

ORIGINAL

The State of South Carolina
In The Court of Appeals

Appeal from Spartanburg County
Hon. J. Derham Cole, Circuit Court Judge

Trial Court Case No. 10-CP-42-2350
Appellate Case No. 2013-000807

Jane Doe, as guardian for John Doe, Appellant

v.

Doni Rhinehart, Respondent

Final Brief of Appellants

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SC Court of Appeals

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Statement of Issues on Appeal

1. Did the trial court err in construing the record in the light most favorable to the movant rather than construe the record in the light most favorable to the party opposing summary judgment?
2. Did the trial court abuse discretion in failing to consider the discovery issues set forth in counsel's affidavit under SCRPC 56(f)?
3. Did the trial court abuse discretion in failing to consider the proposed amended complaint?

Standard of Review

An abuse of discretion occurs if the court's ruling is controlled by an error of law or if the ruling is based upon findings of fact that are without evidentiary support. *Sharps v. Sharps*, 342 S.C. 71, 79, 535 S.E.2d 913, 917 (2000).

Appellate courts review a grant of summary judgment under the same standard applied by the circuit court: no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, with the record, and all inferences which can be reasonably drawn from the record, viewed in the light most favorable to the nonmoving party. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 563 S.E.2d 331, 333 (S.C. 2002).

Statement of the Case

The trial court's order fails to present the record in the light most favorable to the Guardian who initiated this action. Set forth below is a Statement of the Case which satisfies that standard.

This appeal is from an order dismissing one of two cases brought by appellant Jane Doe, the grandmother of, and appointed Guardian for, a former Boy Scout Troop member, against an adult leader of Boy Scout Troop 292.¹ Complaint ¶ 1 (R. App. 14); Proposed Amended Complaint ¶ 1 (R. App. 59); 56(f) affidavit at ¶ 11 (R. App. 68 – 69) and Attachment D (R. App. 85); Probate Court order. That Defendant died of illness, Order at 1 (R. App. 1), and her estate has been substituted as the party defendant. *Id.*

The claim against the Defendant is that her negligent supervision, at times during Scouting events in her home, resulted in sexual abuse of the Plaintiff's ward. Complaint (R. App. 15); Proposed Amended Complaint (R. App. 62); 56(f) affidavit at ¶ 11 (R. App. 68 – 69). She failed to follow the “two deep” rule the Boy Scout require, prohibiting one-on-one contact, which the Scouts know from its “90-plus years of experience,” 56(f) affidavit at Att. A p. 440 (R. App. 73), is necessary to protect children because even among Scout volunteers it is impossible to predict who will sexually exploit a child. The prohibition of one-on-one contact is to reduce the possibility that a child will be exploited by any adult in scouting. 56(f) affidavit at ¶ 9 (R. App. 68); 56(f) affidavit at Attachment A page marked 443 (R. App. 76).

The perpetrator of the sexual abuse was the Defendant's former husband, who was also the Scoutmaster of Troop 292. Order at p. 1 (R. App. 1). The Troop was comprised entirely of boys with developmental disadvantages. Order at 2 (R. App. 2). Of the two boys molested by the Scoutmaster, one has autism and the other, the Plaintiff's ward, has an IQ of 60 along with

¹ The order, at p. 8 (R. App. 8), fails to construe in the light most favorable to the Plaintiff the evidence in the record that the Defendant was affiliated with the Troop. E.g., the 56(f) affidavit at ¶ 11 (R. App. pp. 68 – 69); 56(f) affidavit at Att. D (R. App. 88, Defendant on Troop Committee), and that the ward was molested by the Scoutmaster. 56(f) affidavit at Att. C

other mental health challenges. Order at 2 (R. App. 2). Each was fourteen or younger when molested. 56(f) affidavit at Att. C (R. App. 81).

The Scoutmaster is presently incarcerated after entering a guilty plea to abusing one child in the troop. Order at p. 4 (R. App. 4); 56(f) affidavit at Att. B (R. App. 80). The Plaintiff's ward reported the sexual abuse of both boys when he disclosed it to a school counselor, and was then immediately notified that he was dismissed from the Troop. 56(f) affidavit at ¶ 6 (R. App. 67), Att. A (R. App. 78) and Att. D (R. App. 85). The Defendant is one of the persons copied on the letter. 56(f) affidavit at Att. D (R. App. 85). Defendant's role as an adult volunteer with the Troop is actually not in dispute, but the trial court's order assesses evidence and concludes that there is no evidence that she "ever served in any capacity as a volunteer leader." Order at p. 8 (R. App. 8). In fact, the inferences from record reflect her undisputed involvement, both in the letter that dismissed the Plaintiff's ward (R. App. 85) and in the 56(f) affidavit at ¶ 11 (R. App. 68 – 69), and additional information can readily be provided on this point if the court had permitted the delay requested by the 56(f) affidavit.

Each act of abuse by the Scoutmaster occurred when he was able to isolate himself with one or both of the scouts he molested. 56(f) affidavit at Att. C (R. App. 81 – 82).

Neither Plaintiff nor John Doe is aware of two deep rule obligation the Defendant failed to comply with in the scouting event during which the ward was molested. 56(f) affidavit at ¶ 12 (R. App. 69). The evidence of it comes from 1998 edition of Boy Scout documents, because the Defendants in each case had promised to produce, but had failed to produce, the versions of those documents applicable to the 2005 events which gave rise to these actions, as the 56(f) affidavit

sets forth. 56(f) affidavit at ¶¶ 4 – 12 (R. App. 67 – 69).

The trial court analyzed only the Defendant's duty to an overnight social guest and that Defendant lacked prior knowledge of his sexual interest in children. E.g., Order at p. 10 (R. App. 10). No analysis was made of the Defendant's assumed duty of supervision or the Defendant ignoring both the risk known to the Boy Scouts as well as the supervisory means to protect against that risk, when she permitted her Scoutmaster husband to isolate himself with the troop members during meetings.

At p. 3 (R. App. 3) the trial court's order quoted from the deposition of the ward, and refers, incorrectly, to the ward as the party who has brought the case. The correct statement is that the Guardian is the Plaintiff who has brought the case in the interest of the ward. Complaint (R. App. 14); Proposed Amended Complaint (R. App. 59); 56(f) affidavit at, e.g., ¶ 12 (R. App. 69). Among other things, the ward's limited mental capacity, 56(f) affidavit at ¶ 19 (R. App. 70), means he has no conception of a breach of duty other than an active wrongdoer. The evidence of Defendant's negligence comes not from her active conduct but her negligent conduct.

The Plaintiff sought, and been promised production of, minutes of meetings and accounting records, 56(f) affidavit at ¶ 6 (R. App. 67), none of which had been produced at the time of the motion. Among other things the documents would reflect plainly the Defendant's affiliation with the Troop and the procedures which had not been followed by the Defendant. The Court made no accommodation of that missing discovery, or of the proposed Amended Complaint, which incorporated information provided in the ward's deposition.

Argument

1. The trial court erred in construing the record in the light most favorable to the movant rather than construing the record in the light most favorable to the Plaintiff who was opposing summary judgment.

The trial court erred in construing the record and its inferences in the light most favorable to the movant rather than in the light most favorable to the party opposing summary judgment. E.g., *Brockbank v. Best Capital Corp.*, 534 S.E.2d 688, 692 (S.C. 2000). The incorrect factual premises underlay the Court's analysis of the duty owed by Doni Rhinhart under the "two deep" rule, as well as of the allegations of abuse by the ward. On each the trial court erred because the court relied on a view of the facts in dispute that was favorable to the movant rather than to the Plaintiff.

2. The trial court abused its discretion in failing to consider the discovery problems set forth in counsel's affidavit under SCRCP 56(f).

Summary judgment is dispositive, so is not to be invoked when a "person will be improperly deprived of a trial of the disputed factual issues." *Lanham v. Blue Cross Blue Shield of S.C.*, 563 S.E.2d 331, 334 (S.C. 2002) (overturning summary judgment because, "summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.") Elemental documents were promised, but not provided. The trial court erred in not holding the motion in abeyance, as the Rule 56(f) affidavit requested (§ 21, R. App. 70), and the court's discretion permits, until the discovery was provided and the Plaintiff could

make a comprehensive submission.

3. The trial court abused discretion in failing to consider the proposed amended complaint?

Similarly, the trial court abused discretion in failing to consider the information obtained in discovery that supported the allegations of the proposed amended complaint. The trial court should have permitted full discovery and its full effects. *Schmidt v. Courtney*, 592 S.E. 2d 326, 331 – 332 (S.C. App. 2003); *Baughman v. American Tel. and Tel. Co.*, 410 S.E.2d 537 (S.C. 1991) (summary judgment “premature”).

Conclusion

The trial court’s order should be reversed, and the action reinstated to permit discovery to conclude and the record in response to the motions to be supplemented, as requested in the 56(f) affidavit (R. App. 70).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gregg Meyers", with a stylized flourish at the end.

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Proof of Service

I certify pursuant to SCACR 208(a) that I have served one copy of the

Final Brief of Appellant and the
Final Reply Brief of Appellant

by placing a copy of each document in the United States mail, first-class postage pre-
paid, addressed to:

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Certificate of Compliance

I hereby affirm pursuant to SCACR 211(a) that the Final Brief of Appellant and the Final Reply Brief of Appellant each complies with SCACR 211(b).



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