

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2019CP2304659

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APR 17 2020

SC Court of Appeals

John Douglas Alexander,

Appellant,

vs.

John Doe, Director of The Crafts - Farrow
Hospital; and The State of South Carolina,

Respondents.

INITIAL BRIEF

Appellant:

John Alexander, Pro se
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669

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STATEMENT OF ISSUES ON APPEAL

1. Did the lower Court err in granting Appellee's Motion For Summary Judgment based on its finding Plaintiff's Complaint does not set for a cause of action for which relief can be granted?

STATEMENT OF THE FACTS

On December 6, 2018 the Appellant sent the South Carolina Department of Mental Health a letter requesting his inpatient Mental Health Records / Files. The Appellant received a letter from the South Carolina Department of Mental Health on February 25, 2019 informing me that my records were under the old State Hospital System. That my request was sent to Medical Records, Bldg. 17, Crafts - Farrow State Hospital.

Subsequently, the Appellant sent the Crafts - Farrow State Hospital three (3) letters (the last dated May 3, 2019) stating on two previous occasions I had requested my inpatient Mental Health Record / Files but, had not received any response from their office. Consequently, under the Freedom of Information Act I was making my third request for those documents.

Also, again on May 12, 2019 the Appellant sought the assistance of the South Carolina Department of Mental Health in trying to obtain his Mental Health Records / Files. However, on May 22, 2019 Ms. Adrian Dorrough, Health Information Service Department of the South Carolina Department of Mental Health sent the Appellant a letter stating: "We no longer have access to the records." So, on June 16, 2019 Appellant sent Ms. Dorrough a letter respectfully requesting the name of any person/s who could assist him with gaining a copy of his Records in the possession of Crafts - Farrow State Hospital.

As a result of no response from Crafts - Farrow Hospital or Ms. Dorrrough of the South Carolina Department of Mental Health, on July 16, 2019 the Appellant initiated a Summons and Complaint against John Doe, the Director of Crafts - Farrow Hospital and the State of South Carolina. Thento, on August 29, 2019 the Appellant filed a Motion For Discovery. But September 17, 2019 the Honorable Perry H. Gravely dismissed the motion finding that it was not a proper motion before the Court.

So, on October 4, 2019 Appellant served a Request For Discovery upon the Appellees. Likewise, on October 4, 2019 the Appellant submitted a Motion For Default and Motion For Summary Judgment before the Court. Incidentally, on November 6, 2019 the Appellant received an Answer And Motion For Summary Judgment from the Appellees. In response, on November 12, 2019 the Appellant filed a Motion To Amend John Doe, the Director of the South Carolina Department of Mental Health to the Complaint.

Theafter, on December 19, 2019 Motion Hearings were held, the presiding Judge being Alex Kinlaw. Judge Kinlaw Denied Appellant's Motion For Default as well as Motion For Summary Judgment. However, Judge Kinlaw granted the Appellee's Motion For Summary Judgment. Hence, on January 10, the Appellant filed timel Motions For Rehearings on Judge Kinlaw's Form 4 Order granting Appellee's Motior For Summary Judgment and denying his Motion For Summary Judgment and Motion For Default.

Final, on January 29, 2020 the Honorable Alex Kinlaw denied Appellant's Motion For Rehearing Or Reconsideration. And, on March 3, 2020, the Appellant file the instant Appeal before the Court of Appeals of South Carolina.

ARGUMENT

The Appellant asserts that Judge Alex Kinlaw's decision denying his Motion For Summary Judgment and granting the Appellee's Motion For Summary Judgment was erroneous and unsound. Particularly because Judge Kinlaw considered the contents of the pleadings, the motions, and additional evidence adduced by the parties and determined that there was existence of a genuine issues of material fact to present the case to a Jury. As such, the Court dismissed the Appellant's Motion For Summary Judgment concluding the procedural device did not allow the speedy disposition of the issues in controversy without the need for a Jury Trial. See Fed. R. Civ. P. Rule 56.

Error is presumed where Judge Kinlaw granted the Appellee's Motion For Summary Judgment based on the Court's opinion that "Plaintiff's complaint does not set forth a cause of action." While Judge Kinlaw possessed certain discretion, that discretion did not amount to legislative power in disguise. The Judge's sole function is to apply the law as written. Not supplanting the criterias and bases for granting or denying a motion for summary Judgment from the existence or non existence of a "genuine issue of material fact" into that of whether or not a cause of action exists. See Federal Civil Procedure Key 2470, 2470.1

The Appellant contends that this Court of Appeals can and should determine that when Judge Kinlaw decided that the existence of a genuine issue of material fact required the matter to move forward, and denied the Appellant's motion for summary Judgment; the same triable, substantial, and/or real question of fact supported by substantial evidence equally precludes entry of summary Judgment in the Appellee's favor. See Judgment Key 181 (2), 185 (6). C.J.S. Judgment Section 260.

Final, a cause of action determines whether or not a complaint ends or moves forward. Proof of such state of facts entitles a party to maintain an action in a Judicial tribunal. Consequently, a cause of action is not the proper issue for governing a summary Judgment motion hearing.

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that the Judgment of the lower Court should be Reversed. That a trial by Jury be Ordered. And this Honorable Court grant the Appellant any other relief that it deem Just and proper.

Dated 4.15.20.

Respectfully Submitted,
John D. Alexander

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PROOF OF SERVICE

I, John D. Alexander, certify today this 15 day of April, 2020
sent the Initial Brief United States Postal Services, prepaid, to
Mr. Logan Y. Rogals, Esq., Post Office Box 485, Columbia, South Carolina
29202.

Respectfully Submitted,
John D. Alexander

Sworn and Subscribed
this 15 day of April, 2020

Jamara Conwell
Notary Public

My Commission Expires September 25, 2023

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APR 15 2020

P.C.I. MAILROOM

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LEGAL MAIL

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NOT CENSORED THIS ITEM, THEREFORE,
THE DEPARTMENT DOES NOT ASSUME
RESPONSIBILITY FOR ITS WRITTEN CONTENTS.
S.C. DEPARTMENT OF CORRECTIONS