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APR 17 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS
Kristi Lea Harrington, Circuit Court Judge

Case No.: 2012-CP-10-8423

Jerome Myers and Gloria Myers. Appellants,

v

Walter R Kaufmann, Kaufmann and Associates, LLC, Joseph A.
Broom, Active Day, Inc , Craig Mehnert COO, Bettye Dorn as Center
Director of Active Day, Inc. @ Charleston, SC. Respondents.

**FINAL BRIEF OF RESPONDENTS ACTIVE DAY, INC.,
CRAIG MEHNERT, COO, BETTYE DORN AS CENTER
DIRECTOR OF ACTIVE DAY, INC. @ CHARLESTON, SC**

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Craig Mehnert, COO, Bettye Dorn as Center
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Table of Contents and Cases

I Table of Contents and Cases 1
II Statement of Issues on Appeal .. . 1
III Statement of the Case1
IV Argument.. . . . 2
V Conclusion. 3

Statutes:

S C. Code Ann § 62-5-312..... 2

Cases:

Sloan Constr Co , Inc v Southco Grassing, Inc., 368 S.C. 523, 525,
629 S E.2d 372, 373 (Ct App. 2006).....2

Statement of Issue on Appeal

1 The trial court correctly dismissed Appellants’ claims, pursuant to Rule 12, SCRCPP, against Respondents Active SC One, Inc. (incorrectly named), Bettye Dorn, and Craig Mehnert, who operated an adult day care facility, because the only allegation against these Respondents is that they allowed an agent of the Probate Court-appointed Guardian for Appellants’ father to take him home from the adult day care facility on June 17, 2010

Statement of the Case

The Charleston County Probate Court appointed Respondent Walter R. Kaufmann as Guardian for Appellants’ father (Henry Myers) on October 25, 2007. (R p 94) Appellants filed this lawsuit on December 28, 2012 against “Atty Walter R. Kaufmann, Mr Joseph A. Broom, and Bettye Dorn-Ctr Dir. Active Day, Inc” alleging various Constitutional violations Appellants filed a “First Amended Complaint & for a Temporary and Permanent Injunction” on March 28, 2013 against “Walter R. Kaufmann; Kaufmann and Associates, LLC; Joseph A. Broom; and Active Day, Inc , Craig Mehnert COO; and Bettye Dorn as Center Director of Active Day, Inc @ Charleston, SC” (R p 16-29)

On May 7, 2013, Respondents Active SC One, Inc. (incorrectly named in the Amended Complaint), Craig Mehnert, and Bettye Dorn moved to dismiss the lawsuit pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. On October 16, 2013, Respondents Walter Kaufmann, Kaufmann and Associates, LLC, and Joseph Broom moved to dismiss the lawsuit pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

Judge Kristi Lea Harrington heard the motions on November 20, 2013 and granted the motions. The Charleston County Clerk of Court filed an Order dismissing the lawsuit pursuant to Rule 12, SCRCP, on December 23, 2013. Appellants filed the Notice of Appeal on January 2, 2014. Appellants filed their Initial Brief on January 15, 2015 and served these Respondents by mail. These Respondents' attorney received a copy of the initial brief on January 20, 2015.

Argument

Appellants claims center largely on their dispute with attorney Kaufmann as Guardian for their father, who passed on May 5, 2013. As for claims against Active SC One, Inc. and its agents (Mehnert and Dorn), the First Amended Complaint alleged that Active SC One, Inc. and its agents damaged Appellants by allowing Kaufmann's agent (Joseph Broom) to pick up Appellants' father on June 17, 2010 from the adult day care facility operated by Active SC One in Charleston, South Carolina and take him home (R. p. 25, ¶ 17.1 and R. p. 93). The First Amended Complaint made no other factual allegation against these Respondents. In addition, Appellants produced no credible evidence that Kaufmann acted outside the appointment as Guardian by the Charleston County Probate Court or the mandates of S.C. Code Ann. § 62-5-312.

Judge Harrington correctly ruled that Appellants did not present a sufficient claim under South Carolina law against Respondents Active SC One, Inc. (incorrectly named), Bettye Dorn, and Craig Mehnert (R. p. 5). As stated in Sloan

Constr Co , Inc v Southco Grassing, Inc., 368 S C. 523, 525, 629 S E 2d 372, 373 (Ct. App 2006), “[t]he circuit court, in a civil action, may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” Clearly, allowing the court-appointed Guardian and/or an agent of the Guardian to pick up Appellants’ father and take him home did not constitute any actionable conduct or misdeed.

Conclusion

Respondents Active SC One, Inc. (incorrectly named), Bettye Dorn, and Craig Mehnert ask this Court to affirm Judge Harrington’s decision that dismissed this lawsuit against them pursuant to Rule 12, SCRPC



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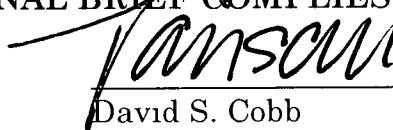
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I CERTIFY THAT THIS FINAL BRIEF COMPLIES WITH RULE 211(b)



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PROOF OF SERVICE

On April 17, 2015, I mailed a copy of Respondents Active SC One, Inc. (incorrectly named in the Amended Complaint), Craig Mehnert, and Bettye Dorn's Final Brief to

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