IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Eugene C Griffith, Jr., Circuit Court Judge

Case No.: 2009-CP-24-180

Adam Hill, Jr., ... Appellant,

v.

Henrietta Norman and Primerica Insurance Company, ... Defendants,

of whom Henrietta Norman is ..... Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

The undisputed facts are that Ms. Helen Smith submitted application for life insurance to Primerica Life Insurance Company on January 23, 1997. Ms. Smith, at the time of application, annotated a beneficiary for primary insurance as Henrietta Norman, Cousin and a contingent beneficiary of Adam Hill, Jr., brother. The affidavit of Maureen Middleton, corporate counsel and vice president of Primerica Life Insurance Company has verified that the original application designated Henrietta Norman as beneficiary and no change of beneficiary was ever received by the life insurance company. The proceeds of the life insurance policy were paid to Henrietta Norman. The Appellant filed a Summons and Complaint and the Respondent filed an Answer and counterclaimed for frivolous litigation. After the grant of summary judgment to the Respondent and the denial of a Motion to Reconsider, this appeal followed.

APPLICABLE LEGAL STANDARD

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRCP: 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. White v. J.M. Brown Amusement Co., 360 S.C. 366, 601 S.E.2d 342 (2004); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004); Redwend Ltd. P'ship v. Edwards, 354

S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998).

Summary judgment is appropriate where 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. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 602 S.E.2d 389 (2004); McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004); Rule 56(c), SCRCP; *see also* Higgins v. Medical Univ. of South Carolina, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (noting that when ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including pleadings, depositions, answers to interrogatories, admissions on file, and affidavits). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002); *see also* Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003)(stating that all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party).

Moreover, summary judgment is appropriate where further inquiry into the facts of the case is not necessary to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000); Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004). Where plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001); Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall, 359 S.C. at 376, 597 S.E.2d at 183. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRCP. The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004).

ARGUMENT

I. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT TO RESPONDENT BECAUSE NO GENUINE ISSUE OF MATERIAL FACT EXISTS AND RESPONDENT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

A. Appellant's arguments are based solely on speculation and conjecture.

Appellant's Initial Brief is saturated with speculation. The hypothetical situations which the Appellant relies on here are:

- ". . . the Company , (sic) **more likely than not**, misplaced it or tossed it aside." *See* Brief page 12. (*emphasis added*)
- " . . . to consider the **plausibility** of the Company misplacing a change of beneficiary." Id. at 13. (*emphasis added*)
- ". . . lead a reasonable person to conclude that the Company **may have** misplaced a change of beneficiary . . ." Id. at 14. (*emphasis added*)
- " . . . was pointed out to the Court the affidavit submitted by the corporate representative **may have** been a sham affidavit . . ." Id. at 14. (*emphasis added*)
- "A beneficiary who had **perhaps**, somehow deceived the insurer . . ." Id. at 16. (*emphasis added*)

After discovery was completed, there was no evidence substantiating the speculation and conjecture of Appellant's claims and summary judgment was required. *See* Hanahan v. Simpson, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997) (stating "verdicts may not be permitted to rest upon surmise, conjecture or speculation"). Appellant's arguments lack any evidentiary support or legal authority. Appellant even has the audacity to dispute the contents of the transcript of the summary judgment hearing completed by a certified court reporter. (R. pp. 170-171).

Further, in order to accept Appellant's hypothetical construct and reverse the trial court, this Court also would have to accept as true his multiple hypothetical premises: Priamerica's corporate representative lied in her affidavit, Helen Smith completed a change of beneficiary form and Priamerica Life Insurance Company lost it. There is no evidence in the record from which it can even be inferred that any one of the allegations has support – much less all three. The order of the court was not a motion to dismiss, it was a motion for summary judgment that was granted *in toto*. Appellant's hypothetical arguments may have survived a motion to dismiss, however Appellant, in opposition to a summary judgment motion, has to set forth specific facts showing there is an issue for trial. *See*, Rule 56(e) SCRCP. Appellant has failed in his burden.

B. Appellant relies on documents not relevant to this action from a previous litigation and an Affidavit of no probative value.

Appellant seeks to rely on documents to be included in the Record on Appeal and cites the documents in his initial brief which are irrelevant, not part of the record in this case and are documents from litigation in the Probate Court. (R. pp. 24-25; R. pp. 172-174) Appellant contested the funeral expenses being reimbursed to this Respondent in the settling of the estate. That issue was fully litigated in the Probate Court, ruled upon and is *res judicata*. It has no bearing or probative value in the matter *sub justice*.

Additionally, Appellant is attempting to submit the Affidavit of Pastor Clara O. Barnes (R. pp. 147-148) which was excluded by the trial court as having no probative value. Pursuant to Rule 403, SCRE, "evidence may be excluded if its probative value is substantially outweighed by the danger of . . . confusion of the issues, or misleading the jury, or by considerations of undue delay, [or] waste of time"). In any event, the

exclusion of the evidence caused Appellant no prejudice. *See* Fields v. Reg'l Med'l Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005) (holding appellant must show prejudice from admission of evidence to warrant reversal). All probate pleadings, filings, orders and the Affidavit of Pastor Clara O. Barnes should be stricken from the Record on Appeal.

CONCLUSION

Under the facts and law of this case, Appellant has no genuine issue of material fact and has based this frivolous appeal on conjecture, speculation and hypothetical situations.

Based upon the foregoing, Respondent respectfully requests the decision of the trial court be affirmed and the appeal deemed frivolous.

DATED this 23rd day of October, 2012.

Respectfully submitted,

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CERTIFICATION OF RULE 221(b)

I certify Respondent's Final Brief complies with Rule 221(b).

October 23, 2012

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PROOF OF SERVICE

I certify that I have served the Respondent's Final Brief by depositing a copy of the same in the United States Mail, postage prepaid, on October 23, 2012, addressed to Appellant Pro Se: Adam Hill Post Office Box 1014, Anniston, Alabama 36202.

October 23, 2012

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