

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Tyrone Manigault, Sr. and Tyrone)
Manigault, Jr.,)
)
Plaintiffs,)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2016-CP-10-0433

FILED
2017 SEP 27 AM 8:45
JAMES J. HARRIS, CLERK OF COURT

**ORDER GRANTING SUMMARY
JUDGMENT TO THE DEFENDANT**

v.)
Denise Reisinger,)
)
Defendant.)

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DEC 11 2017
SC Court of Appeals

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THIS MATTER IS BEFORE THE COURT on the Defendant's Motion to Dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The hearing on the Defendant's Motion was held on August 29, 2017, at 11:00 a.m., in Charleston County Court of Common Pleas. Although the Plaintiffs were notified of the hearing and Plaintiffs filed a Memorandum to Oppose Defendant's Motion to Dismiss, no appearance was made by the Plaintiffs. Appearing on behalf of Defendant was Michael Todd Loftis.

PROCEDURAL BACKGROUND

Plaintiffs filed this action on January 27, 2016. On May 16, 2016, Plaintiffs delivered the Summons and Complaint to the Berkeley County Sherriff's Department for service of process. On June 8, 2016, Plaintiffs filed a Motion to Extend Time for Service of Process and to Confirm Venue, indicating that it was discovered that the Defendant's address of record was actually in Berkeley County, not Charleston County. Plaintiffs also filed an Affidavit of Due Diligence stating that the Defendant moved from the address of record in December 2015.

On June 13, 2016, an Order granting Plaintiffs' Motion to Extend Time for Service was issued, providing an extension of thirty days to serve the Defendant. In addition, the Order provided that if at the end of thirty days, Plaintiffs were still unable to serve the Defendant, then service could be made by publication in a newspaper circulated in Charleston and Berkeley counties.

On August 10, 2016, Plaintiffs filed an Amended Motion to Extend Time for Service of Process and to Confirm Venue, requesting an additional thirty days to serve the Defendant via publication in Charleston and Berkeley Counties. An Amended Order allowing service upon the Defendant via publication was signed by the Honorable Roger M. Young, Sr. on August 8, 2016.

On November 29, 2016, Plaintiffs filed a Petition for Entry of Default, along with an Affidavit of Default attesting that the Defendant was served via publication in Charleston County via publication in the Post and Courier from August 13, 2016, through August 27, 2016. According to the Petition for Entry of Default, the Defendant was also served in Berkeley County via publication in the Berkeley Independent from August 17, 2016, through August 31, 2016.

On December 1, 2016, an Order for Entry of Default was issued. The Defendant filed a Motion for Relief from Entry of Default on January 5, 2017. On February 2, 2017, Plaintiffs filed a Motion to Amend to Add Proper Party. On June 26, 2017, the Honorable Thomas L. Hughston, Jr., issued an Order granting Defendant's Motion for Relief from Default, rendering Plaintiffs' request for a Damages Hearing Moot and denying Plaintiffs' Motion to Amend. On July 13, 2017, the Defendant filed a Motion to Dismiss.

A Hearing on Defendant's Motion to Dismiss was conducted on August 29, 2017, during which this Court made the determination to convert the Motion to Dismiss to a Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

FINDINGS OF FACT

This matter arises out of a motor vehicle accident that occurred on January 28, 2013. On August 28, 2014, the Defendant passed away. Following the Defendant's death, an estate was opened in the Probate Court in Berkeley County, South Carolina. On September 17, 2014, a Certificate of Appointment was filed, naming the Defendant's father, David Steven Reisinger, as the personal representative for the estate. On November 20, 2015, the estate was closed with the Berkeley County Probate Court. The Plaintiffs did not file the present action until after the death of the Defendant. The Estate of the Defendant was never named as a Defendant to the present lawsuit. The Plaintiffs never served the Summons and Complaint on the Estate of the Defendant.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate 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 summary judgment as a matter of law. Rule 56(c), SCRPC. Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact; however, the moving party need not support its motion with affidavits or other similar materials negating the opponent's claims but must clearly establish by the record the absence of a triable issue of fact. Baughman v. American Tel

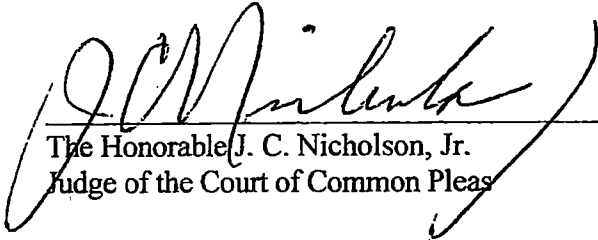
& Tel. Co., 306 S.C. 101, 410 S.E.2d 537, 545 (1991). With respect to an issue upon which the non-moving party bears the burden of proof, the moving party may discharge his initial responsibility by pointing out to the Court the absence of evidence to support the non-moving party's case. Id.

After the moving party has met his initial burden, Rule 56(e) of the South Carolina Rules of Civil Procedure requires the opposing party to "do more than simply show that there is some metaphysical doubt as to the material facts." Id. In response to a properly supported motion for summary judgment, the opposing party "must come forward with specific facts showing there is a genuine issue of material fact." Id. Thus, "the non-moving party may not rest on the mere allegations or denial of pleadings, but must set forth or point to specific facts showing there is a genuine issue of material fact." Thomas v. Waters, 315 S.C. 524, 526, 445 S.E. 2d 659, 661 (Ct. App. 1994)(internal citations omitted).

Upon review of the pleadings, it appears that the Plaintiffs did not file the pending lawsuit prior to the Defendant's death, the Defendant's Estate was never a party to the pending lawsuit, the Estate of the Defendant was never served with the Summons and Complaint, the applicable Statute of Limitations expired on January 28, 2016, and that there is no genuine issue of material fact in that these Plaintiffs did not file suit against the Estate of the Defendant prior to the expiration of the applicable Statute of Limitations.


Based on the foregoing, IT IS ORDERED, ADJUDGED AND DECREED: that the Defendant is entitled to Summary Judgment against the Plaintiffs, Tyrone Manigault, Sr. and Tyrone Manigault, Jr., thus ending the present action with prejudice.

AND IT IS SO ORDERED.


The Honorable J. C. Nicholson, Jr.
Judge of the Court of Common Pleas

Charleston, South Carolina

September 27, 2017

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By 
DEPUTY CLERK