

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2017-002618

RECEIVED
JUL 27 2018
SC Court of Appeals

Harold Estes Blackwell, Jr. Appellant,

v.

Miracle Hill Ministries..... Respondent,

APPELLANT'S INITIAL REPLY BRIEF

Harold E. Blackwell, Jr.
315 Glendale Road
Union, SC 29379
864-303-7000
Pro se

Adam Bach
1306 South Church Street
Greenville, S.C. 29607
Attorney for Respondent
Miracle Hill Ministries
(864) 236-5013

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Statement of Issues on Appeal

1. Constitutionality of 10 day limit for pro se litigant.
2. Did the Court err in not providing Appellant any consideration due to his *pro se* status?
3. Did the Court err abuse its authority by dismissing the instant case at this juncture?
4. Did the Court err in finding Defendant Fisk was not acting in a fiduciary role?
5. Did the Court err in analyzing respondents' conduct regarding Appellant's claims of outrage?

Statement of the Case

Plaintiff received notice of both Court's orders granting Defendants Fisk and Miller dismissal of Plaintiff's claims against them, pursuant to Rule 12(b) (6), on November 14, 2017, and could not file this motion pursuant to Rule 59(e) SCRCF and/or Rule 52 SCRCF, due to time constraints imposed by having to produce so many complex legal documents within the Rule's 10 day filing limit. Among Plaintiff's legal disabilities is no legal software or subscription to a legal data service or "boilerplate" recommendations of any kind, in addition to being a *pro se* litigant.

Plaintiff, as a *pro se* litigant, has been required to produce and file complex legal documents with this Court in order to litigate two cases before Judge Stilwell. Maintaining the appealability of all the issues Plaintiff might raise to the Court of Appeals has been denied Plaintiff as both cases now seem to run concurrently where previously staggered litigation processes made the work load manageable. The other case was filed on November 16, 2016, the instant case on July 7, 2017.

Argument

With respect to Respondent Miracle Hill's claim this lawsuit exposes addiction treatment facilities to virtually limitless liability regarding non-patient plaintiffs (Resp. brief, pg 6), Appellant avers to dismiss this claim is to grant addiction treatment facilities carte blanche when dealing with family members of those in their care. Other treatment facilities are not exposed to the liability of Miracle Hill's unorthodox methods or horrendous past results.

As to Respondent's Section I, **THE LOWER COURT CORRECTLY DETERMIND THAT THE COMPLAINT FAILED TO STATE GACTS SUFFICIENT TO CONTSTITUTE ANY CASUSE OF ACTION AGAINST RESPONDENT MIRACLE HILL.** Respondent cites *Doe v. Marion*, stating, "In considering a motion to dismiss a complaint base on a failure to state facts sufficient to constitute a cause of action, the lower court must base its ruling solely on the allegations set forth in the complaint" (Resp. Init. Reply, pg. 6) without explaining how the court separated two cases being heard at the same time and did not consider both complaints when deciding both motions to dismiss. The evidence, construed in a light most favorable to Appellant, is that the court was considering both complaints when making its findings. The transcript clearly shows Judge Stilwell being told he was hearing two cases, not one, after a considerable amount of testimony had already been given.

Respondent cites *Brazell v Windsor*, 384 S.C. 512, 515, 682, S.E.2d 824 826 (2009) as the proper standard but both litigants in that case were represented by counsel. The plaintiff was entitled to a reading of the complaint which is less stringent than that of an attorney. That did not happen in this case.

As to Respondent's subsection A, **"The Lower Court Determined that the Complaint Fails to Allege Extreme and Outrageous Conduct by Respondent Miracle Hill, Sufficient to State a Claim for Intentional Infliction of Emotional Distress."** With respect to Miracle Hill's claim Appellant's arguments in his Rule 60 Motion for Reconsideration could have been brought before the lower court, Appellant doesn't know to what arguments Respondent refers. Appellant avers he was not given the opportunity to raise this to the lower court due to the confusion of having two case heard at one time. Additionally, the court did not rule on the acts instead of the conduct of Miracle Hill until the Court's order so indicated. Appellant clearly had no opportunity

to raise this to the lower court.

Respondent's statement "The lower court correctly concluded that the complaint fails to allege any extreme or outrageous conduct by Miracle Hill" (Resp. Init. Reply, pg 7) is in error. The Court ruled on Miracle Hill's acts, not conduct. Respondent's entire response to Appellant's appeal of the claim of outrage's dismissal is predicated on the court having ruled on the conduct of Miracle Hill which it did not. It ruled incorrectly on the acts of the Respondent.

Respondent does not base his claim of outrage solely on Miracle Hill's facilitation of Miller's silence, as alleged by Respondent (Resp. pg. 9). That is the absurd hope of Respondent, to have the Court's findings based on the error that the current action at bar is in essence a complaint about Appellant's ex wife.

As to Respondents subsection B. The Lower Court Correctly Determined that the Complaint Fails to Allege Any Legal Duty Owed by Respondent Miracle Hill to Appellant Sufficient to State a Claim for Gross Negligence.

Respondent also neglects to acknowledge Appellant arranged for Miller to enter Miracle Hill. (Resp. Init. Reply, pg 10). Respondent also alleges Appellant was estranged from Miller which is clearly not in evidence and just made up out of thin air. That falsity litters the Respondent's reply.

Appellant does not bring action on behalf of his ex-wife, he is suing her in this lawsuit as well. Another fiction from thin air produced by Respondent.

Appellant avers Miracle Hill arranging for marriage counseling for his wife (and Appellant as there are two in a marriage), suggesting she divorce Appellant, supply this marriage counselor with selected pieces of Appellant's correspondence, sending of arrogant emails to Appellant degrading him, entering into a conspiracy with Respondent Fisk and Miller to teach

Appellant a lesson and Reid Lehman's total abandonment of the precepts he advocated for in his book, "Are Those The Words You Meant to Use" with the subtitle, "How to Keep Martial Conflict Safe," did, with knowledge and forethought, set out to inflict emotional trauma on Appellant. This emotional trauma led to his suicide attempt in December 2015.

Respondent's note of *non-sequitur* is off point. (Resp. Init. Br., pg 11). Appellant alleges that because Lehman, Slocum and Woodard, "were acting within the scope of their employment their acts are attributable to Miracle Hill along with the liability.

As to Respondent's Subsection C. The Lower Court Found that the Complaint Fails to Alleges an Unprivileged Publication by Respondent Miracle Hill to a Third Party or the Existence of Legally Presumed or Special Damages Sufficient to State a Claim for Defamation.

Appellant is mystified at Respondent's reference to Miller's accusation of adultery in the divorce proceedings forms the bases of no claim of defamation by Appellant. Respondent's claim is not cites no authority.

Respondent's averment Miracle Hill had an obligation to believe Miller's accusation and then report it to police with no attempt to investigate whether a known prolific liar was telling the truth is wrong. There is certainly no moral or social obligation to do that. Besides, Miracle Hill did not report this to police until July 18, 2015. Miller is alleged to have made the allegation in March.

Respondent's claim "Miracle Hill and the marriage counselor shared a common interest in providing needed treatment to Miller" is a farce. There is no evidence Miracle Hill shared a common interest with the marriage counselor. The marriage counseling was to be after Miller left the care of Miracle Hill, when Miracle Hill no longer would have an interest. Appellant avers

Lehman did this to “teach plaintiff a lesson” for complaining about his wife treatment which was obviously going to be a failure. Appellant has clearly made the allegation Lehman was not acting in good faith as he violated every precept in his aforementioned book.

Respondent’s averment the police report was not included in complaint is in error, obviously. (see Plaintiff’s Exhibit D). The complaint did not identify by name the persons who were present when Miracle Hill slandered Appellant only that the police report clearly shows a third person was present. (Plaintiff’s Exhibit D, bottom third page). Appellant’s claim is nowhere evidenced to be false. (see Resp. Init. Reply pg. 13)

As to Respondent’s D. The Lower Court Correctly Concluded That the Complaint Failed to State Facts Sufficient to Constitute a Claim for Relief Despite Appellant’s Status as a Pro Se litigant.

Appellant never argues his claim Respondent the dismissal of his claim because he is a pro se litigant. He simply argues he should have been given the chance to amend his complaint. Appellant is mystified as to how the court would expect him to address issues until they are raised in the lower court. Appellant had no idea he was being discriminated against due to his pro se status until the order was issued. (see Resp. Reply pg. 13).

Respondent's citation of *Barnett v Hargett*, is off point. Appellant never asked the lower court to rewrite the complaint to include claims not presented. In *Barnett* the court states "means that if the court can reasonably read the pleadings to state a valid claim on which the [petitioner] could prevail, it should do so despite the [petitioner's] failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir.1991). Appellant notes Respondent did not use the verbatim language in *Barnett* but opposing counsel's paraphrase. Appellant isn't asking the court to add claims to his complaint, just allow its amendment.

Appellant also asked for counsel to be appointed due to his pro se status and that was refused by the Court.

As to Respondent's section **II. THE LOWER COURT DID NOT ABUSE ITS DISCRETION BY DISMISSING THE COMPLAINT WITH PREJUDICE AND BY DECLINING TO GRANT APPELLANT'S REQUEST FOR A CONTINUANCE**

As to Respondent's subsection **A. The Lower Court Did Not Abuse Its Discretion by Dismissing the Complaint with Prejudice.**

Respondent is making up claims in the Reply Brief, such as Appellant never brought the issue of granting permission to amend his complaint before the lower court. (Resp. Init. Reply, pg. 15). Appellant states clearly before the lower court, "then allow plaintiff to amend his complaint as justice demands." (see Plaintiff's Motion to Reconsider, R. pg. 127).

As to Respondent's speculation Appellant could not sufficiently repair his complaint, Appellant avers he was attempting to state a claim, not prove his case. In retrospect, Appellant would have included many more facts and anticipate discovery.

As to Respondent's **B. The lower Court Did Not Abuse Its Discretion by Denying Blackwell's Request for a Continuance.**

Again, Respondent is making up claims in his Reply Brief. Appellant clearly objected to the two cases being heard together in the hearing. (see Resp. Init. Reply page 17). Appellant, not being an attorney, had notes in front of him for the Miracle Hill case and was unable to reference his notes on the other case. While trying to find those notes the hearing continued without pause so that Appellant could not refer to either set of notes while searching for notes on a case he expected would be heard subsequently, not at the same time.

Both lawsuits do not contain facts describing the same events even remotely. (Ibid).

As to Respondent's Section III. THERE ARE ADDITIONAL SUSTAINING GROUNDS TO AFFIRM THE ORDER OF THE LOWER COURT GRANITN RESPONDENT MIRACLE HILL'S MOTION TO DISMISS.

It is true Appellant does not appeal the dismissal of the claims for civil conspiracy, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraudulent concealment, fraud and mental health facility failure to control patient. Upon amending his complaint Appellant would add a claim for unfair trade practices and failure to properly supervise and train employees under the negligence claim.

CONCLUSION

Miracle Hill's argument on this appeal fall short on the claim for negligence, outrage and defamation. Miracle Hill clearly had a duty of care to the Appellant after meeting with him, selecting the person who was going to be his intermediary with his wife, selecting a marriage counselor for Appellant and writing Appellant emails concerning his marriage and making threats against his marriage gives rise to a duty of care. Miracle Hill also clearly slandered Appellant to the police in an unprivileged statement by William Slocum. Appellant expects discovery to yield even more evidence of what actually happened. Appellant, having had no

discovery, can't possibly know all the facts. Appellant anticipates the discovery harvest will be plentiful.

Appellant asks the Court to remand this case to the lower court with permission for the Appellant to amend his complaint, as justice demands.

So says Appellant, pro se,

Harold E. Blackwell, Jr.
(864) 303-7000

Union, SC
July 22, 2018

Harold (Hal) E. Blackwell, Jr.
315 Glendale Road
Union, South Carolina 29379

July 25, 2018


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

Re: Case No. 2017-002635

Dear Ms. Kitchings,,

Please find enclosed the Appellant's Reply to Miracle Hill's Initial Response.

Kindest regards,



Hal Blackwell
Plaintiff, pro se
(864) 303-7000
halblackwell@gmail.com

Adam Bach
1306 South Church Street
Greenville, South Carolina 29607
Attorney for Respondent Miracle Hill Ministries
(864) 236-5013

M. Lee Daniels
120 1200 Woodruff Road, Suite A-3
Greenville, South Carolina 29607
Attorney for Respondent Anita Jane Miller
Telephone: (864) 242-9484

Carrie O'Brien
Walker Allen Grice Ammons & Foy LLP
225 East Worthington Ave
Suite 200
Charlotte, NC 28226
Telephone: 704-264-0159 (Carrie ext 775, Allie ext 661)

(864) 303-7000
halblackwell@gmail.com

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Harold (Hal) E. Blackwell, Jr.
315 Glendale Road
Union, South Carolina 29371



V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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