

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J.C. Nicholson, Jr., Circuit Court Judge

Opinion No. 2017-UP-172

Sebrina Walker, Petitioner,

v.

SAIC Engineering Inc., Christina Broom, John Kiessling
and Marcia Saari, Respondents.

PETITION FOR A WRIT OF CERTIORARI

Sebrina Walker
810 Playground Road
Charleston, S.C. 29407
(843) 478-2351
Pro se

Other Counsel of Record:

Ogletree, Deakins, Nash, Smoak, & Stewart, P.C.
Ashley P. Cuttino
Ogletree Bldg.
300 North Main St., Suite 500
Greenville, S.C. 29601
Attorney for Respondents

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CERTIFICATE OF COUNSEL

Petitioner sees no court rule that clearly requires that she petition the Court of Appeals for Rehearing prior to petitioning the S.C. Supreme Court for a Writ of Certiorari and therefore, certifies that no petition for rehearing was made in this case.

QUESTION(S) PRESENTED

1. Did the Court of Appeals err in holding that they lacked sufficient record upon which to make a decision in this case ?

STATEMENT OF THE CASE

On October 11, 2011 petitioner, Sebrina Walker, along with seven (7) other employees of respondent SAIC Engineering Inc. (SAIC) brought this complaint against respondents SAIC, Christina Broom, John Kiessling, and Marcia Saari alleging eight (8) separate causes of action including false imprisonment.

On November 15, 2011 respondents answered the complaint in a timely manner. On April 30, 2014 respondents filed a Motion for Summary judgment as to all eight (8) causes of action. On March 31, 2017 Judge J.C. Nicholson, Jr. heard the motion and granted it.

On May 22, 2015 petitioner Walker filed a Notice of Appeal with the S.C. Court of Appeals. On April 19, 2017 the court affirmed the decision of Judge Nicholson, Jr.

ARGUMENTS

1. THE COURT OF APPEALS SHOULD HAVE DECIDED THIS ACTION.

In her appeal to the S.C. Court of Appeals petitioner abandoned all causes of action in the complaint save her false imprisonment claim. Issues not argued on appeal are deemed abandoned. *First Sav. Bank v. Mclean*, 314 S.C. 361; 444 S.E.2d 513; 1994 S.C. LEXIS. Thus, the only issue before the Court of Appeals requiring a decision was petitioner's false imprisonment claim. Petitioner submits that, in addition to the briefs of petitioner and respondent, the court had sufficient record before it to decide that issue.

A court of appeals reviews a grant of summary judgment de novo. *JKC Holding Co. L.L.C. v. Washington Sports Inc.* 264 F.3d 459; 2001 U.S. App. LEXIS 19818 (2001). In reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under rule 56(c), SCRPC. *Argoe v. Three Rivers Behavioral Health, L.L.C.* 392 S.C. 462; 710 S.E.2d 67; 2011 S.C. LEXIS 180 (2011).

There is no requirement that the trial judge make findings of fact in ruling on a motion for summary judgment under Rule 56, SCRPC. The judge's function at the summary judgment stage is not himself weigh the evidence and determine the truth of the matter, but to determine if there is a genuine issue for trial. *Anderson v. Liberty Lobby Inc.* 477 U.S. 242; 106 S.Ct. 2505; 91 L.Ed.2d. 202 (1986). The function of the judge at the summary judgment stage is not to determine the truth of a matter or weigh credibility, but to determine whether there is any genuine issue of fact that can only properly be resolved by a finder of fact because it could reasonably be resolved in favor of either party. *JKC Holding Co.*, supra.

The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. To prevail on a claim for false imprisonment the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. *Law v. S.C. Dep't of Corr.* 368 S.C. 424; 629 S.E.2d 642; 2006 LEXIS 122 (2006).

Petitioner and respondents both agree to the elements of a false imprisonment claim. (App. 21 & 32) They also agree to the salient facts that gave rise to the false imprisonment cause of action herein. However, they disagree in their perception of those facts. “Respondent disagrees with Appellant’s Statement of Facts ...” (App. 28). (These differences are clearly stated in respondents’ motion to dismiss and petitioner’s memorandum in opposition; argued in both, petitioner’s memorandum in opposition and petitioner’s brief to the appellate court and cited in the court’s order granting the motion, which all were on record before the appellate court for their consideration.

In granting the motion for summary judgment pertaining to petitioner’s False Imprisonment cause of action, the trial judge stated, “Plaintiffs’ claim is dismissed because “Plaintiffs voluntarily entered and remained in the conference room and did not ask if they could leave, thereby giving consent.” (App. 11).

Contrarily, respondents claim (1) that petitioner and other employees were “ordered” by their supervisors to report to the administrative office building; (2) Once there, the doors were locked behind them; (3) They were told not to speak to each while there; (4) Their cell phones were confiscated; (5) They were not allowed to leave to go to lunch; and (6) They were denied the use of bathroom facilities without an escort. (App. 20).

Petitioner submits that these are genuine issues of fact in dispute that should have only properly be resolved by a finder of fact because it could reasonably be resolved in favor of either party. *JKC Holding Co.*, supra.

Summary judgment will not lie if the dispute about a material fact is “genuine,” that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson*, supra. A material fact is one where its existence or non-existence could result in a different jury verdict. *JKC Holding Co.*, supra. .

In the context of the tort of false imprisonment, the fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. "Probable cause" is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. The question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. *Law*, supra.

Petitioner submits that, based on the record before it where, in the instant case, petitioner and the respondents offer conflicting evidence as to all the material elements of a False Arrest action and upon viewing the motion in the light most favorable to the respondent, the nonmoving party, the appellate court should have decided that material allegation(s) of fact were in dispute, precluding the granting of summary judgment.

Additionally, citing Rule 220(b) as ground for affirming the judgment of the lower court, the South Carolina Court of Appeals held that petitioner did not provide it with sufficient record upon which it could make a decision.

Rule 220(b), SCACR provides in part:

“In every decision rendered by an appellate court,

every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case."

Clearly, this rule is a mandate directed to the S.C. Court of Appeals after they have made a decision in a case. This rule does not direct an appellant to, "provide the court with a sufficient record upon which it can make a decision," nor does it direct the S.C. Court of Appeals to automatically or summarily affirm the ruling of the lower court where, in its view, an appellant did not provide it with a sufficient record upon which it can make a decision. Instead, Rule 212(a), SCACR wisely and justly addresses this situation.

Notwithstanding the above arguments, Rule 212(a), SCACR provides in part:

"The appellate court may require copies of all or any part of the transcript of proceedings or other matter which was before the lower court ... to be sent up for its inspection and consideration."

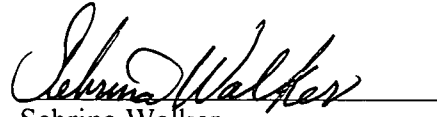
Thus, where the S.C. Court of Appeals opted not to request whatever matter, which was before the lower court, that it needed to inspect and consider in deciding the appeal, the court abused its discretion to the detriment of petitioner.

Summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Rule 56(c) SCRCF*.

CONCLUSION

For the reasons stated, petitioner asks the court to grant the petition for a writ of certiorari.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sebrina Walker". The signature is written in black ink and is positioned above a horizontal line.

Sebrina Walker
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Charleston, S.C. 29407
(843) 478-2351
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CERTIFICATE OF SERVICE

I certify that I have this date served the Petition for Writ of Certiorari on respondents by depositing a copy of it in the United States Mail, postage prepaid, return receipt requested, addressed to their attorney of record, Ashley P. Cuttino, Ogletree Bldg., 300 North Main St., Suite 500, Greenville, South Carolina 29601

May 19, 2017.

Sebrina Walker
810 Playground Road
Charleston, S.C. 29407
(843) 478-2351
Pro se