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SC Court of Appeals

INITIAL BRIEF

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals
Appellate Case No. 2015-002367

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya Gee, Circuit Court Judge

Orlando I. Brown, Pro Se,

Appellant,

v.

The State Of South Carolina,

Respondent.

Initial Brief

Orlando I. Brown
440 Rimer Pond Road
Blythewood, S.C. 29016
(803) 477-0098
Pro Se

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STATEMENT OF ISSUES ON APPEAL

1. THE TRIAL COURT ERRED BY FAILING TO SEARCH THE AMENDED MOTION FOR SUMMARY JUDGEMENT FOR MATERIAL FACTS.
2. THE TRIAL COURT ERRED BY FAILING TO ACKNOWLEDGE THAT FEDERAL LAWS SUPERCEDE STATE LAWS.

STATEMENT OF THE CASE

Plaintiff filed an Amended Complaint on July 10, 2015. The Amended Complaint listed the State of South Carolina as sole defendant and not the Richland County Probate Court. The State answered the complaint claiming several immunities and 12 (b) (6). Plaintiff's reply defeated all defenses' answers, and it appeared as though Plaintiff would prevail with being granted an Amended Motion For Summary Judgment that was filed with the initial pleadings.

On October 13, 2015, the Honorable Tanya A. Gee signed the defenses' Proposed Order For Dismissal.

FACTS

This case is as a matter of law. If Arguments 1, 2, & 3 in this Appeal reflected Plaintiff's reply to Defendant's Answer, the Trial Court would have been directed to Plaintiff's Amended Motion For Summary Judgment. All the supporting facts in this case are filed in Exhibits: A, B, D, E, & F pointed to in the Amended Motion For Summary Judgment.

ARGUMENTS

- I. Because Respondent could have found sufficient evidence to support a claim upon which relief could be granted in the Amended Motion For Summary Judgment, the Trial Court erred by adopting the defense's Proposed Order For Dismissal. S.C.R.C.P. 8 (a) (1) instructs that pleadings should be written as "short and plain statement of the grounds . . .," eluding that material facts could be supplied in other areas of the complaint, such as in this case, the Amended Motion For Summary Judgment, which was filed with the initial pleadings.
- II. Because Respondent failed to acknowledge Tennessee V. Lane, which held that state governments may be sued for violating Title II of the Americans with Disabilities Act as it applies to claims involving the fundamental right of access, and because of failure to acknowledge 42 U.S.C. § 2000 d-7 which waives State's immunities, and because of failure to acknowledge S.C. R.C.P. 17 (a) which is quoted, "benefit of another shall be brought in the name of the state," which does not call for dismissal for improper party, the Trial Court erred by adopting defense's Proposed Order For Dismissal.

- III. Because Respondent failed to give federal statute 42 U.S.C. § 2000 d-7 precedence over state tort laws, the Trial Court erred by adopting defense's Proposed Order For Dismissal. 42 U.S.C. § 2000 d-7 is an unambiguous waiver of all state immunities for claimants who are recipients of federal aid. Had any evidence in the Amended Motion For Summary Judgment been upheld, Plaintiff would have prevailed, being that eleventh amendment immunity is waived also.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,



December 11, 2015

Orlando I. Brown
440 Rimer Pond Road
Blythewood, South Carolina 29016
(803) 638-9905
Irabrown81@gmail.com
Pro Se

State of South Carolina

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In The Court of Appeals

County of Richland

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Orlando Ira Brown,

)

CA No. 2015-002367

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Plaintiff,

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DEC 11 2015

Vs.

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Proof of Service

SC Court of Appeals

State of South Carolina,

)

Defendant.

)

The undersigned hereby certifies that on December 11, 2015, a copy of the foregoing Plaintiff, Orland Ira Brown's Initial Brief was hand delivered to opposing counsel to the address as follows:

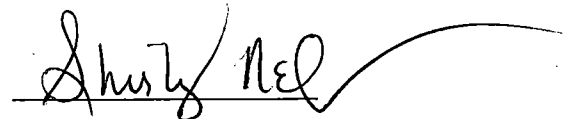
Richard Marsh III

1303 Blanding Street

Columbia, South Carolina 29201

Dec 11, 2015

dated



Shirley Nelson

440 Rimer Pond Road

Blythewood, South Carolina 29016

(803) 477-0098