute of limitations, pursuant to S.C. Code Ann. § 15-3-350 (1976, as amended), expired on April 11, 2022.

Counsel for the Respondent electronically filed a Notice of Appearance on behalf of the Respondent on October 7, 2021. (Return to Motion to Dismiss, Ex. A). Counsel for the Appellant, as a courtesy to Counsel for the Respondent, attempted to contact him by telephone in November 2021, to confirm that he would accept service on behalf of the Respondent. (Return to Motion to Dismiss). Counsel for the Respondent sent an e-mail to Counsel for the Appellant, on December 3, 2021, stating that he would accept service on behalf of the Respondent. (Return to Motion to Dismiss, Ex. B). Counsel for the Appellant subsequently failed to send a formal Acceptance of Service form to Counsel for the Respondent until May 4, 2022. (Return to Motion to Dismiss). Said form was electronically signed by Counsel for the Respondent on the same date. (Return to Motion to Dismiss).

On June 3, 2022, the Respondent filed a Motion to Dismiss the Appellant's claims, alleging that the Respondent had not been served within the applicable three (3) year statute of limitations. A virtual hearing on the Respondent's Motion was held on October 17, 2022, and the Court issued an Order Granting Defendant's Motion to Dismiss. Said Order was filed on October 28, 2022, and the Appellant received written notice of entry of said Order on that same date.

The Appellant filed a Motion to Reconsider, Alter, or Amend said Order on October 28, 2022. The Court filed an Order denying the Appellant's Motion on January 29, 2024, and the Appellant received written notice of the entry of said Order on that same date. The Appellant filed and served the Notice of Appeal on February 2, 2024.

STANDARD OF REVIEW

The Circuit Court’s “findings of fact regarding the validity of service of process are reviewed under an abuse of discretion standard.” *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 294-295, 721 S.E.2d 430, 432 (2012) *citing Clark v. Key*, 304 S.C. 497, 500, 405 S.E.2d 599, 601 (1991).

ARGUMENT

I.

The Circuit Court erred in finding that the electronic filing of a Notice of Appearance by Counsel for the Respondent was not a “voluntary appearance...equivalent to personal service” by the Respondent pursuant to Rule 4(d), SCRPC, and thus, dismissing this case for failure of the Respondent to be served prior to the expiration of the applicable statute of limitations.

Service was effective on the Respondent on October 7, 2021, the date that Counsel for the Respondent electronically filed a Notice of Appearance on its behalf. “Voluntary appearance by defendant is equivalent to personal service.” Rule 4(d), SCRPC. A Court also obtains personal jurisdiction over a defendant by the defendant’s voluntary appearance. *Stearns Bank Nat. Ass’n v. Glenwood Falls, LP*, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007). Further, voluntary appearance by a defendant waives “any defect or irregularity in the service of process” on said defendant. *Stickland v. Consolidated Energy Products Co.*, 274 S.C. 554, 555, 265 S.E.2d 682, 683 (1980).

The electronic filing of a Notice of Appearance by Counsel for the Respondent constituted a voluntary appearance by the Respondent. A voluntary appearance can be accomplished by a formal filing or by the words or actions of a defendant. “[A] defendant may choose to come into court with trumpets, or quietly by the back door.” *Stephens v. Ringling*, 102 S.C. 333, 86 S.E. 683, 685 (1915). In this case, the Respondent, through counsel, submitted a formal filing to the Court indicating that it was aware that this action had been filed and that counsel was appearing on its behalf. Therefore, the actions of Respondent, in having its attorney file a Notice of Appearance show the Respondent’s intent to voluntarily appear in this case.

II.

The Circuit Court erred in finding that an e-mail, sent on December 3, 2021, from Counsel for the Respondent to Counsel for the Appellant agreeing to accept service of the Summons of Complaint on behalf of the Respondent was not effective until the electronic signing of a formal Acceptance of Service form on May 4, 2022, and thus, dismissing this case for failure of the Respondent to be served prior to the expiration of the applicable statute of limitations.

Counsel for the Respondent confirmed to Counsel for the Appellant, by e-mail, on December 3, 2021, that he would accept service of the Summons and Complaint on the Respondent's behalf. The Appellant concedes that a formal Acceptance of Form was not electronically signed by Counsel for the Respondent until May 4, 2022. However, the Respondent clearly had notice of this action and electronic access to the pleadings at least by December 3, 2021.

The "principal object" of service of process is to ensure that a defendant has notice of the proceedings against it. *Mull v. Richland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) citing *Burriss Chemical, Inc. v. Daniel Const. Co.*, 251 S.C. 483, 487, 163 S.E.2d 618, 620 (1968). Further, [e]xacting compliance with the rules is not required to effect service of process." *Id.* The representations of Counsel for the Respondent to Counsel for the Appellant show that the Respondent had notice of the proceedings and intended to accept service of the pleadings on December 3, 2021; therefore, the effective date of Respondent's acceptance of service was on that same date.

CONCLUSION

The Respondent voluntarily appeared in this matter through the electronic filing of a Notice of Appearance by its attorney on October 7, 2021. This voluntary appearance was equivalent to personal service pursuant to Rule 4(d), SCRCP. Moreover, Counsel for the Respondent accepted service of the Summons and Complaint in this matter by his e-mail to Counsel for the Appellant on December 3, 2021. Both of these dates occurred well in advance of the expiration of the applicable statute of limitations on April 11, 2024. Therefore, the Appellant would respectfully request that the Circuit Court’s Order Granting Defendant’s Motion to Dismiss, filed October 22, 2024, be reversed.

May 20, 2024

s/ G. Lee Cole, Jr.
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