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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

Cour of Common Pleas

Honorable Daniel Dewitt Hall

Case No: 2021-CP-46-02684

Appellate Case No: 2023-001987

MALIA SANTIAGO,

Appellant

vs.

ASHLEY HOGGARD,

Respondent

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Whether or not the Circuit erred in granting summary judgment prior to both parties being given a fair and full opportunity to conduct discovery?

STATEMENT OF THE CASE

On or about August 15, 2021 Plaintiff was injured as a result of being struck by Defendant's automobile. Plaintiff's injuries were catastrophic including broken bones, internal bleeding and knocked out teeth. Plaintiff's medical bills are nearly \$200,000. As litigation developed, liability was hotly contested between the parties.

Plaintiff commenced lawsuit on August 31, 2021. The parties engaged in discovery which took both parties several months to answer. The parties finished written discovery exchanges in late May 2023. The case was nearing ready for trial on the roster in September 2023. On or about September 13, 2024, Plaintiff's Counsel was consulting with Plaintiff's mother about the case when it was brought up that Plaintiff's uncle, Buster Patterson, witnessed the accident and his version of the story was vastly different from what Defendant testified to in her deposition. (R. p. 3, line 21-p.4, line 8; R. p.8 line 16- p.9, line 24) On September 14, 2023, Plaintiff supplemented discovery naming Buster Patterson as a witness. (R. p.4, lines 1-2; R. p. 8, line 25-p. 9, line 3) Defense counsel noticed his deposition the next day for September 15, 2023, which in addition to being non-compliant with the S.C.R.C.P., the witness was not available the next day. (R. p. 4, lines 1-8) The Plaintiff and Defense Counsel were working on new deposition dates via email. The Summary Judgment motion was heard on September 21, 2023, before both parties were given a chance to depose the newly identified witness. (R. p.8, line 25-p. 9, line 24) On September 22, 2023, the Summary Judgment motion was granted despite Plaintiff's Counsel making it clear that this witness was extremely important. (R. p.3, line 21-p.4, line 8; R. p.5 line 3-p.6 line.2) On

September 29, 2023, Plaintiff filed a motion to reconsider. The motion to reconsider hearing was heard on November 16, 2023 and was denied on November 17, 2023. This appeal was filed on December 15, 2023.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRPC: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Laurens Emergency Med. Specialists v. M.S. Bailey SonsBankers, 355 S.C. 104, 584 S.E.2d 375 (2003); Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App. 2003); Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct.App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Sauner v. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003) Schmidt v. Courtney, 357 S.C. 310, 316 (S.C. Ct. App. 2003)

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003); Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Rule 56(c), SCRPC. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); see also Ferguson

v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 563, 564 S.E.2d 94, 96(2002) ("On appeal from 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 non-moving party below.").

Many South Carolina cases point out summary judgment is a "drastic remedy" which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Cunningham v. Helping Hands, Inc., 352 S.C. 485, 575 S.E.2d 549 (2003) Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. at 362, 563 S.E.2d at 333;

ARGUMENT

1. The Circuit Court erred in granting summary judgment before Plaintiff could depose a key witness that was properly identified prior to trial.

In Baughman v. American Tel. and Tel. Co., 306 S.C.101, 112-114, 410 S.E.2d 537 (1991), the Court focused on 1) whether additional discovery would likely uncover relevant evidence, 2) whether the party opposing summary judgment had been dilatory in seeking discovery, 3) whether the moving party had satisfied the opposing party's discovery requests, 4) the importance to the position of the opposing party of the information sought in the unsatisfied requests, 5) the difficulty of proving the contentions the information was sought to bolster, and 6) whether the court was aware of the need for further discovery. 306 S.C. at 112-14.

Here, the court granted summary judgment despite being informed of a new witness, Buster Patterson, that both the Plaintiff and Defendant wanted to depose and were in the process of trying

to schedule. The court was clearly aware of the need for further discovery and the importance of a witness in a highly contested liability dispute. Despite being made aware at the motion for summary judgment hearing and at the motion to reconsider, the Court still erred in failing to allow this additional discovery to take place. (R. p. 3, line 21- p. 4, line 19; R. p.5, line 3 - p.6, line 2; R. p. 8 line 16- p. 9, line 24)

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Circuit Court and allow discovery to be completed.

September 26, 2024

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served Final Brief of Appellant by depositing a copy of it in the United States Mail, postage prepaid, on September 26, 2024, addressed to Respondent's attorney of record, Matthew Clark LaFave, Esquire, Crowe LaFave Garfield & Bagley, Post Office Box 1149, Columbia, SC 29202. Said documents were also served on Matthew LaFave via email on September 26, 2024 addressed to matt@crowelafave.com.

September 26, 2024

/s/Jerry A. Meehan, Jr.

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