

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUL 27 2015

APPEAL FROM MARION COUNTY
COURT OF COMMON PLEAS

S.C. Supreme Court

D. Craig Brown, Circuit Court Judge

Opinion No. 2015-UP-155
(S.C. Ct. App. Filed March 18, 2015)

Ashlie Outing Petitioner,

v.

Velmetria Chante Weeks. Respondent,

PETITION FOR A WRIT OF CERTIORARI

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1. THE COURT OF APPEALS ERRED IN AFFIRMING THE CIRCUIT JUDGE'S AFFIRMATION OF THE MAGISTRATE'S DENIAL OF APPELLANTS MOTION FOR A DIRECTED VERDICT AND JUDGMENT NOTWITHSTANDING THE VERDICT WHEN ALL OF THE EVIDENCE INCLUDING RESPONDENT'S CLEAR AND DISTINCTIVE ADMISSIONS CLEARLY MANDATED A FINDING OF NEGLIGENCE ON THE PART OF THE RESPONDENT AS A MATTER OF LAW . . 3

2. THE COURT OF APPEALS ERRED IN SUMMARILY DENYING CLAIMANT'S APPEAL AND PETITION FOR REHEARING BY RULING THAT THE BURDEN IS ON THE APPELLANT TO PROVIDE A SUFFICIENT RECORD SO THAT THE COURT CAN MAKE AN INTELLIGENT REVIEW AND THE COURT WILL NOT CONSIDER FACTS THAT DO NOT APPEAR IN THE TRANSCRIPT OF RECORD CITING PRICE V. PICKENS COUNTY, 308 S.C. 64, 67, 416 S.E.2D 666, 668 (CT. APP. 1992) AND WYNDHAM V. HONEYCUTT, 290 S.C. 60, 64, 348 S.E.2D 185, 187 (CT. APP. 1986) 3

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 26, 2015.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in affirming the Circuit Judge's affirmation of the Magistrate's denial of Appellants Motion for a Directed Verdict and Judgment Notwithstanding the verdict when all of the evidence including Respondent's clear and distinctive admissions clearly mandated a finding of negligence on the part of Respondent as a matter of law?
2. Did the Court of Appeals err in summarily denying Claimant's appeal and Petition for Rehearing by ruling that the burden is on the Appellant to provide a sufficient record so that the Court can make an intelligent review and the Court will not consider facts that do not appear in the Transcript of Record citing Price v. Pickens County, 308 S.C. 64, 67, 416 S.E.2d 666, 668 (Ct. App. 1992) and Wyndham v. Honeycutt, 290 S.C. 60, 64, 348 S.E.2d 185, 187 (Ct. App. 1986)?

STATEMENT OF THE CASE

Ashlie Outing initiated this action by the filing of a Summons and Complaint in the Magistrate's Court of Marion County, South Carolina on May 4, 2006. Defendant interposed an Answer essentially denying Plaintiff's allegations and trial was held before a Marion County Magistrate's Court with a jury on July 20, 2011 with Magistrate Judge Mackie D. Hayes presiding. The jury rendered a verdict in favor of the Defendant.

Plaintiff made a motion for a directed verdict on the issue of negligence which was denied and made a further motion for Judgment Notwithstanding the verdict or in the alternative for a new trial which was denied.

Plaintiff timely filed a notice of appeal with the Marion County Court of Common Pleas and the Magistrate provided the Court with a terse "return" dated August 31, 2011 stating "In this case the Defendant admitted they were negligent in the present (sic) of the Court therefore the motion for a directed verdict on the issue of negligence was denied."

Plaintiff timely appealed the ruling of the Circuit Judge to the South Carolina Court of Appeals and a decision was rendered without oral argument being filed March 18, 2015. In its ruling, the Court of Appeals specifically stated that the burden is on the Appellant to provide a sufficient record so that the Court can make an intelligent review and the Court will not consider facts that do not appear in the Transcript of Record citing Price v. Pickens County, 308 S.C. 64, 67, 416 S.E.2d 666, 668 (Ct. App. 1992) and Wyndham v. Honeycutt, 290 S.C. 60, 64, 348 S.E.2d 185, 187 (Ct. App. 1986).

Plaintiff/Appellant timely filed a Petition for Rehearing which was denied by Order dated June 26, 2015.

Petitioner seeks a Writ of Certiorari to review that decision.

ARGUMENTS 1 & 2

THE COURT OF APPEALS ERRED IN AFFIRMING THE CIRCUIT COURT'S AFFIRMATION OF THE MAGISTRATE COURT AND FURTHER SPECIFICALLY ERRED IN FINDING THAT THE APPELLANT FAILED TO PROVIDE A SUFFICIENT RECORD FOR REVIEW.

Please pardon the rhetorical flourish which follows but this case is of ultimate import to the Ashlie Outings of this world.

In the grand pantheon of the law, this case is totally unimportant; however, our system of justice is based on an algorithm of small components and is the sum of its parts. In arriving at justice in small measures, the Court can not ignore and stand idly by and allow an inferior Court no matter how ostensibly insignificantly to wreak havoc on this system. To ignore one under these circumstances is to smite all.

Paraphrasing a time tested adage, it is the silence of the good that allows the error of the bad to prevail.

This case was initiated in the Magistrate's Court of Marion County, South Carolina and acutely presents a specific problem which is endemic in these inferior courts.

In the present case, the intractable application of the principles of review regarding the presentation of a record creates an impossible burden for the Appellant. The entire Magistrate's Return consisted of a terse letter dated August 31, 2011 stating "In this case the Defendant admitted they were

negligent in the present (sic) of the Court therefore the motion for a directed verdict on the issue of negligence was denied." However, even with the paucity of the evidence which made it into the record in this case, the Magistrate's Return itself makes it patently obvious that the denial of a directed verdict on the issue of negligence was improper. Fettler v. Gentner, 396 S.C. 461, 722 S.E.2d 26 (Ct. App. 2012). The absurd contradiction in the statement in the Magistrate's return is painfully illustrative of the problem acutely presented here.

The Circuit Court's Order stated "Upon hearing the appeal the Appellate Court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the Court may affirm or reverse the judgment of the Court below, in whole or in part, as to any or all the parties and for errors of law or fact." The Circuit Court as affirmed by the Court of Appeals decided the appeal on the basis that the Magistrate's rulings were mere technical errors and defects - a finding which is patently misplaced in that negligence is the defining threshold issue in a case such as the one at hand. Fettler infra. These are much more than technical errors and defects and go to the very heart of the issues presented. The case should be remanded for adjudication of the issues of proximate cause and damages.

The overriding maxim of this case is that it represents a small acorn of justice which is necessary to support the giant oak tree. A case initiated in the Marion County, South Carolina Magistrate's Court is still an integral part of the constellation of justice which is made up of multitudinous small stars. This case is one of those small stars but vital to the firmament.

CONCLUSION

On behalf of all the participants who seek justice in our lowest echelon courts and for the reasons stated herein, Petitioner requests that the Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,



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PROOF OF SERVICE

I certify that I have served the Petitioner's Petition for Writ of Certiorari on Velmetria Chante Weeks by depositing a copy of it in the United States mail, postage prepaid, on July 27, 2015, addressed to her attorney of record, J. David Banner, Esquire, Post Office Drawer 1931, Florence, South Carolina 29503 and to Jenny Abbott Kitchings, Clerk of Court for the Court of Appeals, P.O. Box 11629, Columbia, SC 29211.

July 27, 2015



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