

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Letitia Verdin, Circuit Court Judge

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SC Court of Appeals
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Appellate Case No.: 2015-001720

Kevin Watkins..... Appellant,
v.
Jason Hall Jr., Jason Hall Sr., Martha Hall, and J.S. Hall Inc.,..... Defendants,
Of Which J.S. Hall Inc. is the..... Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT PROPERLY RULE THAT APPELLANT FAILED TO ADEQUATELY PLEAD VICARIOUS LIABILITY AGAINST RESPONDENT AS THE ALLEGED EMPLOYER OF JASON HALL, JR.?
- II. DID THE TRIAL COURT PROPERLY RULE THAT APPELLANT FAILED TO ADEQUATELY PLEAD HIS CLAIM FOR NEGLIGENT HIRING AND SUPERVISION AGAINST RESPONDENT?
- III. DID THE TRIAL COURT BASE ITS RULING ON THE INCORRECT PLEADING STANDARD?

FINAL BRIEF OF RESPONDENT

STATEMENT OF CASE

This is an appeal of the Circuit Court's Order (R. p. 1) dismissing all claims brought by Kevin Watkins ("the Appellant") against J.S. Hall, Inc. ("the Respondent"). Appellant filed his original Complaint on March 28, 2014 in regard to a shooting that took place in Greenville County in early 2014. Specifically, Appellant's Complaint alleges that he suffered injuries and other damages when he was shot by Jason Hall, Jr. ("Hall, Jr."), the son of the Appellant's owner Jason, Hall, Sr. ("Hall, Sr."), when walking past Hall, Jr.'s personal residence on January 28, 2014. Before the original Complaint was served on Hall, Jr., Appellant filed an Amended Complaint on March 31, 2014 and, over five (5) months later, filed a Motion to Amend his Complaint yet again to add Respondent and its owner, Hall, Sr., as Defendants. That Motion was granted on December 18, 2014.

Appellant then filed his Second Amended Complaint on December 22, 2014, claiming that Respondent and Hall, Sr. were vicariously liable for the alleged conduct at issue of Hall, Jr. Specifically, Plaintiff's Second Amended Complaint alleges that Hall, Sr., either personally or through Respondent, owns the residence where the shooting occurred and that Respondent employs Hall, Jr.¹. Based solely thereon, Appellant alleges that Respondent and Hall, Sr. are vicariously liable for Hall, Jr. shooting Appellant at his personal residence on January 28, 2014. Appellant's counsel was then informed that neither Respondent nor its owner, Hall, Sr. own the residence where the shooting occurred and that public records clearly indicate that Hall, Jr.'s mother, Martha Hall, is the sole owner of that property. (R. p. 15, lines 15-20, p. 83 and p. 87.)

¹ Respondent previously employed Hall, Jr. as a structural steel designer, but that employment ended in 2003 or 2004 and Hall, Jr. has done no work for Respondent since that time. (R. p. 84) Respondent is aware that Hall, Jr. has stated otherwise, but Respondent has previously provided Appellant's counsel with documentation evidencing the actual end of Hall, Jr.'s employment with Respondent in 2003 or 2004, almost ten years prior to the shooting at issue.

Accordingly, Appellant filed a Third Amended Complaint (R. p. 6) on January 20, 2015, naming Martha Hall as an additional defendant based on her ownership of the home where the shooting.

Thereafter, Respondent filed its Motion to Dismiss Plaintiff's Third Amended Complaint on March 11, 2015, which was heard by the Circuit Court on May 28, 2015. At the hearing and in memoranda filed prior thereto, Respondent argued that Appellant's Third Amended Complaint should be dismissed as against Respondent because Appellant failed to allege facts sufficient to impose either vicarious or direct liability on Respondent, either as an employer or property owner, for the alleged conduct of Hall, Jr. (R. pp. 16-31, and p. 82.) Specifically, and even if Respondent were Hall, Jr.'s employer on the date of the shooting, which it was not, Appellant still failed to allege facts sufficient to meet his burden of pleading vicarious liability or direct liability on the part of Respondent because Appellant did not allege facts to show either (1) that Hall, Jr.'s actions occurred within the course and scope of his alleged employment, or (2) that Respondent had actual knowledge of any risk of undue harm posed by Hall, Jr. at the time of the events giving rise to Appellant's claims. Respondent also argued that all of Appellant's other claims, including his claim for negligent entrustment, should be dismissed for failure to adequately plead such claims against Respondent.

Having reviewed Appellant's Third Amended Complaint, read all submissions from the parties and heard all argument from counsel at the above-referenced hearing, the Court took Respondent's Motion under advisement (R. p. 31, line 23-p. 32, line 1.) On June 29, 2015, the Honorable Letitia Verdin entered a short form order (R. p. 1), granting Respondent's Motion to Dismiss and dismissing all of Appellant's claims as against Respondent, including Appellant's claims for negligence, negligent entrustment and negligent hiring and supervision. Appellant then filed a Motion to Reconsider (R. p. 81) on June 25, 2015, which the Court summarily

denied pursuant to an order dated July 16, 2015 (R. p. 3).

It should be noted that the underlying case is essentially a companion case to another case currently pending in the Court of Common Pleas for Greenville County, *Robert Bankston v. Jason Hall, Jr., et al*, 2015-CP-23-02726. That companion case, filed by a friend of Appellant who was with Appellant on the night of the shooting at issue, involves the exact same causes of action alleged against the exact same set of defendants arising out of the exact same set of facts as are at issue in the instant action. Respondent also filed a Motion to Dismiss the claims against it in that companion case on the exact same grounds set in the instant action, which was similarly granted by the Honorable J. Derham Cole by way of Order, filed November 9, 2015.

ARGUMENT

I. THE TRIAL COURT PROPERLY RULED THAT APPELLANT FAILED TO ADEQUATELY PLEAD HIS CLAIM FOR VICARIOUS LIABILITY.

Appellant argues that the trial court erred in granting Respondent's Motion to Dismiss on grounds that Appellant failed to properly plead a claim for vicarious liability against Respondent as the alleged employer of Hall, Jr. because Appellant's Third Party Complaint stated the following: (1) "Hall, Jr. is an employee of (Respondent);" (2) Hall, Jr. is allowed to live in the home where the shooting took place in exchange for his employment with Respondent as a caretaker of that property²; and (3) "Hall, Jr. acted within his capacity as caretaker [for] the property owned by one or more of the defendants³ and Hall, Sr., (Respondent) and Martha Hall acted vicariously through Hall, Jr." Specifically, Appellant argues that merely stating that Hall, Jr. was employee of Respondent, that Hall, Jr. was allowed to live in his residence as a part of said employment with Respondent and that, as a result, Respondent acted vicariously through Hall, Jr. is sufficient to allege a causes of action.

Despite Appellant's argument, however, and even if all such allegations contained in Appellant's Third Party Complaint are taken as true, said allegations alone are insufficient to state a cause of action against Respondent for vicarious liability as Hall's alleged employer under the theory of respondeat superior. While, the doctrine of respondeat superior provides that an employer may be held vicariously liable for the tortious acts of an employee, such liability may only be found "*when those acts occur in the course and scope of the employee's employment.*"

² Respondent's sole business is the drafting and review of steel drawings for use in architecture and Hall, Jr.'s employment therewith, which ended in 2003 or 2004 was within that same scope. (R. p. 84) Respondent owns no properties and has never employed any individual as a caretaker of property belonging to others. (R. p. 87)

³ The home is solely owned by Martha Hall, who is neither an owner nor officer of Respondent. (R. p. 17, lines 17-23, p. 31, lines 18-22, and p. 83.)

James v. Kelly Trucking Co., 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008) (emphasis added). Such liability is not predicated on the negligence of the employer, but upon the acts of the employee. *Id.* The focus thus is not on whether or not a third party is the employer of the tortfeasor, but rather the circumstances under which the tortfeasor's acts were committed and whether or not said acts were committed in the furtherance of his employment. *Id.*

Regardless, and beyond just merely alleging employment with Respondent, Appellant's Third Party Complaint fails entirely to factually allege that the shooting by Hall Jr. occurred within the course and scope of his alleged employment with Respondent. Instead, Appellant alleges only that Hall Jr. was at his residence and exited that residence at the time of the shooting without any allegation whatsoever that said shooting was committed in furtherance of Hall, Jr.'s alleged employment with Respondent. (R. p. 6, ¶ 10 and p. 7, ¶¶ 15-16.) Even read in the light most favorable to Appellant, this fails to meet Appellant's burden of alleging that Hall, Jr. was acting within the course and scope of his alleged employment with Respondent *at the time of the shooting* such that Respondent is vicariously liable therefore under a theory of respondeat superior and the Court is not required to make inferences not supported by the allegations. (R. p. 17, lines 10-21, p. 27, lines 10-20, p. 28, line 20 - p. 29, line 1, and p. 30, lines 8-20.) Accordingly, the trial court did not err in dismissing Appellant's claims against Respondent for failure to allege facts sufficient to impose vicarious liability on Respondent pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

II. THE TRIAL COURT PROPERLY RULED THAT APPELLANT FAILED TO ADEQUATELY PLEAD HIS CLAIM FOR NEGLIGENT HIRING AND SUPERVISION.

Appellant also argues that the trial court erred in granting Respondent's Motion to Dismiss on grounds that Appellant failed to properly plead a claim for negligent hiring and

supervision against Respondent as the alleged employer of Hall, Jr. because Appellant's Third Party Complaint contains the following allegations: (1) Hall, Jr. is employed by Respondent; (2) Hall, Jr. is the alleged "caretaker" of the home that is his personal residence; (3) Hall, Jr.'s mother Martha Hall, the owner of the home at issue, was involved in hiring Hall, Jr. to care for the house; and (4) the people making hiring decisions for the caretaker of the house "knew or should have known of Hall, Jr.'s dangerous propensities." Based thereon, Appellant argues that his pleading "threshold has been satisfied" in regard to his claim for direct liability on the part of Respondent as the alleged employer of Hall, Jr. under Appellant's claim for negligent hiring and supervision.

Even if all such allegations are taken as true for purposes of Respondent's Motion to Dismiss, Appellant still failed to meet his burden of alleging direct liability on the part of the Respondent pursuant to Appellant's claim for negligent hiring and supervision. In regard thereto, the South Carolina Supreme Court has explained that such liability may be properly found against an employer "(i)n circumstances where an employer knew or should have known that its employment of a specific person created an undue risk of harm to the public." *James v. Kelly Trucking Co.*, 377 S.C. 628, 631, 661 S.E.2d 329, 330 (2008). Unlike a claim brought under a theory of respondeat superior, the employer's liability under a claim for negligent hiring and supervision does not rest on the negligence of another, but on the employer's own negligence. *Id.* Regardless, the South Carolina Supreme Court has been clear that such liability only exists when the employer "knew or should have known" that its employment of an individual employee "created an undue risk of harm to the public." *Id.*

Appellant's Third Amended Complaint fails to allege facts sufficient to state a cause of action for negligent hiring and supervision against Respondent as the alleged employer of Hall,

Jr. because there are absolutely no facts alleged therein, even when read in the light most favorable to the Appellant, from which it can be reasonably inferred that Respondent knew or should have known that its alleged employment of Hall, Jr. posed any undue risk to the public. (R. p. 17, line 22-p. 18, line 14, and pp. 85-86.) Instead of alleging any such facts, Appellant's Third Amended Complaint merely contains an insufficient conclusory statement that "(Respondent)... knew or should have known of Hall, Jr.'s dangerous propensities." (R. p. 7, ¶ 23.) However, conclusory statements alone without actual facts being alleged in support thereof are insufficient to survive a motion for judgment on the pleadings. *See Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. App. 1986) (noting that allegations that are conclusory only are demurrable).

Further, the Court is not required to make inferences not supported by the allegations, and the mere fact that Respondent's owner is Hall, Jr.'s father does not support an inference that Respondent knew or should have known that Hall, Jr. posed any danger to the public absent some allegation regarding past incidents of dangerous conduct on the part of Hall, Jr. that were known to either Respondent or its owner, Hall, Sr. Accordingly, and because Appellant's Third Party Complaint fails to allege any actual facts from which it can be reasonably inferred that Respondent had any knowledge of any danger posed to the public by Hall, Jr., the trial court properly granted Respondent's Motion to Dismiss in regard to Appellant's claim against Respondent for negligent hiring and supervision.

III. THE TRIAL COURT DID NOT BASE ITS RULING ON RULE 8.

Appellant also argues that the trial court's grant of Respondent's Motion to Dismiss was erroneous because the trial court applied the wrong standard in ruling on Respondent's Motion to Dismiss. Specifically, Appellant seems to imply that the trial court granted Respondent's

Motion by applying Rule 23, SCRC⁴, which Appellant asserts to be the incorrect standard for motions to dismiss. Instead, Appellant argues that Rule 8, SCRC is the correct standard that should have been applied and that the trial court erred in not applying that standard so as to deny the Respondent's Motion to Dismiss.

Regardless, absolutely nothing in the Court's June 29, 2015 Order in any way notes or otherwise even implies that the trial court's ruling on Respondent's Motion to Dismiss was based on an application of Rule 23. Instead, the trial court's June 29, 2015 Order is a short form order that states only that "(t)his matter came before the Court on a Motion to Dismiss submitted by Defendants J.S. Hall, Inc., Jason Hall, Sr., and Martha Hall...(and) (b)ased on the pleadings and the arguments of the parties, the Court hereby GRANTS the Motion with respect to Defendant J.S. Hall, Inc." (R. p. 1) Accordingly, and since there is no indication whatsoever that the trial court applied Rule 23 instead of Rule 8 in ruling on Respondent's Motion to Dismiss, Appellant's argument for reversal based on the trial court allegedly basing its ruling on Rule 23 is entirely without merit. Additionally, the mere fact that Rule 23 was addressed in a case inadvertently cited by Respondent is irrelevant and does not form the basis for reversal of the trial court's dismissal of Appellant's claims against Respondent.

ADDITIONAL SUPPORTING GROUND TO AFFIRM

As noted above, the trial court's June 29, 2015 Order is a short form order that states only that "(t)his matter came before the Court on a Motion to Dismiss submitted by Defendants J.S. Hall, Inc., Jason Hall, Sr., and Martha Hall...(and) (b)ased on the pleadings and the arguments of the parties, the Court hereby GRANTS the Motion with respect to Defendant J.S. Hall, Inc." (R.

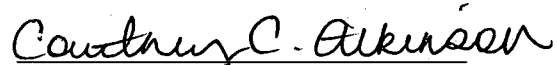
⁴ Rule 23 is addressed in a case inadvertently cited by counsel for Respondent in Respondent's its Memorandum in Support of its Motion to Dismiss but is not noted in the trial court's Order as forming any basis therefore. (R. p. 1)

p. 1) Based thereon, the Court granted Respondent's Motion to Dismiss, which contained arguments for dismissal of all claims alleged against Respondent, including a claim for negligent entrustment, on alternative grounds not being appealed by Appellant in this matter, in its entirety. (R. p. 82-88) Accordingly, and even if the Appellant's first two arguments had merit, which Respondent asserts they do not, Appellant has chosen not to appeal the trial court's dismissal of Appellant's claims against Respondent on the additional grounds set forth in Respondent's Motion to Dismiss.

CONCLUSION

For all of those reasons set forth above, Respondent respectfully requests that this Court deny Appellant's appeal in this matter and affirm the trial court's June 29, 2015 Order, granting the Motion to Dismiss of Respondent.

Respectfully submitted,



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March 11, 2016

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J.S. Hall, Inc.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b),

SCACR.

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PROOF OF SERVICE

I certify that I have mailed for filing the Final Brief of Respondent by depositing a copy of it in the United States Mail, postage prepaid, to the South Carolina Court of Appeals on March 15, 2016. I further certify that I have served the Final Brief of Respondent on appellant's counsel of record, Joshua T. Hawkins, by hand delivery to his office at 1225 South Church Street, Greenville, SC 29605 on March , 2016.

March 15, 2016

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March 14, 2016

The Honorable Jenny A. Kitchings
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MAR 18 2016

SC Court of Appeals

Re: Kevin Watkins v. J.S. Hall, Inc.
Appellate No.: 2015-001720

Dear Ms. Kitchings:

Enclosed for filing please find the original and fifteen (15) copies of Respondent's Final Brief in the above-referenced case as well as the proof of service and certificate of counsel.

I would very much appreciate your filing same and returning one copy to me in the enclosed self-addressed stamped envelope. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Courtney C. Atkinson

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CCA/awr

Enclosure

cc: Joshua Hawkins, Esq.