

THE STATE OF SOUTH CAROLINA

In the Supreme Court

RECEIVED

SEP 20 2017

SC Court of Appeals

Appellate Case No. 2016-000561

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

John Gregory,

Appellant,

v.

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

Respondents.

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

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 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 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 Petitioner filing on April 17, 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. The Petitioner also filed with the Court an Affidavit of Thomas V. Martin, M.D., a licensed physician who rendered an opinion about the likelihood of the risk regarding the Petitioner to re-offend.

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.

A hearing was held on February 2, 2016, on the Respondents'/Defendants' Motion for Judgment before the Honorable Paul M. Burch. 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.

ARGUMENTS

1. THE TRIAL COURT ERRED BY GRANTING RESPONDENTS 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.

The Respondents argued that judgment should be granted on the pleadings because the pleadings herein presented no cause of action in favor of 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 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 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 exoneration 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 Petitioner, who has no legal remedy available under the law, thereby requiring that equitable relief be available. As in the case here, if the statutory provisions for removal are limited in nature, then the provisions do not provide a complete and adequate remedy at law and equity is and should be available for relief. A genuine issue of fact then exists as to whether the Petitioner 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 Petitioner's situation is the reason why Petitioner 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 Petitioner of a trial on the disputed factual issues of whether equitable relief can be afforded to the Petitioner 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 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), SCRPC: 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), SCRPC: 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. Petitioner 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 Petitioner 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 Petitioner 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 Petitioner should be able to avail himself of the equitable remedies of the court. Therefore, the Petitioner 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 Petitioner should be able to avail himself of the equitable remedies of the court.

The Trial Court granted 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 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 Judgment was not appropriate.

The Trial Court's granting of the Respondents' Motion for 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 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.

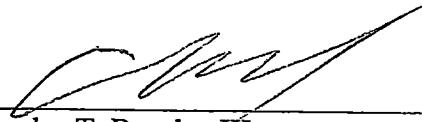
Herein, while the Respondents argued that the Petitioner was asking the Trial Court to rewrite the South Carolina Sex Offender Registry laws by providing a remedy not allowed by the statute, the Petitioner in fact was asking the Trial Court to allow the exercise of equitable relief since the statute 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 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

August 8, 2017

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

Case No.:
2016-000561

John Gregory ,

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

RECEIVED

SEP 20 2017

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,



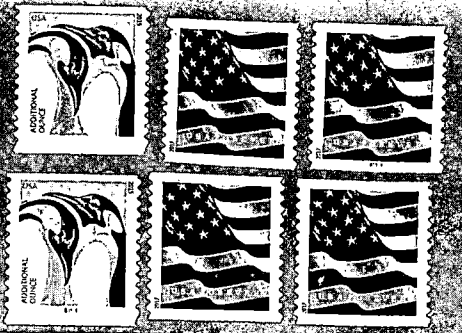
Charles T. Brooks, III

CTB,III/jlm

Enclosures as stated

cc: Linda Allen, SC Supreme Court

RECEIVED
SEP 20 2017
SC Court of Appeals



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

RECEIVED

SFP 20 2017

SC Court of Appeals

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