THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Thomas L. Hughston, Jr., Circuit Court Judge

Appellate Case No. 2016-000872

Scott N. Carr,

Respondent,

v.

Aaliyah Smith, Appellant.

REPLY BRIEF OF APPELLANT

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Spartanburg, South Carolina

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I. Argument in Reply

a. The lower court erred in failing to permit Appellant to use the pleadings in the case and Respondent makes no meaningful argument to the contrary.

"It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action."[1] So well settled is this law that Respondent did not (and could not) make any attempt at arguing to the contrary in its brief.

Instead, Respondent attempted to insert an abuse of discretion standard into this analysis by alleging that the lower court made its decision under Rule 403. This is not only false but it is not South Carolina law.

First, the lower court did not base its decision on Rule 403. Indeed, the lower court never even mentioned Rule 403 or conducted any type of balancing analysis. Instead, the lower court based its exclusion of the pleadings on the lower court's belief that the answer was not "somethin' that's introduced in evidence durin' the trial" (TR., p. 33, lines 13-19); that the information in the answer was not relevant (TR. p. 45, line 24 to p. 46, line 20); and because the lower court did not believe requiring conclusiveness of pleadings was a "good way to operate." (TR. p. 148, lines 13-16). The lower court's ruling that conclusiveness of pleadings was not "a good way to operate" came in response to Appellant's citation and direct quotation from Postal v. Mann and Lucht v.

[1]Postal v. Mann, 418 S.E.2d 322, 323 (S.C. App. 1992) (citing Elrod v. All, 243 S.C. 425, 134 S.E.2d 410 (1964)).

Youngblood. (TR., p. 145-148). Specifically, the lower court ruled: "to try to say that because something was stated in an initial pleading or answer should be conclusive and used against the party at the time a trial I don't think is good, is a good way to operate . . . . (TR. p. 148, lines 13-16). Rule 403 was never mentioned by the lower court or by Respondent.

This is likely because no South Carolina Appellate Court has ever upheld the use of Rule 403 to exclude pleadings. Given the requirements of Rule 403, one questions how excluding pleadings under this rule could ever be done. The rule requires that the probative value of evidence be *substantially* outweighed by the prejudicial effect.[2] What could be more probative evidence than the pleadings in an action? Accordingly, the prejudice to *substantially* outweigh this probative value would need to be monumental. No such circumstances existed in this case and certainly no analysis along these lines was ever done by the lower court. For these reasons, the lower court erred in excluding the pleadings in this case on the grounds of relevance and the lower court's belief that a conclusive pleading is not "a good way to operate."

b. Respondent's untruthful testimony should have been admitted to show his lack of credibility

Respondent's brief attempts to confuse the issue by discussing Rule 609. The argument Appellant is making is that the Respondent's untruthfulness under oath at his deposition and then again during the trial was admissible under Rule 608 given the myriad credibility issues in the case. These credibility issues include the dispute over the extent of property damage to the vehicles, whether there was any repair of the physical appearance of the vehicles after the wreck but before the pictures were taken, and

[2] S.C.R.Civ.P. 403 (emphasis added).

whether or not the collision impact was significant enough to cause injury. Respondent's lack of truthfulness was an important component of the case that the jury was never told about.

Even assuming the Court did not abuse its discretion by excluding the untruthful testimony on the foregoing issues, certainly it was an abuse of discretion to exclude this untruthfulness once Respondent put his credibility into the case as an issue by testifying about his alleged "honorable discharge" and military record. When this issue was raised again at that time before the lower court, there was a summary ruling against Appellant with no explanation. (TR., p. 67, lines 6-23). The only argument Respondent had made against the introduction of the untruthfulness was that it was not relevant and was prejudicial because it was more than ten years old. (TR. p. 47, line 18 to p. 51, line 11). This relevance issue and any accompanying evidentiary support was removed once Respondent inserted the military history.

"An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support."[3] In this case, the only purported factual basis for excluding the untruthfulness initially was that it was not relevant. Once Respondent inserted the issue into relevance by attempting to boost his own credibility with his military career then this factual basis was eliminated. Accordingly, because there was no factual basis for the Court's exclusion of the untruthfulness, the lower court abused its discretion and Appellant is entitled to a new trial.

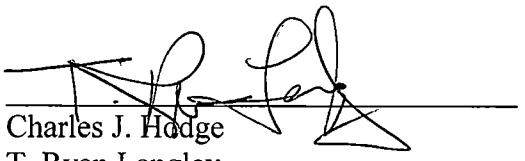
[3] Conner v. City of Forest Acres, 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005).

II. CONCLUSION

The lower court erred by excluding the pleadings and preventing cross examination on Respondent's untruthfulness. These errors were prejudicial given the issues in the case. Based on the foregoing, Appellant respectfully requests that this Court grant Appellant a new trial.

Respectfully Submitted by:

HODGE & LANGLEY LAW FIRM



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