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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Vernon F. Dunbar, Circuit Court Judge

Case No. 2025-002444

Ava Sykes.....Appellant,

v.

Greenville County, City of Greenville, and Prisma Health, Defendants,
of which Greenville County is the.....Respondent.

FINAL BRIEF OF APPELLANT

Respectfully submitted,

s/ Helena L. Jedziniak

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ISSUE ON APPEAL

- I. WHETHER THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT WHEN THE APPELLANT HAD NOT BEEN AFFORDED THE OPPORTUNITY TO CONDUCT FULL AND COMPLETE DISCOVERY

STATEMENT OF THE CASE

On July 23, 2024, Ava Sykes brought this action against Greenville County, the City of Greenville, and Prisma Health in the Greenville County Court of Common Pleas alleging causes of action for gross negligence/recklessness and negligent hiring, supervision, and retention in connection with injuries that she sustained in a bicycle wreck on the Swamp Rabbit Trail. (R. p. 22). The Appellant served written discovery requests, including interrogatories, requests for production, and requests for admission, on the Respondent on April 14, 2025. The Respondent never responded to the Appellant's discovery requests.

On May 2, 2025, the Appellant inquired about dates for scheduling the deposition of a 30(b)(6) representative of the Respondent. The Respondent did not provide available dates or otherwise attempt to coordinate the deposition. On May 28, 2025, the Respondent filed a Motion for Summary Judgment. On July 16, 2025, the Appellant again attempted to schedule the 30(b)(6) deposition. That same day, counsel for the Appellant and Respondent exchanged email correspondence concerning the deposition. Appellant's counsel emphasized the importance of the deposition in allowing the Appellant to set forth evidence in support of her claims, and Respondent's counsel confirmed that he "would protect [Appellant's counsel] on at least the attempt to seek this discovery prior to the hearing," with respect to Respondent's Motion for Summary Judgment. (R. p. 99).

Appellant's counsel noticed the 30(b)(6) deposition for July 29, 2025. (R. p. 100). On July 25, 2025, Respondent's counsel's office informed the Appellant and the circuit court that

Respondent's counsel had been in an accident and would have surgery on July 30, 2025. Out of courtesy, Appellant's counsel agreed to continue the 30(b)(6) deposition until counsel for the Respondent had healed and felt capable of proceeding. Respondent's counsel failed to coordinate a new date for the deposition and instead proceeded with the hearing on its Motion for Summary Judgment on September 24, 2025. The Court entered a Form 4 Order granting summary judgment in favor of the Respondent on September 30, 2025, and a formal order reaffirming that ruling on October 28, 2025. (R. p. 8, 11). The Appellant timely filed a Motion to Reconsider as to each order. (R. p. 81, 91). The Court issued a Form 4 denying both of those motions on November 24, 2025. (R. p. 19). The plaintiff filed a Notice of Appeal on December 3, 2025. (R. p. 111). This appeal follows.

STANDARD OF REVIEW

“[S]ince it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.” *Baird v. Charleston Cty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). Summary judgment cannot be granted where there is more than one reasonable inference from the evidence existing at the time the motion is heard. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461 (2023), citing *Vaughan v. Town of Lyman*, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006). Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is a disagreement concerning the conclusions or inferences to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000); *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004); *Montgomery v. CSX Transp., Inc.*, 376 S.C. 37, 656 S.E.2d 624, 628 (Ct. App. 1994), cert. granted, decision aff'd, 319 S.C. 79, 459 S.E.2d 850 (1995). See also SCRPC 56(c); *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (“All ambiguities, conclusions, and inferences

arising from the evidence must be construed most **strongly** against the moving party” (emphasis added)); *Hall v. Fedor*, 349 S.C. 169, 173, 561 S.E.2d 654, 656 (Ct. App. 2002); *Young v. South Carolina Dep’t of Corr.*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999)).

FACTS

In 2023, Greenville County conducted repairs on the Swamp Rabbit Trail, a 28-mile walking and cycling trail that connects Greenville to Traveler’s Rest. By October 2023, Greenville County had completed many of the necessary repairs but left a large, dangerous hole in the asphalt path despite repairing areas around the hole. (R. p. 24). On October 17, 2023, the Appellant was riding her bicycle on the Swamp Rabbit Trail when she came upon that large, dangerous hole. Because of the location of the hole and the color of the asphalt, the Appellant was unable to see the hole until it was too late for her to avoid it. The Appellant hit the hole, was thrown from her bicycle, struck her head on the ground, and landed on her left elbow. The Appellant received medical treatment for her injuries, including emergency surgery to repair an olecranon fracture in her left arm. That surgery required the insertion of a plate and five screws. (R. p. 24-25).

The Appellant reported the dangerous condition that caused her injuries to Greenville County employee Ty Houck. Rather than assisting the Appellant with obtaining an incident report, Houck began publicly disseminating information about the Appellant’s injury and informed multiple third parties that the Appellant intended to sue Greenville County, even though the Appellant had no intention at that time of filing suit and had never informed Houck that she planned to file suit. As a result of Houck’s dissemination of inaccurate and untrue information, the Appellant, a professional cyclist, was banned from cycling by the owner of a property that she frequently visited and lost a sponsorship with a wheel manufacturer. (R. p. 26).

ARGUMENT

I. The Circuit Court erred in granting summary judgment when Sykes had not been afforded the opportunity to conduct full and complete discovery.

South Carolina law clearly holds that, because it is such a drastic remedy, summary judgment must not be granted until the opposing party has had a full and fair opportunity to conduct discovery so that no person will be improperly deprived of a trial of disputed factual issues. *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Doe v. Batson*, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); *Schmidt v. Courtney*, 357 S.C. 310, 319, 592 S.E.2d 326, 331 (Ct. App. 2003); *Wallace v. Day*, 390 S.C. 69, 76-77, 700 S.E.2d 446, 450 (Ct. App. 2010); *Lanham*, 349 S.C. at 363, 563 S.E.2d at 333 (2002); *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Lanham v. Blue Cross & Blue Shield of South Carolina, Inc.*, 349 S.C. 356, 361-62, 563 S.E.2d 331, 333 (2002).

In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm’n*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998); *Pye v. Aycock*, 325 S.C. 426, 431, 480 S.E.2d 455, 467 (Ct. App. 1997). In ruling on a summary judgment motion, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *Thomas v. Waters*, 315 S.C. 524, 625, 445 S.E.2d 659, 661 (Ct. App. 1994).

Circumstantial evidence alone is sufficient to withstand summary judgment. *Gastineau v. Murphy*, 323 S.C. 168, 473 S.E.2d 819 (Ct. App. 1996), *rev’d on other grounds*, 331 S.C. 565, 503 S.E.2d 712 (1998) (“In totality, the Court comes to the inescapable conclusion that there is

sufficient circumstantial evidence in the record to create a factual issue.”). Our Supreme Court has held that it is reversible error to direct a verdict in favor of the defendant when sufficient circumstantial evidence existed to justify sending the case to the jury. *Anderson v. Augusta Chronicle*, 619 S.E.2d 428, 365 S.C. 589 (2005). *Dawkins v. Fields* provides that a verified complaint is equivalent to an affidavit for summary judgment purposes, provided that it satisfies the requirements of Rule 56(e). *Id.*, 354 S.C. 58, 580 S.E.2d 433 (2003).

In *Doe v. Batson*, the South Carolina Supreme Court found that the trial court abused its discretion in granting summary judgment before the plaintiff had a full and fair opportunity to complete discovery. *Doe v. Batson*, 345 S.C. at 321, 548 S.E.2d 857 (2001). The procedural history of *Doe* mirrors that of this case. Batson moved for summary judgment, arguing that South Carolina did not impose upon her a duty to act under the facts alleged. Doe opposed the motion arguing, *inter alia*, that it was premature because he had not had the opportunity to complete discovery, including taking Batson’s deposition. As in this case, the plaintiff had scheduled the defendant’s deposition, “but postponed it at the request of defense counsel.” *Id.* at 322. Agreeing with Doe, the Court held not only that “Doe should have been permitted to complete discovery” but also that “the paucity of the record makes it impossible for us to determine the merits of Doe’s argument. Whether Batson had a cognizable duty will be determined after the record has been more fully developed.” *Id.* at 323.

In ruling for Doe, the Court cited to *Baughman v. American Tel. & Tel. Co.*, a 1991 case in which the South Carolina Supreme Court similarly held that, “summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Baughman v. American Tel. & Tel. Co.* 306 S.C. 101, 112, 410 S.E.2d 537, 554. In *Baughman*, the Court cited to cases from a variety of jurisdictions across the country – including the District of

Columbia, Alaska, Arizona, Florida, and West Virginia – in support of its finding that summary judgment is inappropriate before the parties have completed discovery. *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); and *Board of Education v. Van Buren & Firestone, Architects, Inc.*, 165 W. Va. 140, 267 S.E. (2d) 440 (1980). The *Baughman* Court, like the *Doe* Court, emphasized that the plaintiff had not been dilatory in seeking discovery and that “delays in completing discovery [...] may not fairly be attributed solely to Plaintiffs’ inaction.” *Baughman*, 206 S.C. at 113, 410 S.E.2d at 55.

The present case is analogous to both *Batson* and *Baughman*. Here, the circuit court prematurely granted summary judgment before the Appellant had the opportunity to depose 30(b)(6) representatives of Greenville County – a party and necessary witness – and without first requiring the Respondent to respond to the Appellant’s written discovery requests. The Appellant raised this issue in her written response to the Respondent’s Motion for Summary Judgment and at the hearing on the motion, specifically telling the court that the parties had to postpone the 30(b)(6) deposition because Respondent’s counsel was involved in an accident. (R. p. 132, 19:5-11). Appellant’s counsel told the court that the parties were “making arguments without enough facts on the record” and asked “the court to allows us to conduct those depositions so we can further develop the record.” (R. p.132, 19:14-19). Despite the absence of a full and fair opportunity to conduct discovery, the circuit court granted summary judgment on all claims and issues. Because such a grant of summary judgment contravenes long-established South Carolina precedent, this Court should reverse the circuit court’s ruling.

CONCLUSION

For the foregoing reasons, the Appellant respectfully requests that this Court reverse the decision of the circuit court and remand this action to allow the Appellant the full and fair opportunity to conduct discovery.

Respectfully submitted,

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