

STATE OF SOUTH CAROLINA
In the Court of Appeals

On Appeal from Greenville County
Court of Common Pleas

The Honorable D. Garrison Hill

Case No. 2013-002688

Beverley D. Wilson,

APPELLANT,

v.

Stephen P. Williams,

RESPONDENT.

BRIEF OF RESPONDENT

Michael D. Glenn
GLENN, HAIGLER & STATHAKIS, LLP
Attorney for Respondent
121 West Benson Street
Anderson, South Carolina 29624
(864) 226-1885
(864) 226-0561, fax

RECEIVED

AUG 15 2014

SC Court of Appeals

Table of Contents

Table of Authorities..... iii

Statement of the Issues on Appeal..... 1

Statement of the Case..... 2

Argument..... 4

1. Was the Lower Court correct in granting Respondent’s Motion to Dismiss..... 4

2. Was the Lower Court correct in denying Appellant’s Motion to Amend her Complaint to add an expert affidavit?..... 6

3. Was the Lower Court correct in denying Appellant’s Motion to Appeal the Change of Venue?.....6

4. Was the Lower Court correct in failing to allow Appellant to amend her Complaint to add a party Defendant?..... 7

Conclusion..... 7

Table of Authorities

Breland v Love Chevrolet Olds, Inc., 339 S.C. 89,
529 S.E. 2d 11 (2000)..... 6

Ranucci v Crain, 397 S.C. 168,
723 S.E. 2d 242 (S.C. App., 2012)..... 4

Statutes

S.C. Code § 15-36-100(B)..... 2

S.C. Code § 15-36-100(G)..... 2

S.C. Code § 15-30-100(C)(D)(E)(F)..... 5

Statement of Issues on Appeal

1. Was the Lower Court correct in granting Respondent's Motion to Dismiss?
2. Was the Lower Court correct in denying Appellant's Motion to Amend her Complaint to add an expert affidavit?
3. Was the Lower Court correct in denying Appellant's Motion to Appeal the Change of Venue?
4. Was the Lower Court correct in failing to allow Appellant to amend her Complaint to add a party Defendant?

STATEMENT OF THE CASE

Appellant commenced this action by filing a summons and complaint (R.p. 7) on May 22, 2013 in the Court of Common Pleas for Richland County, South Carolina. In her complaint Appellant sought damages from Respondant, an attorney who had previously represented Appellant. Appellant alleged four causes of action, all of which amount to legal negligence or legal malpractice.

In his answer (R.p. 81), Respondant denied the material allegations of the complaint, alleged that the complaint fails to state facts sufficient to constitute a cause of action, and in his third defense, contends that the complaint fails to comply with the requirements of SC Code Anno. Section 15-36-100(B) and (G) and that Appellant failed to file, as a part of her complaint, an affidavit of an expert witness which is required by the statute.

Contemporaneously with filing of the answer, Respondent filed a Motion to Dismiss the Complaint (R.p. 133) because of Appellant's failure to comply with the requirements of the code section. At the same time Respondent filed a Motion to Change Venue from the Richland County Court of Common Pleas to the Greenville County Court of Common Pleas.

(R.p. 135). The Motion to Change Venue and the Motion to Dismiss were scheduled for hearing at 11:00 a.m. on August 28, 2013. Appellant appeared at the hearing and opposed the Motion to Change Venue. The court granted Respondent's Motion to Change Venue to the Greenville County Court of Common Pleas. The Court did not consider, and did not rule upon, Respondent's Motion to Dismiss. The order granting the Change of Venue was filed on September 17, 2013. (R.p. 1).

Following the change of venue to Greenville County, Respondent again filed his Motion to Dismiss the complaint (R.p. 149) because of Appellant's failure to comply with the provisions of SC Code Anno §15-36-100(B) and (G). That motion was filed on October 3, 2013. The Court scheduled the motion for hearing on November 12, 2013. On November 7, 2013 Appellant filed a Motion to Amend her Complaint (R.p. 142) to add the affidavit of an expert witness, a Motion to Amend her Complaint to add Haynsworth Sinkler Boyd P.A. as a Defendant, (R.p. 143), and a Motion to Appeal the Change of Venue. (R.p. 146).

The motions were heard by the Honorable D. Garrison Hill on November 12, 2013. The Court issued an Order granting Respondent's Motion to Dismiss and denying Appellant's Motion to Amend her

Complaint to add an expert affidavit. (R.p. 3). The Court also issued an Order denying Appellant's Motion to Appeal the change of venue. (R.p. 5). Both orders were signed on November 18, 2013 and filed on November 20, 2013.

Appellant's Notice of Appeal was filed and served on December 18, 2013.

ARGUMENT

Standard of Review

In an appeal from an order of a trial court granting a Motion to Dismiss or Denying a Motion to Amend the Complaint, the lower court decision will only be reversed upon a showing of an error of law. Ranucci vs. Crain, 397 S.C. 168, 723 S.E. 2d 242 (S.C. App., 2012).

1. Was the Lower Court correct in granting Respondent's Motion to Dismiss?

Appellant's complaint was filed on May 22, 2013 alleging four causes of action, all of which amount to legal negligence or legal malpractice. Respondent's answer was filed and served on June 24, 2013. In

his second defense, respondent alleges that the complaint failed to state facts sufficient to constitute a cause of action. In his third defense, Respondent contended that the complaint failed to comply with the requirements of SC Code Anno §15-36-100(B) and (G) in that Appellant failed to file as a part of her complaint an affidavit of an expert witness as required by the statute.

Contemporaneously with filing the answer, Respondent filed a Motion to Dismiss the complaint because of appellant's failure to comply with the requirements of the code section. Subsequently, venue was changed to the Greenville County Court of Common Pleas where Respondent filed an identical Motion to Dismiss.

Appellant contends that since she is a *pro se* Plaintiff, she should be excused for her failure to comply with the requirement to file an expert affidavit. Code sections 15-30-100(C), (D), (E), and (F) provide certain relief for the failure to meet statutory requirements of filing an expert affidavit. Here Appellant learned of the defect in her complaint on June 24, 2013 when Respondent filed his Answer and Motion to Dismiss. Even with that knowledge, Appellant did not attempt to amend her complaint until she filed her Motion to Amend on November 7, 2013, more than 4 months after

learning of the defect and long after the expiration of the Statute of Limitations.

2. Was the Lower Court correct in denying Appellant's Motion to Amend her Complaint to add an expert affidavit?

Appellant's contention that she should now be allowed to file an expert affidavit uses the same logic and reasoning as used to support her Motion to Amend her Complaint. The motion to file the expert affidavit was made along with her motion to amend the complaint. Under the statute the time was long past for the filing of the affidavit. Respondent contends that the lower court was correct in its ruling.

3. Was the Lower Court correct in denying Appellant's Motion to Appeal the Change of Venue?

In Breland v Love Chevrolet Olds, Inc, 339 SC 2d 89, 529 SE 2d 11(2000), the South Carolina Supreme Court held that an Order effecting venue of a case is not immediately appealable and may be appealed only after the case is concluded in the Lower Court.

In addition, an order to change venue by a circuit court is subject to a Motion for Reconsideration but in no case is such an order subject to appeal in another circuit court. It is clear that the lower court's denial of the motion

to appeal the change of venue is correct.

4. Was the Lower Court correct in failing to allow Appellant to amend her Complaint to add a party defendant?

Appellant's Motion to Amend her Complaint to add Haynsworth Sinkler Boyd, PA as a Defendant was made, along with her Motion to Amend by adding an expert affidavit. Both motions were made on November 7, 2013, long after the filing of the complaint. In the argument of her motion, Appellant conceded that she knew that Defendant Stephen P. Williams was an attorney employed by Haynsworth Sinkler Boyd, PA when she hired Mr. Williams and when she filed her complaint for legal malpractice against Mr. Williams on June 17, 2013.

Since the court determined that Appellant's Motion to Amend to include an expert affidavit should not be allowed, the case was dismissed. There was no reason for the court to consider allowing the addition of a party Defendant when the case was to be dismissed.

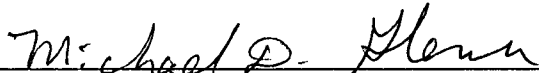
The lower court was correct in denying the motion.

CONCLUSION

Respondent contends that all of the lower court rulings on motions filed by Appellant and Respondent were correct and supported by the law of South Carolina. The lower court dismissal of the complaint should be sustained.

Respectfully submitted,

GLENN, HAIGLER & STATHAKIS, LLP



Michael D. Glenn, #2147
Attorney for Respondent
121 West Benson Street
Anderson, South Carolina 29624
(864) 226-1885
(864) 226-0561, fax

August 7, 2014

Certificate of Counsel

The undersigned certifies that the Brief of Respondent complies with Rule 211(b), Appellate Court Rules.

GLENN, HAIGLER & STATHAKIS, LLP

Michael D. Glenn
Michael D. Glenn, #2147
Attorney for Respondent
121 West Benson Street
Anderson, South Carolina 29624
(864) 226-1885
(864) 226-0561, fax

August 7, 2014