THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
MAR 31 2016
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Robert Hood, Circuit Court Judge

Case No. 2014-CP-40-2209

James Chaffin and Marietta Chaffin, ... Appellants,

v.

Richland County Sheriff's Department, Deputy Brian Metz,
Investigator Roy Livingston, Tallie and Devra Lackey,
individually and as the Parents to the minor M.G., ... Respondents.

INITIAL BRIEF OF RESPONDENTS RICHLAND COUNTY SHERIFF'S DEPARTMENT AND BRIAN METZ

Andrew F. Lindemann
Robert D. Garfield
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondents Richland County Sheriff's Department and Brian Metz

TABLE OF CONTENTS

Table of Authorities ii

Statement of the Case 1

Arguments 3

I. Conversion of Rule 12(b)(6) Motions 4

II. Recusal of Trial Judge 5

III. No Factual Disputes Precluded Dismissal of Certain Claims 7

Conclusion 9

TABLE OF AUTHORITIES

Cases

Ellie, Inc. v. Miccichi,
358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004).

Fields v. Melrose Limited Partnership,
312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993).

Glasscock, Inc. v. United States Fidelity & Guaranty Co.,
348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

I'On v. Town of Mt. Pleasant,
338 S.C. 406, 526 S.E.2d 716 (2000).

Parker v. Shecut,
340 S.C. 460, 531 S.E.2d 546 (Ct. App. 2000).

Parker v. Shecut,
349 S.C. 226, 562 S.E.2d 620 (2002).

Roper v. Dynamique Concepts, Inc.,
316 S.C. 131, 447 S.E.2d 218 (Ct. App. 1994).

Statutes and Rules

S.C. Code Ann. § 15-78-70(a).

S.C. Const., art 1, § 10.

Rule 12(b)(6), SCRCP.

Rule 501, SCACR.

STATEMENT OF THE CASE

This is an appeal from an order granting a Rule 12(b)(6) motion to dismiss in favor of the Respondents Richland County Sheriff's Department ("RCSD") and Deputy Sheriff Brian Metz.[1] The Appellants James Chaffin and Marietta Chaffin brought this civil action on April 14, 2014, as a result of the James' arrest on March 9, 2007 on the charge of Criminal Sexual Conduct with a Minor, second degree. The Appellants have sued not only the Richland County defendants but also the Respondents Tallie and Devra Lackey, individually and as parents of the minor child.

The Appellants' Complaint includes nine counts including causes of action for false arrest/false imprisonment, assault and battery, and a violation of Article 1, § 10 of the South Carolina Constitution directed at the Richland County defendants. The Respondents RCSD and Metz filed a Rule 12(b)(6) motion to dismiss at the same time that they filed an Answer. The other Respondents also filed a Rule 12(b)(6) motion to dismiss.

Those motions were heard by Circuit Court Judge Robert E. Hood on July 21, 2014. Judge Hood thereafter filed two separate orders, both of which have been appealed. The order filed September 8, 2014, addresses solely the Lackeys'

[1] The Appellants have also sued Investigator Roy Livingston who has never been served nor made an appearance.

motion to dismiss. The order filed September 9, 2014 addresses solely the Richland County defendants' motion to dismiss. In that latter order, Judge Hood granted the motion to dismiss which includes the following rulings: (1) dismissal of the Respondent Brian Metz as a party-defendant in accordance with Section 15-78-70(a) of the South Carolina Tort Claims Act; (2) substitution of Leon Lott, in his official capacity as Richland County Sheriff, for the Richland County Sheriff's Department; (3) dismissal of the Appellants' cause of action for a violation of Article 1, § 10 of the South Carolina Constitution; (4) dismissal of the Appellants' false arrest/false imprisonment and assault and battery causes of action as barred by the applicable statute of limitations; and (5) dismissal the Appellants' prayer for punitive damages against the Richland County defendants. (Order). (R. ___).[2]

The Appellants filed a motion to reconsider which included no specific grounds for relief. (R. ___). That motion was denied by Judge Hood by a form order filed July 20, 2015. This appeal followed.

[2] The Order filed September 9, 2014 does not result in the dismissal of all claims against Sheriff Lott, who has been substituted as the party-defendant for the Richland County Sheriff's Department.

ARGUMENTS

The Appellants are appealing from the order issued by Circuit Court Judge Robert E. Hood that (1) dismissed the Respondent Brian Metz as a party-defendant in accordance with Section 15-78-70(a) of the South Carolina Tort Claims Act; (2) substituted Leon Lott, in his official capacity as Richland County Sheriff, for the Richland County Sheriff's Department; (3) dismissed the Appellants' cause of action for a violation of Article 1, § 10 of the South Carolina Constitution; (4) dismissed the Appellants' false arrest/false imprisonment and assault and battery causes of action as barred by the applicable statute of limitations; and (5) dismissed the Appellants' prayer for punitive damages against the Richland County defendants. (Order). (R. ___).

The Appellants do not specifically argue on appeal that any of those five rulings were in error. Instead, the Appellants contend that Judge Hood improperly converted a Rule 12(b)(6) motion to dismiss into a motion for summary judgment, that Judge Hood failed to recuse himself, and that Judge Hood failed to recognize that there were disputed issues of fact that precluded summary judgment. None of those exceptions have any merit or warrant the reversal of Judge Hood's order adjudicating the Richland County defendants' motion.

I. Conversion of Rule 12(b)(6) Motions

The Appellants contend that Judge Hood converted the Respondents' Rule 12(b)(6) motions into motions for summary judgment without providing sufficient notice to the Appellants or an opportunity to file counter affidavits. That did not occur. The transcript from the July 21, 2014 motion hearing does not reflect that the Respondents ever made a request to convert the Rule 12(b)(6) motions into motions for summary judgment. Nor is there any indication that Judge Hood made such a conversion *sua sponte*. Further, and most importantly, there is no indication that Judge Hood accepted or relied on any evidence outside the pleadings.

In their opening brief, the Appellants include no cite to the hearing transcript to support their contention that the Rule 12(b)(6) motions were converted into motions for summary judgment. Likewise, they cite to no specific evidence that was presented to or considered by Judge Hood that falls outside the allegations of the Complaint. The order filed September 9, 2014, includes a section entitled "Plaintiffs' Allegations," and each of the facts stated therein include citations to the Appellants' Complaint and to no other documents or evidence.

Moreover, the record does not include any objection made by the Appellants that Judge Hood was improperly converting the Rule 12(b)(6) motions into motions for summary judgment or that he was presented or considering evidence outside the pleadings. The Supreme Court has repeatedly stressed "the long-

established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments." *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "Without an initial ruling by the trial court, a reviewing court simply would not be able to evaluate whether the trial court committed error." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004). (Emphasis in original). Because this issue was not raised or decided in the lower court, it cannot be raised for the first time on appeal.

In sum, the Appellants' argument that Judge Hood improperly converted the Rule 12(b)(6) motions into motions for summary judgment should be rejected for both procedural and substantive reasons. The issue is quite simply not preserved for appellate review. Moreover, on the merits, there is no indication in this record that Judge Hood converted the Rule 12(b)(6) motions into motions for summary judgment or that he considered evidence outside of the pleadings.

II. Recusal of Trial Judge

As an additional issue for appeal, the Appellants argue that Judge Hood should have recused himself from hearing this case because of an alleged working relationship between the judge and Rena Covington, who is identified as James Chaffin's mother and Devra Lackey's sister.

Canon 3(E)(1)(a) of the Code of Judicial Conduct, Rule 501, SCACR, requires a judge to recuse himself if he "has a personal bias or prejudice concerning a party." Rule 501, SCACR. "The alleged bias must stem from an extrajudicial source and result in a decision based on information other than what the judge learned from his participation in the case." *Roper v. Dynamique Concepts, Inc.*, 316 S.C. 131, 447 S.E.2d 218, 223 (Ct. App. 1994). "It is not enough for a party to simply allege bias; a party seeking disqualification of a judge must show some evidence of bias or prejudice." *Id.* In the case at bar, the Appellants have presented no evidence supporting their claims of bias, and certainly there is no such evidence of bias or prejudice in the lower court record.

More importantly, this recusal issue was never raised to or ruled upon in the lower court. The Appellants did not make a request for Judge Hood to recuse himself nor did Judge Hood address any recusal motion. This recusal issue is raised for the first time on appeal. It is well settled, however, that a party that fails to move for recusal does not preserve that issue for appellate review. *See*, *Parker v. Shecut*, 340 S.C. 460, 531 S.E.2d 546, 566 (Ct. App. 2000), *rev'd on other grounds*, 349 S.C. 226, 562 S.E.2d 620 (2002).

III. No Factual Disputes Precluded Dismissal of Certain Claims

As a final issue for appeal, the Appellants argue in a general and conclusory fashion that there exist "factual disputes to be decided by a jury." The Appellant fail, however, to specify any "factual disputes" that preclude any of the rulings that were made by Judge Hood in his order filed September 9, 2014. The Appellants' conclusory argument should be rejected. For, it is well settled that "an issue is deemed abandoned on appeal, and therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993). *See also*, *Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

In short, the Appellants cannot point to any "factual disputes" that preclude the rulings made by Judge Hood relative to the Richland County parties. The dismissal of the state constitutional claim was predicated upon an issue of law, as was the dismissal of the prayer for punitive damages. The dismissal of the Respondent Metz under Section 15-78-70(a) was based on the Appellants' allegations in their Complaint, where they specifically pled: "At all times material to the allegations contained herein, all of the Defendants Metz and Livingston were acting within the course and scope of their employment and/or agency as police officers employed by Defendant RCSD." *See*, Complaint, ¶ 9. Finally, the

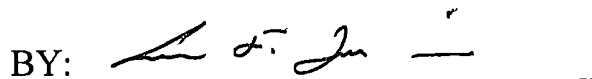
application of the statute of limitations to dismiss two of the causes of action was based exclusively on the factual allegations contained in the Complaint indicating that the arrest of James Chaffin occurred on March 9, 2007. *See*, Complaint, ¶¶ 16-17, 65. In short, there are no "factual disputes" that preclude or require the reversal of any of Judge Hood's rulings in his order filed September 9, 2014.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents respectfully request that this Court affirm the dismissal order entered by Circuit Court Judge Robert E. Hood filed September 9, 2014.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondents Richland County Sheriff's Department and Brian Metz

Columbia, South Carolina

March 28, 2016