THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2023-001987

Malia Santiago, Appellant,

v.

Ashley Hoggard, Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

I. **DID THE CIRCUIT COURT CORRECTLY RULE THAT APPELLANT HAD FAILED TO ESTABLISH A GENUINE ISSUE OF MATERIAL FACT SUFFICIENT TO WITHSTAND DEFENDANT'S MOTION FOR SUMMARY JUDGMENT?**

STATEMENT OF THE CASE

On August 15, 2021, a motor vehicle accident occurred on Mt. Gallant Road near Rock Hill, South Carolina. Specifically, Appellant, a pedestrian, entered the roadway while chasing her dog that had run off while being let out to use the bathroom. Appellant, while solely focused on her dog, entered the roadway and was struck by Respondent's vehicle.

The lawsuit from which the appeal has arisen commenced on August 31, 2021, when Appellant filed her Complaint raising negligence as her sole cause of action. Thereafter, on September 27, 2021, Respondent filed her Answer denying all allegations of negligence and raising numerous affirmative defenses. Respondent served her discovery requests on February 2, 2022, which included, as a standard interrogatory, a request that Appellant identify any and all fact witnesses. Respondent was eventually forced, on July 5, 2022, to file a Motion to Compel. Appellant ultimately produced discovery responses on September 16, 2022. The only witness identified in discovery by Appellant was Appellant. On June 8, 2023, Appellant was deposed. Present at the deposition was Princess Santiago, Appellant's mother. During her deposition Appellant testified that she knew of no one else who actually witnessed the accident. Moreover, she testified that most of the information she had about the accident was given to her by her uncle, Buster Junior, as he had been in contact with Respondent.

Following Appellant's deposition, the parties mutually agreed on a term of court for the trial of this case, which was to begin September 18, 2023. On September 13, 2023, Appellant

supplemented her discovery identifying a new witness, her uncle, Buster Patterson, Jr. On September 19, 2023, Appellant's counsel contacted the trial court and informed Judge Hall he would be unavailable for trial owed to his having contracted COVID-19. Judge Hall conducted a telephone conference with the parties on September 19, 2023, and determined the case could not proceed to trial but Respondent's Motion for Summary Judgment would be heard via WebEx on September 21, 2023. Appellant, aside from oral argument, offered nothing in opposition to this motion. Having heard oral arguments from the parties Judge Hall granted Respondent's Motion. Appellant, subsequently, filed a Motion for Reconsideration pursuant to Rule 59(e), which was also denied by Judge Hall. This appeal ensued thereafter.

STANDARD OF REVIEW

An appellate court, when called on to review the granting of a Motion for Summary Judgment, shall "apply the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008); (*See also* Rule 56(c), SCRCP; *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005); *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)). "Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a [circuit] court may grant a motion for summary judgment 'if 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 a judgment as a matter of law.'" *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009); (quoting Rule 56(c), SCRCP).

"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.*; (*See also Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A.,* 320 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)). "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." *Id.*, (*See also Nelson v. Charleston County Parks & Recreation Comm'n*, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct. App. 2004)). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Id.* at 377 S.C. at 653-54.

ARGUMENT

1. **There was more than ample time and opportunity for Appellant to conduct and complete discovery.**

"The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *CEL Products, LLC v. Rozelle*, 357 S.C. 125, 129, 591 S.E.2d 643, 645 (Ct. App. 2004); (*quoting Carolina Alliance for Fair Employment v. S.C. Dept. of Labor, Licensing, and Regulation,* 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999). "Moreover, summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

Appellant argues that summary judgment was not appropriate, when granted on September 22, 2023, because a new witness was identified but had not been deposed. The witness at issue, Buster Patterson, Jr, Appellant's uncle, was disclosed by Appellant's counsel in supplemental discovery responses served on Respondent on September 13, 2023. These responses were served

just five (5) days prior to the term of court the parties had previously identified for trial. Appellant's counsel argued that his identity, as a witness, was only just discovered on that date as he was preparing for trial. Respondents, upon receipt of the supplement discovery, immediately attempted to notice the newly disclosed witness's deposition. However, owed to the timing of the disclosure in relation to the forthcoming trial date the parties were unable to settle on a mutually agreeable date. Appellant's counsel, as noted above, informed the trial court of an illness the day before trial was set to commence with the parties thereafter being informed trial would be continued by the Motion for Summary Judgment would be heard on September 22, 2023. Appellant's counsel offered no opposition to the decision of the trial court as to holding a hearing on the Motion for Summary Judgment. In light of the decision to continue the trial Respondent was prepared to, and did, proceed with arguing the Motion for Summary Judgment without the deposition of Appellant's uncle. Appellant, upon being informed by the trial court that the Motion for Summary Judgment Hearing would occur, took no further action relative to the purportedly newly discovered witness.

Appellant seemingly relies exclusively on *Baughman v. American Tel. And Tel. Co.*, where the Court was asked to assess whether summary judgment was premature. 306 S.C. 101, 410 S.E.2d 537 (1991). In *Baughman*, the Court noted summary judgment is a drastic remedy and, as such, "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Id.* 306 S.C. at 112; (*quoting Watson v. Southern Ry. Co.*, 420 Supp. 483, 486 (D.S.C. 1975); *see also Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked.") "This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Id.*; (10A Wright & Miller, *Federal Practice and Procedure* § 2741, p.

543 (1983); 6 *Moore's Federal Practice* ¶ 56.02[6], p. 56–39 (2d ed. 1990); *see, e.g., First Chicago Int'l v. United Exchange Co.*, 836 F.2d 1375 (D.C.Cir.1988); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F.2d 230 (2d Cir.1985); *Tyler v. City of Enterprise*, 521 So.2d 951 (Ala. 1988); *Gangadean v. Leumi Fin. Corp.*, 13 Ariz. App. 534, 478 P.2d 532 (1970); *Commercial Bank of Kendall v. Heiman*, 322 So.2d 564 (Fla. Dist. Ct. App. 1975); *Board of Education v. Van Buren & Firestone, Architects, Inc.*, 165 W.Va. 140, 267 S.E.2d 440 (1980); *cf.* Rule 56(f) S.C.R.C.P.)). The Court in *Baughman* identified multiple factors upon which to evaluate the issue of whether a party had a full and fair opportunity to discuss. First, the Court required a party to make a showing that additional discovery was likely to lead to uncovering additional relevant evidence. Second, the party seeking additional time must not have been dilatory in seeking discovery. Finally, the Court analyzed the difficulty in obtaining the information when assessing the delay.

In the instant case the hearing occurred more than two (2) years after Appellant initiated litigation. Appellant's claim that the witness was newly discovered is directly contradicted by the facts and evidence of this case. As noted hereinabove the witness disclosed just five (5) days before trial was Appellant's uncle. Appellant knew, as of the day of the accident, that multiple individuals, including her uncle, were present at the location of the accident. Further, Appellant knew, almost immediately after the subject accident, that Respondent had been in communication with her uncle as it was that contact that led to Appellant contacting Respondent. In fact, during Appellant's deposition taken on June 8, 2023, at which Appellant's mother was in attendance, multiple statements were made regarding communication between Respondent and her uncle. Therefore, it is illogical to argue that the uncle could not have been identified as a witness far earlier than September 13, 2023, as the identification by Appellant did not occur for three (3) more months

after she testified about his involvement. Appellant has failed to offer any explanation as to justify the delay in identifying a family member as a witness, which was, based on the evidence, seemingly not a difficult endeavor.

Importantly, at the hearing on the motion Appellant asked the trial court to deny Respondent's motion despite having presented nothing in opposition. Appellant merely argued, as above, that the motion was premature due to the need for a full and fair opportunity to complete discovery. Respondent acknowledges that there was, between the date of identification and date of hearing, limited time to complete a deposition. However, Appellant had ample time to secure an affidavit. Rule 6(d), S.C.R.C.P. states "opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at some other time." Appellant was informed, on September 18, 2023, of the hearing being scheduled for September 21, 2023. Despite having more than the two days set forth in Rule 6(d), Appellant made no apparent effort to secure an opposing affidavit. The ability to obtain and submit an opposing affidavit negates the need for Appellant to have had additional time to secure opposing testimony in deposition form.

On account of Appellant's failure to present an affidavit in response to the motion the trial court was left simply with the pleadings, parties' depositions, and Appellant's discovery responses.

> Where a plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is ***required***, under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.

Supra CEL Products, LLC, 357 S.C. at 130; (*quoting Humana Hosp-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991). In this case there was nothing, presented to the trial court, preventing Appellant from obtaining, and submitting, a counter-affidavit from her uncle in opposition to Respondent's motion. The failure by Appellant to submit the affidavit is fatal to her

opposition to the motion as the trial court was left only with her Complaint and those documents entered into the record by Respondent. The result of the submissions by Respondent, and the absence of submissions in opposition by Appellant, was that there was no factual showing by Appellant of the existence of a genuine issue of material fact and as such the granting of summary judgment was warranted.

CONCLUSION

Under South Carolina law, there was more than ample opportunity for Appellant to complete necessary discovery to oppose Respondent's Motion for Summary Judgment. Appellant's argument regarding the need to conduct a deposition of the witness fails as Appellant could have defended the motion by securing an affidavit from said witness. Therefore, Respondent submits the trial court properly granted her Motion for Summary Judgment and respectfully requests that this honorable Court deny this appeal and affirm the ruling of the trial court.

Respectfully submitted,

This 15th day of October 2024

s/Matthew C. LaFave

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CERTIFICATE OF COUNSEL

The under signed certifies that this Final Brief of Respondent complies with Rule 211, SCACR.

Respectfully submitted,

This 15th day of October 2024

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