

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullens, Circuit Court Judge

Case No. 2014-CP-07-01908

Anthony King,

Appellant,

v.

P.J. Tanner, Sheriff of
Beaufort County; Beaufort
County Sheriff's Department;
Randolph Murdaugh III,
Solicitor; and The Fourteenth
Judicial Circuit Solicitor's
Office,

Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN HEARING DEFENDANT'S AMENDED MOTION FOR SUMMARY JUDGEMENT PURSUANT TO RULE 43 (L) OF THE SOUTH CAROLINA RULE OF CIVIL PROCEDURE?
2. DID THE TRIAL COURT ERR IN GRANTING THE DEFENDANT'S AMENDED MOTION FOR SUMMARY JUDGMENT WHEN THERE WAS MORE THAN A MERE SCINTILLA OF EVIDENCE PRESENT TO DEFEAT DEFENDANT'S AMENDED MOTION FOR SUMAMRY JUDGMENT?

STATEMENT OF THE CASE

This civil cause of action arose from a criminal conviction of Appellant in July of 1999 that was later overturned after several rounds of appeals. On August 8, 2014 Anthony King filed a civil complaint. Service of process was perfected on October 14, 2014. An amended complaint was served on December 5, 2014. The parties in the case engaged in discovery.

On August 27, 2015 Defendants filed a motion for Summary Judgment. Oral argument was made before the Honorable C. Eugene Griffith, Jr. on October 27, 2015. On December 11, 2015, Judge Griffith, in a written order, denied the Defendant's motion for Summary Judgment. The parties continued to engage in Discovery after the motion for Summary Judgment was denied.

On June 17, 2016 Defendant filed a second motion for Summary Judgment followed by an amended motion for Summary Judgment on August 26, 2016. On September 27, 2016 oral argument on the motion was made before the Honorable Carmen T. Mullen. On November 21, 2016, Judge Mullen issued an order granting Summary Judgment.

On xxxxxxxxxx, the Appellant filed the Notice of Appeal. On xxx the transcript from the September 27, 2016 hearing was received by Appellant's attorney. This appeal now follows.

STANDARD OF REVIEW

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). A trial court may properly grant a motion for summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Fleming, 350 S.C. at 493-494, 567 S.E.2d at 860. In Hancock v. Mid-South Management Co., 381 S.C. 326 at 330-331, 673 S.E.2d 801 at 803 (2009) the State Supreme Court held that “in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment.” More than a mere scintilla is required only in cases requiring heightened burdens of proof or applying federal law. Id. at 331. RULE 43(l), SCRPC provides that if any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action.

FACTS

Appellant was originally indicted in July 1999 by the Beaufort County Grand Jury for possession of crack with intent to distribute (99-GS-07-922). Amended Complaint p.6. In October 1999, a jury convicted Appellant, and the trial court sentenced him to ten years imprisonment. Id. A timely notice of appeal was filed and perfected and the South Carolina Court of Appeals affirmed Appellant’s conviction and sentence. State v. King, Op. No. 3467 (S.C. Ct. App. Filed March 25, 2002). Id. The remittitur was issued on July 28, 2003. Id. Appellant subsequently filed an application for Post Conviction Relief on May 3, 2003 (03-CP-07-803) alleging ineffective assistance of counsel. Id. The State filed its return on March 22, 2004 and on July 27, 2004, an evidentiary hearing was held before the Honorable John C. Few. Id. Appellant’s application was denied and dismissed by Judge Few in an order dated December 6, 2004. Id. Appellant filed a Motion to Reconsider on December 14, 2004 which Judge Few denied on February 15, 2005. Amended Complaint. p. 7. In his Order served and filed on May 13, 2005, Judge Few suggested that the alleged Brady violation was not proper before the Court and suggested that the alleged Brady violation was used as a ground for a separate Post Conviction Relief Application based on Newly Discovered Evidence. Id.

In the interim, Appellant filed a pro se notice of appeal, dated February 11, 2005. Amended Complaint p.7. The South Carolina Supreme Court dismissed the appeal on February 28, 2005 because the order denying the motion to reconsider had not been issued when the notice of appeal was filed and served. Id. Following the issuance of that order, Appellant again appealed and the South Carolina Supreme Court denied certiorari. Id.

On February 25, 2005 Appellant filed a second Post Conviction Relief application based on newly discovered evidence alleging that he was being held in custody unlawfully based on after discovered evidence not previously presented in that the State failed to disclose material evidence or properly respond to discovery request for favorable evidence. Amended Complaint p. 7. A police report reflecting the search on the home and the fact that no drugs were found during that search was not turned over by the State in response to a timely filed Brady motion by Applicant's counsel. Id. at 8 This newly discovered police report of the May 25, 1999 search of Applicant's residence came into the Applicant's possession through an anonymous source immediately before his hearing on his first post conviction relief application. Id. The second Post Conviction Relief Court found that Plaintiff was entitled to a new trial based on the omitted incident report. Id. at 11. The case was appealed to the South Carolina Court of Appeals and the decision to set aside the conviction was affirmed. Plaintiff's Motion to Strike p.10 An appeal to the South Carolina State Supreme Court denied Certiorari. Id. Appellant was released from prison in May of 2012.

On August 8, 2014 Anthony King filed a civil complaint. Amended complaint filed December 14, 2015.

ARGUMENTS

- I. THE TRIAL COURT ERRED IN HEARING A RENEWAL OF DEFENDNANT'S MOTION FOR SUMMARY JUDGMENT UNDER RULE 43 (L) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE WHICH PROHIBITS SUCCESSIVE SUMMARY JUDGMENT MOTIONS ONCE A MOTION HAS BEEN RAISED AND RULED UPON ON THE SAME ISSUES ABSENT NEW FACTS BEING ASSERTED.

As previously stated, on August 27, 2015 Defendants filed a motion for Summary Judgment. On October 27, 2015 oral arguments were made before the Honorable C. Eugene Griffith, Jr. On December 11, 2015, Judge Griffith, in a written order, denied the Defendant's initial motion for Summary Judgment. On June 17, 2016 Defendant filed a second motion for Summary Judgment followed by an amended motion for Summary Judgment on August 26, 2016. While subsequent summary judgment motions are not prohibited, they must include new matters discovered as the case proceeds toward a disposition. Rule 43(l), SCRCP provides that if any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action. In the case of Smith v. Breedlove, 377 S.C. 415, 661 S.E.2d 67 (2008), the South Carolina Supreme Court addressed the issue of renewal of summary judgment motions holding that "the fact that a different trial judge previously denied a motion for summary judgment does not preclude the moving party from renewing its motion once new evidence is gathered."

In the present case, there was continued discovery after the initial motion for Summary Judgment was denied, however there were no new facts or information that arose out of the discovery process, only a furtherance of the facts that were already there.¹ The renewal of the motion for summary judgment was an attempt by the respondents to receive a favorable motion on the same set of facts from a different judge. It is the Appellants position that due to the fact that no new facts or information arose from discovery but only a furtherance of the facts that were already present, the motion for summary judgment was not appropriate to be heard and thus should have been denied.

II. THE TRIAL COURT ERRED IN GRANTING DEFENDANT'S RENEWAL MOTION FOR SUMMARY JUDGMENT.

In the alternative, if this Court finds that there was sufficient new evidence and the Amended Motion for Summary Judgment was appropriate to be heard, the Amended Motion for Summary Judgment should have been denied as there is more than a mere scintilla of evidence present to defeat the motion.

When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). A trial court may properly grant a motion for summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Fleming, 350 S.C. 488, 493, 567 S.E.2d 857, 860. The present case is in the discovery phase of litigation. Pleadings along with depositions, request to admit, supporting memorandums and affidavits have been exchanged between the parties. Here, Appellant is the non moving party and thus the aforementioned evidence and all reasonable inferences that may be drawn from the evidence must be viewed in the light most favorable to the Appellant. In regards to the amount of evidence required to defeat summary judgment, the South Carolina Supreme Court recently clarified earlier confusion about whether a scintilla of evidence is sufficient to defeat summary judgment. In Hancock v. Mid-South Management Co., 381 S.C. 326 at 330-331, 673 S.E.2d 801 at 803 (2009), the State Supreme Court held that “in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment.” More than a mere scintilla is required only in cases requiring heightened burdens of proof or applying federal law. Id. at 331. Here, this is a civil cause of action and the burden of proof required is the preponderance of the evidence standard. Secondly, federal law is not being applied in the case at hand therefore, the Appellant and non moving party need only to submit a mere scintilla of evidence to withstand summary judgment.

Here, the Appellant served on the respondents individually its Request to Admit to which the Respondents responded and their responses clearly admit that the acts complained of in Appellant's complaint were done so knowingly, intentionally, and for the purpose of depriving the Appellant of clearly known and established Constitutional and Statutory rights to ensure a conviction and imprisonment of the Appellant.²

In the lower court, the Respondents argued that the Appellant's claims were barred by the statute of limitations pursuant to Wallace v. Kato, 549 U.S. 384, 127 S. Ct. 1091, 166 L.Ed 2d 973 (2007).³ In that 2007 matter, the U.S. Supreme Court analyzed for statute of limitations purposes the common law actions for false arrest and malicious prosecution and determined that a cause of action for false arrest terminates when the Plaintiff is "bound over for trial" not when his conviction was set aside and he was released from custody. It was and continues to be the Appellant's argument that the 2007 Wallace decision is not applicable in this instance to the Appellant as the holding in that case should be applied prospectively and not retroactively. In Bartley v. Bartley Logging Co., 293 S.C. 88,90, 359 S.E. 2d 55,56 (1987), the South Carolina Supreme Court held that the general rule is that statutes are to be construed prospectively rather than retroactively absent a specific provision or clear legislative intent to the contrary. While the Wallace decision is considered case law and not a statute it is the position of the Appellant that this Court should apply that same reasoning and the law found in the Wallace decision should be applied prospectively. It is the Appellants argument that the holding in the Wallace case would not be applicable in the case at hand as he was "bound over for trial" in 1999 many years before the holding in Wallace. Under the Respondents argument the court would be applying the case law retroactively as the Wallace decision was not until 2007 many years after the Appellant was bound over for trial. This would be inaccurate. A prospective application of the Wallace decision is applicable and thus the holding in Wallace would not apply to the Appellant.

As evidenced by the information obtained by the Appellant during the discovery process, the Appellant was deprived of his Constitutional and Statutory rights that he was entitled to. There was more than a mere scintilla of evidence present to defeat the motion for Summary Judgment and thus the trial court erred in granting Defendant's motion for Summary Judgment.

2 SEE RESPONSE TO REQUEST TO ADMIT MARKED AS EXHIBIT 1

3 SEE MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT P. 8, MARKED AS EXHIBIT 2

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

July 17, 2018

Respectfully submitted,

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