

RECEIVED

Jul 08 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2025-000046

Pennie Wolfe, as Personal Representative
of the Estate of Jason Wolfe,

Appellant,

v.

Anderson County Sheriff's Office and
Security Transport Services, Inc.,

Defendants,

Of Which Anderson County Sheriff's Office is the

Respondent.

APPELLANT'S FINAL BRIEF

William T. Young III (SC Bar No. 75153)
YOUNG LAW FIRM LLC
141 Traction Street
P.O. Box 9567
Greenville, SC 29604
(864) 403-8300
Bill@YoungInjuryLawyer.com

Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of Issues on Appeal..... 1

Statement of the Case.....1

Standard of Review.....2

Facts..... 3

Arguments.....5

 I. ACSO Did Not Meet the Initial Burden of Demonstrating the Absence of any
 Genuine Issue of Material Fact.....5

 a. Dr. Liu’s Affidavit was not submitted timely.....5

 b. Dr. Liu’s affidavit does not meet the requirements of Rule 56(e)..... 5

 i. The affidavit was not made on personal knowledge.....6

 ii. The testimony in Dr. Liu’s affidavit would not be admissible at
 trial.....6

 iii. Dr. Liu is not competent to testify concerning Sheriff’s Office
 employees..... 7

 II. Summary Judgment was Granted Without Adequate Time for Discovery..... 8

 III. The Circuit Court Failed to View the Evidence in the Light Most Favorable to
 Appellant.....8

Conclusion.....9

TABLE OF AUTHORITIES

CASES

Bank of America v. Draper, 405 S.C. 214, 746 S.E.2d 478 (2013)..... 5

Baughman v. American Telephone & Telegraph Co., 306 S.C. 101, 410 S.E.2d 537 (1991).....2

Collins v. Doe, 352 S.C. 462, 574 S.E.2d 739 (2002)5

Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204 (Ct. App. 2003)..... 5

Cunningham ex rel. Grice v. Helping Hands, Inc., 352 S.C. 485, 575 S.E.2d 549 (2003)2

Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003) 6

Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004)2

S.C. Property and Cas. Guar. Ass’n v. Yensen, 345 S.C. 512, 548 S.E.2d 880 (Ct. App. 2001) 2

Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998)..... 2

RULES

Rule 6(d), SCRCP 5

Rule 56(c), SCRCP 2

Rule 56(e), SCRCP 5,6,7

Rule 701, SCRE 6

STATEMENT OF ISSUES ON APPEAL

1. Did the circuit err in granting summary judgment where the only affidavit offered in support of summary judgment was not timely filed?
2. Did the circuit court err in granting summary judgment where the only affidavit offered in support of summary judgment did not comport to the requirements of Rule 56(e), in which the affidavit was not made on personal knowledge, the testimony would not be admissible at trial, and the affiant was not competent to testify regarding the duties owed by Sheriff's Office employees with respect to pretrial detainees?
3. Did the circuit court err in granting summary judgment where the party seeking summary judgment relied upon an affidavit by a witness who was never previously disclosed to the parties?

STATEMENT OF THE CASE

Appellant Pennie Wolfe ("Wolfe"), as personal representative of the Estate of Jason Wolfe, seeks a reversal of the circuit court order granting summary judgment to Defendant Anderson County Sheriff's Office ("ACSO").

On November 28, 2023, Jason Wolfe commenced the within action by filing a summons and complaint against ACSO and Security Transport Services, Inc. (STS), a private transport company who is not a party to this appeal. (R.pp. 12-24). Jason unexpectedly passed away on August 18, 2024. Pennie Wolfe was named the personal representative of her husband's Estate on November 27, 2024 and substituted as the Plaintiff the following month.

On December 2, 2024, the circuit court granted summary judgment to ACSO, finding as a matter of law Wolfe had not established gross negligence on the part of ACSO. (R.pp. 2-8). Wolfe timely filed a Rule 59(e) motion to alter or amend on December 11, 2024, which was

denied the following day in a Form 4 Order (R.pp. 26-27); R.p. 9). Appellant filed her Notice of Intent to Appeal on January 8, 2025.

STANDARD OF REVIEW

An appellate court reviews the grant of summary judgment under the same standard applied by the trial court. *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998). “Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *S.C. Property and Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 517, 548 S.E.2d 880, 883 (Ct. App. 2001); Rule 56(c), SCRPC. “In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 491, 575 S.E.2d 549, 552 (2003). “Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of a material fact.” *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 390, 593 S.E.2d 183, 186 (Ct. App. 2004).

“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact.” *Yensen* at 517, 548 S.E.2d at 883. “Since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues.” *Cunningham* at 491, 575 S.E.2d at 552. Summary judgment “must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Baughman v. American Telephone & Telegraph Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

FACTS

From December 3, 2021 through December 11, 2021, Jason was held by the Anderson County Sheriff's Office on a foreign arrest warrant issued out of Shawnee County, Kansas¹ (R. p. 9, para. 9-10). Records prepared and maintained by ACSO employees reveal striking and irreconcilable inconsistencies relating to Jason's treatment while in ACSO custody. During the general intake process, Jason informed Officer Robinson, the intake officer, that he was prescribed Lyrica, Lithium, Duloxetine, and Klonopin (R. p. 9, para. 11; R. p. 58). Jason also told the general intake officer that he suffered from PTSD and previously attempted suicide (R. pp.58-59). Notably, the intake officer determined Jason was neither confused nor disoriented while providing this information (R. p. 60).

After the general intake evaluation was completed, Jason participated in a mental-health-specific intake process conducted by a different officer, Devin Holcombe (R. pp. 61-62). During this process, certain responses can require further evaluation by a mental health professional (R. p. 61). Specifically, if an individual answers "yes" to at least one of the following questions, the individual is deemed to have "self-reported a need for clinical assessment/evaluation" and a mental health professional is to be contacted for further evaluation:

"Have there currently been a few weeks when you felt like you were useless or sinful?"

"Are you currently taking any medication prescribed for you by a physician for any emotional or mental health problems?"

"Have you ever been in a hospital for emotional or mental health problems?"

¹ The charges against Jason were ultimately dismissed due to a lack of evidence. In separate litigation currently pending in federal court, pursuant to 42 U.S.C.A. §1983, Appellant seeks to recover damages for multiple violations of Jason's civil rights, including the omission of material facts from the affidavit of probable cause executed by the City of Topeka, Kansas police officer that cast significant doubt that Jason was the perpetrator of the alleged criminal activities.

(R. p. 61).

Based on the information Jason provided to Officer Robinson during the general intake process, two² of his three answers should have been “yes” and a mental health professional should have been contacted (R. pp. 58-59). However, Officer Holcombe marked each answer “no” (R. p. 61). As a result, Jason was not evaluated again while in Sheriff’s Office custody. According to ACSO own records, Jason was not given any of his prescribed medications while in custody (R. p. 57).

Notwithstanding ACSO faulty recordkeeping, the Complaint alleges Jason was given some of his medications some of the time over the next 8 days, causing serious withdrawal symptoms and resulting in physical and mental injury (R. p. 16, para. 28-29). These allegations are supported by an affidavit executed by Pennie Wolfe, who visited Jason while he was in custody and personally observed him shaking, having lost weight, that his eyes were sunken, and that his skin was pale (R. pp. 55-56). As an emergency room and critical care nurse, she identified he was experiencing from withdrawal (R. pp. 55-56).

ACSO filed a generic, one paragraph summary judgment motion on October 15, 2024 (R. p . 25). Seven days before the November 18 hearing date, ACSO filed an affidavit of Dr. Qing Liu, M.D. (R. pp. 44-47), who had not been named as a fact or expert witness by any party.

ARGUMENTS

I. ACSO Did Not Meet the Initial Burden of Demonstrating the Absence of any Genuine Issue of Material Fact

ACSO failed to meet the initial showing required under Rule 56, SCRPC: the absence of a genuine issue of material fact. Therefore, the circuit court erred in granting summary judgment.

² Jason was taking three medications for mental health problems: Lithium (used to treat bipolar disorder), Klonopin (used to treat anxiety and panic disorders), and Duloxetine (an antidepressant).

a. Dr. Liu’s Affidavit was not submitted timely

Rule 6(d), SCRPC requires any affidavit submitted in support of a motion “shall be served not later than ten days before the time specified for the hearing.” Dr. Liu’s affidavit, which the circuit relied upon almost exclusively in granting summary judgment, was filed only seven days before the November 18 hearing (Liu Affidavit). The failure to timely file the affidavit results in a waiver of using the affidavit in support. *See Crawford v. Henderson*, 356 S.C. 389, 401-402, 589 S.E.2d 204 (Ct. App. 2003). Therefore, it was error for the circuit court to consider Dr. Liu’s affidavit, particularly where, as discussed in more detail herein, he was never identified as a witness and there was no chance to conduct discovery concerning the assertions contained in his affidavit.

b. Dr. Liu’s affidavit does not meet the requirements of Rule 56(e)

Rule 56(e), SCRPC, governs affidavits submitted in support of summary judgment and requires they “shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.” *See Bank of America v. Draper*, 405 S.C. 214, 224, 746 S.E.2d 478, 483 (2013). A failure in any of these respects would render the affidavit ineffective for summary judgment purposes; Dr. Liu’s affidavit is deficient in each. Furthermore, the affidavit and other materials presented by ACSO fail to establish the absence of any genuine issue of material fact. Therefore, it was error for the circuit court to grant summary judgment to ACSO.

i. The affidavit was not made on personal knowledge.

Rule 56(e) mandates affidavits supporting summary judgment “shall be made on personal knowledge...” *See Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) (“Under the rules of statutory interpretation, use of words such as ‘shall’ or ‘must’ indicates the legislature’s

intent to enact a mandatory requirement”). “Allegations made upon information and belief do not meet the ‘personal knowledge’ requirements of Rule 56(e).” *Dawkins v. Fields*, 354 S.C. 58, 68, 580 S.D.E.2d 433, 438 (2003).

Dr. Liu’s affidavit is not based on personal knowledge, which he readily acknowledges in Paragraph 3: “I did not personally treat the patient in this case, Jason Wolfe...” (R. p. 44). Since Dr. Liu did not treat Jason, he cannot have the “personal knowledge” required by Rule 56(e) for an affidavit submitted in support of a summary judgment motion.

An exception exists to the personal knowledge requirement for expert witnesses who are familiar with the records relied upon in the formulation of that expert’s opinion(s). That exception does not apply here. Dr. Liu has not been identified as an expert witness by ACSO and was not presented as an expert witness at the summary judgment motion hearing³.

ii. The testimony in Dr. Liu’s affidavit would not be admissible at trial.

Because Dr. Liu has not been designated as an expert witness, his trial testimony would necessarily be limited to his own personal observations. *See* Rule 701, SCRE. Dr. Liu’s affidavit parrots information contained in unauthenticated records prepared by an unknown individual (or individuals) before culminating in Dr. Liu’s opinion that “the medical staff at ACDC acted appropriately” with respect to Jason. (R. p. 46). This testimony forms the centerpiece of Respondent’s motion for summary judgment. However, the opinion would be inadmissible at trial because Dr. Liu has never been presented as an expert witness or identified by ACSO as an expert witness. Further, because Dr. Liu did not prepare the records he recites, that information is inadmissible unless and until it is properly authenticated. Accordingly, without making several

³ Moreover, as stated previously, ACSO never even identified Dr. Liu as a fact witness.

preliminary showings (which are absent here), the content of the affidavit would be inadmissible. Therefore, it does not meet the second requirement of Rule 56(e) affidavits.

iii. Dr. Liu is not competent to testify concerning Sheriff's Office employees.

Finally, nothing in Dr. Liu's affidavit establishes he is competent to discuss Sheriff's Office employees and whether their actions were, as a matter of law, sufficient to defeat summary judgment. (R. pp. 44-46). Dr. Liu is silent as to the basis for any knowledge Dr. Liu might possess relating to the responsibilities of Sheriff's Office employees. He is silent concerning specific interactions between ACSO employees and Jason. He is silent on the standard of care applicable to them and how that standard was met. Even though these issues were front and center at the hearing, Dr. Liu does not address any of them. This silence is deafening.

Rather than addressing these salient issues, Dr. Liu attempts a sleight of hand: instead of addressing whether ACSO acted properly, he shifts the focus to the actions of Mediko's employees. (R. pp. 45-46) Dr. Liu only addresses the "medical staff" at the detention center, all of whom are employees of Mediko: "In December 2021 and until August 2023, Mediko was the health care contractor at Anderson County Detention Center." (R. p. 44). Dr. Liu does not offer testimony about Sheriff's Office employees because he cannot. His affidavit is absolutely worthless for evaluating ACSO summary judgment motion and the circuit court committed reversible error in granting summary judgment on the basis of this testimony.

ACSO did not submit any affidavits of its own employees or officers. It did not submit any handbooks or guidelines to demonstrate what the deputies were supposed to do (or not do) in connection with Jason's detention. It did not submit anything to demonstrate ACSO exercised even slight care. At best, it is evidence that Mediko, a non-party, met *its* standard of care, but that

is not the issue. What is at issue but not addressed—and what therefore precludes granting summary judgment—is evidence that ACSO’s employees met the standard of care applicable to them. Because it failed to demonstrate the absence of a genuine issue of material fact, ACSO was not entitled to summary judgment.

II. Summary Judgment was Granted Without Adequate Time for Discovery

Fundamentally, the shortcomings detailed in the foregoing section can be traced largely to summary judgment being granted before the parties had an opportunity to conduct discovery. As noted above, the matter was effectively stayed for nearly three months as a result of Jason’s unexpected death. The case had been pending for almost a year when summary judgment was granted, but in effect, the case was closer to only nine months old. Certainly, the age of the case was not such that the Appellant should have been deemed to have had a “full and fair opportunity to present discovery,” particularly when ACSO primary basis for summary judgment was a witness who was never identified in discovery and never identified as an expert witness. All the issues raised in the preceding section may be answered through discovery and stands as sufficient reason to reverse the summary judgment granted to ACSO.

While ACSO may contend Jason’s death is irrelevant to the summary judgment motion, that argument ignores practical problems such as the steps required to have a personal representative appointed, a necessity in order to continue pursuit of these claims, which of course the Estate is permitted to pursue. Instead of preparing for depositions, Appellant and her counsel were preparing probate documents.

III. The Circuit Court Failed to View the Evidence in the Light Most Favorable to Appellant

The circuit court’s order focuses nearly exclusively on the materials ACSO submitted in granting summary judgment. As discussed above, those materials relate to Mediko and Mediko’s

employees, not ACSO. By contrast, the evidence Appellant submitted, when viewed in the light most favorable to her as the nonmoving party, was sufficient to defeat summary judgment. The circuit court determined summary judgment was appropriate because it adopted ACSO version of events. This was in error.

Among the factual issues the circuit court failed to interpret in the light most favorable to Appellant are the following: whether and to what extent Jason was provided his medication while in ACSO custody; whether and to what extent the mental intake screening form deficiencies exacerbated Jason's treatment and condition; the testimony of Pennie Wolfe describing her husband's condition while he was detained; the purpose of requiring Pennie Wolfe to bring Jason's medications to the detention center if they were not going to administer the medications; whether Jason's withdrawal condition was so poor as to stop the use of Ativan in favor of Jason's regular medication; the training of Sheriff's Office employees in performing intakes; as well as others. These issues are appropriate for investigation and in the light most favorable to Appellant, preclude summary judgment in ACSO's favor.

CONCLUSION

Accordingly, Appellant Pennie Wolfe respectfully requests this Court reverse the order of the circuit court granting summary judgment in favor of Anderson County Sheriff's Office and remand for further proceedings.

Respectfully Submitted,

YOUNG LAW FIRM LLC

s/William T. Young III

William T. Young III (SC Bar No. 75153)

141 Traction Street

P.O. Box 9567

Greenville, SC 29604

(864) 403-8300

Bill@YoungInjuryLawyer.com

July 8, 2025

Greenville, South Carolina