

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas
Eugene C. Griffith, Jr., Circuit Court Judge

Court of Appeals Case No. 2015-002090

RECEIVED
SEP 22 2016
SC Court of Appeals

William Crenshaw,Appellant

v.

Erskine College and David Norman, Respondents.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

The trial court judge erred by granting Erskine College a judgment notwithstanding the verdict, finding that Dr. William Crenshaw breached his contractual obligation to Erskine College, even though the jurors, by special verdict form, expressly found (1) Dr. Crenshaw did not breach his obligation under the agreement and (2) Erskine College did breach its obligation under the agreement.

I. Dr. Crenshaw properly preserved his appellate arguments before the trial court to be heard by the appellate court.

Dr. Crenshaw raised the issue he argues in his appellate brief to the trial court that JNOV was not appropriate so the issue is properly preserved for appellate review.

The state's issue preservation rules require that an issue be raised and ruled upon by the trial court before it can be heard by the appellate courts. *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (citing *Wilder Corp. v. Wilkie*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). "It is axiomatic that an issue cannot be raised for the first time on appeal." *Id.* "The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error." *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, ___ (2005).

Erskine College argues that Dr. Crenshaw failed to make the argument that the trial judge should not stray from the jury's findings by granting JNOV. This argument ignores that Dr. Crenshaw repeatedly requested the Court to uphold and then reinstate the jury's verdict in the post-trial proceedings.

In Plaintiff's Response to Defendant Erskine College's Motion for JNOV and in the Alternative for a New Trial, Dr. Crenshaw cited to the jury form and the jury's specific interrogatory findings that he did not breach the parties' agreement while Erskine College did. (Plaintiff's response to JNOV, R. 95.) At the hearing on Erskine College's motion, Dr. Crenshaw's counsel argued that the jury's verdict should be upheld because

the jury made specific findings that Crenshaw did not breach his obligations under the agreement, and Erskine College did breach its obligations. (JNOV hrg. R. 800, l. 22 – R.801, l. 3; R. 801, l. 21 – R. 802, l. 2.) Dr. Crenshaw’s counsel specifically stated, “The jury was asked the questions.... They answered them and they were presented to them. Great deference is given to those answers.” (JNOV hrg. R. 803, ll. 3-8.)

After the Court granted Erskine College a new trial, Dr. Crenshaw filed a motion to alter or amend that requested the Court to reinstate the jury’s verdict. In this motion Dr. Crenshaw stated, “The jury specifically made findings that Crenshaw did not breach his obligation under the agreement and that Erskine College breached obligations under the agreement.” (Plaintiff’s motion to alter or amend, R. 102.) Dr. Crenshaw then argued that the record supported these specific findings by the jury so the trial court should give the verdict deference and reinstate it. (Plaintiff’s motion to alter or amend, R. 103.)

Erskine College’s argument that Dr. Crenshaw did not properly raise the issue that Erskine College breached its implied duty of good faith lacks merit. Dr. Crenshaw repeatedly argued throughout the trial and post-trial proceedings that Erskine College had violated its duties to Crenshaw in various ways. At trial, Dr. Crenshaw specifically argued that Erskine College violated the duty of good faith in the way it jumped between stages during the termination process: “And so, it shows a lack of good faith, the fact that they are jumbling these stages and give him two days to respond or three, I guess, less than three days, weekend days.” (R. 749, ll. 6-9.)

The record demonstrates that Dr. Crenshaw requested the trial court defer to the specific factual findings of the jury and reinstate its verdict. It also shows that Dr.

Crenshaw consistently argued, and the jury found, that Erskine breached its obligations under the parties' contract in various ways, including its duty of good faith. Crenshaw, therefore, adequately preserved these issues for review by the appellate court.

II. The trial court erred.

Erskine College continues to rely on Dr. Crenshaw's supposed breach of the contract, but it cannot be overlooked that the jurors expressly found that Dr. Crenshaw did not breach his obligation under the agreement, and Erskine College breached its obligation under the agreement. R. 4. Furthermore, as discussed in his opening brief, at p. 21, Dr. Crenshaw was prepared to meet his obligations under the agreement by teaching classes during the fall semester. He returned to campus on August 6, 2011 to meet his freshmen classes.

The jurors' express finding that Erskine College breached its agreement with Dr. Crenshaw is supported by the eight examples of Erskine College's bad faith and unfair dealings with Dr. Crenshaw. *See* Appellant's Brief, pp. 21-24. In its brief, at pp. 14-15, Erskine College chose to address only the fifth example by arguing that "Norman did fix the time and place of the hearing for August 29, at 9 AM unless Crenshaw requested a reasonable adjustment." And, "Norman appeared for the hearing and waited for Crenshaw for three hours, but Crenshaw never arrived." Dr. Crenshaw never instructed Dr. Norman or Erskine College not to convene the hearing on August 29, 2011. Dr. Norman's letter of August 12, 2011, expressly represented to Dr. Crenshaw that the hearing would occur "unless you waive your right to a hearing." In fact, Dr. Crenshaw had every right to expect that the hearing would be convened at that time. Demonstrating Erskine College's ongoing bad faith, Dr. Norman never appointed the committee.

The trial court judge was required to view the evidence in a light most favorable to Dr. Crenshaw and deny Erskine College's motion for a JNOV if any reasonable inferences drawn from the evidence supported the jury's verdict. The record in this case supports the jury's finding that Dr. Crenshaw complied with his obligations under the agreement, and Erskine College breached its obligations.

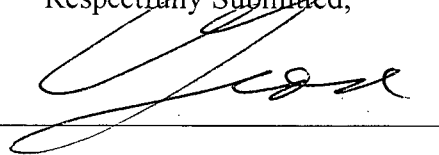
This Court should reinstate the jurors' verdict.

CONCLUSION

The trial court judge erred by granting Erskine College a judgment notwithstanding the verdict, finding that Dr. William Crenshaw breached his contractual obligation to Erskine College, even though the jurors, by special verdict form, expressly found (1) Dr. Crenshaw did not breach his obligation under the agreement and (2) Erskine College did breach its obligation under the agreement. This Court should reverse the trial court judge's order granting Erskine College a JNOV and reinstate the jury's verdict.

Respectfully Submitted,

By



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This 20th day of September 2016.

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Eugene C. Griffith, Jr., Circuit Court Judge

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Rule 211, SCACR Certification

I certify that this Final Reply Brief of Appellant complies with Rule 211(b),
SCACR.



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September 20, 2016
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THE STATE OF SOUTH CAROLINA
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Eugene C. Griffith, Jr., Circuit Court Judge

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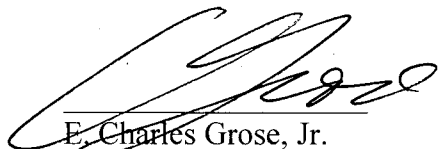
v.

Erskine College and David Norman, Respondents.

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant and Final Reply Brief of Appellant, by placing a copy in the United States Mail, postage prepaid, on the date reflected below, addressed as follows:

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September 21, 2016

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SC Court of Appeals

The Honorable, Jenny Abbott Kitchings
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Re: *William Crenshaw v. Erskine College and David Norman*
Court of Appeals Case No. 2015-002090

Dear Ms. Kitchens:

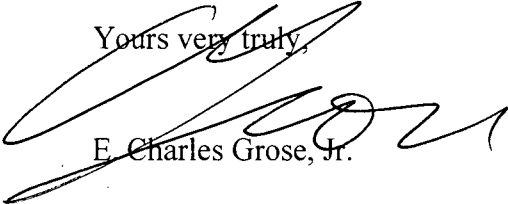
Enclosed please find fifteen copies of the Final Brief of Appellant and Final Reply Brief of Appellant, one of which is not bound, along with a certificate of service.

By copy of this letter to Mr. Close and Mr. Keim, I am serving the respondents.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

With kindest regards, I am

Yours very truly,


E. Charles Grose, Jr.

cc: Robert J. Tinsley, Sr., Esquire
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