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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeal
ON APPEAL FROM CHARLESTON COUNTY
Doyet A Early, Administrative Law Judge
Order 27 November 2007

Charleston County School District, et al.....Respondent,

v.

Mr. Wesley Edward Smith III, ...Appellant.

MOTION TO ARGUE AGAINST PRECEDENT PURSUANT RULE 217 TO RECORD ON APPEAL

Wesley E. Smith, Pro Se
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I. INTRODUCTION

This appeal is taken from the Administrative Law Court Judges law review but written by opinion without the support of the supporting memorandum of any law argument to support or the law enforcement agency that granted relief of claims to the Charleston County School District to move through the court in such mannerism.

This action on appeal, as taken into it written account per the order is moot and frivolous which is believed to be an error of appellate rules as well. Mr. Wesley Edward Smith III was involved in a judicial action but not service according to the appeal legal process which gives reason to believe his procedural due process legal right has been violated. Such violations were committed by the Charleston County School District and third party intervenors who action are contrary to act which both parties had entered into an agreement for valid considerations and such a actions leaves irreconcilable difference.

In accordance with and pursuant rule 217, Mr. Wesley Edward Smith III identifies with a recognizable appellate legal right to challenge the appeal order based on the precedent Enclosed for your immediate action and in accordance with appellant rule 217. the appellant seek this court to compel the respondents to contest the decision of the order sought in case of 2003-CP-10-4751 (the premature awarding of Civil Summary Judgment, believed to be an error in law) under the precedent for which this action is demanded to be reverse under reconsiderations pursuant and in accordance with this rule.

On the face of this order is discriminatory with prejudice and as equal, legally complicated. Therefore pursuant rule 214 for Consolidation of matters. **As stated in relevant parts 214 CONSOLIDATION.** Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated. Last amended by Order dated May 3, 2007

II. PRECEDENT LEGAL ARGUMENT

Pursuant to rule 217, I seek to argue against the expressly written opinionated order. As the court order has allowed a reasonably premature determination, that describes that although Mr. Wesley Edward Smith III is Pro Se, this is not an excuse for the filing frivolous pleadings with Court and continuing a frivolous action. As such statements were presumptuously made, as the lower court used reference in Goodson v. American Bankers Ins.. 295 S. C. 400. 368 S.E.2d 687, 689, (Ct App. 1988) ("Lack legal familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard then is applied to an attorney").

I Mr. Wesley Edward Smith III was denied procedural due process that involves having appellate rights according to the posted rules, that error of law by the trial judge was made of

In the same mannerism, I also rely on Goodson v. American Bankers Ins.. 295 S. C. 400. 368 S.E.2d 687, 689, (Ct App. 1988), with same reliance on holdings, of the stated required standards. I objectively opposed to the order(s) of the lower court review, and initiated action of the respondents without allowing procedural due process or disclosing the legal substance require legal familiarization to make a sound decision. Mr. Wesley Edward Smith III believes "just as a Pro Se is not held to a lesser standard of that an attorney, with the same breath, an attorney should not be held to lesser standard than that of a Pro Se. Without the legal familiarly of unfounded contradiction, the court should not be allowed to make legally official by order with reason to believe itself is moot or frivolous. This reasonableness is gathered from the indirect of direct substantive evidences of the express subjective written opinions of the court that is based on a belief, sheer speculative, mere conjecture of a law argument or legal styles are taken from a previous cultural activity, that was used to control a society and its citizens. This action and implied charges in the written order is not fair to this citizen. I am not claiming to be practicing as an attorney does in a law court, but I have a right, freedom and liberty to exercise legal rights when being or have been legally attacked by another or entity. I have a duty and obligation to report such infractions, when I believe that I am being harassed, bullied, legally taken advantaged of, while being deprived my appellate rights CCSD actions gives reasons to believe acts are legally wrong and harmful to me, my family and can be construed detrimental to the civilized community of citizens. I report these violations because these are recognizable rights. I seek the enforcement of such protections in this court of law, as offered to all persons. Invoking these fundamental protections, allows me free movement to exercise through the designs of any judicial machinery without regard of my gender, race, color, age, religion or disability being

considerable factor for judgment. As construed, preference has been shown to a more favorable client or customer in the court ruling. I invoke my legal right based on these same appellate court rules, that the lower court did not determining in its expressive written order(s).

III. IN CONCLUSION the lawfully unchallenged violation was committed by the respondents while acting under the State of South Carolina Appellant Rules. As such, this action under this court judicial review, should address the denial issue and the accused rights. A modification, extension, stay or reversal is in order, and such equitable relief is sought as allowed under appellate rule 240 to be reverse on motions to reinstate or remand pursuant the rule should be respectfully granted..

June 1, 2015

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ATTACHMENT "D"

Goodson v. America Bankers Ins. Co.

295 S.C. 400 (St Ct 1988)

Donald GOODSON, Respondent v. AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA, Appellant.

Court of Appeals of South Carolina.

Heard March 22, 1988.

Decided May 9, 1988.

*401 Robert T. Williams, of Williams & Brink, Lexington, for appellant.

John A. Mason, Columbia, for respondent.

Heard March 22, 1988.

Decided May 9, 1988.

SHAW, Judge:

Donald Goodson commenced an action against appellant, American Bankers Insurance Company of Florida, hereinafter American. From a denial of a motion to set aside the judgment lacked legal familiarity with judicial proceedings], American appeals.

We affirm.

American, through its agents, Rick and Sharon O'Rear, posted an appearance recognizance bond for Goodson. In exchange, Goodson agreed to pay American a certain sum, and as security for the debt, Goodson permitted the O'Rears to hold his truck. The O'Rears subsequently sold the truck although Goodson claimed to have paid and worked off the debt owed. As a result, Goodson sued American on various theories.

Goodson's summons and complaint were served on the South Carolina Department of Insurance which accepted service and forwarded these documents to Norman I. Weil, an attorney for American. A timely answer was served and filed, signed by Ms. O'Rear as agent for American. However, the answer did not state an address. In April of 1986, Goodson's attorney sent requests for admissions and interrogatories to both Ms. O'Rear and Mr. Weil which apparently were never answered. The record also reflects a letter was sent to Ms. O'Rear and Mr. Weil in September of 1986 informing *402 them the case would be coming to trial soon.[1] On October 2, 1986, the case was heard before a jury. American did not appear at the trial and was not represented by counsel. The jury returned a verdict in favor of Goodson for $34,800 actual damages and $15,200 punitive damages.

I.

American contends the trial judge erred in refusing to set aside the judgment for excusable neglect under Rule 60 of the South Carolina Rules of Civil Procedure (FRAUD] claiming it received no notice of the trial. Rule 60(b)(1) S.C.R.C.P. provides as follows:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence.

Although most often used when relief is sought from a judgment by default, Rule 60(b)(1) applies to any final judgment. See H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 398-399 (2nd Ed. 1985). Relief under this section is within the sound discretion of the trial judge and will not be disturbed absent a clear abuse of that discretion. Id. at 399. Such an abuse arises when the judge issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support Id. (See also Ledford v. Pennsylvania Life Insurance Co., 267 S.C. 671, 230 S.E. (2d) 900 (1976) and Ricks v. Weinrauch, 293 S.C. 372, 360 S.E. (2d) 535 (Ct. App. 1987). While these cases deal with the trial court's discretion in setting aside default judgments, the principles are equally applicable to motions for relief from ANY final judgment.)

American points to no error of law by the trial judge. Rather, it contends the trial judge abused his discretion in finding there was no excusable neglect which would warrant setting aside the judgment.

*403 Whether American received notice of the impending trial is not clear. Goodson claims to have sent notice. American claims it never received any. However, it is clear that American's own neglect was the cause of any such problem. First, the answer was signed by Ms. O'Rear and not an attorney. Contrary to Rule 11 of the South Carolina Rules of Civil Procedure, Ms. O'Rear did not give an address on the answer.[2] Secondly, a party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney. (See H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 400 (2nd Ed. 1985) and McCall v. A-T-O, Inc., 276 S.C. 143, 276 S.E. (2d) 529 (1981)). Any neglect resulted from American using Ms. O'Rear, a layman, in defending the case. In our opinion, the facts of this case do not amount to excusable neglect.

II.

American next contends the trial judge erred in refusing to set aside the judgment, as the verdict rendered by the jury was excessive. American asserts the actual damages were limited to $8,820, the amount prayed for by Goodson, yet the jury returned a verdict of $34,800 in actual damages. It bases this contention on two arguments.

A. American claims under Rule 55(b)(1) of the South Carolina Rules of Civil Procedure, it was entitled to be served with written notice of the application for judgment at least three days prior to the hearing and it received no such notice. American summarily claims its nonappearance at trial constituted a default situation. We disagree.

Rule 55(a) of the South Carolina Rules of Civil Procedure states, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend ... the clerk shall enter his default upon the calendar." (emphasis added). In the instant case, American had not "failed to plead" and no default was entered by the clerk.

*404 Further, Rule 55(b) provides for written notification where there has been an application for judgment by default. There was no such application. The case went before a jury and a full trial was held on the matter.

B. In finding the judgment should not be set aside for an excessive verdict, the trial judge correctly relied on Rule 54(c) of the South Carolina Rules of Civil Procedure. That rule provides: A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is

entitled, even if the party has not demanded such relief in his pleadings.
American argues, while the trial judge was correct on the law, he was incorrect in his finding that Goodson was entitled to such relief. The trial judge stated, "It appears from the testimony presented at the trial, and I so find and rule, that the damages awarded by the jury are consistent with the case presented by the plaintiff, and are in accord with the relief to which plaintiff was entitled under the evidence." We do not have the transcript of the trial before us and, therefore, cannot second guess the finding of the trial judge. The appellant is responsible for compiling an adequate record from which this court can make an intelligent review. We will not consider facts that do not appear in the transcript of record. Windham v. Honeycutt, 290 S.C. 60, 348 S.E. (2d) 185 (Ct. App. 1986).
Affirmed.
CURETON, J., concurs and dissents in separate opinion.
GOOLSBY, J., concurs in separate opinion.
CURETON, Judge (concurring and dissenting):
American moved to set aside Goodson's judgment apparently under equity principles and under Rules 59[1] and 60 of the South Carolina Rules of Civil Procedure based on: (1) its *405 failure to receive notice of the hearing in accordance with Rule 55(b)(1); (2) mistake, inadvertence and/or excusable neglect under Rule 60(b)(1); and (3) excessiveness of the jury verdict.
I.
American argues the trial court erred as a matter of law in holding Goodson's judgment was not a default judgment. Moreover, it argues that because the judgment is a default judgment, it was entitled to three days' notice of Goodson's application for the judgment and his failure to give such notice makes the judgment void and it should be set aside under Rule 60(b)(4).
It is clear default may result from delicts other than failure to file an answer. In fact, Rule 55(a) provides for the entry of default when a party fails to "otherwise defend." There is some disagreement among the federal courts whether under similar circumstances a defendant is entitled to default status as opposed to the plaintiff being entitled to proceed to obtain a judgment based on a trial on the merits in the defendant's absence.[2] The logical basis for this disagreement seems to be that a defendant who files an answer, but fails to appear or defend thereafter, should not be penalized more severely than a defendant who does absolutely nothing. By way of illustration, if American had done nothing in this case, Goodson's recovery of actual damages under Rule 54(c) could not have exceeded the amount stated in his complaint which was $8,820.00.
Although there appears to be authority for the proposition that a failure to appear at trial after answering the complaint should entitle a defendant to default status, the majority view appears to permit the plaintiff to proceed to judgment on the merits.[3]See 11A Words and Phrases "Default" 272-274 (1971); Coulas v. Smith, 96 Ariz. 325, 395 P. (2d) 527 (1964); Tartaglia v. Del Papa, 48 F.R.D. 292 (E.D.Pa. *406 1969). I, therefore, agree with the majority that the judgment at hand was not a default judgment. Thus, Rule 55 is inapplicable.
In Sijon v. Green, our Supreme Court held:
[W]here a judgment roll does not contain evidence that a party-litigant received notice of the hearing or trial and a judgment is rendered, the absent party, upon motion, is entitled to a judicial determination of whether he received proper notice. If it be determined that the party received such notice, the judgment remains; if not, the absent party is entitled to a new trial.
289 S.C. at 128, 345 S.E. (2d) at 248. In the case at hand, the trial court made no finding whether

American received notice of the hearing. In fact, he reasoned that any lack of notice was the fault of American since its agent Sharon O'Rear failed to list her address in the pleadings and American failed to keep abreast of the progress of the trial roster to determine when the case would come to trial. The Sijon court did not have before it the question of whether the notice of hearing could be waived by the defendant. To that extent, the holding in Sijon is inapposite. The record contains no showing why American did not list its address on its pleadings or keep abreast of the trial roster. Therefore, it has not sustained its burden of showing the trial judge abused his discretion in failing to find excusable neglect. Em-Co Metal Products, Inc. v. Great Atlantic & Pacific Tea Co., 280 S.C. 107, 311 S.E. (2d) 83 (Ct. App. 1984).

II.

Nevertheless, I am persuaded by American's argument that the excessiveness of the verdict provides a basis for relief from judgment. Although Rule 60 provides no basis for setting aside a judgment on this ground, our Supreme Court has held that a judgment should be vacated on general principles of equity where the award is patently and greatly out of proportion to the wrongs alleged in the complaint. Renney v. Dobbs House, Inc., 275 S.C. 562, 274 S.E. (2d) 290 (1981); Williams by and through Williams v. Vereen, 284 S.C. 219, 325 S.E. (2d) 337 (Ct. App. 1985). In Renney, the *407 appellant based his motion to vacate on S.C. Code Ann. Section 15-27-130 (1976).[4] The Supreme Court, on its own motion, vacated the judgment on equitable grounds stating:

"Whether a defendant is or is not in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount recoverable based on the proof."

275 S.C. at 567, 274 S.E. (2d) at 293.

Here, Goodson itemized his actual damages in his complaint as amounting to $8,820.00.[5] While we have no hint of why or how the jury awarded $34,000 in actual damages, it is implicit American's non-appearance at trial had something to do with the amount of the verdict. I would hold the actual damages award is so patently out of proportion to the wrongs alleged in the complaint, that this court should do as our Supreme Court did in Renney, and reverse and remand the case for a new trial on actual damages only.

The majority cites Rule 54(c) as support for upholding the excessive actual damages award. I agree that in an ordinary non-default trial of a case, a party's pleadings should not preclude relief for which the party is justly entitled. However, where as here, Goodson itemizes his actual damages, it is unduly prejudicial to American for the court and jury to award actual damages grossly in excess of those specified in the complaint. As to those damages, American had absolutely no notice Goodson was claiming them. See United States v. Hardy, 368 F. (2d) 191 (10th Cir.1966) (party had no notice other party was claiming damages because no plain statement appeared in either pleadings or pretrial order). Goodson notes the law has always been that a party is entitled to fully recover all damages incurred, although not demanded in his complaint, citing former Code Section 15-35-70 and cases enumerated thereunder especially the case of Christopher v. Christopher, 18 S.C. 600 (1882). But attention is directed to the case of Straub v. Screven, 19 S.C. 445 (1883) which holds that where a complaint stated *408 amounts due and credits allowed and demanded judgment for a certain sum, and the answer admitted the allegations, it was error for the trial judge to reduce the credits and give judgment for a larger sum. I would reverse and remand for a new trial on actual damages only.

GOOLSBY, Judge (concurring):

I concur in the opinion of Judge Shaw.

Regarding Judge Cureton's view that the case should be remanded for a new trial on the issue of damages alone, the trial judge, as Judge Shaw points out, made an express finding that the proof supported the amount recovered. Nothing in the record shows otherwise. Indeed, the reason why we have as Judge Cureton stated, "no hint of why or how the jury rewarded $34,000 in actual damages," is because the appellant failed to provide us with a proper record.

Moreover, neither of the appellant's two exceptions fairly raise the issue of whether the damages awarded were excessive because their amount exceeded the amount itemized in the complaint. Ordinarily, if a question is not asked of us, we do not answer it.

NOTES

[1] A letter from Mr. Weil to a Mr. Nowosad of American indicates Mr. Weil had notified American of the suit but had not been retained to handle it.

[2] S.C.R.C.P. 11 provides in part, "A party who is not represented by an attorney shall sign his pleading and state his address."

[1] I cannot discern American's argument under Rule 59.

[2] See 6 J. Moore, W. Taggert and J. Wicker, Moore's Federal Practice Section 55.02[3], n. 12 (2d ed. 1987).

[3] The question of whether a defendant received notice of the hearing at which he failed to appear is another issue. Failure of a defendant to receive such notice may give rise to right of new trial for the defendant. Sijon v. Green, 289 S.C. 126, 345 S.E. (2d) 246 (1986).

[4] Repealed by Act 100, 1985 S.C. Acts 277. Now replaced by S.C.R. Civ. P. 60.

[5] While not required, Rule 8(a) permits a plaintiff to demand a sum certain in money as actual damages.

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Doyet A Early, Administrative Law Judge
Order 27 November 2007

Charleston County School District et al , Respondent,
v
Mr. Wesley Edward Smith III, Appellant.

PROOF OF SERVICE

I , Wesley Edward Smith III, certify that on June 1, 2015, submits his Motion to argue Precedent Pursuant rule 217 of Record on Appeal by First Class Mail via United States Mail and on all parties listed below in this action to the following.

TO: Attorney for Appellant
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June 1, 2015

CLERK
Honorable Jenny A. Kitchens
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Mr. Wesley Edward Smith, III Appellant v Charleston County School District et al Respondents Appellant Case No. 2015-000787

Honorable Clerk Jenny A. Kitchens:

Enclosed for your immediate action and in accordance with appellant rule 217. the appellant seeks rule to argue against the lower court written opinion. This court should respectfully compel the respondents. in contrast, to the unsupported decision of the court order of case 2003-CP-10-4751 (a premature awarding of Civil Summary Judgment that is believed to be an error in law) without being legally familiar or allowing both parties its entire fair procedural due process.

As being guided under the precedent for which this action is demanded to be reverse under strict considerations pursuant and in accordance with this longstanding rule 217. On the face of the order, it is complicated. Therefore pursuant rule 214 also call for the Consolidation of matters.
As stated in relevant parts 214 CONSOLIDATION (Assuming Arguendo)
Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.
Last amended by Order dated May 3, 2007.

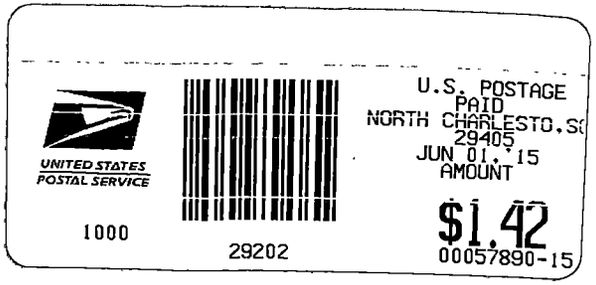
Thanking You in advance,

Sincerely,

Mr. Wesley Edward Smith III

COPY TO: Mr. Daniel F. Blanchard, III ESQ

Mr. Wesley Edward Smith III
465 N. Nassau Street
Charleston, SC 29403



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