

THE SOUTH CAROLINA COURT OF APPEALS

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APPELLATE CASE NO. 2023-001705

AUG 29 2024

SC Court of Appeals

SUZANNE SILVERMAN, RESPONDENT

V.

RIDEAWAY MOTORS LLC, CHRIS WOODBURY, AND TREY COOPER
INDIVIDUALLY AND/OR D/B/A/ RIDEAWAY MOTORS LLC, DEFENDANTS

OF WHOM CHRIS WOODBURY IS THE APPELLANT

THE HONORABLE GEORGE M. McFADDIN, JR.

THE HONORABLE MICHAEL G. NETTLES

FLORENCE COUNTY COURT OF COMMON PLEAS

TRIAL CASE NO. 2023CP2100754

APPELLANT'S INITIAL REPLY BRIEF

Appellant

Chris Woodbury
407 West Smith Street
Timmonsville, SC 29161
(843)307-9567

Respondent counsel of record

J. Charles Ormond, Jr., Esq.
301 Stoneridge Drive
Columbia, SC 29210
(803)933-9000

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER APPELLANTS WERE DENIED DUE PROCESS IN THE LOWER COURT WHEN THEY WERE NEVER SENT THE MAGISTRATE'S ORDER DISMISSING THE MOTION TO TRANSFER VENUE FOR FAILURE TO PROSECUTE WITHOUT PREJUDICE, AND THEREFORE WERE NEVER GIVEN THE OPPORTUNITY TO REFILE IT BECAUSE THE LOWER COURT GRANTED DEFAULT JUDGMENT IN FAVOR OF THE RESPONDENT ONLY 11 DAYS LATER – THEREBY CLOSING THIS CASE?
- II. WHETHER APPELLANT WOODBURY HAS A CONSTITUTIONAL RIGHT TO DEFEND HIMSELF THROUGHOUT THESE PROCEEDINGS, AND WHETHER APPELLANTS' RIDEAWAY MOTORS LLC AND TREY COOPER WERE DENIED DUE PROCESS WHEN RESPONDENT ONLY SERVED APPELLANT WOODBURY WITH A MOTION FOR DEFAULT JUDGMENT WHICH THE LOWER COURT SUBSEQUENTLY GRANTED – THEREBY FAILING TO GIVE APPELLANT RIDEAWAY MOTORS LLC AND APPELLANT TREY COOPER AN OPPORTUNITY TO RESPOND?
- III. WHETHER APPELLANTS' WERE DENIED DUE PROCESS WHEN THE LOWER COURT GRANTED DEFAULT JUDGMENT FOR THE RESPONDENT LESS THAN 30 DAYS AFTER APPELLANT WOODBURY WAS SERVED WITH RESPONDENT'S MOTION FOR DEFAULT JUDGMENT AND LESS THAN 12 DAYS AFTER THE MAGISTRATE COURT DISMISSED APPELLANTS' MOTION TO TRANSFER VENUE FOR FAILURE TO PROSECUTE WITHOUT PREJUDICE?
- IV. WHETHER THE MAGISTRATE COURT'S DISMISSAL OF APPELLANT WOODBURY'S MOTION TO TRANSFER VENUE WAS IN VIOLATION OF S.C. CODE OF LAWS UNANNOTATED SECTION 15-7-30(E)(1)?

STATEMENT OF THE CASE

For a clearer understanding of this case, Appellants now present the following facts. Appellants do not want to be repetitive but find it necessary to present these facts for a clearer understanding of this case.

The Summary and Complaint was filed by Respondent in this case on April 4, 2023. See (Complaint, 1-9)(Record, pp. 8-16). On June 23, 2023, Appellants filed a motion to transfer venue to Kingstree, SC in Williamsburg County with exhibits in support. (Motion, pp. 1-3)(Record, pp. 17-21). While Appellants' motion to transfer venue was pending, Respondent filed a motion for default judgment on September 1, 2023. See (Default Judgment Motion, pp. 1-4)(Record, pp. 23-27). Notably, as seen by Respondent's certificate of service for default judgment, this motion was only sent to Appellant Woodbury on September 12, 2023, but not to Appellants Rideaway Motors LLC or to Appellant Trey Cooper. (Motion for default judgment certificate of service)(Record, p. 27).

On September 18, 2023, a hearing was held on Appellants' motion to transfer venue to Kingstree SC where neither Appellants nor Respondent were present for this hearing.¹ See (Transcript, p. 2)(Record, p. 22). On September 22, 2023, Magistrate Judge McFaddin entered an Order dismissing Appellants' motion to transfer venue for failure to prosecute without prejudice. See (Venue Order, p. 1)(Record, p. 5) and (Transcript, p. 2)(Record, p. 22).

On October 3, 2023, only 11 days after the Magistrate Judge dismissed Appellants' motion to transfer venue, the lower court granted Respondent's motion for default judgment, thereby closing this case. (Order, pp. 1-3)(Record, pp. 2-4). None of the Appellants ever received the Magistrate Judge's Order dismissing the Motion to Transfer

¹ Appellant Woodbury was not present for this hearing only because he had to attend a court hearing in Lumberton, North Carolina on this same day pertaining to his drivers license. Appellant Woodbury is a car dealer and his failure to attend this hearing would have resulted in his drivers license being suspended and a revocation of his SC dealers license.

Venue for failure to prosecute without prejudice, and none of the Appellants ever received the lower court's Order granting the Respondent's motion for default judgment.

On or about October 20, 2023, Appellant Woodbury went to the clerk of court office in Florence SC and discovered to his surprise that the motion to transfer venue was dismissed for failure to prosecute without prejudice, and that the lower court had granted Respondent's motion for default judgment, and immediately filed a notice of appeal on in the lower court on October 31, 2023. See (Notice of Appeal)(Record, p. 28). Until this discover, Appellants were still waiting to receive a response from the lower court on the motion to transfer venue.

STANDARD OF REVIEW

The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. U.S. Const. Amend. 14

ARGUMENT

- I. APPELLANTS WERE DENIED DUE PROCESS IN THE LOWER COURT WHEN THEY WERE NEVER SENT THE MAGISTRATE'S ORDER DISMISSING THE MOTION TO TRANSFER VENUE FOR FAILURE TO PROSECUTE WITHOUT PREJUDICE; AND THEREFORE WERE NEVER GIVEN THE OPPORTUNITY TO REFILE IT BECAUSE THE LOWER COURT GRANTED DEFAULT JUDGMENT IN FAVOR OF THE RESPONDENT ONLY 11 DAYS LATER - THEREBY CLOSING THIS CASE.

In its initial brief, Respondent argues that "an appeal of the motion to deny appellants' motion to change venue is interlocutory and not immediately appealable." (Respondent's Initial Brief, p. 3). Respondent goes on to state that "[a]fter the form Order was issued by the Judge, Appellant Woodbury appealed the decision to this Court." *Id.* However, the record in this case clearly indicates that a notice of appeal was filed by Appellants only after the lower

court granted Respondent's motion for default judgment, which makes the Respondent's argument here factually incorrect.

Moreover, Appellants were denied Due Process in this case because they never received the Magistrate's Order dismissing their motion to transfer venue without prejudice until after the lower court had granted the Respondent's motion for default judgment - only 11 days after the Magistrate's Order was filed! There can be no doubt that Appellants' motion to transfer venue with exhibits in support should have been granted pursuant to S.C. Code of Laws Unannotated section 15-7-30(E)(1) which clearly holds that "[a] civil action ... against a domestic liability company ... must be brought and tried in the county in which the (1) ... limited liability company ... has its principal place of business at the time the cause of action arose." The exhibits in support, Rideaway Motors LLC retail business license (Exhibit 1) and Rideaway Motors LLC dealer license (Exhibit 2), clearly show Rideaway Motors LLC business location to be at 1000 East Main Street in Kingstree, SC in Williamsburg County requiring a transfer of venue pursuant to S.C. Code of Laws Unannotated section 15-7-30(E)(1). The transfer of venue in this case was not discretionary... it was required by law!

Here, if Appellants had properly received a copy of the Magistrate's Order denying their motion to transfer venue for failure to prosecute without prejudice, Appellants would have simply refiled their motion to transfer venue with exhibits in support, along with a motion to hold the case in abeyance until a decision was made on the motion to transfer venue - based on Respondent filing a motion for default judgment. Moreover, this motion would have been granted pursuant to S.C. Code of Laws Unannotated Section 15-7-30(E)(1), and Appellants would have gone to Kingstree and hired an attorney to properly represent them and the LLC in this matter. However, the Appellants were denied Due Process in this case when they were never given a copy of the Magistrate's Order in this case - requiring reversal of the lower court's Order granting default judgment for the Respondent.

II. APPELLANT WOODBURY HAS A CONSTITUTIONAL RIGHT TO DEFEND HIMSELF THROUGHOUT THESE PROCEEDINGS, AND APPELLANTS' RIDEAWAY MOTORS LLC AND TREY COOPER WERE DENIED DUE PROCESS WHEN RESPONDENT ONLY SERVED APPELLANT WOODBURY WITH A MOTION FOR DEFAULT JUDGMENT WHICH THE LOWER COURT SUBSEQUENTLY GRANTED – THEREBY FAILING TO GIVE APPELLANT RIDEAWAY MOTORS LLC AND APPELLANT TREY COOPER AN OPPORTUNITY TO RESPOND.

Respondent argues that “Appellant Woodbury is acting pro se and did not have authority to file any motion on behalf of the defendant LLC or represent such entity at the appellate level.” (Respondent Initial Brief, p. 4). However, at no time has Appellant Woodbury made any attempt to represent Rideaway Motors LLC or Appellant Trey Cooper. Appellant Woodbury has only been exercising his constitutional Due Process rights to defend himself in this proceeding because he is also being sued in his own capacity. Furthermore, Respondent has completely denied Appellants Rideaway Motors LLC and Trey Cooper their right to properly defend themselves by only serving Appellant Woodbury with a Motion for Default Judgment which the lower court subsequently granted and dismissed this case!

Here, Respondent filed a motion for default judgment on September 1, 2023. See (Motion for default Judgment, pp. 1-5)(Record, pp. 23-27). Notably, Respondent served Appellant Woodbury with this motion on September 12, 2023, and failed to serve Appellants' Rideaway Motors LLC and Trey Cooper at all! See (Certificate of service for Motion For Default Judgment)(Record, p. 27). Thus, Appellants' Rideaway Motors LLC and Trey Cooper never received any notice whatsoever that Respondent had filed a motion for default judgment in this case. Further, Appellant Woodbury is not an attorney for Appellant Rideaway Motors LLC or Appellant Trey Cooper and never notified them of any filings in this case because it was never his responsibility to do so! Subsequently, the lower court granted Respondent's motion for default judgment on October 3, 2023 – thereby completely denying Appellants' Rideaway Motors LLC and Trey Cooper the opportunity to respond to the allegations against them in this case... in violation of their right to Due Process! See (Order for Default Judgment, pp. 1-3)(Record, pp. 2-4).

Here, there can be no doubt that Appellant Woodbury has a constitutional right to represent himself, and that Appellants' Rideaway Motors LLC and Trey Cooper were denied Due Process when the Respondent completely failed to notify them of its Motion for Default Judgment and the lower court subsequently granted this motion. Appellant Rideaway Motors LLC and Appellant Trey Cooper were never given the opportunity to defend themselves in this matter against Respondent's motion for default judgment because they were never made aware that this motion had ever been filed. Furthermore, after the lower court granted the Respondent's motion for default judgment, Appellant Rideaway Motors LLC and Appellant Trey Cooper are now being held liable for a law suit that they never had the opportunity to defend themselves against... in violation of their constitutional right to due process.

Therefore, in the interest of justice in this case, the lower court's grant of default judgment for the Respondent should be reversed, and this case remanded back to the lower court for further proceedings.

III. APPELLANTS WERE DENIED DUE PROCESS WHEN THE LOWER COURT GRANTED DEFAULT JUDGMENT FOR THE RESPONDENT LESS THAN 30 DAYS AFTER APPELLANT WOODBURY WAS SERVED WITH RESPONDENT'S MOTION FOR DEFAULT JUDGMENT AND LESS THAN 12 DAYS AFTER THE MAGISTRATE COURT DISMISSED APPELLANTS' MOTION TO TRANSFER VENUE FOR FAILURE TO PROSECUTE WITHOUT PREJUDICE.

In its initial brief, Respondent argues that the "[t]rial court's denial of Appellant Woodbury's motion to transfer venue was correct as it was filed (30) days after Woodbury was served with the summons and complaint and he did not appear at the hearing to prosecute such motion." (Respondent's Initial Brief, p. 4). (Respondent's Initial Brief, p. 4).

Here, Respondent's argument fails because by Respondent's own admission Appellant Rideaway Motors LLC and Appellant Trey Cooper were not served until June 8, 2023. See (Respondent's Initial Brief (Facts), p. 2). The time filing a motion for change of venue only

began when all Appellants had been served. Therefore, Appellant Woodbury's June 23, 2023 filing for a motion to transfer venue was timely.

Furthermore, Respondent supposedly filed a motion for default judgment on September 1, 2023, but did not serve Appellant Woodbury with a copy of this motion until September 12, 2023... but had not served Appellants' Rideaway Motors LLC or Trey Cooper at all! See (Motion for default judgement certificate of service)(Record, p. 27). On September 22, 2023, Magistrate Judge McFaddin entered an Order dismissing Appellants' motion to transfer venue for failure to prosecute without prejudice. See (Venue Order, p. 1)(Record, p. 5) and (Transcript, p. 2)(Record, p. 2). Then on October 3, 2023, the lower court granted Respondent's motion for default judgment and closed this case. (Order, pp. 1-3)(Record, pp. 2-4).

Here, the lower court granted default judgement for the Respondent only 21 days after Appellant Woodbury had been serviced with this motion, and only 11 days after Magistrate Judge McFaddin dismissed Appellants' motion to transfer venue. Therefore, Appellants' were never given the opportunity to be heard in a meaningful way in this case because they were never given adequate time to respond... in violation of their constitutional right to Due Process! These proceedings in the lower court were expedited to the point where Appellants were never given an opportunity to refile the motion to transfer venue, or to respond against Respondent's motion for default judgment!

Therefore, in the interests of justice, the lower court's grant of default judgment for the Respondent should be reversed, and this case remanded back to the lower court for further proceedings.

IV. THE MAGISTRATE COURT'S DISMISSAL OF APPELLANT WOODBURY'S MOTION TO TRANSFER VENUE WAS IN VIOLATION OF S.C. CODE OF LAWS UNANNOTATED SECTION 15-7-30(E)(1).

In its initial brief, Respondent argues that "If an action has two or more defendants, the action may be tried in any county where the action properly may be maintained against any

one of the defendants.” (Respondent’s Initial Brief, p. 6). Respondent goes on to state that “both individual Defendants reside in Florence County and were served in Florence County”, and that Defendant Cooper “lists his Florence County residential address as the proper service address for the LLC”. Id.

Here, Respondent fails to recognize that Appellants’ Woodbury and Trey Cooper are only mere agents for Rideaway Motors LLC and that the business address of Rideaway Motors LLC is all that matters. The car in question was sold under Rideaway Motors LLC... not by Appellants’ Woodbury or Cooper. The address listed on the bill of for the vehicle in question is Rideaway Motors LLC 1000 East Main Street, Kingstree SC 29556 as the seller – as stated on the business license for Rideaway Motors LLC and the SC Dealers license for Rideaway Motors LLC. See (Record, pp. 20-21).

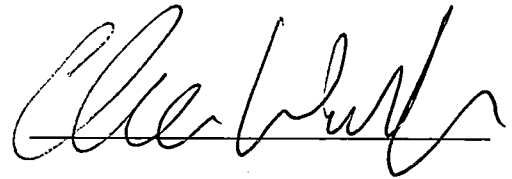
In this case, S.C. Code subsection 15-7-30(E)(1) clearly holds that “[a] civil action tried pursuant to this section against... domestic liability company... must be brought and tried in the county in which the ... limited liability company... has its principal place of business at the time the cause of action arose.” The residential addresses of Appellants’ Woodbury and Cooper in this matter are insignificant. Whats important is Rideaway Motors LLC is located and has its principal place of business in Kingstree South Carolina, Willamsburg County. Therefore, the Magistrate Court’s dismissal of Appellant Woodbury’s motion to transfer venue was in violation of S.C. Code subsection 15-7-30(E)(1), and the lower court’s grant of default judgment for the Respondent should be reversed.

CONCLUSION

The constitutional violations in this case are egregious... Appellants were denied due process when the Magistrate Court dismissed their motion for change of venue, in violation of S.C. Code subsection 15-7-30(E)(1); Appellants were denied due process when they never received the Magistrate Court’s dismissal of their motion to transfer venue or the lower court’s Order granting summary judgment for the Respondent; Appellants’ Rideaway

Motors LLC and Trey Cooper were denied due process when they were never serviced with the Respondent's default judgment motion which the lower court subsequently granted; and Appellants were denied due process when the lower court granted summary judgment for the Respondent a mere 21 after Appellant Woodbury was serviced with the motion for default judgment and only 11 days after the Magistrate's Order dismissing the motion to transfer venue. Based on all of the above, Appellants respectfully request that the lower court's grant of default judgment for the Respondent be reversed, and that this case be remanded back to the lower court for further proceedings.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Chris Woodbury", written over a horizontal line.

Christopher R. Woodbury

407 W. Smith St.

Timmonsville, SC 29161

(843)307-9567