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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
In The Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2024-000335

Vernon R. Graham .....Respondent,

v.

Carolina Tractor & Equipment Company, Inc.
and Lonnie D. Gates ..... Defendants,

of which Carolina Tractor & Equipment Company, Inc.
is the .....Appellant.

INITIAL BRIEF OF RESPONDENT VERNON R. GRAHAM

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COUNTER-STATEMENT OF THE ISSUES ON APPEAL

This is motor vehicle case, in which Respondent alleges he suffered extensive injuries and damages. Appellant asks this Court to review an Order of the Circuit Court Granting Respondent's Motion for Summary Judgment, filed February 8, 2024.[1] The question presented in this Appeal is as follows:

1. Did the trial court err in granting summary judgment in favor of Respondent on the Appellant employer's vicarious liability for an undisputed rear-end collision, where the defendant driver, acting within the course and scope of employment, failed to see the Respondent's vehicle?

[1] The Court should summarily reject Appellant's improper appeal, as the issue presented by Appellant is devoid of a factual foundation, unsupported by existing law, and lacks merit.

COUNTER-STATEMENT OF THE CASE

Plaintiff-Respondent Vernon R. Graham ("Respondent") filed his Summons and Complaint on December 16, 2021, alleging negligence by Defendant-Appellant Carolina Tractor & Equipment Company, Inc. ("Appellant") and Defendant Lonnie D. Gates ("Gates") stemming from a January 11, 2021, motor vehicle collision. (R. at __, Compl.). Respondent alleges Gates, an employee of Appellant, acting within the course and scope of employment, collided with the rear of Respondent's vehicle, causing extensive injuries and damages. (R. at __, Compl. ¶¶ 6-7).

Appellant and Gates failed to Answer or otherwise respond to Respondent's Complaint and default was entered against them on February 7, 2022. A September 22, 2022, Circuit Court Order on Motions to Set Aside Entries of Default denied Gates' motion to set aside default and he remains in default. (R. at __, Sept. 22, 2022 Order). The Order, however, granted Appellant's Motion to Set Aside Default and Appellant later filed an Answer to Respondent's Complaint. (R. at __, Sept. 22, 2022 Order; and R. at __, Ans.).

Respondent alleges, and Appellant admits, that at all times relevant, Gates was acting in the course and scope of his employment with Appellant. (R. at __, Compl. ¶ 4; Ans. ¶ 5). Appellant admits Gates "within the course and scope of his employment with [Appellant] made contact with the rear of a vehicle driven by [Respondent]." (R. at __, Ans. ¶ 7). Moreover, in its Answer, Appellant admits "[it] is liable for the acts and omissions of the Defendant Gates under the doctrines of respondeat superior, master/servant, and/or agent/principal." (R. at __, Comp. ¶ 28; R. at __, Ans. ¶ 18).

Respondent alleges Gates acted negligently to cause the collision in a variety of acts. (R. at __, Compl. ¶ 23). The South Carolina Highway Patrol investigated and determined Gates contributed to the collision by driving too fast for conditions. (R. at __, Memo. in Supp. of

Motion for Summary Judgment, Ex. 1 – Collision Report Form). Respondent testified he came to a stop for a red light and "before [Respondent] even knew it, [Gates] was already in the back of [him]." (R. at __, Graham Depo. 54:7-55:18). Gates exited his truck and stated "the sun was in [his] face" and that "[he] couldn't see." (R. at __, Graham Depo. 55:15-17).

Appellant's Answer does not assert Comparative Negligence, or any other affirmative defense related to Respondent's conduct in causing or contributing to the wreck. (R. at __, Ans.). Appellant does not allege any affirmative defenses that another party caused the wreck, that it was an Act of God, that it was the result of a Sudden Emergency, or any other affirmative defense that would explain the collision aside from Gates' negligence. (R. at __, Ans.).

On December 18, 2023, Respondent filed a Motion for Summary Judgment as to his First and Second Causes of Action – i.e., first as against Gates for commercial vehicle negligence and second as to Appellant for *Respondeat Superior* / Agency-Principal Liability. (R. at __, Motion for Summary Judgment; R. at __, Comp. ¶¶ 8-25 (First Cause of Action); R. at __, Comp. ¶¶ 26-31 (Second Cause of Action)).[2] On February 8, 2023, the Circuit Court granted Respondent's motion for partial summary judgment against Appellant and Gates, finding there are no genuine issues of material fact as to Gates' negligence and that Appellant is vicariously liable for Gates' negligence under the doctrine of *respondeat superior*. (R. at __, Feb. 8, 2024 Order).

On March 8, 2024, Appellant filed the instant appeal from the trial court's February 8, 2024, Order, asserting "[t]he Circuit Court improperly granted summary judgment in Respondent's favor on Respondent's claim of vicarious liability under the doctrine of *respondeat superior*." (App. Br. p. 8).

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[2] Respondent also asserted a Third Cause of Action as to Respondent for Negligent Hiring, Training, Supervision, Retention and/or Monitoring that was not the subject of Respondent's Motion for Summary Judgment and is not at issue in this appeal.

STANDARD OF REVIEW

On appeal from the grant of a summary judgment motion, this Court applies the same standard as that required for the circuit court under Rule 56(c), SCRCP. Brockbank v. Best Capital Corp., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000) (citing Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998)). Summary judgment is appropriate where there is no genuine issue as to any material fact and it is clear the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP (providing summary judgment shall be granted when "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").

The South Carolina Supreme Court recently clarified the proper standard under Rule 56(c), SCRCP, abrogating the "mere scintilla" standard. See The Kitchen Planners, LLC v. Samuel E. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023) (overruling Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009) and the "mere scintilla" standard articulated in its decision). Despite acknowledging there have been instances in which the "mere scintilla" standard and "genuine issue of material fact" standard may be consistent, the Court held "the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule." Id. at 463, 892 S.E.2d at 301.

"In determining whether any triable issues of fact exist, the evidence and all inferences [that] can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994) (citing Hamilton v. Miller, 301 S.C. 45, 47, 389 S.E.2d 652, 653 (1990)). "The appellate court, like the trial court, must view all ambiguities, conclusions, and all inferences

arising in and from the evidence in a light most favorable to the non-moving party below." Young v. S.C. Dep't of Disabilities & Special Needs, 374 S.C. 360, 365, 649 S.E.2d 488, 490 (2007) (citing Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001)).

A party opposing summary judgment "must . . . do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with 'specific facts showing that there is a *genuine issue for trial.*'" Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586–87 (1986)) (emphasis in original). "Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Koester, 313 S.C. at 493, 443 S.E.2d at 394. However, "'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." Kitchen Planners, LLC, 440 S.C. at 463–64, 892 S.E.2d at 301 (quoting Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)).

STATEMENT OF FACTS

The basic facts relevant to the issue on appeal are not in dispute. At all times relevant, Gates was acting in the course and scope of his employment with Appellant. (R. at __, Compl. ¶ 4; Ans. ¶ 5). Gates "within the course and scope of his employment with [Appellant] made contact with the rear of a vehicle driven by [Respondent]." (R. at __, Ans. ¶ 7). Under these facts and circumstances, Appellant admits "[it] is liable for the acts and omissions of the Defendant Gates under the doctrines of respondeat superior, master/servant, and/or agent/principal." (R. at __, Comp. ¶ 28; R. at __, Ans. ¶ 18). Appellant does not assert Respondent was comparatively negligent or that any other person or entity caused the wreck, that it was an Act of God, or that it was the result of a Sudden Emergency. (R. at __, Ans.).

ARGUMENT

I. The trial judge properly granted summary judgment as to Respondent's Second Cause of Action as to Appellant for vicarious liability under the doctrine of *respondeat superior*.

a. There are no genuine issues of material fact as to Gates' negligence and Appellant's vicarious liability.

Appellant's attempt to frame the issue as whether South Carolina would impose liability on one defendant due to another party's default is misguided. The actual question before the Court is whether the trial court erred in granting summary judgment based on the employer's vicarious liability in an undisputed rear-end collision, in which the defendant employer admitted the acts occurred while its employee was acting within the course and scope of employment. Gates admitted he failed to see the Respondent's stopped or slowed vehicle and rear-ended it. (R. at __, Gates Aff. dated March 2, 2022, ¶ 2).[3] The trial court's ruling as to Appellant's vicarious

[3] Respondent objected to the admissibility of Gates' affidavit filed by Appellants. (See R. at __, Hearing Trans. 7:21-8:19). See Limehouse v. Husley, 404 S.C. 93, 116, 744 S.E.2d. 566, 578-79 (2013) (holding a defaulted

liability was not based on Gates' default but on his negligent acts while admittedly employed by Appellant. (R. at __, Feb. 8, 2024 Order).

Appellant's argument lacks merit. The trial court's order does not rely on Gates' default but on the factual record, including, but not limited to, admissions by both Gates and Appellant. The trial court correctly found no genuine issue of material fact regarding Gates' negligence or Appellant's vicarious liability, as reflected in its order, ruling:

> There are no genuine issues of material fact as to Defendant Gates' negligence or [Appellant's] vicarious liability and Plaintiff [Respondent] is entitled to judgment as a matter of law.

(See R. at __, Feb. 8, 2024 Order, p. 1).

There is no dispute all allegations against Gates were deemed admitted due to his default. Furthermore, Gates affirms his actions in his own, albeit improper, self-serving affidavits. More importantly, Appellant admits Gates rear-ended Respondent's vehicle while acting in the scope of his employment. (R. at __, Ans. ¶ 7, R. at __, Hearing Trans. 12:6-15). Appellant did not raise any affirmative defenses to contest these key facts, and summary judgment was appropriate. (R. at __, Ans.).

Appellant's contentions focus on damages rather than its employee's negligence, which is irrelevant to the liability determination. Appellant's efforts to raise issues of fact—such as the speed at which Gates struck Respondent's vehicle, whether Respondent was stopped, or whether sunlight played a role—are immaterial to the question of Gates' negligence. (See R. at __, App.

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party cannot offer any affirmative testimony challenging facts deemed admitted by failure to respond to the plaintiff's pleadings); id. ("If our courts were to allow a defaulting defendant to fully participate in a post-default hearing, we believe there would be no consequence of default."); see Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998) ("It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability."). Assuming, *arguendo*, Gates' affidavit is considered, he admits the core elements of negligence/liability and the same conclusion holds true – i.e., Gates, while operating within the course and scope of his employment with Appellant, rear-ended Respondent's vehicle.

Br. p. 10; R. at __, Hearing Trans. 12:6-15). These points go to the severity of the collision, not the fact Gates caused it. Whether Gates failed to keep a proper lookout or drove too fast for conditions, he admittedly caused the rear-end collision. Combined with Appellant's admission Gates was acting in the scope of his employment, these facts support the trial court's grant of summary judgment. See Kitchen Planners, LLC, 440 S.C. at 463–64, 892 S.E.2d at 301 ("'[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.").

Appellant's reliance on irrelevant factual disputes over damages does not change the fundamental issue. Even considering Gates' affidavit, which Respondent objected to, Gates still admits to causing the collision, and Appellant admits vicarious liability for Gates' actions. (R. at __, Ans. ¶¶ 5, 7, 18 (admitting in its Answer Gates was "working in the course and scope of his employment . . . or was otherwise acting as an agent or servant of [Appellant]" and that "[Appellant] is liable for the acts and omissions of the Defendant Gates under the doctrines of respondeat superior, master/servant, and/or agent/principal")).

The Court should find Appellant's argument manifestly without merit. See Miller v. FerrellGas, L.P., Inc., 392 S.C. 295, 299, 709 S.E.2d 616, 618 (2011) (holding driver negligent as a matter of law for proceeding into intersection without verifying view of favored highway was clear of traffic); see also Crosby v. Sawyer, 291 S.C. 474, 476, 354 S.E.2d 387, 388 (1987) (finding directed verdict appropriate on the issue of negligence when driver properly stopped before pulling into intersection but nonetheless collided with another vehicle); Lufkin v. Kyle, 275 S.C. 90, 91, 267 S.E.2d 533, 534 (1980) (finding a directed verdict appropriate where motorist blinded by the sun caused an accident); Odom v. Steigerwald, 260 S.C. 422, 426, 196 S.E.2d 635, 637 (1973) (finding a directed verdict appropriate when driver approaching favored

highway properly stopped, looked both ways, and entered the intersection but collided with a vehicle approaching the intersection on the favored highway); Edwards v. Bloom, 246 S.C. 346, 355, 143 S.E.2d 614, 619 (1965) (finding a directed verdict appropriate when motorist blinded by the sun caused an accident); Horton v. Greyhound Corp., 241 S.C. 430, 440, 128 S.E.2d 776, 782 (1962) (finding the driver on the unfavored highway negligent for turning into path of oncoming vehicle); Epps v. S.C. State Hwy. Dep't, 209 S.C. 125, 133, 39 S.E.2d 198, 201-02 (1946) (finding negligence as a matter of law where driver's view obscured by fog).

The trial court recognized and ultimately correctly held that Gates' negligence proximately caused the collision at issue and, because he was admittedly acting in the course and scope of his employment, that summary judgment as to Appellant was equally appropriate. See, e.g., Odom, 260 S.C. at 426, 196 S.E.2d at 637 ("It cannot be seriously argued that [the defendant's] driving conduct was not negligent and that such negligence did not proximately cause the collision . . . [when] the only reasonable inference to be drawn from the whole of the testimony is that the real, the more immediate and efficient, cause of the collision involved in this case was the improper driving conduct of [the defendant].); Lufkin, 275 S.C. at 91, 267 S.E.2d at 534 ("[The defendant] says that he did not see [the plaintiffs'] vehicle until he struck it . . . and was only blinded by the sun 'immediately' before the impact[; however,] [t]here is a total absence of any reasonable explanation for [the defendant's] failure to see [the plaintiffs'] vehicle . . . which he should have seen in the exercise of due care.").

Indeed, the South Carolina Supreme Court has long noted:

> The general rule is that a motorist whose vision is obscured by unfavorable atmospheric or weather conditions must exercise care commensurate or consistent with the conditions of travel. Likewise, a motorist should exercise reasonable care in keeping a

> lookout commensurate with the increased danger occasioned by conditions obscuring his view.

Id. at 91–92, 267 S.E.2d at 534 (quoting Edwards, 246 S.C. 346, 351-52, 143 S.E.2d 614, 617). Accordingly, the Supreme Court held "the trial judge erred in refusing [the plaintiff's] motion for a directed verdict on the issue of liability" when "[t]he record fails to sustain [the defendant's] contention that he was confronted with a sudden condition which could not have been foreseen."). Id. at 92, 267 S.E.2d at 534–35; see also Edwards, 246 S.C. at 352, 143 S.E.2d at 617 ("In a number of cases evidence that a motorist blinded by the sun proceeded ahead, causing injury to himself or to another, in or near the road, has been deemed to show as a matter of law, or to justify or require a finding of, negligence or contributory negligence. Similarly, in a number of other cases, evidence that a motorist blinded by the lights of a locomotive or streetcar, or street lamps or floodlights, proceeded ahead, causing injury to himself or another, has been held to justify a finding of negligence or contributory negligence.").

Therefore, the trial court did not err in granting summary judgment. See Rule 56(c), SCRCP (providing summary judgment shall be granted when "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").

b. Appellant fails to cite any persuasive authority that would establish summary judgment was not appropriate under the facts of this case.

The limited cases from other jurisdictions cited by Appellant for persuasive purposes are not applicable to the current issue and are distinguishable in meaningful ways from the case before this Court. The Court should not be persuaded by these cases.

In Rogers v. J.B. Hunt Transport, Inc., 649 N.W.2d 23, 26-27 (Mich. 2002), a Michigan court addressed a situation where the defaulting *former* employee refused to participate in the

proceedings. In the present case, although Gates is in default, he has attempted to participate by submitting an affidavit. (R. at __, Gates Aff. Jan. 25, 2024). Moreover, the Rogers court held the default did not prevent the employer from contesting its vicarious liability or asserting affirmative defenses, such as comparative negligence. Rogers, 649 N.W.2d at 25. Appellant here does not contest vicarious liability for Gates' acts and omissions. Appellant concedes Gates' acts in rear-ending Respondent's vehicle and has not raised any relevant affirmative defenses to challenge Gates' liability.

Likewise, in Leavitt v. Siems, 330 P.3d 1, 9 (Nev. 2014), the issue was whether defendant was "precluded from asserting any defenses available to [its employee in default]." Appellant cites other cases for the same proposition, albeit distinguishable from the case at hand. These include Delpiano v. JPMorgan Chase Bank, N.A., 812 S.E.2d 506, 508-09 (Ga. Ct. App. 2018) (addressing whether default as to a defendant in a foreclosure action binds co-defendant who denied allegations and raised affirmative defenses); United Salt Corp. v. McKee, 628 P.2d 310, 313 (N.M. 1981) (permitting employer to contest issues that were properly raised in defendant employer's pleadings); Dade Cty. V. Lambert, 334 So. 2d 844, 847 (Fla. Dist. Ct. App. 1976) ("The default of one defendant, although an admission by him of the allegations of the complaint, does not operate as an admission of such allegation as against a contesting co-defendant."). Here, Appellant has raised no relevant defenses. In contrast, Appellant has admitted the core facts, including that Gates was acting within the course and scope of his employment and that it is liable for the acts and omissions of the Gates under the doctrines of respondeat superior, master/servant, and/or agent/principal. (R. at __, Ans. ¶¶ 18). Appellant and Gates share the same admissions relevant to the issue of liability decided by the trial court as a matter of law.

Similarly, Peek v. Southern Guaranty Insurance Co., the Georgia case cited by Appellant, involved an insured's default in a declaratory judgment action over liability coverage, not analogous to the scenario before this Court. Peek v. S. Guar. Ins. Co., 241 S.E.2d 210, 211 (Ga. 1978) (holding an insured's default could be imputed on the other parties to a tort action with respect to whether there was liability coverage); cf. Allstate Ins. Co. v. Hayes, 499 N.W.2d 743 (Mich. 1993) (involving a declaratory judgment action concerning insurance coverage, where the Michigan Supreme Court addressed whether the default of the insured could be imputed to a tort plaintiff joined in the insurer's action); W. Heritage Ins. Co. v. Superior Court, 132 Cal.Rptr.3d 209, 218–19 (Cal. App. 2nd 2011) (recognizing an insurer's right to intervene in lawsuit after a default judgment was entered against its insured); Morehouse v. Wanzo, 72 Cal.Rptr. 607, 610 (Cal. App. 1st 1968) (holding a general contractor may "take advantage of any favorable aspects of [a] judgment against the employee, but he is not bound by the issues resolved against the employee"); Balanta v. Stanlaine Taxi Corp., 763 N.Y.S.2d 840 (N.Y. 2003) ("Non-defaulting co-defendant] demonstrated that there is a triable issue of fact as to whether [the plaintiff] contributed to the accident by failing to yield the right-of-way at the intersection in violation of [New York state] Vehicle and Traffic Law.").The foregoing cases cited by Appellant are not persuasive to the issue before the Court – whether an employer, who admits that its employee was acting within the scope of his employment, can be held vicariously liable for that employee's admitted actions that amount to negligence. Appellant has already admitted to Gates' agency and the there is no genuine issue of material fact as to Gates' liability.

In sum, the cases Appellant relies on are factually and legally distinct from the present case, and do not support Appellant's position. Instead, under the facts of the instant case, Appellant's vicarious liability is not based just on the default of its employee, Gates. Appellant

admitted Gates was working in course and scope of his employment and the only evidence is that Gates rear-ended Respondent when he drove into an area of roadway he admittedly could not see. The trial court properly concluded, on these facts, that Appellant is vicarious liable for the negligence of Gates as a matter of law.

CONCLUSION

For the foregoing reasons, the trial court's Order Granting Summary Judgment should be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that I have caused to be served Respondent's Initial Brief and Designation of Matter upon all parties, by electronic mail to all counsel of record on October 2, 2024 addressed to the following:

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Columbia, South Carolina
October 2, 2024