

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable Thomas L. Hughston, Jr.

Common Pleas Case No.: 2020-CP-33-00277
Appellate Case No.: 2024-000632

RECEIVED

Aug 09 2024

SC Court of Appeals

Bevance Lynch,

Respondent,

v.

Bertha E. Dunham,

Appellant.

APPELLANT'S INITIAL BRIEF

August 9, 2024

/s Paul B. Ferrara, III

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STATEMENT OF ISSUES

- I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHEN NUMEROUS MATERIAL QUESTIONS OF FACT EXIST FOR A JURY TO DECIDE.
 - A. SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED WHEN THERE WAS A PENDING MOTION TO AMEND WHICH RAISES MATERIAL QUESTIONS OF FACT.
 - B. SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED WHEN THERE WAS MORE THAN A SCINTILLA OF EVIDENCE THAT THE BELINS' HAVE AN INTEREST IN THE PROPERTY AND PROVIDED CONSENT TO MRS. DUNHAM.
 - C. SUMMARY JUDGMENT WAS INAPPROPRIATE WHEN DISCOVERY WAS NOT YET COMPLETE.
- II. THE FIFTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION ARE BEING VIOLATED BY THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT AND THE PARTIES CONSTITUTIONAL RIGHT TO DUE PROCESS.

STATEMENT OF FACTS

In November of 1975, William Dunham, Jr., and Bertha E. Dunham were grantees, by a recorded deed, to real property in Marion County at 1701 West Highway 378, Gresham, South Carolina 29546 (“the property”). (R. at ____). The tax map number is 163-00-00-053. (R. at ____). In September of 1983, William Dunham, Jr., granted his one-half interest in the subject property to Bertha E. Dunham. (R. at ____).

Beulah Mae Dunham is the daughter of Bertha E. Dunham. (R. at ____). In June of 1988, Beulah Mae Dunham married James O’Neal Belin. (R. at ____). Beulah Belin has resided on the property of Bertha Dunham continuously for over twenty-eight (28) years. (R. at ____). Beulah and James Belin own a 1996 mobile home that has been located on the property for twenty-eight (28) years and they have paid property taxes since they moved the mobile home on the property in 1996. (R. at ____). A fence outlines the portion of land the Belin’s occupy, exclusive to all others

including Dunham. (R. at ____). The Belins were advised that if they took care of the property and paid the property taxes, the Dunham's would transfer the deed for the property that the Belins maintained and occupied. (R. at ____). The Belins have never received a deed to the property they assert an equitable interest in. Since 1996 the Belins have fenced their portion of the property, improved the land, cut the grass, and taken care of the property for twenty-eight (28) continuous years. (R. at ____).

In August of 2019, the subject property was conveyed by a foreclosure deed to Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A. (R. at ____). In March of 2020, the subject property was conveyed to Bevance Lynch by a special warranty deed. (R. at ____). Lynch was aware of issues with the title and the Belin's legal and equitable interest in the property. (R. at ____). Bevance Lynch thereafter transferred his interest in the subject property VIA deed (R. at ____). Currently, Bertha E. Dunham resides on the premises, with Beulah Mae and James Belin's consent as established in paragraph two of the amended answer of Dunham. (R. at ____).

STATEMENT OF CASE

In May of 2020, Bevance Lynch filed for a Notice to Quit premises against Bertha Dunham in the Marion County Magistrate's Court. (R. at ____). Thereafter, Bertha Dunham, through counsel, timely filed an Answer, motion to add parties, and motion to dismiss or transfer. (R. at ____). The motions to add Beulah Mae and James Belin as interested parties due to the Belins' equitable and legal interest in the subject property were never heard. (R. at ____). In June of 2020, the Marion County Magistrate's Court transferred the Notice to Quit case to Marion County Common Pleas from the Marion County Magistrate's Court as required under S.C. Code Ann. § 22-3-20. (R. at ____). Thereafter on July 5, 2023, Lynch motioned for summary judgment in the

Marion County Court of Common Pleas. (R. at ____). On August 17, 2023, the Belins filed a Lis Pendens on the property in their efforts to quiet title. (R. at ____). Moreover, the affidavit of Beulah Belin was also filed on August 17, 2023. (R. at ____).

On November 29, 2023, the clerk accepted Bertha Dunham's motion to amend answer and counterclaim and also received the amended answer and counterclaim at 10:10 a.m. (R. at ____). Later that same day at 10:39 a.m. the Honorable Judge Hughston issued a judgment following a hearing granting summary judgment, Order to Quit Premises, and Warrant of Ejectment while there were outstanding questions of fact, in addition to the pending motion. (R. at ____). The subsequent order granting relief was dated December 4, 2023. (R. at ____).

Thereafter, on December 10, 2023, Bertha Dunham timely filed a motion to reconsider. (R. at ____). This motion to reconsider was denied by Judge Hughston's on March 18, 2024. (R. at ____). Bertha Dunham subsequently timely filed a notice of appeal on April 17, 2024, appealing the Orders dated November 29, 2023, and March 18, 2024. (R. at ____).

STANDARD OF REVIEW

As to questions of law, this Court's standard of review is *de novo*. *Fesmire v. Digh*, 385 S.C. 296, 302 683 S.E.2d 803, 807 (Ct. App. 2009). "An appellate court may decide questions of law with no particular deference to the trial court." *In re Campbell*, 379 S.C. 593, 599, 666 S.E.2d 908, 911 (2008).

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHEN NUMEROUS MATERIAL QUESTIONS OF FACT EXIST FOR A JURY TO DECIDE.

The trial court erred in granting summary judgment when there was a pending motion to amend, per *Skydive Myrtle Beach, Inc. v. Horry County*; questions of a material fact exist in the

case, per *Hancock v. Mid-South Mgmt. Co.*; and where a violation of constitutional due process has occurred per *Kurschner v. City of Camden Planning Comm'n*. These points will be explained thoroughly below.

This Court is very aware that summary judgment is improper when there is a genuine issue of any material fact, thus making the moving party not entitled to judgment as a matter of law. Rule 56(c) SCRPC. When appealing an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976). Moreover, summary judgment should not be granted, “[w]here further inquiry into the facts of the case is desirable to clarify the application of the law.” *Middleborough Horizontal Prop. Regime Council of Co-Owners v. Motedison S.P.A.*, 1320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995)(citing *Baugus v. Wessinger*, 303 S.C. 412,401 S.E.2d 169 (1991)). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005).

A. SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED WHEN THERE WAS A PENDING MOTION TO AMEND WHICH RAISES MATERIAL QUESTIONS OF FACT.

The trial court is supposed to be liberal in granting motions to amend per Rule 15 and our appellate courts have generally encouraged the trial courts to grant leave to amend freely which justice so requires. The South Carolina Rules of Civil Procedure 15(a) and 15(c) provide that there should be no unnecessary dismissal of a pending motion, but rather that the parties and the trial court should work to reach a decision on the merits. Rule 15 SCRPC. The case of *Patton v. Miller* emphasized this principle, highlighting that Rule 15 strongly favors amendments and encourages courts to grant leave to amend freely. *Patton v. Miller*, 420 S.C. 471, 489, 804 S.E.2d 252, 261

(2017). The trial court's failure to exercise discretion under SCRCP 15(a) constitutes an abuse of discretion. *Id.* at 498. Moreover, Rule 15 aims to avoid unnecessary dismissals and to ensure that cases are decided on their merits. *Id.* *Patton* quoted *Parker* in furtherance of this point, "This rule strongly favors amendments, and the court is encouraged to freely grant leave to amend." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005).

Similarly, in *Skydive Myrtle Beach, Inc. v. Horry County*, the South Carolina Supreme Court ruled that the circuit court erred by not considering the appellant's motion to amend its complaint when it found that the complaint did not state sufficient facts to constitute a cause of action under Rule 12(b)(6) motion. *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 179-80, 826 S.E.2d 585, 587 (2019). This reinforces the principle that courts should allow amendments to pleadings to ensure cases are resolved based on their merits rather than procedural technicalities. *Id.* It is an abuse of discretion for the trial court to fail to consider a pending amended complaint under SCRCP 15 when considering a summary judgment motion. *See Skydive Myrtle Beach*, 426 S.C. at 179-80. The failure to address the pending motion to amend the answer and motion to add parties further violates the procedural fairness intended by Rule 15 SCRCP, which is an abuse of discretion. *See Patton*, 420 S.C. at 498.

Here, the trial court committed reversible error in failing to apply *Skydive Myrtle Beach* to the motion for summary judgment before the court. In May 2020, when Bevance Lynch filed a Notice to Quit Premises against Bertha Dunham, Dunham responded with motions to add parties, and dismiss or transfer the case, citing the Belins' claim of an equitable interest. (R. at ____). Despite these motions and a subsequent transfer to the Marion County Common Pleas, the trial court later granted summary judgment and issued a warrant of ejectment, while ignoring Dunham's pending motion to amend her answer and counterclaim. The amended answer and counterclaim reached

the important material question of fact of consent. (R. at ____). The ruling by the Court contradicts the principles established under *Skydive Myrtle Beach* and SCRCP 15, as it dismissed potential merits-based claims and defenses without proper consideration.

Furthermore, the trial court erred in failing to recognize the amended answer and counterclaim, viewed in the light most favorable to Dunham, that establishes Dunham had consent to be on the property via the Belins' equitable interest. The amended answer/complaint identified that Beulah Mae Belin and James Oneal Belin, through their equitable interest in the property, identified them as necessary parties and that the Belin's gave Ms. Dunham consent to remain on the premises. (R. at ____).

The trial court failed to consider the allegations of the amended pleadings of all parties' claims in violation of *Skydive*. The trial court's failure to consider the facts in the amended pleadings was an abuse of discretion and was an error of the trial court.

B. SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED WHEN THERE WAS MORE THAN A SCINTILLA OF EVIDENCE THAT THE BELINS HAVE AN INTEREST IN THE PROPERTY AND PROVIDED CONSENT TO MRS. DUNHAM.

In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988). Moreover, the Supreme Court has held in *Hancock*, that the non-moving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 803 (2009). Our Supreme Court has held that even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Redwend Ltd. Ptshp.*, 354 S.C. 459, 468, 581 S.E.2d 496, 501 (Ct. App. 2003).

Mrs. Dunham has met her burden of proof to withstand summary judgment based upon the filed affidavit of Belin and the filed deed of Lynch. (R. at ___); (R. at ___). The burden of proof to withstand summary judgment is that “The non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock*, S.C. 326 at 330. When all inferences are viewed in the light most favorable to the non-moving party, Dunham met her burden of proof through the filed affidavit of Belin. (R. at ___). Specifically, Belin’s affidavit established that there is a factual dispute regarding consent Mrs. Dunham had to remain on the property and a title dispute regarding the property central to the notice to quit at issue. (R. at ___).

Here, summary judgment should not be granted when there are numerous material questions of fact for a jury to decide. Importantly, Bertha Dunham’s amended answer was filed and pending prior to this Court issuing its order of summary judgment. (R. at ___). Additionally, the amended answer asserted the defense of consent to this pending action- notice to quit. (R. at ___).

Specifically, the material questions of disputed fact were: 1) whether Mrs. Dunham had consent to be on the property she was being ejected from; 2) whether Mr. and Mrs. Belin possessed an equitable interest in the property and possess an ownership interest in the property such that they could provide consent to Mrs. Dunham to remain on the property; 3) whether Mr. and Mrs. Belin have a right to intervene, and 4) whether the Belins, through their equitable interest in the property, have the right to allow Mrs. Dunham permission to remain on the property. *See Skydive*, 426 S.C. at 179-180.

All the above, at a minimum, indicates the trial court had a multitude of material issues of fact in dispute. Summary judgment was simply premature and inappropriate at this stage.

C. **SUMMARY JUDGMENT WAS INAPPROPRIATE WHEN DISCOVERY WAS NOT YET COMPLETE.**

In South Carolina, it is clear, as established through a multitude of cases that summary judgment is a drastic remedy to be cautiously invoked so that no person will be improperly deprived of a trial of disputed factual issues. *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); *Lanham v. Blue Cross & Blue Shield*, 349 S.C. 356, 563 S.E.2d 331 (2002); *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002); *Redwend Ltd. Ptshp v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003); *Baril v. Aiken Regl Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); *Trivelas v. South Carolina Dept of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001); *Murray v. Holnam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998).

Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003); *Lanham*, 349 S.C. at 363, 563 S.E.2d at 334; *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

Here, Dunham's defense of consent and counterclaim for conspiracy should allow her to discover relevant disputed material facts of the case before the grant of summary judgment. In this case, there have been no depositions of Mr. and Mrs. Belin nor of Mr. Lynch to further discover the material facts in dispute in this case. Additionally, Lynch's deposition is likely to reveal that he knew or should have known that the Belins had an equitable interest and there were competing claims to the ownership of the property because of the filed "as is" special warranty deed from Wilmington Savings Bank to Lynch and also the quitclaim deed granted to his predecessor in title.

(R. at ____). Discovery into his notice of the Belins' equitable interest must occur before the trial court can determine any issues. Summary judgment should be denied considering discovery has not properly been had for the parties' claims.

II. THE FIFTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION WERE VIOLATED BY THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT.

Procedural due process requires that judiciary decisions depriving individuals of liberty or property must include an opportunity to be heard in a meaningful way with judicial review. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 656 S.E.2d 346 (2008); *Bundy v. Shirley*, 412 S.C. 292, 772 S.E.2d 163 (2015).

Procedural due process imposes constraints on governmental decisions that deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendments of the United States Constitution. *See Kurschner*, 376 S.C. at 171-172; U.S. Const. amend. V; U.S. Const. amend. XIV. The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. This concept of due process is flexible and demands procedural protection as the particular situation requires. *S.C. Dep't of Soc. Servs. v. Wilson*, 352 S.C. 445, 574 S.E.2d 730 (2002), quoting *Morrissey v. Brewer*, 408 U.S. 471 (1972).

In *Bundy v. Shirley*, the S.C. Supreme Court emphasized that procedural due process includes the essential elements of notice and an opportunity to be heard in a meaningful way. *Bundy*, 412 S.C. at 303. (Ensuring that individuals are afforded a fair process before being deprived of liberty or property.) This emphasizes the importance of procedural safeguards while recognizing the flexibility required to address the unique circumstances of each case. Moreover, procedural due process, as mandated by the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States' Constitution, requires that before an individual is deprived of liberty or property,

they must be given an opportunity to be heard in a meaningful way and have access to judicial review. U.S. Const. amend. V; U.S. Const. amend. XIV. This concept, as articulated in *Kurschner v. City of Camden Planning Comm'n* and *Bundy v. Shirley*, emphasizes the necessity for a meaningful opportunity to be heard, and the flexibility to tailor these procedural safeguards to the specifics of each case.

Again, the Belin's Fifth and Fourteenth Amendment rights have been violated by the trial court. The Belins' claim revolves around their legal and equitable interest in the property and their exclusion from the ejectment proceedings affecting their property. Despite their significant and prolonged investment in maintaining and improving the property, the ejectment action against Bertha E. Dunham did not afford them the equitable opportunity to intervene or contest the ejectment, as they had an equitable interest in the property. (R. at ____). The lack of their inclusion represents a violation of due process, as they were not allowed to present their defenses despite their significant and ongoing interest in the property.

Moreover, the subsequent legal actions of the trial court, and failure to be heard, further highlight due process concerns. The denial of their motion to intervene and the granting of summary judgment without addressing their equitable claims or pending motions is a deprivation of their right to a fair process. This procedural due process violation is compounded by the fact that their equitable interests were not considered, despite their substantial and continuous investment in the property.

The aforementioned procedural posture of this case coupled with the trial court's knee jerk grant of summary judgment have failed to provide the Belins with adequate due process. This conduct by the Court is a violation of the Belins' fundamental due process rights as required under

the S.C. Constitution and U.S. Constitution. This case must be remanded to ensure the Belins' procedural due process rights are fully protected.

CONCLUSION

Based upon the above, the Orders dated November 29, 2023, and March 18, 2024, must be vacated allowing the matter to proceed to a jury trial.

August 9, 2024

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable Thomas L. Hughston, Jr.

Common Pleas Case No.: 2020-CP-33-00277
Appellate Case No.: 2024-000632

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SC Court of Appeals

Bevance Lynch,

Respondent,

v.

Bertha E. Dunham,

Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant on Jacob Kennedy Esq., via email to jake@kennedysc.com, the Attorney for Respondent on August 9, 2024.

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Aug 09 2024

SC Court of Appeals

August 9, 2024

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Re: *Bevance Lynch v. Bertha E. Dunham*
Common Pleas Case No.: 2020-CP-33-00277
Appellate Case No.: 2024-000632

Dear Ms. Kitchings:

Please find the original and a copy of the Appellant's Initial Brief, along with proof of service regarding the same.

Please file the original and return a clocked copy to our office in the self-addressed, stamped envelope which is enclosed.

Sincerely,

FERRARA LAW FIRM, PLLC

/s Paul B. Ferrara, III

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Enclosures

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