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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Case No.: 2024-001088

The School of Hope Christian
Academy, Jacqueline McKie
Burden, and Eugene Burden,
Sr., APPELLANTS,

vs.

South Carolina Department of
Social Services,
RESPONDENT.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUE ON APPEAL

1. DID THE CIRCUIT COURT JUDGE ERR IN GRANTING SUMMARY JUDGMENT TO DEFENDANT UNDER THE LAW OF THE CASE DOCTRINE?

STATEMENT OF THE CASE

Plaintiffs/Appellants The School of Hope Christian Academy (School of Hope), Jacqueline McKie Burden and Eugene Burden filed an action in August 2019 against Defendant/Respondent South Carolina Department of Social Services (“the Department”) and two employees of the Department, Dyeretta Fashion and Mary Abney Young. The Plaintiffs alleged a cause of action against the Department for breach of contract. Plaintiffs also alleged a cause of action for defamation against the Department and employee Ms. Young and a cause of action for civil conspiracy against the Department and employees Ms. Young and Ms. Fashion.

The School of Hope is a charitable corporation organized under the provisions of Section 501 © (3) of the United States Code. The School of Hope operated a feeding program for individuals (primarily children) throughout the State of South Carolina. The feeding program was funded through a Federal grant that was under the umbrella of the United States Department of Agriculture (USDA) and administered in South Carolina by the South Carolina Department of Social Services. This feeding program was known as the Child and Adult Care Food Program (CACFP). Jacqueline McKie Burden was the founder and Chief Executive Officer of the School of Hope. Eugene Burden was the Board Chairman of the School of Hope. Mr. and Mrs. Burden became husband and wife in February 2020.

The Defendants filed a Motion to Dismiss in response to the Plaintiffs’ Complaint.

During the time the Motion was pending and during the delay caused by the COVID pandemic, the parties reached a partial resolution of the case. The Department made a payment to the Plaintiffs and the individual Defendants were dismissed from the case with prejudice. In addition, the civil conspiracy cause of action was dismissed leaving the breach of contract cause of action and defamation cause of action against the Department. This partial resolution was reached in June 2020. During the pandemic, Plaintiffs' initial counsel, J. Lewis Cromer, limited his active practice of law and stepped back from handling the case. Attorney Cromer's office remained in the case following Attorney Cromer's retirement. Due to the pandemic and the retirement of Attorney Cromer, this case moved slowly. In July 2021, the Plaintiffs moved to strike the case from the active roster pursuant to Rule 40 (j), SCRCP. The Department consented to the removal of the case and then further consented to restoring the case with the current case number in July 2022. Just after the case was restored, the Cromer Law Firm withdrew as counsel. Plaintiffs then hired the undersigned counsel to represent them in the case.

In May 2023, the Department moved for summary judgment. A hearing was held on the Motion via WebEx on January 22, 2024. The Circuit Court issued an Order granting summary judgment on June 5, 2024(R. pp. 1-15). Plaintiffs then filed this appeal. Plaintiffs are asking this Court to reverse the grant of summary judgment as material issues of fact exist in this lawsuit. Plaintiffs seek the opportunity to litigate the material facts before a jury of twelve citizens of Richland County. It has been a difficult path to feed hungry children and Plaintiffs simply ask this Court to apply substance over form and allow Plaintiffs to proceed with their lawsuit against the Department.

STANDARD OF REVIEW

In reviewing a grant of summary judgment, the appellate court applies the same

standard as the circuit court judge under Rule 56 ©, SCRPC. *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009). Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Id.*

FACTS

Jacqueline McKie Burden has a heart for serving children. That heart for service led to her founding the School of Hope. The School of Hope is a charitable corporation organized under the provisions of Section 501 © (3) of the United States Code. The School of Hope operated a feeding program for individuals (primarily children) throughout the State of South Carolina. As noted previously, the CACFP feeding program was funded through a Federal grant that was under the umbrella of the United States Department of Agriculture (USDA) and administered in South Carolina by the South Carolina Department of Social Services. The Order on appeal in this case references a lawsuit that was filed by the Plaintiffs against the South Carolina Department of Education that is on appeal to this Court (Case #2023-000500). At certain periods of time, the USDA's feeding program in South Carolina was administered by the Department of Education rather than the Department of Social Services. Specifically, the Summer Food Service Program (SFSP) was a USDA program which was administered by the South Carolina Department of Education. Significantly, the Plaintiffs' mission throughout the operation of the feeding program was to make sure that children were fed throughout South Carolina no matter which State agency was administering the Federal program.

The School of Hope first became a sponsor in the feeding program in the year 2012 when the USDA program was administered in South Carolina by the South Carolina Department of Social Services. The School of Hope was a model sponsor and operated

efficiently for several years. The good work that was being done by the School of Hope was recognized by the USDA and the Department of Social Services. As noted in the Complaint, the Department supposedly had computer software issues beginning in the fall of 2017 which caused delays in the payment of claims through the CACFP (see paragraphs 10-13 of the Complaint). The Department referred to the software issues as glitches. These “glitches” caused significant financial problems for the School of Hope while the Department tried to resolve the matters. The Department’s primary stated reason for terminating the Plaintiffs from the CACFP program was concern about financial solvency. The Department cited a \$446,772.12 Confession of Judgment to The Merchants Company, a food distributor, in support of that position. It seems particularly unfair for the State agency responsible for administering the CACFP to withhold the payments and then penalize the School of Hope for not having funds to pay vendors. The irony is that children were being fed by the School of Hope despite the Department’s inability to process CACFP payments. The School of Hope was able to continue its mission for a while despite the lack of funding through the Department. The facts that gave rise to the lawsuit were that the Department’s bureaucracy interfered with the processing of payments to sponsors such as The School of Hope. The bureaucratic red tape led to many sponsors leaving the CACFP.

The two Orders (R. pp. 55-64 and R. pp. 94-104) issued by the Administrative Law Court which upheld the findings made by the Department’s hearing officers were heavily relied upon by the Circuit Court in granting the Department’s Motion for Summary Judgment. Plaintiffs respectfully submit that the “fair hearings” to determine whether the Plaintiffs had in fact violated the rules and policies of the CACFP were anything but fair. Both hearings were presided over by employees of the Department at a building owned

by the Department. The Administrative Law Court determined that there was substantial evidence presented such that the findings of the Department's hearing officers should be upheld. The Plaintiffs again respectfully submit that they exhausted their administrative remedies by appealing the hearing officers' findings to the Administrative Law Court and receiving a ruling on both Orders (R. pp. 55-64 and R. pp. 94-104). The Appellants then sought redress in the form of a jury trial in order to have their day in Court. The School of Hope certainly lived up to the spirit of the law in feeding children across South Carolina as was demonstrated by the testimony provided at the administrative hearings. Throughout the various administrative quagmires that the Plaintiffs have had to navigate, there has been no question that children were being fed. The disqualification of the Plaintiffs from the CACFP and the SFSP are sad commentaries on the operation of the USDA feeding programs in South Carolina.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT WHEN SHE APPLIED THE LAW OF THE CASE DOCTRINE TO MATTERS THAT WERE NOT ADJUDICATED BY THE ADMINISTRATIVE LAW COURT.

The Plaintiffs/Appellants brought this action after hearing officers had ruled against them at administrative hearings. After this action was filed, the South Carolina Administrative Law Court issued an Order dated October 4, 2019 (R. pp. 55-64), affirming the denial of certain claims submitted by the Plaintiffs for payment. Then, on October 11, 2019, the Administrative Law Court issued an Order (R. pp. 94-104) affirming the termination of the Plaintiffs from the CACFP. The Circuit Court Judge relied on the law of the case doctrine in reaching her decision granting summary judgment to the Defendant. The Circuit Court stated that "an unappealed ruling is the law of the case" (R. p. 7) citing

Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013).

The law of the case doctrine applies to an order or ruling which finally determines a substantial right. *Id.* Certainly, the Circuit Court Judge stated the law of the case doctrine as described by the South Carolina Supreme Court. However, the Circuit Court erred in the application of the doctrine. Here, Plaintiffs Jacqueline Burden and Eugene Burden alleged defamation claims against the Department of Social Services. As with the prior Orders in *Shirley's Iron Works*, the defamation claims were not addressed by either of the Administrative Law Court's Orders (R. pp. 55-64 and R. pp. 94-104). "We also note that pleadings are to be liberally construed, and the purpose of raising mode of trial issues at the earliest opportunity is to place the opposing party on notice of the issues at stake in the case." *Gates at Williams-Brice Condo. Ass'n v. DDC Constr., Inc.*, 418 S.C. 282, 792 S.E.2d 240 (Ct. App. 2016). The Circuit Court's Order (R. pp. 1-15) is based on a determination that both causes of action in the Complaint are addressed in the Administrative Law Judge's Orders (R. pp. 55-64 and R. pp. 94-104). The Circuit Court Judge erred in determining that the claims of Plaintiffs and the damages sought by them arose primarily from their contractual claim. In actuality, the most significant and lasting damage to Mr. Burden and Mrs. Burden was through the tort claim for defamation. Contrary to the Department's argument and the Circuit Court's findings in its Order, the tort claim of defamation was not addressed in either Order issued by the Administrative Law Court.

Summary judgment is a drastic remedy to be invoked cautiously and must be denied if (Plaintiffs) demonstrate a scintilla of evidence in support of their claims. *Gibson v. Epting*, 426 S.C. 346, 827 S.E.2d 178 (Ct.App. 2019). This Court went on in *Gibson* to say that a "scintilla" of evidence is a perceptible amount. *Id.* This Court further elaborated

in *Gibson* citing old authority that there still must be a verifiable spark, not something conjured by shadows. *Bethea v. Floyd*, 177 S.C. 521, 529, 181 S.E. 721, 724 (1935). ("Scintilla' means, according to 56 C. J. 863, 'a gleam,' 'a glimmer,' 'a spark,' 'the least particle,' 'the smallest trace.'"); *Crosby v. Seaboard Air Line Ry.*, 81 S.C. 24, 31–32, 61 S.E. 1064, 1067 (1908). ("[A] scintilla of evidence is any material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror.").

Again, the Circuit Court cited the law but misapplied it to the material facts presented by the Burdens as to the defamation claim. There is certainly a trace of material evidence presented against the Defendant to withstand summary judgment. The School of Hope and the Burdens were investigated by the FBI for well over a year before the School of Hope's records were returned in February 2020 and some semblance of order was restored to the lives of Mr. and Mrs. Burden and to the School of Hope. Appellants urge this Court to examine the two Orders of the Administrative Law Court (R. pp. 55-64 and R. pp. 94-104) and determine that neither Order extends to the defamation claims filed on behalf of Mr. and Mrs. Burden.

The problem for the Circuit Judge here is that the issues alleged in the defamation cause of action against the South Carolina Department of Social Services were NOT litigated in the administrative matter. The Circuit Court attempts to include the defamation issue in her ruling by determining that any statements made by the Department were necessarily true. However, that determination is negated by the dropping of the FBI's investigation against the School of Hope and the return of its records in February 2020.

As set forth in their Complaint, the Plaintiffs were substantially damaged by the actions of the Department. Both Mr. Burden and Mrs. Burden had their reputations damaged by the false accusations of wrongdoing that resulted in a lengthy FBI

investigation that was ultimately closed. Eugene Burden serves as a minister/pastor in the Lower Richland community. His reputation has suffered due to false statements made against him. Mrs. Jacqueline Burden has been a stalwart presence in the Midlands community serving children. However, the false defamatory statements made by the Defendant have damaged her reputation also. She seeks the opportunity to litigate the defamation claim and to restore her reputation.

Appellants further submit that their breach of contract claim against the Department has also not been foreclosed by the Administrative Law Judge's Orders (R. pp. 55-64 and R. pp. 94-104). The losses that stemmed from the Department's failure to abide by the terms of its contract extend beyond the claims that were addressed in the October 4, 2019, Order (claims for January-March 2018) (R. pp. 55-64). Appellants Mr. and Mrs. Burden provided deposition testimony regarding the losses incurred by the Department's withholding of payments. In addition, the Burdens testified regarding their consequential damages suffered due to the Department's delay in paying claims (R. pp. 105-123). The Department's failure to follow its own rules and the USDA guidelines was not addressed in either of the Administrative Law Judge's Orders. The October 11, 2019, Order (R. pp. 94-104) did not deal with the claims for reimbursement at all which was a significant part of the Plaintiffs' cause of action for breach of contract. Therefore, the law of the case doctrine does not apply to the Plaintiffs/Appellants' cause of action for breach of contract against the Department and the Circuit Court's grant of summary judgment on that cause of action should also be reversed.

CONCLUSION

The Circuit Court's granting of summary judgment was contrary to the standard set

forth in Rule 56, ©, SCRCP. For the reasons set forth above, Appellants respectfully ask this Court to reverse the Circuit Court's ruling and remand the case for trial.

Respectfully submitted,

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