

RECEIVED

APR 17 2018

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-26-05633

Bobby Foster,

Plaintiff,

vs.

Julian Neil Armstrong,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION OF THIS COURT'S
ORDER GRANTING SUMMARY JUDGMENT
AND DISMISSING THE ACTION WITH
PREJUDICE**

PLAINTIFF'S ATTORNEY: BENJAMIN W. LEE, ESQUIRE
DEFENDANT'S ATTORNEY: LINDA WEEKS GANGI, ESQUIRE
HEARING DATE: MARCH 26, 2018
PRESIDING JUDGE: LARRY B. HYMAN, JR.

The Plaintiff represented by Benjamin W. Lee and the Defendant represented by Linda Weeks Gangi came before this Court on the Plaintiff's Motion to Reconsider this Court's Order Granting the Defendant's Motion for Summary Judgment. The Defendant asserts that this action is precluded by the Statute of Limitations. This Court heard the arguments of counsel as it deemed appropriate.

The automobile accident which is the subject matter of this action, occurred on April 8, 2013 in Horry County (See Complaint paragraphs 3, 5 and 6). Thereafter, the Plaintiff attempted to serve the Defendant by personal service through the Sheriff's Department but was unable to do so as more clearly reflected on the Affidavit of Service filed with the Court on November 23, 2015. Thereafter, Plaintiff's counsel obtained an Order for Publication which was filed on November 23, 2015. The Order states in pertinent part "the court finds that it is appropriate and necessary to serve the defendant via publication in the daily newspaper of the defendant's last known address, 186 Williamsburg Road, Little River, South Carolina." The Order of Publication goes on to state "service upon the defendant shall be effectuated by publishing the Summons, and a Notice of

ELECTRONICALLY FILED - 2018 Apr 09 4:16 PM - HORRY - COMMON PLEAS - CASE#2015CP2605633

Filing the Complaint in the above-referenced case in a local newspaper, once weekly for three consecutive weeks, and by forwarding a copy of the pleading to the defendant at the defendant's last known address." The Plaintiff then filed an Affidavit of Default and obtained an Order for Entry of Default and Referral for Hearing on Damages which was filed on March 8, 2016. Defense counsel filed a Notice of Appearance after having received notice that a damages hearing was scheduled. The Notice of Appearance filed on July 19, 2016 simply gives the Court and Counsel notice that she is representing the defendant and asks that all notices concerning this matter be sent to her. Thereafter, on September 16, 2016 the defendant filed a Motion to Set Aside the Order for Entry of Default and Order for Publication. After hearing the matter, Judge Culbertson issued an Order setting aside the Order for Publication and setting aside the Order for Entry of Default and Referral for Hearing on Damages and the Order was filed with the Court on October 26, 2016. Judge Culbertson found that 1) the Summons failed to comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*, 2) the Publication failed to include the date of the filing of the Summons and Complaint as required by the Order of Publication and S.C. Code Ann. §15-9-740, 3) the Plaintiff failed to properly publish the Summons in accordance with the Order for Publication which required that it be published in a daily newspaper of the defendant's last known address, and 4) the Plaintiff failed to use reasonable diligence in locating the Defendant as required by S.C. Code Ann. §15-9-740. See Court Order dated October 21, 2016 and filed October 26, 2016. Judge Culbertson further found that this Court had no personal jurisdiction over the Defendant. The Plaintiff filed a Motion to Reconsider which specifically states "Plaintiff respectfully requests this Court reconsider its October 21, 2016 Order on Defendant's Motion so that litigation is not precluded by the Statute of Limitations." The Motion for Reconsideration was denied.

The Order setting aside the Order for Publication and setting aside the Order for Entry of Default specifically required that the Plaintiff amend the Summons to comply with Rule 4(b). The Summons has never been amended. After the October 21, 2016 Order was issued by the Court, an Answer was filed on behalf of the Defendant raising the issue of the Statute of Limitations.

As stated previously, Judge Culbertson specifically found that this Court had no jurisdiction over the Defendant as of October 21, 2016, the date he issued the Order declaring the Order for Publication and the Order for Entry of Default null and void and of no force and effect. The Statute of Limitations ran on April 8, 2016, more than six months before Judge Culbertson's Order finding that the Court still had no personal jurisdiction over the Defendant as of October 21, 2016. Thus, there are no issues of facts in controversy and the Defendant is entitled to Summary Judgment on the basis that the Statute of Limitations expired prior to proper service of the Summons and Complaint on the Defendant. The Court hereby denies the Plaintiff's Motion for Reconsideration of its Order Granting Summary Judgment. This case is hereby dismissed with prejudice.

AND IT IS SO ORDERED this the _____ day of _____, 2018.

In Chambers

The Honorable Larry B. Hyman, Jr.
Presiding Judge of the Fifteenth Judicial
Circuit



Horry Common Pleas

Case Caption: Bobby Foster VS Julian Neil Armstrong
Case Number: 2015CP2605633
Type: Order/Other

So Ordered

s/ Larry B. Hyman 2152