THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

In the Matter of the Estate of Reba P. Hinson, Probate # 2008-ES-12-297, Circuit Court # 2010-CP-12-168,

---

Mell Woods . . . . . Appellant,

v.

Robert H. Breakfield, as Personal Representative of the Estate of Reba P. Hinson, ... Respondent.

FINAL BRIEF OF APPELLANT

Court Of Appeals Internal Tracking Number: 2011-191876

Mell Woods
P.O. Box 2603
Lancaster, SC 29721

B. Michael Brackett
Moses Koon & Brackett
P.O. Box 100261
Columbia, SC 29202
Respondent Attorney

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES. ii

ISSUES PRESENTED. 01

STATEMENT OF THE CASE. 02, 03, 04

STANDARD OF REVIEW 05

ARGUMENT. . . . . .

Issue 1: 06, 07

Issue 2: 08

Issue 3: 09

CONCLUSION. 10

TABLE OF CASES AND AUTHORITIES

CASES — Page

Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E. 2d 537 (1991). 05, 10

Brave v. Blakely, 250 S.C. 353, 157 S.E.2d 726, 728 (1967). 08

Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 637 S.E.2d 801, (2009).. 06

In the Matter of Ned Gregory, II., 306 S.C. 270, 411 S.E.2d 430 (1991). 03

Lever v. Wilder Mobile Homes, Inc, 283 S.C. 452, 322 S.E.2d 692 (Ct. App. 1984). 01, 08

Madison v. Babcock Center, Inc., et al., 371 S.C. 123, 638 S.E.2d 650 (2006) 05

Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1998). . . 05

Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) 05

State v. King, 367 S.C. 131, 137, 623 S.E.2d 865, 868 (Ct. App. 2005). 07

Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 125, S.E.2d 628, 632 (1962). 08

Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). 05

Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1975). 05

Woodstock Hardwood & Spool Manufacturing Co. v. Charleston Light & Water Co., 76 S.C. 95, 63 S.E. 548, 556 (1909). . . 08

OTHER AUTHORITIES

Rule 59(e) SCRCP. 04

Rule 601(a) SCRE. 07

. . . . . ___

Issues Presented

1. Did the trial court err in granting summary judgment where issues of fact remained?

2. Did the trial court err in granting summary judgment in a nuisance case where Lever v. Wilder Mobile Homes, Inc., 283 S.C. 452, 322 S.E.2d 692 (Ct.App. 1984) was specifically made a part of the pleadings, and argument to the trial court?

3. Did the trial court err in not adding Ned Gregory, II., as a party?

Statement of the Case

This case started in the Probate Court of Chester County. This case involves appellant Mell Woods, because of a nuisance maintained in a close proximity to lands and a recreation boat dock owned by appellant Mell Woods, located at Fishing Creek Lake. If there is such a thing as a current "Hinson Estate," that entity is responsible for pollution discharge into the public waters of South Carolina. The pleadings complain of and blame the Hinson Estate for dumping raw untreated human sewage into the lake near the appellant's boat dock, (R.pp. 121-124, R.pp. 679-688). The reason this is done is that the entire subdivision was never intended to have permanent residents, but only travel trailers, which would have "holding tanks," (R.pp. 121-124). Many people now live directly on the river bank and have installed 55 gallon drums either near, or directly on the high water line. Commodes are flushed into the drums which is illegal according to South Carolina State regulations, (R.pp. 639-650).

Appellant has raised questions in the probate court, and the circuit court if the Hinson Estate really exists, because the current personal representative, the respondent herein, lied under oath (perjury) in order to obtain appointment as a personal representative in the first place, (R.pp. 150-156).

The pleadings allege that Ned Gregory, II., is the actual cause of the nuisance, because Gregory helped the respondent herein, Breakfield in obtaining his bogus appointment as personal representative of the Hinson Estate, (R.pp. 77-91, R.pp. 150-156, R.pp. 592-602). Ned Gregory, II., is known to the South Carolina Courts, and is the same person as, In the Matter of Ned Gregory, II., Respondent, 306 S.C. 270, 411 S.E.2d 430 (1991), where Gregory was disciplined for forging documents. Gregory filled out the probate form #300 involved in this appeals case, and then obtained the signature under oath of Mr. Breakfield, the Respondent herein, knowing full well that another will existed which revoked the will that Gregory wanted probated, (R.pp. 63-64, R.pp. 93-109, R.pp. 159-163, R.pp. 203-212, R.pp. 386-392).

Other Information Required by Rule 208(b)(1)(c) SCACR: This action was removed from probate court, Order of February 10, 2010; defense is general denial; a summary judgment hearing was held on February 02, 2011, and an Order granting respondent a Summary Judgment was signed on February 09, 2011, a Rule 59(e) SCRCP Motion was filed and denied, a timely Notice of Appeal was served on or about May 16, 2011.

STANDARD OF REVIEW

Quoting Acting Justice Cole in the case of Madison v. Babcock Center. Inc., et al, 371 S.C. 123, 638 S.E.2d 650 (2006).

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 a judgment as a matter of law." Rule 56(c), SCRCP; Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). In determining whether any triable issues of fact exist, the court must view the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C 383, 365 S.E.2d 24 (1988). *Summary judgment is a drastic remedy which should be cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues.* (emphasis added) Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E. 2d 537, (1991).

On appeal from an order granting summary judgment, the appellate court applies the same standard that governs the trial court. The appellate court will review all ambiguities, conclusions, and inference arising in and from the evidence in a light most favorable to the appellant, the non-moving party below. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001); Williams v. Chesterfied Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976).

If all ambiguities, conclusions, and inferences arising in and from the depositions and Affidavit are viewed in a light most favorable to the petitioner, it is clear that there are true and genuine issues as to the question of liability and causation. The decision of the trial court should be reversed.

Argument as to Issue one:

1. In South Carolina, there are two standards of applying facts where a summary judgment motion is decided; the first if the federal standard, meaning not necessarily an action in federal court, but any action in a State court where the action is based on federal law, or a State action where a heightened burden of proof is required, and as explained by the South Carolina Supreme Court in Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 637 S.E.2d 801, (2009);

2. In addition to the federal standard, there is also the regular, South Carolina Standard, where only a scintilla of evidence is needed in order to defeat a motion for summary judgment, all as explained in Hancock, as above;

3. The Trial Court's summary judgment order, applies the federal standard; this case is a plain preponderance of evidence case, where only one scintilla of evidence is needed to send the case to jury;

4. The record in this case is full of sworn, and admissible testimony in quantities enough to send the case to jury, (R.pp. 639-650).

5. Contrary to the ex parte Court Order drawn by the defense counsel, and presented to the Court for signature, the affidavit of appellant is made upon personal knowledge, does state specific facts, and is admissible: Rule 601(a) of the South Carolina Rules of Evidence provides: Every person is competent to be a witness except as otherwise provided by statute or these rules." Rule 601(a), SCRE. Generally, "all witnesses are presumed competent to testify." Courts presume a witness to be competent because bias to other defects in a witness's testimony--revealed primarily through cross-examination--affect a witness's credibility *and may be weighed by the finder of fact.* State v. King, 367 S.C. 131, 137, 623 S.E.2d 865, 868 (Ct. App. 2005).

Argument as to Issue Number Two:

1. The South Carolina Court of Appeals has ruled in a case very similar to the present one, that matters of nuisance, sewage, and odors are jury questions, from Lever v. Wilder Mobile Homes, Inc., 283 S.C. 452, 322 S.E.2d 692 (Ct.App. 1984), the following:

> "However, issues are for the jury when the evidence, viewed in the light most favorable to the non-moving party, may establish the issues in the mind of a reasonable juror. Brave v. Blakely, 250 S.C. 353, 157 S.E. 2d 726, 728 (1967). We hold the nuisance issue was for the jury. In South Carolina "Anything" working inconvenience or damage, or interfering with the enjoyment of life or property is a nuisance. Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 125, S.E.2d 628, 632 (1962). More to the point, it is a nuisance to use property in such as way that annoying or injurious odors are emitted. Woodstock Hardwood & Spool Manufacturing Co. v. Charleston Light Water Co., 76 S.C. 95, 63 S.E. 548, 556 (1909)."

There is evidence in the Record that Respondent's actions have inconvenienced appellant, and interfered with his property, (R.pp. 362-367, R.pp. 639-650, R.p. 710, R.pp. 23-721).

Argument as to Issue Number Three:

1. Ned Gregory, II., should be a party in this action because it is his doing that the estate cannot be settled; it is prejudicial to everyone involved, appellant, respondent, and the Hinsons, because Gregory is the person responsible for causing a revoked Will to be admitted to probate, (R.pp. 150-156).

Conclusion

Summary judgment "should be cautiously invoked so that no person will be improperly deprived at trial of disputed factual issues." Baughman v. American Telephone and Telegraph Co., 306 S.C. 101, 410 S.E.2d 537 (1991). The awarding of summary judgment, though justified in some instances, is a somewhat anticipatory method of resolving a lawsuit. Therefore, in reviewing a summary judgment, all evidence and reasonable inferences to be drawn therefrom are construed in a light most favorable to the party opposing the motion. If the facts of this case are evaluated and weighed in the light most favorable to the appellant, then the motion for the summary judgment should fail and the summary judgment granted be reversed. This case must be decided by fact finders, appellant Mell Woods has a right to a day in court in front of a jury.

Dec 04, 2012 Mell Woods

P.O. Box 2603
Lancaster, SC 29721

ORIGINAL

Certificate of Service follows:

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

In the Matter of the Estate of Reba P. Hinson, Probate # 2008-ES-12-297, Circuit Court # 2010-CP-12-168,

---

Mell Woods . . . . . Appellant,

v.

Robert H. Breakfield, as Personal Representative of the Estate of Reba P. Hinson, ... Respondent.

Rule 211(a), SCACR
Certificate of Party

Court Of Appeals Internal Tracking Number: 2011-191876

Mell Woods certifies that Appellant's Final Brief complies with Rule 211(b), SCACR.

This 04 day of December, 2012.

Mell Woods

P.O. Box 2603
Lancaster, SC 29721

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

In the Matter of the Estate of Reba P. Hinson, Probate # 2008-ES-12-297, Circuit Court # 2010-CP-12-168,

---

Mell Woods . . . . . Appellant,

v.

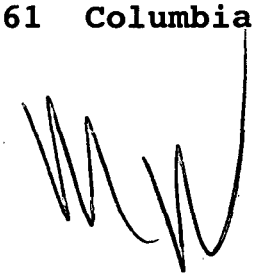
Robert H. Breakfield, as Personal Representative of the Estate of Reba P. Hinson, ... Respondent.

Certificate of Service
Court Of Appeals Internal Tracking Number: 2011-191876

I hereby certify that I have served the Respondent Counsel of Record, B. Michael Brackett, with a true copy of Appellant's Brief and Certificate of Party by placing the same in the U.S. Mail, with sufficient postage addressed to:

Moses Koon & Brackett, PC
C/O B. Michael Brackett P.O. Box 100261 Columbia, SC 29202

This 04 day of December, 2012.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721