

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2013-CP-32-3371

RECEIVED
JUL 05 2016
SC Court of Appeals

Jo Pradubsri, Appellant,

v.

The Lexington County Sheriff's Department, Respondent.

BRIEF OF RESPONDENT

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

Counsel for Respondent

TABLE OF CONTENTS

Table of Authorities	ii
Statement of the Case	1
Arguments	4
Conclusion	8

TABLE OF AUTHORITIES

Cases

Christensen v. NCH Corp.,
956 P.2d 468 (Alaska 1998).

Colgrove v. Battin,
413 U.S. 149 (1973).

Cuyler v. Allstate Ins. Co.,
284 Ga. App. 409, 643 S.E.2d 783 (2007).

Farmer v. Florence County Sheriff's Office,
401 S.C. 606, 738 S.E.2d 473 (2013).

Foret v. Wilson,
463 So.2d 53 (La. App. 1985).

Hickman v. Hickman,
301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990).

In the Matter of Shirley J.C.,
172 Wisc.2d 371, 493 N.W.2d 382 (1992).

Martin v. Commercial Metals Co.,
138 S.W.3d 619 (Tex. App. 2004).

Pelfrey v. Bank of Greer,
270 S.C. 691, 244 S.E.2d 315 (1978).

State v. Pradubsri,
403 S.C. 270, 743 S.E.2d 98 (Ct. App. 2013).

Strother v. Lexington County Recreation Commission,
332 S.C. 54, 504 S.E.2d 117 (1998).

Tschantz v. Ferguson,
97 Ohio App. 3d 693 (1994).

Statutes and Rules

Rule 38(a), SCRCP.

Rule 56, SCRCP.

Rule 59(e), SCRCP.

STATEMENT OF THE CASE

On November 9, 2008, the Appellant Jo Pradubsri was arrested and charged with trafficking crack cocaine, possession with intent to distribute crack cocaine within proximity to a school, and unlawful carrying of a firearm following a traffic stop. At the time of the Appellant's arrest, a sum of money totaling \$728.00 was located on the Appellant's person and was seized as evidence. These funds have been held by the Respondent Lexington County Sheriff's Department in an account maintained for holding such seized funds. After initially being tried and convicted on all counts, the Appellant's convictions were eventually reversed and remanded. *See State v. Pradubsri*, 403 S.C. 270, 743 S.E.2d 98 (Ct. App. 2013), *reh'g denied* (June 20, 2013), *cert. denied* (June 25, 2014). Since that time, the Appellant has been retried and convicted of the offenses for which he was charged stemming from his November 9, 2008, arrest.

The Appellant filed this action on or about September 19, 2013. In his Complaint, he asserted several causes of action against the Lexington County Sheriff's Department regarding the seizure of funds following his arrest. Specifically, the Appellant alleged that money was seized from him without the initiation of the required forfeiture proceedings. The Sheriff's Department conceded that it has been in possession of the funds that were seized from the

Appellant's person at the time of his arrest but denied that the seizure of those funds was unlawful.¹ The Sheriff's Department maintained that it has fulfilled its statutory duty of taking reasonable steps to maintain the seized property and that it lacked any authority to institute forfeiture proceedings relative to the seized funds.

The Sheriff's Department filed a motion for summary judgment raising several grounds. A hearing was held on June 16, 2015, before Circuit Court Judge G. Thomas Cooper, Jr. By Order filed August 3, 2015, Judge Cooper granted summary judgment in favor of the Sheriff's Department. He found "there is no dispute of facts and the inferences to be drawn from the evidence are susceptible to only one reasonable interpretation." (Order, p. 5). He further ruled as follows:

In light of the Supreme Court's decision in *Farmer*, it is clear that the Defendant Lexington County Sheriff's Department had no ability, much less responsibility, to initiate forfeiture proceeding regarding the \$728.00 that was seized from the Plaintiff at the time of his arrest. If a duty to initiate forfeiture proceedings was breached in this case, it was not a duty that was owed by the Defendant.

(Order, p. 5).

¹ On September 8, 2014, an Order was issued by the Circuit Court allowing the Lexington County Sheriff's Department to return the seized money to the Appellant. However, the Appellant has refused to accept the money. As a result, the Sheriff's Department requested an Order allowing it to deposit the seized funds, plus accrued interest, with the Clerk of Court pending a resolution of this matter. An Order to that effect was entered on May 18, 2015.

The Appellant subsequently filed a Rule 59(e) motion to alter or amend, which was denied by an Order filed on September 11, 2015. The Appellant thereafter filed this appeal.

ARGUMENTS

The Appellant Jo Pradubsri has not appealed the merits of the order granting summary judgment issued by Circuit Court Judge G. Thomas Cooper, Jr. Instead, as his sole issue on appeal, the Appellant argues that Judge Cooper denied his right to a jury trial by granting summary judgment in favor of the Respondent Lexington County Sheriff's Department. In disposing of this issue, which was presented for the first time in a Rule 59(e) motion and thus was untimely,² Judge Cooper correctly recognized that "[a]lthough Rule 38(a), SCRPC, does provide for a trial by jury in certain cases, Rule 56, SCRPC, provides for summary judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." (Order). Judge Cooper further ruled:

In essence, Rule 56 allows for an efficient disposition of a case when there is no need for it to go to a jury. In this case, the Plaintiff's right to a jury trial has not been violated by the granting of summary judgment. To hold otherwise would mean that whenever a jury demand is made, summary judgment is no longer an option.

(Order).

² It is well settled that a Rule 59(e) motion may not be used to present a new issue or new evidence to the court that could have been presented prior to entry of judgment. In *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990), this Court held: "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." 392 S.E.2d at 482.

On appeal, the Appellants fails to show that the grant of summary judgment violates his right to a jury trial. He cites no authority in support of his position. Moreover, the Appellant fails to recognize that the granting of summary judgment does not represent the denial of a litigant's right to a jury trial. "Summary judgment is appropriate where it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law." *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117, 121 (1998). Thus, where the moving party is entitled to judgment as a matter of law, the non-moving party has not been denied its right to a jury trial. Accordingly, in this case, the Appellant was not deprived of his right to a jury trial.

There only authority on this issue from the South Carolina appellate courts is an unpublished opinion. In fact, *Waterford Place Homeowners Association of Lexington, Inc. v. Barnes*, No. 2006-UP-289, 2006 WL 7286101 (S.C. Ct. App. June 21, 2006), was cited by Judge Cooper as "persuasive authority" even though he recognized that unpublished decisions are not precedential. In that case, this Court rejected the plaintiff's argument that the trial court's grant of summary judgment against him violated his constitutional right to have a trial by jury.

Additionally, authority from other jurisdictions fully supports Judge Cooper's ruling on this issue. For example, in *Martin v. Commercial Metals Co.*, 138 S.W.3d 619 (Tex. App. 2004), the Texas Court of Appeals ruled as follows:

The summary judgment process provides a method of terminating a case when only questions of law are involved and there are no genuine issues of fact. The process will not deprive litigants of a jury trial where material questions of fact exist. However, if there is nothing to submit to a jury, then the grant of summary judgment cannot violate a party's constitutional right to a jury trial.

138 S.W.3d at 626-627. (Citation omitted). Similarly, in *Cuyler v. Allstate Ins. Co.*, 284 Ga. App. 409, 643 S.E.2d 783 (2007), the Georgia Court of Appeals explained that "when a trial court determines that summary judgment is appropriate, it is in effect a determination that a party is not entitled to his or her right to a jury trial." 643 S.E.2d at 785. The Court concluded that "the trial court did not violate [plaintiff's] right to a jury trial by granting summary judgment to [defendant] in this matter." *Id.* See also, *Tschantz v. Ferguson*, 97 Ohio App. 3d 693 (1994) ("[a]n individual's right to a jury trial is not abridged by the proper granting of a motion for summary judgment"); *In the Matter of Shirley J.C.*, 172 Wisc.2d 371, 493 N.W.2d 382, 385 (1992) ("right to a jury trial does not ... preclude the use of summary judgment"); *Christensen v. NCH Corp.*, 956 P.2d 468 (Alaska 1998) (holding that a proper Rule 56 summary judgment dismissing claim is not a violation of the right to jury trial).

In his arguments, the Appellant in the present case further claims that the granting of summary judgment violated his Seventh Amendment right to a jury trial. However, his position is in error on an additional basis. It is well settled that

the Seventh Amendment is not applicable to a state court action. In *Pelfrey v. Bank of Greer*, 270 S.C. 691, 244 S.E.2d 315 (1978), the South Carolina Supreme Court confirmed that the Seventh Amendment "has never been held applicable to the States." 244 S.E. at 316. See also, *Colgrove v. Battin*, 413 U.S. 149, 151, n.4 (1973) ("the Seventh Amendment is one of the few remaining provisions in the Bill of Rights which has not been held to be applicable to the States"). In short, the Appellant does not enjoy a Seventh Amendment right to a jury trial in a state court proceeding. See also, *Foret v. Wilson*, 463 So.2d 53 (La. App. 1985).

In sum, Judge Cooper ruled as a matter of law that the Sheriff's Department was entitled to summary judgment. Relying on the Supreme Court case of *Farmer v. Florence County Sheriff's Office*, 401 S.C. 606, 738 S.E.2d 473 (2013), Judge Cooper determined that the Department "had no ability, much less responsibility, to initiate forfeiture proceeding regarding the \$728.00 that was seized from the Plaintiff at the time of his arrest." (Order, p. 5). The Appellant does not challenge that legal rulings on appeal. Instead, the Appellant maintains only that the grant of summary judgment deprived him of his constitutional right to a jury trial. As demonstrated above, the Appellant was not deprived of his right to a jury trial, and as a result, the summary judgment in favor of the Sheriff's Department should be affirmed.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Lexington County Sheriff's Department respectfully requests that this Court affirm the order of Circuit Court G. Thomas Cooper granting summary judgment and dismissing this action with prejudice.

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 Respondent
Lexington County Sheriff's Department*

Columbia, South Carolina

June 30, 2016

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CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent, does hereby certify that service of the **Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter was made upon the *pro se* Appellant by placing copies in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 30th day of June 2016:

Jo Pradubsri, #181097
Lee Correctional Institution
F5 - A252
990 Wisacky Highway
Bishopville, South Carolina 29010



DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Daniel C. Plyler
Joel S. Hughes
David A. DeMasters
Steven R. Spreeuwers

June 30, 2016

*Also Admitted In North Carolina
†Certified Mediator

Of Counsel
Kenneth P. Woodington

Writer's Email: alindemann@dml-law.com

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Jo Pradubsri v. The Lexington County Sheriff's Department
Appellate Case Number: 2015-002320
Civil Action Number: 2013-CP-32-3371
Claim Number: 93493
Our File Number: 103.9162

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Dear Ms. Kitchings:

Please find enclosed for filing the originals and one copy each of the **Initial Brief of Respondent** and **Respondent's Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope.

By copy of this letter, I am serving copies on the *pro se* Appellant. Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



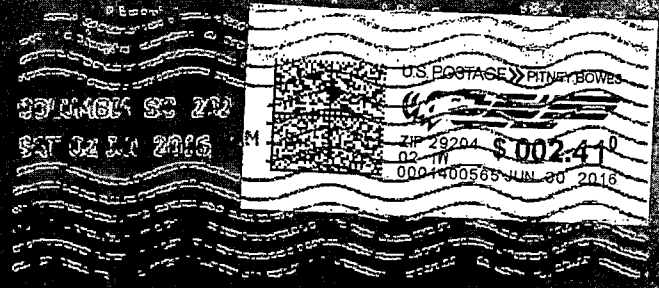
Andrew F. Lindemann

AFL/jmb
Enclosure

The Honorable Jenny Abbott Kitchings
June 30, 2016
Page Two

cc: (w/ Enclosures)

Jo Pradubsri, #181097
Lee Correctional Institution
F5 - A252
990 Wisacky Highway
Bishopville, South Carolina 29010



Davidson & Lindemann, P.A.
 Post Office Box 8568
 Columbia, South Carolina 29202-8568

The Honorable Jenny Abbott Kitchings
 Clerk of Court
 South Carolina Court of Appeals
 Post Office Box 11629
 Columbia, South Carolina 29211

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