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Sep 26 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
In The Circuit Court

Brian M. Gibbons, Circuit Court Judge

Case No. 2022-000987

Saint Luke Baptist Church,

Respondent,

v.

Rayshawn Terry,

Appellant.

PETITION FOR REHEARING
or REHEARING *EN BANC*

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STATEMENT OF THE CASE

In or about August, 2019, the Appellant RAYSHAWN TERRY was engaged by the Respondent SAINT LUKE BAPTIST CHURCH as its Pastor. Controversy arose between TERRY and the head deacon at SAINT LUKE, Kirk Chappell. Chappell and his allies called a December 26, 2020 church meeting to fire TERRY from his position, having told TERRY he could not be present. The parties dispute the propriety of the meeting and its call under the By-Laws of SAINT LUKE and under TERRY's terms of engagement.

The said meeting declared TERRY fired. By its Complaint filed January 14, 2021, SAINT LUKE sought an injunction against TERRY's involvement with church affairs and finances. After hearing on January 27, 2021, on February 4, 2021 the Circuit Court, per the Honorable Eugene C. Griffith, Jr. granted the relief sought under a Temporary Injunction.

By his Answer and Counterclaim filed February 18, 2021, TERRY:

denied the legality of his firing and any interference with Church finances, and alleged:

conversion of his personal property by SAINT LUKE;

slander and slander *per se* by SAINT LUKE and its agents;

breach of contract and breach of contract with fraudulent intent; and

violation of the S.C. Wage Payment Act.

On March 15, 2021, SAINT LUKE filed its Reply denying the Counterclaims and interposing defenses. By Order filed September 23, 2021, the Appellant TERRY's initial counsel was relieved; his present counsel appeared October 11, 2021.

Discovery began between the parties; no Scheduling Order was sought or entered by the Circuit Court. On February 4, 2022, SAINT LUKE filed its Motion for summary judgment. This was granted by Order of the Circuit Court, per the Honorable Brian Gibbons, filed April 21, 2022.

The Appellant filed his Rule 59 Motion to Reconsider on April 29, 2022. This was denied by Order of the Circuit Court filed June 14, 2022. This Court's decision affirming the Circuit Court was issued September 11, 2024.

STANDARD OF REVIEW

The matter in question is an error of law.

ARGUMENT

The Appellant re-cited the precedent governing review of a grant of summary judgment:

An appellate court reviews the grant of Summary Judgment under the same standard applied by the Trial Court. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).¹ The Trial Court should grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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. Rule 56(c), S.C.R.C.P.; *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003).

A Court considering Summary Judgment makes neither factual determinations nor considers the merits of competing testimony. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5. (2006). In ruling on a motion for summary judgment, the Court must construe all ambiguities, conclusions, and inferences arising in and from the evidence most strongly against the moving party. *Glasscock, Inc. v. US Fidelity & Guar.*, 348 S.C. 76, 80, 557 S.E.2d 689, ____ (Ct.App. 2001).

[*Emphasis added.*]

INCOMPLETE DISCOVERY

To again recite: present counsel was substituted October 11, 2021. The Defendant's Motion for Summary Judgment was filed February 4, 2022. No Scheduling Order was sought or entered by the Circuit Court.

The Court's decision blames Appellant by reciting the case history back to his initial Answer in February, 2021 and the lack of additional discovery prior to the Motion for Summary Judgment.

1. This paragraph is quoted, with stylistic changes only, from *Chastain v. Hiltabidle*, 381 S.C. 508, 673 S.E.2d 826, 829 (Ct.App. 2009).

In this case, the Appellant has clearly alleged spoliation of evidence, that is, the contact between the parties. [RECORD ON APPEAL, DEPOSITION, p.492. Depo.Page 91, l.7 – 18; p.373, l.7-22.]

The Respondent refused production of its relevant financial records, claiming the Appellant's discovery request for the same was "not defined". [RECORD ON APPEAL, RESPONSES TO REQUEST FOR PRODUCTION, p.611, Request 7.] Despite this failure, with its Memo in Support, the Respondent produced what it contends was the Appellant's Wage Report. [RECORD ON APPEAL, Exhibit M, p.346-347.]

The decision of the Court recites at length other discovery that might have been pursued by Appellant within the year between the time the case was filed and the Summary Judgment was filed. Allowing that extra discovery could have occurred, and in light of a change of counsel, the decision to preclude other discovery and grant summary judgment must be considered punitive.

The Appellant contends that the precedent on incomplete discovery is inherently ambiguous.

The Appellant's response to the Summary Judgment Motion, by his Memo and Affidavit, noticed these failures.

In *Smith v. Jones (IN RE Estate of Smith)*², in response to a claim for additional discovery, this Court held, *infra*, that there was "an absence of a genuine issue of material fact" in question³. The Appellant contends that, in the absence of unwarranted delay (which is here denied), this holding states the true test for the allowance of additional discovery as a response to a Summary Judgment motion.

Judge Lockemy, dissenting in that case, spoke to the issue at hand:

Our appellate courts have indicated a trial court should deny a request for further discovery before granting summary judgment where [1] the request came a year or more after the case was filed, [2]where the request came after the expiration of the discovery deadline, or [3]where the opposing party failed to demonstrate further discovery would create a genuine issue of material fact. *See e.g.*, *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 55, 677 S.E.2d 32, 36 (Ct. App. 2009) . . .12 pt

[*Id.*, 419 S.C. at 123, 796 S.E.2d at 163; numbering added.]

2. 419 S.C. 111, 796 S.E.2d 158 (Ct.App. 2016).

3. *Id.*, 419 S.C. at 120, 796 S.E.2d at 164.

In this case, [1] discovery had been pursued, though not concluded, within the year since filing, [2] there was no discovery deadline, and [3] the Appellant demonstrated, by his Affidavit and argument, the need to establish genuine issues of material fact.

The Appellant was entitled to additional discovery. Its denial in this case was an abuse of discretion. Summary judgment should not have been granted.

DECLARATORY JUDGMENT

The decision accepts the argument of the Respondent that the failure to follow either the By-Laws or due process is excused by the fact that it was a regular quarterly meeting. The Appellant point out that there is no separate authority set out in the By-Laws as to the right to call a quarterly meeting, or to exclude the Defendant TERRY, as was done. The only basis for the claim that this was a “regular quarterly meeting” is from the Affidavit of Kirk Chappell, produced after the event in litigation. In fact, Chappell’s contemporary Agenda for the meeting it is named a “special called meeting.” [RECORD ON APPEAL, p.123.]

The decision dismisses the Appellant’s arguments based on due process, citing a lack of requirements in the Church By-Laws. However, in spite of his proven exclusion from the meeting that discharged him, the relevant language of the By-Laws defines the Pastor’s duties as follows:

THE PASTOR. . . . He shall be the principal representative of the church and shall generally supervise all the affairs of the church. . . . He shall supervise all activities within the congregation as Shepard.
[RECORD ON APPEAL, p.109.]

The quoted language cannot be reconciled with the Appellant’s exclusion.

The trier of fact must decide the truth of the meeting’s status; it is not the provenance of this Court, or the Circuit Court, to decide this material, factual issue at this stage. That question must await trial and the decision cannot grant summary judgment on a disputed issue.

BREACH OF CONTRACT / BREACH WITH FRAUDULENT INTENT

The decision bases its dismissal of this claim around the Appellant’s ability to recall specific terms of this contact with the Respondent Church.

The Appellant has argued that there is every indication that the Respondent is in possession of, or has suppressed, other documents relevant to this case. The Respondent has failed to produce the covenant contract entered into between the parties for the Appellant's service as Pastor of the Plaintiff Church. The Appellant has charged the Respondent has committed, or is chargeable with, spoliation of that evidence. [RECORD ON APPEAL, DEPOSITION, p.492. Depo.Page 91, l.7 – 18; p.373, l.7-22.]

This charge was clearly set out in the Appellant's Brief. It is obviously a matter of material fact, as to which further discovery was sought and denied. In the absence of the document in question – which was not produced by either party – this Court cannot reach summary judgment by relying upon the Appellant's inability to cite chapter and verse in deposition testimony.

SLANDER / SLANDER *PER SE*

The decision takes issue with the allegations of his Answer as opposed to that of his deposition. The Appellant notes that he was not asked in his deposition to name other sources of the allegations of theft, [RECORD ON APPEAL, DEPOSITION, p.412. Depo.Pages 61, l.13 – Depo Page 62, l.13.]

In his Affidavit of March 28, 2022, the Appellant stated:

The Defendant TERRY heard of the claim from Brenda Anderson of Winnsboro, S.C., as coming from Kirk Chappell of the Church.⁴ On knowledge and information, that spreading of this claim to the local community will also be confirmed by other persons in further discovery.

[RECORD ON APPEAL, MEMO IN OPPOSITION, p.377, Affidavit, p.393.]

The Appellant noted that the Respondent Church made no effort in its submissions below to confirm the allegation of theft against the Appellant TERRY. [RECORD ON APPEAL, Memo in Support, p.204-205.] Rather, it relies wholly upon the absence of repetition to a third party.

The Appellant has stated the grounds for the need of additional discovery above. Fairness requires he be allowed to prove the slander alleged.

4. Kirk Chappell was the head deacon of the Respondent Church and the Respondent Church is thus chargeable with his actions.

NON-PAYMENT OF WAGES

The decision accurately recites the conflict between the parties and the Respondent's failure to supply financial records prior to its Motion for summary judgment.

It goes on to recite the Respondent's position as to the correspondence from the SC Department of Labor. [RECORD ON APPEAL, MEMO IN SUPPORT, p.206; Exhibit N, p.348-349.] That correspondence stated the Department's conclusion that no violation of S.C. Code §§ 41-10-30 or -40 had occurred.

S.C. Code § 41-10-80(C) states the relief available for violation of S.C. Code §§ 41-10-40 and -50. The Appellant would first note the lack of any conclusion by the Department of Labor as to S.C. Code §§ 41-10-50; this fact is not addressed by the Decision.

More broadly, there is no language contained in S.C. Code §§ 41-10-10 *et seq.* that requires a finding of violation by the Department of Labor as a pre-condition of a private suit, or is there any language within those statutes that precludes a private suit in the event such a violation is not found by the Department of Labor.

The conclusion of the decision granting summary judgment is incorrect as a matter of law.

CONCLUSION

The Appellant has set out his grounds for the need for additional discovery in this case on the grounds of fairness and existing precedent.

In their treatise on SOUTH CAROLINA CIVIL PROCEDURE (2d ed.) (1996), Lightsey and Flanagan re-cite the standard for summary judgment as follows, in relevant part:

Rule 56(c) states that summary judgment is available when "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Another formulation of the same standard is that summary judgment is appropriate when plain, palpable and indisputable facts exist on which reasonable minds cannot differ. [*Cite to Williams v Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976). . . . The court does not try the disputed issue on a motion for summary judgment, it only decides whether one exists. [*Cite to Hammond v. Scott*, 268 S.C. 137, 232 S.E.2d 336 (1977).]

The initial inquiry is whether there is a material issue in dispute. . . . The second inquiry is whether there is a genuine dispute about that material issue. The court views the

evidence and draws all the inferences in the light most favorable to the non-moving party.
[Cite to *Tom Jenkins Realty, Inc. v. Hilton*, 278 S.C. 624, 300 S.E.2d 594 (1983).]
[*Id.*, p. 447.]

The Appellant cites the above, established, precedent in order to point out that the standards for summary judgment have been disregarded in the decision at hand. On point after point, the decision finds grounds to acknowledge the facts are disputed, and then opts for the Respondent's evidence in order to dismiss causes of action. Even in the absence of additional discovery, the Appellant has the right to judgment based on the established standard by which a motion for summary judgment is reviewed.

September 26, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, counsel for Appellants in the civil appeal above, hereby certifies that, on the date written below, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Petition for Rehearing or Rehearing *En Banc*; and
this Certificate of Service,

by service to the opposing lawyer's primary e-mail address listed in the Attorney Information System (AIS), as authorized by Section (b)(2) of the Order of the Supreme Court dealing with Electronic Filing and Service issued May 6, 2022.

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