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JAN 28 2015

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The South Carolina Supreme Court

Case No. 2006-CP-40-4840
Appellate Case No. 2011-201047

William A. Thompson, 145029,Appellant,

V.

Jon Ozmint, Director, S.C. Dept. of Corr.;
Dennis Patterson, Records, S.C. Dept. of Corr.,Defendants,

Of Whom South Carolina Department Of Corrections is the,Respondent.

NOTICE OF INTENT TO SEEK WRIT OF CERTIORARI

William Thompson

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4848 Goldmine Hwy.
Kershaw, SC 29067

cc:
Supreme Court Of South Carolina
Appeals Court Of South Carolina
Attorney For Defendant

THE STATE OF SOUTH CAROLINA
In The South Carolina Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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The Honorable L. Casey Manning, Circuit Court Judge

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Jon Ozmint, Director, S.C. Dept. of Corr.,
Dennis Patterson, Records, S.C. Dept. of Corr.,.....Defendants,

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PETITION FOR WRIT OF CERTIORARI

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TABLE OF AUTHORITIES

Cases

Thompson v. Jon Ozmint and Dennis Patterson, 2004-CP-40-3521,
3:04-22109-JFA-JRM

Bloom v. Ravoria, 339 S.C. 417, 529 S.E.2d 710 (2000).

Garvin V. Bi Lo. Inc., 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999).

Tant V. SCDC, 408 S.C. 334, 759 S.E.2d 398 (2014).

Fulton V. Atlantic Coast line R. Co., 220 S.C. 287, 67 S.E.2d 425 (1951).

Board of Regents V. Roth., 408 S.C. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

Jensen V. Anderson County Department of Social Services., 304 S.C. 195,
403 S.E.2d 615 (1991).

Hughes V. Rowe., 449 U.S. 5, 9, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980).

Statutes

42 U.S.C.A § 1983

S.C. Code § 16-3-910

S.C. Code § 23-3-430

S.C. Code §15-78-70 (c).

S.C. Code § 24-1-220.

Rules

Rule 56 (c) SCRCiv.P.

ISSUES ON APPEAL

I. THE COURT OF APPEALS ERRORED IN DISMISSING THE APPELLANT'S APPEAL FOR FAILURE TO NAME THE DEFENDANTS AS RESPONDENT IN HIS NOTICE OF APPEAL.

STATEMENT OF THE CASE

On July 26, 2004, Appellant, William Thompson ("Thompson"), appearing pro se, brought suit against Jon Ozmint and Dennis Patterson in the Richland County Court of Common Pleas, for defamation. Defendants filed an answer and removed the case to the United States District Court (Thompson v. Jon Ozmint and Dennis Patterson, 2004-CP-40-3521, 3:04-22109-JFA-JRM). In his suit, Appellant contended his Fifth and Fourteenth Amendment rights were violated because he was labeled a sex offender without due process and because his picture and name were placed on a website with false information indicating he was a sex offender. He also claimed his Eighth Amendment rights were violated because he was subjected to ridicule and emotional distress by those actions. (Id.)

On January 13, 2005, Defendants filed a Motion for Summary Judgment asserting Appellant could not establish any violation of his constitutional rights, that they were entitled to immunity and that Appellant's state law claims were barred. The United States District Court granted Defendants' Motion for Summary Judgment but declined to exercise jurisdiction over any state law claims, instead remanding those claims to the state court for determination (June 16, 2005, Report and Recommendation of United States Magistrate Judge Joseph McCrorey; August 22, 2005, Order of United States District Court Judge Joseph F. Anderson, Jr.) In granting Defendants' motion on the merits, the District Court concluded Appellant's claims brought pursuant to 42 U.S.C. § 1983 failed to set forth any violations of the United States Constitution. (Id.)

Upon remand of the state law claims, Defendants file a motion for Summary judgment with the Richland County Court of Common Pleas on September 16, 2011.

On October 10,2005, a hearing on Defendants' Motion was held before the Honorable L. Casey Manning. By Form 4 Order filed August 21,2006, Judge Manning granted the SCDC's motion. (August 21,2006, Form 4 Order.) The Form 4 Order provided a formal Order was to follow. However, the formal Order was not filed until September 16,2011. (September 16,2011, Order.)

On September 23,2011, Thompson served a Notice of Intent to Appeal upon counsel for Defendants. (Notice of Intent to Appeal.) Thompson's Notice of Intent to Appeal seeks review of Judge Manning's September 16,2011, Order granting Defendants' Motion for Summary Judgment. (Id.)

On October 30,2014, Appellant received the Court of Appeals Initial Order dismissing his claim. On November 4,2014, Appellant requested a Re-instatement of his Appeal. On January 8,2015, A final Order was issued. (1)

STATEMENT OF FACTS

On July 26,2004, Appellant filed and subsequently served a Summons and Complaint. Appellant instituted his claim of action pursuant to the South Carolina Tort Claims Act seeking an Order for Injunctive Relief and Monetary Damages against the Defendants. Appellant alleges that he was erroneously identified as a Sex Offender by the Defendants based upon his conviction for kidnapping when; in fact, it is uncontested that Appellant's conviction does not require sex registration. Specifically, Appellant alleges that the

(1) Several letters between Appellant and the Clerk of Court for two years resulted in an abudnace of confusion including a premature dismissal, (see Appendix of Record).

Defendants published a listing of parole hearings within his living unit and on the SCDC website for Offender Management, that Appellant was a (SEX OFFENDER) due to his kidnapping conviction . Appellant contends that this erroneously labeled him a " Sex Offender " and he suffered actual damage.

Appellant never alleged that defendants placed him on the sex registry or was responsible for maintaining the registry, but rather that Defendants erroneously listed Appellant as a Sex Offender, as discussed above. The Parole listing published in the living unit contains information outside the statutory offense for which the Appellant was convicted. Appellant was convicted of kidnapping. As a consequence of this conviction, the offender is required to be listed on the sexual offender registry under certain circumstances. It is not part of the crime itself, S.C. Code § 16-3-910.

The public listing within the living units and on the SCDC Offender website, - has the potential to mislead those who read its content by associating sex offender registry with kidnapping. Appellant asserts that the information available suggests he is a sex offender. The Kidnapping statute itself does not specify the circumstances under which registration is required as listed by the Defendants. Rather, information regarding " Sex Offender " registration is derived specifically from section §23-3-430.

The Question before the lower court of Common Pleas is whether the information published by the Defendants communicated a defamatory meaning which is false. Appellant asserts a factual question exists on whether the listing in the living units and on the Defendants website, " Offender Management ", conveyed to the public that Appellant was a " Sex Offender ".

On August 14, 2006, the Court of Common Pleas dismissed Appellant's case. Appellant filed a timely appeal to the Court of Appeals. (2) Appellant filed

2) Appellant originally received the Form 4 from the Court of Common Pleas on August 22, 2006, but didn't receive the Final Order for five years through the Supreme Court Clerk's intervention. Increasing confusion in filing process.

a timely appeal to the Court of Appeals. Appellant filed his Notice of Intent to Appeal naming only the South Carolina Department of Corrections, (SCDC), as respondent pursuant to S.C. Code § 15-78-70 (c). On October 28, 2011, the Clerk of Court issued a letter informing the caption should include both the individuals and the SCDC as party Defendants in their filings, however never served the defendants with a copy of this letter. The Court of Appeals issued an Order dismissing the appeal because Appellant didn't name the SCDC as a party defendant in his original filing with the lower court of common pleas.

That in his Notice of Intent, Appellant named SCDC as a party to the suit, because SCDC wasn't a party the Defendants were not served with Notice as respondents. The Lower Court never addressed any merits of the Appellant's claim for defamation. (3)

STANDARD OF REVIEW

Summary Judgment is warranted only if there is no genuine issue of material fact and the moving party is entitled to a judgment as matter of law. Rule 56 (c) SCRPC. " In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non moving party." Bloom v. Ravoria, 339 S.C. 417, 529 S.E.2d 710 (2000). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. However, once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent must come forward with specific facts showing there is a genuine

(3) The Defendants acknowledged that all service of appeal was filed and never disputed service until filing their brief. (See Letter from Clerk Dated June 12, 2014.)

issue of material fact for trial. " Garvin v. Bi Lo, Inc., 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999).

The documents submitted to the Court of Common pleas, (See Attached Appendix and Affidavit of Bruce Wendell), clearly establish Appellant was not a " Sex Offender ", that at all times prior to the changes in the Sex Offender registry Appellant was never listed as a " Sex Offender ". However, the parole listing within the living units and the Offender website by Defendants contains information outside the Statutory Offense for which the Appellant was convicted. Not once prior to the listing or placing on the Offender website, was Appellant given Notice of the Defendants intention, as recently required by this Honorable Court, Tant v. SCDC, 408 S.C. 334, 759 S.E.2d 398 (2014), before submission of this information for public viewing, it was simply because of the conviction of kidnapping he was listed.

The Appellant not only submitted the documentation to the Lower Court from the Sentencing Court to clarify this error, but also affidavit alleging only that he was erroneously listed as a " Sex Offender ". A communication is defamatory if it tends to impugn the integrity or reputation of one and thereby expose him to public hatred, contempt, ridicule, or cause him to be shunned or avoided. Fulton v. Atlantic Coast Line R. Co., 220 S.C. 287, 67 S.E.2d 425 (1951). Further, " Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, **NOTICE and Opportunity to be Heard** are essential, (Emphasis Added). Board of Regents v. Roth, 408 S.C. 564, 92 S.Ct. 2701, 33 L.Ed. 2d 548 (1972).

The description listed in the living unit, as well as on the website creates a factual issue on whether the description conveyed to the public that Appellant was a " Sex Offender ".

ARGUMENT

I. THE COURT OF APPEALS ERRORED IN DISMISSING THE APPELLANT'S APPEAL FOR THE FAILURE TO NAME THE DEFENDANTS AS RESPONDENT IN HIS NOTICE OF APPEAL.

Appellant brought this action initially for defamation naming Jon Ozmint, S.C Director, and Dennis Patterson, Records, S.C. Dept of Corrections. This was in conformity to S.C. Code § 24-1-220, " All suits against the Department of Corrections, Must , be brought in the name of the Director. " (Emphasis). Because Appellant's claim falls within the Tort Claim Act he filed his Notice of intent to conform S.C. Code § 15-78-70 (c).

" when bringing an action against a Governmental Entity under the provision of this chapter, Shall name as party defendant only the agency or Political Subdivision which the employee was acting and is not required to name the employee individually. This requirement is mandated by the Act itself, S.C. Code § 15-78-70 (c), Jensen v Anderson County Department of Social Services, 304 S.C. 195, 403 S.E.2d 615 (1991).

As a pro se litigant Appellant asserts that by naming the Department pursuant to section §15-78-70 (c) , which allows for substitution in the event that the employee was individually named, should be controlling in the situation in light of the facts surrounding the abundance of confusion in the filing process and the language of South Carolina Code § 24-1-220, which clearly establishes the director as the respondent for claims against SCDC. To do otherwise would be holding a double standard in this case, where for five years the lower court failed to issue a Final Order, thus a standard stricter against a pro se litigant. Hughes v. Rowe, 449 U.S. 5, 9, 101 S.Ct. 173 . 66 L.Ed 2d 163 (1980).

The contradictory nature of both statutes has misled the Appellant a pro se litigant, along with the fact that several letters and a premature dismissal in this case to be in the situation he is in at no fault of his own.

Therefore, the Appellant seeks a writ of certiorari from this Honorable Court to Review his action.

Respectfully Submitted

s/ *William A. Thompson*

William A. Thompson

Kershaw Correctional Institution

4848 Goldmine Highway

Kershaw, SC 29067

C.C. File

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

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V.

Jon Ozmint, Director, S.C. Dept. of Corr.;
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Of Whom South Carolina Department of Corrections is the....,Respondent.

CERTIFICATE OF SERVICE

This is to certify I, William A. Thompson, Appellant, have this day caused to be served upon the persons named below the attached Petition for Writ of Certiorari and Appendix in the above captioned matter via United States mail, first class postage prepaid, to the following:

William A. Thompson #145029
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw, SC 29067

s/ William Thompson

William Thompson, 145029
4848 Goldmine Hwy.
Kershaw, SC 29067

January 23, 2015

South Carolina Supreme Court
Clerk Of Court
P.C. Box 11330
Columbia, South Carolina 29211

RE: Civil Case No. 2006-CP-40-4840;
Appellate Case No. 2011-201047

Dear Clerk:

Please find enclosed an original copy of Appellant's, Petition for Writ
Of Certiorari and Record On Appeal, from the S.C. Court Of Appeals Order
dismissing Action # 2011-201047, dated 1/8/15

s/ William Thompson

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JAN 28 2015

S.C. SUPREME COURT