

6

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

Lafayette Webber,

PLAINTIFF,

v.

Monique Beecher Brown, Jasper County
Attorney, and Sheriff of Jasper County,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-27-645

**Order Granting Summary Judgment to
Defendants Jasper County Attorney and
Sheriff of Jasper County**

RECEIVED

SEP 28 2016

SC Court of Appeals

✓

PROCEDURAL BACKGROUND

This matter came before me for hearing on July 27, 2016, on the Defendants, Office of the Jasper County Attorney and Sheriff of Jasper County's ("Defendants") motion for summary judgment. Present at the hearing were O. Edworth Liipfert, III, attorney for the Defendants, and the Plaintiff *Pro Se*. The Co-Defendant Monique Beecher Brown is pro-se and did not appear at the hearing.

This motion was originally heard before Judge Mullen on September 25, 2014. At that time, the Plaintiff was represented by attorney Gary Coggin. At that hearing, Plaintiff's counsel consented to dismissing the Defendant Sheriff of Jasper County ("Sheriff"). The motion proceeded on the Defendant Jasper County Attorney's ("Attorney's") motion for summary judgment. Judge Mullen stated on the record at the hearing that she was granting the Defendant Jasper County Attorney's motion for summary judgment. However, before the order granting the motion was filed, Judge Mullen recused herself, and the written order was never signed. This case was then referred to Judge Dukes as a Special Referee by order

of Court dated September 4, 2015.

At the start of the hearing, the Plaintiff presented a motion to continue the case that he filed in Jasper County on July 25, 2016, two days before the hearing. This motion was heard as well.

LEGAL STANDARD

“In a negligence action, the determination of whether a party has a duty to exercise reasonable care for the benefit of another is a question of law for the court.” *Creighton v. Coligny Plaza Limited Partnership*, 334 S.C. 96, 114 512 S.E.2d 510, 519 (Ct.App. 1999). “The Court must determine, as a matter of law, whether the law recognizes a particular duty.” *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003) (*citing* *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999)). “An affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.” *Id.* (*citing* *Carson v. Adgar*, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1997)).

“Under Rule 58 of the South Carolina Rules of Civil Procedure, ‘[e]very judgment shall be set forth in a separate document[,] [and such] judgment is effective only when so set forth and entered into the record. The South Carolina Supreme Court has held that under Rule 58 ‘the written order is the trial judge's final order’ and until entry of the written order the judge is free to change his mind.” *Brailsford v. Brailsford*, 380 S.C. 443, 451-452, 669 S.E.2d 342, 346 (Ct.Ap.2008) (*citing* *Ford v. State Ethics Comm'n*, 344 S.C. 642, 646, 545 S.E.2d 821, 823 (2001); *First Union Nat'l Bank v. Hitman, Inc.*, 306 S.C. 327, 411 S.E.2d 681

(Ct.App.1991), aff'd, 308 S.C. 421, 418 S.E.2d 545 (1992)). "An oral order of the court is not final and binding until reduced to writing, signed by the judge, and delivered for recordation." Id. at 452, 346 (*citing Case v. Case*, 243 S.C. 447, 134 S.E.2d 394 (1964)).

FACTS

Having reviewed all briefs, the evidence submitted, and heard the arguments of counsel for the Defendant and the Pro Se Plaintiff, and taking all evidence presented in the light most favorable to the non-moving party, I ~~make~~ ^{find} the following Findings of Fact: ^{under protest}

Prior to November 2009, the Plaintiff owned adjacent parcels of property in Jasper county on which he kept a large collection automobiles and parts.¹ In November 2009, the Co-Defendant Monique Brown purchased one of the two parcels, lot 27, at a tax sale.² After the tax sale, the Plaintiff noticed many of his cars and car parts were gone, and he determined the majority of the missing vehicles had been sold by the Co-Defendant Monique Brown.³ The purchasers of the vehicles and parts contend that the Co-Defendant Brown held out to them that she owned the properties and the vehicles on the properties belonged to her.⁴

Defendant Brown contends that she was told by the Jasper County Attorney that she owned the vehicles and anything else on the property she had acquired, and, as such, could dispose of the same in any manner she wished.⁵ The Jasper County Attorney denies making these statements, but they are assumed to have been made for the purposes of this motion. The alleged negligent acts by the Jasper County Attorney were: failing to review with

¹ Third Amended Complaint, P.7.

² Third Amended Complaint, P.8

³ Third Amended Complaint, P.9-10.

⁴ Third Amended Complaint, P.11

⁵ Third Amended Complaint, P.12.

Defendant Brown certain statutory procedures required for the removal of the vehicles; failing to advise Defendant Brown that she should familiarize herself with certain statutes; failing to advise Defendant Brown to see a private civil attorney about the legality of removing the vehicles; and failing to familiarize themselves with certain code sections before giving counsel to Defendant Brown.⁶ Mr. Webber has never spoken to the Jasper County Attorney's Office about this case. He was not present when Mrs. Brown claims she spoke to them.⁷

The Complaint alleges that the Defendant Brown also contended in her deposition that the Jasper County Sheriff told her she owned the vehicles⁸. The Sheriff is also sued for giving Defendant Brown bad legal advice or failing to give her good legal advice. However, in her deposition, Defendant Brown did not testify that the Sheriff told her she owned the vehicles. She testified, in response to being asked what Sheriff Jenkins told her, "It's civil. They don't get—get into it with that. They can come out when we call them."⁹

The Jasper County Sheriff's office was called to the scene on five separate occasions, January 30, 2011, January 31, 2011, March 5, 2011, May 21, and June 17, 2011, by either Mr. Webber or Mrs. Brown.¹⁰ Mr. Webber does not believe Ms. Brown is an honest woman, he does not trust her, and he believes she lied to the police throughout this dispute.¹¹

On June 5, 2013, before the Jasper County Defendants were added to the case, Ms. Brown was deposed. She testified that she spoke to the Jasper County attorney on three

⁶ Third Amended Complaint, P.24 & 28.

⁷ Dep. of L. Webber, P.126, l.12-21.

⁸ Complaint, Para. 12.

⁹ Dep. of M. Brown, P.41, l.7-17.

¹⁰ Dep. of L. Webber, P.72, l.1-P.126, l.11 and Exhibits 17-22 to Dep. of L. Webber.

¹¹ Dep. of L. Webber, P.126, l.12-P.127, l.9.

occasions about the junk cars on her property, and on each occasion, she was told that she owned the lot and could dispose of the vehicles.¹²

On November 1, 2011, Mr. Webber filed his initial Complaint in this action against Marquia Jones Bean and Linda Mouzon, who is the Jasper County Tax Assessor. On November 10, 2011, Mr. Webber amended his Complaint to change the name of the Co-Defendant from Marquia Jones Bean to Monique Beecher Brown. On February 27, 2012, the Plaintiff filed a Second Amended Complaint dismissing Linda Mouzon from the Complaint and removing allegations about the real property. On August 28, 2013, Mr. Webber filed the Third Amended Complaint, suing the Jasper County Attorney for the first time.

DISCUSSION

A. Plaintiff's motion to continue

The Plaintiff argued he needed a continuance because he was talking to an attorney that he may retain to assist him with the case, and more discovery was necessary. He also argued that he was not comfortable with me hearing the case because I had ruled against him in a tax sale case. Counsel for the Jasper County Defendants argued that the case was filed in 2011, so the Plaintiff had sufficient time to conduct discovery in the case. Jasper's counsel also argued that the initial hearing on the motion took place on September 25, 2014, and Plaintiff terminated his counsel shortly after the hearing. He had nearly two years to locate substitute counsel but failed to do so.

Having carefully considered all arguments of counsel, I find that because nearly five

¹² Dep. of M. Brown, P.26, l.20-P.40, l.23.

years has passed since this case was filed, the Plaintiff had sufficient time to conduct discovery before the hearing. Additionally, considering the motion was originally heard in September of 2014, I find that the Plaintiff had sufficient time to obtain new counsel and conduct discovery on the motion for summary judgment. I have no recollection of the tax sale hearing in which I ruled against the Plaintiff, and I find that this does not present sufficient grounds for recusal. Therefore, I respectfully deny the Plaintiff's motion to continue.

A. Sheriff of Jasper County's motion for summary judgment

As an initial matter, I find that previous counsel for the Plaintiff and counsel for the Defendant stipulated to dismissing Sheriff of Jasper County on the record at the initial summary judgment hearing on September 24, 2015.¹³ However, having heard the evidence on this issue, I also find that the Plaintiff has failed to produce any evidence to support the allegation in the Complaint that the Sheriff gave any advice to Defendant Brown. Defendant Brown's deposition testimony indicates that the Sheriff just told her it was a civil matter. Therefore, summary judgment as to Defendant Sheriff of Jasper County is appropriate at this time. Summary judgment would also be appropriate for the same reasons discussed below for Jasper County Attorney's office as alternate sustaining grounds.

B. Jasper County Attorney's Office's motion for summary judgment

Counsel for the Defendant Attorney presented several grounds on which it should be granted summary judgment: 1) South Carolina does not recognize a cause of action allowing a Plaintiff to sue another Defendant's attorney for giving bad legal advice to the Defendant,

¹³ Hearing Transcript, 9/25/14, P.10, l.8-13.

2) the claim is barred by the public duty rule, and 3) the Plaintiff failed to sue within the applicable statute of limitations. Each is addressed separately below.

1. Does Jasper County Attorney owe the Plaintiff a duty to the Plaintiff that will allow an action in negligence for giving the defendant bad legal advice to the Co-Defendant?

The Complaint asserts a cause of action against the Defendant for improperly advising the Co-Defendant Monique Brown about the laws regarding the ownership of personal property left on real property at a tax sale and about the laws regarding the sale of vehicles in South Carolina. The Defendant argues that the Plaintiff sued Jasper County Attorney for giving bad legal advice to the Co-Defendant Monique Brown, and this is a legal malpractice claim. The Defendant argues the Plaintiff cannot make a claim for legal malpractice against the Co-Defendant's attorney because there is not privity, as required by South Carolina law. The Defendant cites Rydde v. Morris for this position. See Rydde v. Morris, 381 S.C. 643; 675 S.E.2d 431 (2009). In Rydde v. Morris, an attorney failed to draft a will before a client's death, and a potential beneficiary under the non-existent will sued him for malpractice. The trial court granted the Defendant's motion to dismiss the Complaint for lack of privity. The Supreme Court affirmed, holding, "In sum, under the circumstances presented, we see no reason to depart from existing law which imposes a privity requirement as a condition to maintaining a legal malpractice claim in South Carolina." Id. at 650, 435. The Court re-iterated that in South Carolina, "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." Id. at 646-7, 433 (quoting Gaar v. N. Myrtle Beach Realty Co., Inc., 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986)). The Defendant

argues that, based upon Gaar and Rydde, even assuming that the Jasper County Attorney had a duty to correctly advise Ms. Brown on the law, and assuming that it failed to do so, Mr. Webber still does not have a claim against the Jasper County Attorney directly.

The Plaintiff argues that Jasper County Attorney's Office is part of a large conspiracy to take his property from him. However, the Complaint deals solely with the bad advice, and there is no claim alleging that Jasper County Attorney's Office was part of a conspiracy. That issue is not before me on the Defendant's motion.

Having carefully considered the arguments of counsel, I find that as a matter of law, the allegations asserted in the Complaint state a cause of action for legal malpractice. The allegations of "failing to review with Defendant Brown certain statutory procedures required for the removal of the vehicles; failing to advise Defendant Brown that she should familiarize herself with certain statutes; failing to advise Defendant Brown to see a private civil attorney about the legality of removing the vehicles; and failing to familiarize themselves with certain code sections before giving counsel to Defendant Brown" all assert that the Defendant gave Mrs. Brown bad legal advice. The Defendant is correct that in the instance of a claim for legal malpractice, South Carolina requires a showing of privity for the Plaintiff to maintain a claim. Therefore, I find that the Plaintiff's claims against the Defendant Jasper County attorney fail as a matter of law.

2. Does the public duty rule bar the Plaintiff's claim against Jasper County Attorney?

The Defendant also argues that the Plaintiff's claims are barred by the public duty rule. The Defendant argues that under South Carolina law, "public officials are not liable to individuals of the public for negligence in discharging their statutory obligations." Unlike

immunity under the Tort Claims Act, which is an affirmative defense, "the public duty rule is a negative defense which denies an element of the plaintiff's cause of action -- the existence of a duty of care to the individual plaintiff. The burden is on the plaintiff to show a duty of care was owed to him." Tanner v. Florence County Treasurer, 336 S.C. 552, 561, 521 S.E.2d 153, 157 (1999). "Ordinarily, under South Carolina's public duty doctrine, public officials are not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than [to] anyone individually." Id. The Defendant argues because it owes a duty to the public at large, the Co-Defendant Brown cannot reasonably rely on advice she receives from the Attorney for the County. The County attorney is charged with providing legal advice to the County for the benefit of all citizens of the County, and so no one citizen may reasonably rely on advice obtained from the County attorney regarding a dispute between two citizens of the county. The Defendant relies on the case of Morris v. Anderson County for this proposition. In Morris, an order was issued by the Anderson County probate court for the arrest of Rodney Bowman, who was mentally ill. Three weeks after the order was issued, Mr. Bowman had not been arrested, and a car he was driving collided with another vehicle, killing three of the other vehicle's occupants and injuring the fourth. The Plaintiffs sued Anderson County and the Anderson County Sheriff's Office for gross negligence for failing to apprehend Mr. Bowman prior to the collision. The Court of Appeals affirmed summary judgment for the Defendants because they did not owe any specific duty to the Plaintiffs to arrest Mr. Bowman. See Morris v. Anderson County, 349 S.C. 607, 564 S.E.2d 649 (2002).

The Plaintiff's argues that when the County attorney gave advice to the Co-

Defendant, it could foresee that this advice, if incorrect, could injure the Plaintiff. The County Attorney should not have given this advice, and should have instead sent the Co-Defendant to a private attorney.

After considering the positions of counsel, I find as additional sustaining grounds to grant summary judgment that the Co-Defendant Brown cannot reasonably rely on the advice of the Jasper County Attorney as a matter of law because of the public duty rule. Every rational citizen knows that the County does not employ lawyers for the benefit of representing its individual citizens, and the Co-Defendant Brown could not reasonably have suspected that the Jasper County Attorney could be her personal attorney in a property dispute with another citizen. Therefore, I find that the Plaintiff cannot maintain a cause of action against the Jasper County Attorney because the Co-Defendant had no right to rely on advice she received from the Jasper County Attorney as a matter of law. This claim is barred by the public duty rule.

3. Did the Plaintiff file this claim within the applicable statute of limitations?

The Defendant Attorney also asserts that the Plaintiff failed to file the claim within the applicable statute of limitations. As I have already determined that the Plaintiff's claim is barred because he lacks privity with the Jasper County Attorney as required under South Carolina law, and because the claim is barred pursuant to the public duty rule, I decline to decide the statute of limitations argument.

Therefore as discussed above, it is:

ORDERED that the Plaintiff's motion to continue the hearing is denied;

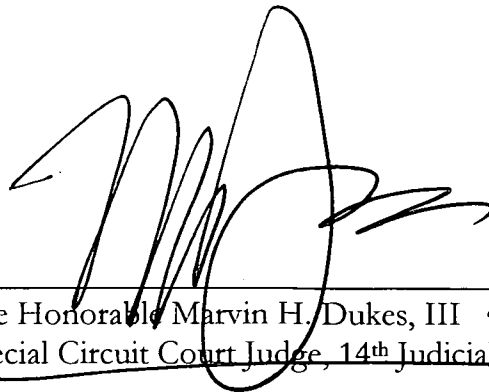
ORDERED that the Defendant Sheriff of Jasper County's motion for summary

judgment is GRANTED;

ORDERED that the Defendant Jasper County Attorney's motion for summary judgment is GRANTED;

ORDERED that the case remains pending against the Co-Defendant Monique Beecher Brown, and the rulings granting summary judgment as to Sheriff of Jasper County and Jasper County Attorney's Office in no way affects the Plaintiff's case against the Co-Defendant Monique Beecher Brown.

IT IS SO ORDERED.



The Honorable Marvin H. Dukes, III *Special Judge*
Special Circuit Court Judge, 14th Judicial Circuit

Beaufort, South Carolina

July 28, 2016