

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUL 24 2015

APPEAL FROM GREENVILLE COUNTY

J. CORDELL MADDOX, JR., CIRCUIT COURT JUDGE

SC Court of Appeals

Appellate Case No. 2015-00000759
2014CP2305969

BILLY JOE CARTRETTE,

APPELLANT,

V

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

INITIAL BRIEF OF APPELLANT

Billy J. Cartrette, 122434
RCI, CA-52, POB 2039
Ridgeland, S. C. 29936

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STATEMENT OF ISSUES(S) ON APPEAL

- I. Did the circuit court erred when it granted South Carolina Department of Corrections' SCDC motion to dismiss with prejudice on subject matter jurisdiction according to Rule 12(b)(1) of South Carolina Rules of Civil Procedure (SCRCP)?
- II. Has the circuit court erred dismissing the complaint for declaratory judgment on the prevailing wage and overtime back pay claims?
- III. Whether appellate and/or subject matter jurisdiction was present when the Court of Common Pleas for Jasper County had jurisdiction to reverse the final order?

STATEMENT OF THE CASE

After the SCDC v. Cartrette, 722 SE2d 805 (2-22-12) issued decision of South Carolina Supreme Court; the remittitur (R. p.) was sent to the lower Circuit Court of Jasper County; he file the complaint for declaratory judgment(s) in Greenville County Court of Common Pleas (R. p.); the respondent who was served by Richland County Sheriff's Office filed an answer and motion to dismiss (R. pp.) prior to the 2-13-15 hearing plaintiff filed an opposition to defendant's motion (R. p.) and discovery request(s) (R. p.)

The Circuit Court Judge granted defendant's motion to dismiss, the appeal herein follows:

ARGUMENT(S)

- I. THE CIRCUIT COURT ERRED WHEN IT GRANTED SCDC'S MOTION TO DISMISS WITH PREJUDICE ON SUBJECT MATTER JURISDICTION ACCORDING TO RULE 12(b)(1) OF SCRCP

Appellant asserts the Court of Common Pleas for Greenville County erred when it granted respondent's 12-29th 14 motion to dismiss based on Rule 12(b)(1) of SCRCP. Slezak v. Leeke, 378 SE2d 65 (1989); Woodard v. Westraco 460 SE2d 392 (1995) ("Proper procedure for raising lack of subject matter jurisdiction, rather than motion for summary judgment.") The Circuit Court issued the 2-13-15 form 4 (Rule. p.) and the 3-12-15" order granting the defendant's motion to dismiss the plaintiff's complaint for Declaratory Judgment(s) "(R. p.): it mentioned :

in its motion and during the hearing conducted February 13, 2015, the Department argued that the opinion issued in 2010 by our Court of Appeals, and, for that matter, the opinion issued by our Supreme Court in 2012, completely negates any and all assertions articulated by the plaintiff that the court possesses subject matter jurisdiction over the claims, (R. p.)

SCDC'S attorney mentioned at the hearing "this is a matter that's I think ripe for adjudication before the administration law court." (p. 11. 14-15) more, counsel stated, "that they are under the jurisdiction of the administrative law court." (p. 11. 9-10) The trial court stressed " you filed this with the wrong court". (p. 11. 21-22) A reading of Woodward suggests the circuit court committed clear error "under the provision of SCRCP 12(b)(1)"(Order p. 5 of 5; R. p.) for Woodward v. Westvaco is cited in Sabb v. S.C. State University, 567 SE2d 233, 234,n.2 (2002); Woodard points to Googe v. Speaks, 9 SE2d 439, 444 (1940) (procedural rather than jurisdiction); Taylor v. MUSC, 362 SE2d 881, 885 (S.C. App. 1987) (The Court of Appeals articulated "MUSC advanced no good reason, certainly none raising any jurisdictional issue")

Evenmore, "the failure to exhaust administrative remedies goes to the prematurity of the case, not subject matter jurisdiction" which was announced or set forth by South Carolina Supreme Court in Ward v. State, 538 SE2d 245, 246 (2000) wherein, it stated, "as a general rule, if the sole issue posed in the particular case is the constitutionality of a statute, a court may decide the case without waiting for an administrative ruling," See Video Gaming Consultants, inc. v. SCDOR, 535 SE2d 642 (2000) Cartrette exhausted the administrative grievance(s) in 2004-2005. Cf. Torrence v. SCDC, 646 SE2d 866 (2007)("plaintiff could not maintain their declaratory judgment claims because they were required to pursue their claims through DOC'S interal grievance procedure")

The election of enforcement of the 2010 judgment(s) is procedural and the circuit court had jurisdiction to issue declaratory judgment(s) requested therein. In Re Hover, 754 SE2d 875, 882 (2014) moreover, the 12-18-14 'answer of the agency failed to plead exclusivity if it is applicable herein to respondent has surely waive it (see Rule 8(c) of SCRCP) Section 15-53-50; 50(i) and 60 of the Code authorizes this proceeding to enforce order.*

II. THE CIRCUIT COURT ERRED DISMISS THE COMPLAINT FOR DECLARATORY JUDGMENT(S) ON THE PREVAILING WAGE AND OVERTIME BACK PAY CLAIMS(S).

The circuit court erred when it dismissed with prejudice the complaint for declaratory judgment(s) on the prevailing wage and overtime back pay claim(s) SCDC v. Cartrette, 694 SE2d 18 (S.C. App. 2010). The court indicated, "I've got to grant their motion. (R. P. 1,2); further, "if you appeal my decision and they tell me I'm wrong, I'll be happy to hear it." (R.p. 11. 18-19) The complaint at p. 2, paragraph 7 set forth:

FURNITURE (team) ASSEMBLERS			
Year	Entry hourly	Mean hourly	Experienced hourly
1999	\$8.94	\$11.66	\$13.24
2000	9.10	12.69	14.43
2002	9.63	13.07	14.24
2003	9.82	13.31	14.63

*More specifically, decisions, judgments, see Rule 9(e) of SCRCP.

(R. p.) See also Judy v. Martin, 674, SE2d 151 (2009); Byrd v. Irmo High School, 468 SE2d 861, 864 (1996) ("there must exist a justiciable controversy.") Auto-Owners Ins. Co. v. Rhodes, 748 SE2d 781, 781 (2013)

Plaintiff began employment at Kwalu 1-16-99 and he continued to work through 3-16-2002 at \$5.25 per hour (R. p.) if he was properly paid according to mean wage for team assembly; the difference or amount owed would be \$67,735.14

The Occupational Employment and Wage Estimates which reference "Lead Man/ Section Leader" (R.p.) set Forth:

Year	Wage Estimates
2002	\$21.19
2003	21.49

He was employed in the section at KWALU from 3-17-2002 (R.p.) to 10-23-2003 where his pay was increased to \$5.50 per hour; the difference would be \$14.50 per hour underpaid; 1238 hours time 14.50 equal \$17,951.00. He had 81 hours overtime at \$30 an hour which is \$2,430.00. Total equals \$20,381.00.

Therefore, regular pay 67,735.14 plus leadman pay with overtime pay equal \$88,116.14. This Court should grant the award herein this appeal.

III. THERE WAS NO SUBJECT MATTER AND/OR APPELLATE JURISDICTION WHEN THE APPELLATE COURT OF COMMON PLEAS FOR JASPER COUNTY WAS AUTHORIZED OR HAD POWER TO GRANT RESPONDENT APPEAL IN 2006

The Court of Common Pleas for jasper County (which was the 2006 appellate circuit court) did not have jurisdiction to grant respondent's appeal from the "Order of Clarification" (R. p.) SCDC v. James, Unpublished Opinion No. 2010-UP-251 (filed 4-26-10) at the 2-13-15 Cartrette presented:

I've got one more thing. I have the subject matter jurisdiction issue on employee status from that administrative law court 3-2-2006 order of Judge Matthews. (R. P. 11. 1-4)

The order which dismissed the action in the lower court with prejudice does not address or rule on the issue. (R. pp.) of course, the jurisdictional issue may be raise at anytime, in short, SCDC had procedural defaulted when it failed to timely appeal the final order mentioned above herein.

At the 9-19-2006 consolidated oral argument the circuit court appellate judge stated; All of you have made the same claim; that's the reason I got you all in here at one time. (R.p. 11. 18-19) further, he asserted:

I'm taking his to apply to all of you. (R. p. 1.8)

The correct definition or term would be the circuit court did not have appellate jurisdiction to Allison v. W.L. Gore & Associates, 714 SE2d 547 (2011) reverse ALJ Matthews" 2-6-2006 order Stare decisis and law of case(s). See SCDC v. James (R. p.) this Court should recognize what fringe benefit(s) exist where Cartrette is granted kwalu employee status. Kwalu's employees don't pay room and board and/or victim witness payment(s).

The SCDC v. Cartrette decision adheved, "holding a prison industrial program sponsor is not an employer of inmates because the sponsor does not exclusively control the payment of inmates wages". 694 SE2d 23 9S.C. App. 2010).


- Fringe benefits at Kwalu Inc. consist of
- (a) paid vacations
 - (b) paid holidays (State & Federal)
 - (c) retirement plan
 - (d) 401 K plan

As an employee at Kwalu the room & board and victim witness payment(s) should be returned immediately.

CONCLUSION

The appellant respectfully requests and urges this court to reverse the (dismissal with prejudice, grant the declamatory judgment and order the payment(s) of back pay and/or wage(s) set forth above herein forthwith. Also granting relevant fringe benefits.

July 21, 2015

s/ 
Billy Joe Cartrette, 122434
RCI, CA-52, POB 2039
Ridgeland, S.C. 29936

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has caused true and correct copies of the 'Resignation of Matter(s)', Initial Brief of Appellant and Motion for Certification to be mailed, postage prepaid, to respondent's attorney:

Lake E. Summers
339 Heyward Street, Suite 200
Columbia, S. C. 29201

This 21 day of July 2015

s. Billy J. Tuttle

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THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

RIDGELAND CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS