

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Honorable Tanya A. Gee, Circuit Court Judge

Case No: 2015-002240

Edward L. Green.....Appellant

v.

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

PETITION FOR A WRIT OF CERTIORARI

Charles T. Brooks, III
Attorney for Petitioner
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708

Other Counsel of Record:
SLED
Adam L. Whitsett, Esq.
Post Office Box 21398
Columbia, South Carolina 29221
Attorney for Respondent

Office of SC Attorney General
ATTN: T. Parkin C. Hunter
Post Office Box 11549
Columbia, South Carolina 29211
Attorney for Respondent

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SEP 20 2017

SC Court of Appeals

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 Motion for Summary Judgment 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 Motion for Summary Judgment 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 May 18, 2015, 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 Summary Judgment asserting that the Petitioner was not entitled to equitable relief because the statute governing removal from the Registry provides an adequate remedy at law.

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 Petitioner 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 Petitioner because Petitioner could not avail himself of any of the statutory remedies because his crime was committed and he was adjudicated prior to the creation of the Registry and subsequent laws. The Petitioner was convicted of Criminal Sexual Conduct 3rd Degree and was sentenced under the Youthful Offender Act in 2005 for a term not to exceed six (6) years. The Petitioner has registered continuously as required by the law ever since.

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 Summary Judgment 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 Motion for Summary Judgment 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 MOTION FOR SUMMARY JUDGMENT 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), SCRCP: If, on a motion for Motion for Summary Judgment, 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), SCRCP: 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 pled guilty, 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 Motion for Summary Judgment, 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 Summary Judgment 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 Motion for Summary Judgment was not appropriate.

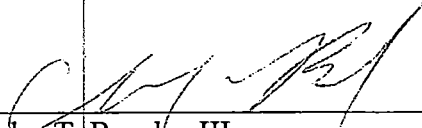
The Trial Court's granting of the Respondents' Motion for Motion for Summary Judgment is the type of drastic remedy that is error, thereby depriving the Petitioner of a trial on the disputed factual issues of whether equitable relief can be afforded to the Petitioner for removal from the Registry in 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

CONCLUSION

For all of the foregoing reasons, the Order Granting Motion for Summary Judgment 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,



Charles T. Brooks, III
Attorney for Petitioner
Post Office Box 3512
Sumter, South Carolina 29151
803-418-5708

July 25, 2017

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

Case No.:
2015-002240

Edward Green,

Petitioner,

v.

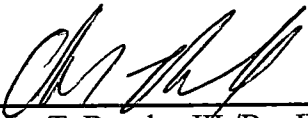
Mark Keel, Chief of the South Carolina
Law Enforcement Division and the State
of South Carolina

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 by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

South Carolina Court of Appeals
Jenny Abbott Kitchings
Post Office Box 11629
Columbia, South Carolina 29211



Charles T. Brooks, III /Bar ID#11762
The Brooks Law Offices

September 15, 2017

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SC Court of Appeals

The Brooks Law Office, LLC

CHARLES T. BROOKS, III, ATTORNEY AT LAW

IRMA R. BROOKS, ATTORNEY AT LAW

309 BROAD STREET ~ SUMTER, SOUTH CAROLINA 29150
POST OFFICE BOX 3512 ~ SUMTER, SOUTH CAROLINA 29151

(803) 418-5708

FAX: (803) 934-9618 TOLL FREE: (877) 770-8792

Email: cbrooks@ctbrooks.com

September 8, 2017

South Carolina Court of Appeals
Jenny Abbott Kitchings
Post Office Box 11629
Columbia, South Carolina 29211

RE: Gregory vs. Keel and SLED
2016-000561

Green vs. Keel and SLED
2016-002240

D. Johnson vs. Keel and SLED
2016-002387

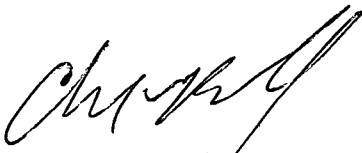
To Whom It May Concern:

Enclosed herewith please find the Petition for Writ of Certiorari in reference to the above cases which I hereby provide you at this time.

If there are any questions, please feel free to give me a call.

With kind regards,

Sincerely,



Charles T. Brooks, III

CTB,III/jlm

Enclosures as stated

cc: Linda Allen, SC Supreme Court

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The Brooks Law Offices, LLC
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29150

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Post Office Box 11629
Columbia, South Carolina 29211