

ORIGINAL

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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APPEAL FROM PICKENS COUNTY

S.C. SUPREME COURT

In The court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2014-001737

Mark D. Ostendorff,.....Petitioner,

v.

School District of Pickens County Board of Trustees,
School District of Pickens County, Alex Saitta, Judy
Edwards, Jimmy Gillespie, Herbert Cooper, Jim Shelton,
Ben Trotter, Kelly Pew, Henry Hunt, and Robert
Folkman,.....Respondents.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Pro se certifies the Petition for Rehearing was made and finally ruled on by the Court of appeals on November 17 , 2016.

A handwritten signature in black ink, appearing to read 'MO', written over a horizontal line.

Mark Ostendorff

QUESTIONS PRESENTED

1. DID THE COURT ERR IN GRANTING THE MOTION TO DISMISS DEFENDANTS WITH NO EVIDENCE PRESENTED BY THE DEFENDANTS, BUT PLAINTIFF DID PRESENT EVIDENCE ?

2. IS WHETHER THE EMPLOYEES ACTED WITHIN THEIR SCOPE OF OFFICIAL DUTIES ONE THAT IS OF LAW OR DETERMINED BY FACT AND THAT OF A JURY ?

3. DID THE TRIAL COURT ERR IN GRANTING DEFENDANT'S MOTION WITHOUT PROVIDING ANY FINDINGS OF FACT OR CONCLUSIONS OF LAW ?

4. DID THE TRIAL COURT ERR IN GRANTING THE MOTION DISMISSING THE DEFENDANTS WITHOUT ANY FINDINGS OF FACT NOR CONCLUSIONS OF LAW IN CONFLICT WITH :
 - (a) Rule 52(a) SCRPC

 - (b) S.C. Code of Laws, Section 18-9-280 ?

 - (c) S.C. Code of Laws , Section 15-78-60 ?

 - (d) S.C. Code of Laws, Section 15-78-70 ?

 - (e) S.C. Code of Laws, Section 15-78-80 ?

 - (f) S.C. Code of Laws, Section 15-78-100?

 - (g) U.S. Constitution First Amendment?

 - (h) S.C. Constitution ,Art I Section 2 ?

 - (i) U.S. Constitution, 14th Amendment

 - (j) S.C. Constitution, Art I, Section 3 ?

STATEMENT OF THE CASE

Appellate Ostendorff was an employee of the School District of Pickens County as a Project Manager in the Building Program.

Ostendorff was guaranteed a minimum of 5 years employment so he could receive SC Retirement System benefits. Ostendorff was currently working in the NC Retirement System when he left to go the School District of Pickens County.

After about 2 $\frac{3}{4}$ years of employment Ostendorff was wrongfully discharged.

Employer nor employees (defendants) never gave evidence to Ostendorff for reason for discharge. The discharge was either one or two weeks after Ostendorff discussed probable misappropriation of public funding within the Building Program.

Ostendorff made timely claims to the defendants regarding his loss of employment and damages sustained. Defendants made no effort to Ostendorff to restore his employment or mitigate his damages.

Ostendorff subsequently filed suit against the defendants. The defendants filed motion to dismiss all defendants except the School District. The lower court granted their motion. This Petition is in regards to the lower court's decision and the Court of Appeal's affirmation.

ARGUMENTS

1 .BECAUSE THE COURT DISMISSED THE DEFENDANTS WITHOUT ANY FINDINGS OF FACT OR CONCLUSIONS OF LAW, THE DECISION TO GRANT THE MOTION SHOULD BE REVERSED.

Tolk v. Weinstein, 265 S.C. 546, 220 S.E. 2d 239 (1975). Generally, an appellate court may reverse the judgment of a lower court when there is some error in law or when factual conclusions are without evidentiary support. The trial court erred in its interpretation on the SC statute. The moving party presented no evidence that the codefendants acted within their official duties. Appellant gave testimony that the codefendants did not act in their official duties.

2. BECAUSE THE COURT DISMISSED THE DEFENDANTS WITHOUT ANY FINDINGS OF FACT OR CONCLUSIONS OF LAW, THE DECISION TO GRANT THE MOTION IS IN CONFLICT WITH S.C. CODE OF LAWS, SECTION 18-9-280.

S.C. Code Section 18-9-280 states that "Written opinions required: memorandum opinions. When a judgment...is affirmed...(1) that a judgment of the trial court is based on findings of fact...(4) that no error of law appears" The lower court never provided any findings of fact nor conclusions of law.

This case is a jury demanded trial. The jury would be the triers –of-fact. Whether the codefendants acted within the scope of their official duties is an issue of fact and not law. No evidence was ever presented to Appellant or the lower court in this case. The lower court never had any findings of fact or conclusions of law in its decision.

3. BECAUSE THE COURT DISMISSED THE DEFENDANTS WITHOUT ANY FINDINGS OF FACT OR CONCLUSIONS OF LAW, THE DECISION TO GRANT THE MOTION IS IN CONFLICT WITH RULE 52(a), SCRPC.

Rule 52(a) states “ Effect. In all actions tried upon the facts without a jury...,the court shall find the facts specially and state separately its conclusions of law thereon,...

4. BECAUSE THE COURT DISMISSED THE DEFENDANTS WITHOUT ANY EVIDENCE PRESENTED BY THE DEFENDANTS, BUT EVIDENCE WAS PRESENTED BY THE PLAINTIFF, THE DECISION TO GRANT THE MOTION IS IN CONFLICT WITH S.C. CODE OF LAWS, SECTION 15-78-60.

S.C. Code of Laws, Section 15-78-60 , states that “ Exceptions to waiver of immunity. The governmental entity is not liable for loss resulting from:

...(17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.”

5. BECAUSE THE COURT DISMISSED THE DEFENDANTS WITHOUT ANY EVIDENCE PRESENTED BY THE DEFENDANTS, BUT EVIDENCE WAS PRESENTED BY THE PLAINTIFF, THE DECISION TO GRANT THE MOTION IS IN CONFLICT WITH S.C. CODE OF LAWS, SECTION 15-78-70.

S.C. Code of Laws, Section 15-78-70 states that “ Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

...(a) This chapter constitutes the exclusive remedy for any tort committed by an employee

of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to do harm or a crime involving moral turpitude.

...(d) A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence."

The jury as triers-of-fact will determine that the defendants did not conduct themselves within the scope of their official duties. If the defendants are dismissed, then the case will become moot as Appellant will have no other remedy for his damages caused by the employees since they were dismissed beforehand and cannot bring a later suit against those employees.

6.BECAUSE THE COURT DISMISSED THE DEFENDATS WITHOUT ANY EVIDENCE PRESENTED BY THE DEFENDANTS, BUT EVIDENCE WAS PRESENTED BY THE PLAINTIFF, THE DECISION TO GRANT THE MOTION IS IN CONFLICT WITH S.C. CODE OF LAWS, SECTION 15-78-80.

S.C. Code of Laws, Section 15-78-80 states that "Filing of verified claim: handling...

(a) A verified claim for damages under this chapter , setting forth the circumstances which brought about the loss, the time of the loss... occurred, the names of all persons involved if known, and the amount... filed:

... (2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim."

All defendants (employees) must be named in the suit as their acts gave rise to appellate's claim.

7. BECAUSE THE COURT DISMISSED THE DEFENDANTS WITHOUT ANY EVIDENCE PRESENTED BY THE DEFENDANTS, BUT EVIDENCE WAS PRESENTED BY THE PLAINTIFF, THE DECISION TO GRANT THE MOTION IS IN CONFLICT WITH S. C. CODE OF LAWS, SECTION 15-78-100.

S.C. Code of Laws, Section 15-78-100 states that "When and where to institute action; requirement of special verdict specifying proportionate liability of multiple defendants.

...(c) In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant whom liability is determined."

Appellant alleged that all defendants did not act in their own official duty and are not protected under this chapter. Appellant must list all defendants known to be involved in this occurrence.

All defendants are allowed the right of service, to which each was given service.

Under strict liability, the employer is required to be listed as a codefendant although the triers of fact will determine that the other listed defendants are liable by acting outside their official duties, and the employer not liable.

8. BECAUSE THE COURT DISMISSED THE DEFENDANTS WITHOUT ANY EVIDENCE PRESENTED BY THE DEFENDANTS, BUT EVIDENCE WAS PRESENTED BY THE PLAINTIFF, THE DECISION TO GRANT THE MOTION IS IN CONFLICT WITH THE U. S. CONSTITUTION, FIRST AMENDMENT ENSURING FREEDOM OF SPEECH.

Appellant was a public servant and entitled to the same freedom of speech as any U S citizen. Appellant was wrongfully discharged for discussing public financing and probable misappropriation of funding with a friend of a school board member, whom is one of the codefendants. No defendant provided any evidence to the court or appellant for any reason for discharge.

9. BECAUSE THE COURT DISMISSED THE DEFENDANTS WITHOUT ANY EVIDENCE PRESENTED BY THE DEFENDANTS, BUT EVIDENCE WAS PRESENTED BY THE PLAINTIFF, THE DECISION TO GRANT THE MOTION IS IN CONFLICT WITH THE S. C. CONSTITUTION, ARTICLE I, SECTION 2 ENSURING FREEDOM OF SPEECH.

(see argument in 8 above)

10. BECAUSE THE COURT DISMISSED THE DEFENDANTS WITHOUT ANY EVIDENCE PRESENTED BY THE DEFENDANTS, BUT EVIDENCE WAS PRESENTED BY THE PLAINTIFF,

THE DECISION TO GRANT THE MOTION IS IN CONFLICT WITH THE S. C. CONSTITUTION,
ARTICLE I, SECTION 3, ENSURING DUE PROCESS.

S.C. Code of Laws, Section 15-78-60 (d) "a settlement or judgment in an action ...under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence,"

The jury as triers of fact will determine that the defendants did not conduct themselves within the scope of their official duties. If the defendants are dismissed, then the case will become moot as appellant will have no other remedy for his damages caused by the employees since they were dismissed beforehand and cannot bring a later suit against those employees.

The jury will also determine the employer was not liable as it was the other defendants that caused appellant's damages, and those defendants were dismissed beforehand.

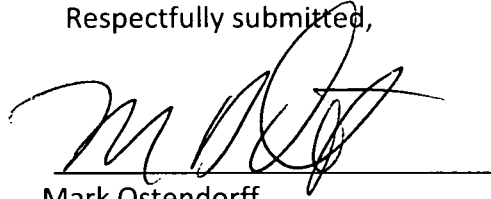
11. BECAUSE THE COURT DISMISSED THE DEFENDANTS WITHOUT ANY EVIDENCE PRESENTED BY THE DEFENDANTS, BUT EVIDENCE WAS PRESENTED BY THE PLAINTIFF, THE DECISION TO GRANT THE MOTION IS IN CONFLICT WITH THE U. S, CONSTITUTION, 14 TH AMENDMENT, SECTION I.

(see argument in #10 above).

CONCLUSION

For the reasons stated, petitioner respectfully submits that the Court should reverse the judgment of the Court of Appeals and reverse the Trial Court's decision to grant the Motion dismissing the Defendants.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Ostendorff', is written over a horizontal line.

Mark Ostendorff

Appellant, pro se

December 16, 2016

THE STATE OF SOUTH CAROLINA
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S.C. SUPREME COURT

APPEAL FROM PICKENS COUNTY
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Letitia H. Verdin, Circuit Court Judge

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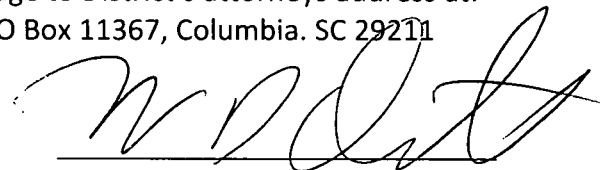
v.

School District of Pickens County, et al,Respondents.

CERTIFICATE OF MAILING

I, Mark Ostendorff, Petitioner, certify that I placed a copy of PETITION FOR A WRIT OF CERTIORARI in the US Postal Service with proper postage to District's attorneys address at: Thomas Barlow and Mary Caudell, Childs & Haligan, PO Box 11367, Columbia. SC 29211

December 19, 2016



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