

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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JUL 28 2017

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

D. Craig Brown, Circuit Court Judge

Appellate Case No.: 2015-002449

Mansy McNeil,

Petitioner,

v.

Mark Keel, Chief of the South Carolina  
Law Enforcement Division and the State  
of South Carolina

Respondents.

PETITION FOR A WRIT OF CERTIORARI

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## **CERTIFICATE OF COUNSEL**

Counsel for the Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on July 12, 2017.

## **QUESTIONS PRESENTED**

1. Did the trial court err by granting the Respondents Judgment on the Pleadings because a genuine issue exists as to the material fact regarding viable remedies available for Petitioner for removal from the South Carolina Sex Offender Registry?
2. Did the trial court err by granting the Respondents Judgment on the Pleadings because the South Carolina Sex Offender Registry laws do not provide an adequate and complete remedy at law, thereby making equitable relief and appropriate remedy available to Petitioner?

## **STATEMENT OF THE CASE**

This case was initiated by Appellant filing on August 6, 2014, a Summons and a Petition for Declaratory Judgment for equitable relief for removal from the registry requirements under “Megan’s Law”, mandating registration with the South Carolina Sex Offender Registry.

Respondents filed an answer generally denying the allegations in Petitioner’s Petition for Declaratory Judgment. Respondents also filed a Motion for Judgment on the Pleadings asserting that the Petitioner was not entitled to equitable relief because the statute governing removal from the Registry provides an adequate remedy at law.

A hearing was held on November 4, 2015, on the Respondents'/Defendants' Motion for Judgment on the Pleadings before the Honorable Clifton Newman. The Court entered judgment in favor of the motion concluding that the Petitioner was not entitled to any equitable remedy and that no equitable jurisdiction applied to the relief the Petitioner sought. The Court further concluded "that for this court to act as a 'superlegislature' and to unilaterally add language to an unchallenged, unambiguously worded statute would violate South Carolina law and the South Carolina Constitution."

### ARGUMENTS

1. THE TRIAL COURT ERRED BY GRANTING RESPONDENTS JUDGMENT ON THE PLEADINGS BECAUSE A GENUINE ISSUE EXISTS AS TO THE MATERIAL FACT REGARDING VIABLE REMEDIES AVAILABLE FOR PETITIONER FOR REMOVAL FROM THE SOUTH CAROLINA SEX OFFENDER REGISTRY.

The Respondents argued that judgment should be granted on the pleadings because the pleadings herein presented no cause of action in favor or the plaintiff pursuant to the South Carolina Sex Offender Registry statutes, S.C. Code Ann. Sec. 23-3-400 *et seq.*

The Respondents relied on *Rosenthal v. Unarco Indus. Inc.*, 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982) citing *Wooten v. Std. Life and Casualty Ins. Co.*, 239 S.C, 243, 122 S.E.2d 637 (1961), asserting a "motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue."

In further support for the Respondents' Motion for Judgment on the Pleadings, Respondents argue that the South Carolina Sex Offender Registry law, specifically S.C. Code Ann Sec. 23-3-460, provides that a person is required to register biannually for life and the

statute provides remedies for removal. The Respondents argue that since the South Carolina Sex Offender Registry statutes are clear and unambiguous on the face of the statutes, no equitable remedy exists for the Petitioner to be removed from the Registry, other than the statutory remedies provided by the law.

South Carolina Code Ann. Section 23-3-430(E) provides "SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of *nolo contendere* for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered." Another statutory remedy for removal is found in South Carolina Code Section 23-3-430(F) which provides an offender who receives a pardon "based on a finding of not guilty specifically state in the pardon" shall be removed from the registry. A third category for statutory remedy for removal is found in South Carolina Code Section 23-3-430(G) where a person may be removed if exonerated subsequent to filing a petition for a writ of habeas corpus or a motion for a new trial.

The Appellant argues that equity was appropriate here because the South Carolina Sex Offender Registry laws regarding removal did not provide an adequate or complete remedy at law for Appellant because Appellant could not avail himself of any of the statutory remedies because none of the statutory provisions for removal apply to Appellant's situation because he was convicted of a qualifying offense and served his time. He has subsequently registered and complied with all of the registry provisions since his release from incarceration. The statutory provisions specify removal is possible in limited situations such as the reversal of a conviction, a specific pardon of not guilty, or exonerated through a new trial or a writ of habeas corpus; none

of which apply to Appellant's situation. The statutory provisions do not allow for any type of review for removal especially where there is no evidence of the likelihood of re-offense. Therefore, in the case where a person was convicted and served time and has no grounds to avail him or herself of the statutory grounds for removal from the registry, no adequate and complete remedy exists at law and equitable relief would be appropriate.

After considering the arguments of the parties, the Trial Court concluded that equity follows the law in this matter and that this Court's equitable powers must yield in the face of South Carolina's unambiguously worded Sex Offender Registry law. The Trial Court erred in granting the Respondents' Motion for Judgment on the Pleadings because the issue here, specifically as it relates to the motion, is the fact that Appellant does not have an adequate or complete remedy at law for removal from the Registry because his offense occurred before the institution of the registry laws and none of the statutory remedies for removal are legally applicable to his situation. While the Trial Court concluded that the Registry laws are unambiguous as to the requirement for registration for life, the genuine issue of fact in dispute here is the law's application to a person, such as Appellant, who has no legal remedy available under the law, thereby requiring that equitable relief be available. Since Appellant's crime was committed prior to the institution of the South Carolina Sex Offender Registry laws, and Appellant served his time and was released during the same year as the creation of the law, Appellant does not and never will have any opportunity to avail himself of any of the removal remedies provided under the law. A genuine issue of fact then exists as to whether the Appellant can avail himself of relief through and pursuant to the equitable remedies of the court when an adequate and complete remedy does not exist under the law.

The very fact that the South Carolina Sex Offender Registry laws do not provide a remedy at law for Appellant's situation is the reason why Appellant filed an action seeking equitable relief for removal from the Registry. The Trial Court's granting of the Respondents' Motion for Judgment on the Pleadings is the type of drastic remedy that is error, thereby depriving the Appellant of a trial on the disputed factual issues of whether equitable relief can be afforded to the Appellant for removal from the Registry. As a result, the Order of the Trial Court should be reversed and the case remanded for a full hearing on the disputed issues.

2. THE TRIAL COURT ERRED BY GRANTING RESPONDENTS JUDGMENT ON THE PLEADINGS BECAUSE THE SOUTH CAROLINA SEX OFFENDER REGISTRY LAWS DO NOT PROVIDE AN ADEQUATE AND COMPLETE REMEDY AT LAW, THEREBY MAKING EQUITABLE RELIEF AN APPROPRIATE REMEDY FOR PETITIONER.

Summary judgment is defined by Rule 12(c), SCRCF: If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. *Hooper v. Ebenezer*, 377 S.C. 217, 659 S.E.2d 213 (Ct. App. 2008).

When reviewing a grant of summary judgment, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRCF: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id. citing Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006); *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005); *Bradley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007); *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006).

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Id. citing Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005); *Medical Univ. of S.C. v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Hackworth v. Greenville County*, 371 S.C. 99, 102, 637 S.E.2d 320, 322 (Ct. App. 2006); *Rife v. Hitachi Constr. Mack Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005).

Further, since the purpose of summary judgment is to expedite the disposition of cases where the services of a fact finder are not necessary, it is a drastic remedy. *Id. citing Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003)( *quoting George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007); *Mulherin-Howell v. Cobb*, 362 S.C. 588, 596-97, 608 S.E.2d 587, 592 (Ct. App. 2005). “Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Id. citing Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); *B & B Liquors, Inc. v. O’Neil*, 361 S.C. 267, 270, 603 S.E.2d 629, 631 (Ct. App. 2004).

Generally, equitable relief is available only where there is no adequate remedy at law. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). “An adequate remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.” *Id.*

Respondents argue that the South Carolina Sex Offender Registry laws provide the complete remedy for statutory removal from the Registry. Appellant argues that the statutory remedies do not apply to him because the provisions only offer limited situations in which a person can petition for removal from the register and an entire class of people like Appellant do

not have adequate relief under the law for removal when no provisions exists when a person has been convicted, served the sentence and registers in compliance with the law for a certain period of time, and has no remedy for review for lifetime registration. Therefore, the Appellant argues that there is no remedy at law for his removal from the Registry because the remedies are not certain, practical, or complete as they relate to his situation. Consequentially, if no remedy exists at law, the Appellant should be able to avail himself of the equitable remedies of the court.

The Trial Court granted Judgment on the Pleadings, concluding that the South Carolina Sex Offender Registry laws offered an adequate and complete remedy at law for removal from the registry, therefore, equitable relief would not be appropriate for the Petitioner. The Trial Court's ruling is in error because a genuine issue as to the material fact of whether the South Carolina Sex Offender Registry laws offered an adequate and complete remedy at law for removal from the Registry for Petitioner exists. It was inappropriate for the Trial Court to grant relief on the Motion for Judgment on the Pleadings since there is a dispute between the parties regarding the factual issues of whether the South Carolina Sex Offender Registry laws offer an adequate and complete legal remedy for removal from the Registry, or if equitable relief is available in the absence of adequate and complete legal relief under the statute. Since there is a genuine disputed issue as to the facts, the granting of Judgment on the Pleadings was not appropriate.

The Trial Court's granting of the Respondents' Motion for Judgment on the Pleadings is the type of drastic remedy that is error, thereby depriving the Petitioner of a trial on the disputed factual issues of whether equitable relief can be afforded to the Petitioner for removal from the Registry in light of the fact that the statutory remedies are not an adequate and complete remedy

at law. As a result, the Order of the Trial Court should be reversed and the case remanded for a full hearing on the disputed issues.

Last, the Trial Court's Order notes restraint in attempting to change a person's duration on the Registry because "the duration of an individual's sex offender registration is purely a matter of legislative prerogative and there is no judicial discretion over this duration without violating the separation of powers mandated by the South Carolina Constitution." However, in *State v. Dykes*, Opinion No. 27124 (S.C. Supreme Court), the Petitioner contested the Circuit Court's Order requiring her to be subjected to satellite monitoring for the rest of her life pursuant to the South Carolina Sex Offender Registry laws, specifically, S.C. Code Ann. Section 23-3-540(C) and (H). The South Carolina Supreme Court invalidated the section of the statute that required lifetime satellite monitoring without judicial review as unconstitutional and left effective the remaining portion of the statute.

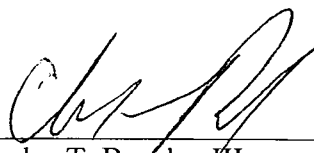
Herein, while the Respondents argued that the Petitioner was asking the Trial Court to rewrite the South Carolina Sex Offender Registry laws by providing a remedy not allowed by the statute, the Petitioner in fact was asking the Trial Court to allow the exercise of equitable relief since the statute does not provide an adequate and complete remedy at law for removal from the Registry. The Petitioner's request for equitable relief is far less imposing than the invalidation of a section of the statute by the South Carolina Supreme Court.

The Petitioner maintains that the equitable relief he seeks should proceed to trial on the disputed facts and that the granting of the Motion for Judgment on the pleadings was improper by the Trial Court.

### CONCLUSION

For all of the foregoing reasons, the Order Granting Judgment on the Pleadings of the Trial Court should be reversed and/or remanded for a full hearing on the disputed issues, and for the granting of any other remedy that is just and proper in this case.

RESPECTFULLY SUBMITTED,



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July 21, 2017

IN THE STATE OF SOUTH CAROLINA  
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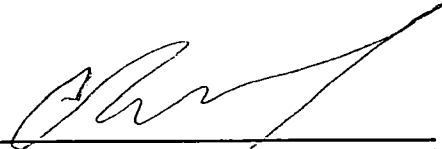
Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below he served the Respondents with a copy of the Writ of Certiorari and Appendix by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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July 21, 2017