

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith Jr., Circuit Court Judge

Case No. 2016-001618

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SC Court of Appeals

Rodrick Tucker and Shakeyra Gilbert

Appellants,

v.

South Carolina Department of Social
Services,,

Respondent.

BRIEF OF APPELLANTS

Rodrick Tucker
206 Oak Street
Clinton, South Carolina 29325
(864) 869-8825
Appellant

Shakeyra Gilbert
350 Norris Street, Apt 246D
Spartanburg, South Carolina 29306
(864) 402-9838
Appellant

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THAT IT LACKED JURISDICTION TO HEAR A TORT CLAIM BROUGHT AGAINST DSS?
2. DID THE TRIAL COURT ERR IN FINDING THAT APPELLANTS DID NOT SUBMIT EVIDENCE TO SUPPORT THE CLAIMS RAISED IN THEIR COMPLAINT AND AMENDED COMPLAINT?
3. DID THE TRIAL COURT ERR IN CONCLUDING THAT THIS ACTION WAS NOTHING MORE THAN AN APPEAL OF A FAMILY COURT ORDER?

STATEMENT OF THE CASE

On November 13, 2015, Rodrick Tucker and Shakeyra Gilbert brought this action alleging gross negligence, abuse of process, malicious prosecution and slander against Mindy Miyares, Deniece Shelman and the South Carolina Department of Social Services. The Respondents answered the claims by denying the allegations raised by the Appellants and stated various immunities. On February 9, 2016 a hearing was held where Mindy Miyares and Deniece

Shelman were dismissed as Respondents. At that same hearing, the Appellants request for punitive damages was struck. On June 3, 2016 a hearing was held on a motion for summary judgment by the Respondent. On June 24, 2016 an Order was signed granting summary judgment in favor of the Respondent. Appellants received written notice of the Order on July 1, 2016. On July 20, 2016, Appellants served the Notice of Appeal on DSS.

FACTS

On or about August 17, 2015, DSS employees visited the home of the Appellants. DSS first spoke to the Appellants on the front porch of the home before being allowed to step into the living room. DSS went no further than the living room of the home. Appellant Tucker explained to DSS that prior to their arrival early that morning he was in the process of changing and bathing his disabled stepmother. DSS then asked if the minor child had a crib to which Appellants responded she did not because she had only been there a night and Appellant Gilbert Planned on returning to Tennessee where she resided. Respondent then stated that until Shakeyra left that she should consider using a dresser drawer as a crib. Respondent was never in a position in the home to observe whether or not the minor child had "adequate clothing," the home was not in a "sordid condition", nor were there any broken windows. Respondent left the home and later called back asking for the Appellants to come to the DSS office for a meeting. At the meeting DSS attempted to force Appellants to sign a "Safety plan" agreeing to their child being removed from the home because of an alleged open DSS case involving Appellant Tucker in Spartanburg. RESPONDENT also claimed that Appellant Tucker was "Not complying with his treatment

plan" in Spartanburg. At no time has Appellant Tucker ever been a party to any supposed treatment plan referenced by DSS. Appellants refused to sign the safety plan without an attorney and DSS employee Deniece Shelman attempted to force the Appellants into agreement with threats of taking the minor child into foster care. Mrs. Shelman alleged that the minor child was being abused and neglected due to the simple fact that the child did not have a crib. Upon being threatened by Mrs. Shelman and hearing her statements, Appellant Tucker used profanity towards Mrs. Shelman. Mrs. Shelman and Mindy Miyares took great offense to the profanity and disrespect displayed by Appellant Tucker and stated something along the lines of, "We gonna get that baby out of that house one way or another, we do this all day every day." Shelman also stated that she "Had something for disrespectful people." shortly after, RESPONDENT made the Appellants wait in the lobby for 30 minutes then finally came back out and said we were free to leave. 28. During the 30 minutes that the Respondents were meeting, they conspired with each other to seek an ex parte order for removal, all the while knowing that they did not have sufficient grounds to do so.

At around 6 p.m. that same day, DSS came to the Appellants home with an ex parte order for custody of the minor child, the next day, a probable cause hearing was held in family court, shortly before the hearing was to start, Respondent gave the Appellants copies of various affidavits alleging various things including that the house was in sordid condition, had broken windows, Appellant Tucker was on probation for cdv, Shakeyra Gilbert had bruises on her arms and that the minor child did not have adequate clothing. None of these things are or ever were true and the Respondents willfully and intentionally made these misrepresentations to the Court in order to punish the Appellants for speaking disrespectfully to them. Based on these misrepresentations the family court found probable cause under 63-7-20 (20) for the minor child

to be placed into DSS custody. During the time the minor child was in DSS custody, the Respondent repeatedly suggested to Appellant Gilbert that if she would leave the home they would return the child to her, Respondents never did any follow up visits or did any other type of investigating during the time they had the minor child. On or about October 15, 2015, prior to the Merits Hearing in Family Court, Respondent called Appellant Gilbert and again made the same offer to drop the case and give the minor child back if she would leave the home. Appellant Gilbert refused and stated she would contest the merits of DSS's case. At the merits hearing, DSS voluntarily dismissed the case against the Appellants.

On November 13, 2015, Appellants brought an action against Respondent, Mindy Miyares and Deniece Shelman, pursuant to the South Carolina Tort Claims Act (TCA) alleging gross negligence, abuse of process and malicious prosecution among other things. On January 11, 2016, Respondents filed an Answer using various defenses including those allowed by the TCA. In an Order dated February 24, 2016, Mindy Miyares and Deniece Shelman were dismissed as defendants in the action pursuant to the TCA. At that same hearing, Appellants voluntarily agreed to drop their request for punitive damages because they aren't allowed under the TCA. On June 3, 2016, a hearing was held on Respondents Motion for Summary Judgment. Appellants filed a response in opposition to Summary Judgment which included a number of affidavits as well as other exhibits. At that hearing, Respondents attorney argued solely that this action was no more than an appeal of a Family Court order. The Circuit Court Judge held the case in abeyance and on June 24, issued an Order granting summary judgment for the Respondents. The basis for the order was that the Court believed it lacked jurisdiction to hear this action; and that even if it did have jurisdiction, Appellants did not present any evidence to support the claims brought. This appeal followed.

ARGUMENTS

- I. BECAUSE THE FAMILY COURT DOES NOT HAVE JURISDICTION TO HEAR AN ACTION BROUGHT UNDER THE SOUTH CAROLINA TORT CLAIMS ACT, THE TRIAL COURT ERRED WHEN IT FOUND THAT IT LACKED JURISDICTION TO HEAR THIS ACTION.

This action was brought under the South Carolina Tort Claims Act. Section 15-78-100(b) of the Act provides that “jurisdiction for any action brought under this chapter is in the circuit court and brought in the county where in which the act or omission occurred. Because DSS, the Respondent, is a government entity, the SCTCA is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in Section 15-78-70(b).

Additionally, the trial court erred when it likened this action to an appeal. This is incorrect as nowhere in the Appellants Amended Complaint (R. pp. 57-68) do they ask for anything lying within the jurisdiction of the family court. The Amended Complaint (R. pp. 57-68) also does not ask for a new review of any orders from the family court. This action was brought solely seeking a remedy for wrongdoing by DSS during the investigation of the Appellants.

- II. BECAUSE APPELLANTS PRESENTED VARIOUS AFFIDAVITS AND OTHER SUPPORTING DOCUMENTATION IN SUPPORT OF THEIR CLAIMS THAT CREATED GENUINE ISSUES OF MATERIAL FACT, THE TRIAL COURT ERRED

IN FINDING THAT THE APPELLANTS “FAILED TO MEET THEIR BURDEN OF PROOF IN ESTABLISHING ANY EVIDENCE TO SUPPORT THEIR CLAIMS.”

A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988). Summary judgment is a drastic remedy which should be cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Because we, the Appellants, presented 3 separate affidavits (R. pp. 135-139) each attacking and challenging the alleged observations of the DSS employees, this created a genuine issue of material fact as to whether or not these things were actually observed. We also presented other exhibits in our response to the Motion for Summary Judgment, including a copy of SLED reports (R. pp. 140-143), DSS internal communications (R. pp. 144-145), as well as a copy of a case deposition from the Public Index. The presentation and existence of all of this contradictory evidence surely creates a genuine issue of material fact as to the claims brought in the Complaint and Amended Complaint. Therefore, the Respondent was not entitled to summary judgement on the basis that the Appellants failed to establish any evidence support their claims. The Respondent was also not entitled to summary judgement because genuine issues of material fact exist and a reasonable

jury could rule in favor of the Appellants.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

September 23, 2016

Respectfully submitted,

Rodrick Tucker

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Appellant

Shakeya Gilbert

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CERTIFICATE

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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