THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Sep 24 2020
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Special Circuit Court Judge

Unpublished Opinion No. 2020-UP-108 (S.C. Ct. App. Filed Apr. 15, 2020)
Appellate Case No. 2020-001119

Shamsy Madani, ... Respondent.

v.

Rickey Phelps and Christy Phelps . . . . Petitioners,

REPLY

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NOVEL QUESTIONS OF LAW AND CONFLICT WITH PRIOR DECISIONS EXIST PURSUANT TO RULE 242, SCACR

Shamsy Madani ("Respondent") responds to Rickey Phelps and Christy Phelps ("Petitioners") Petition for Writ of Certiorari ("Petition") and argues that Petitioners have failed to provide special and important reasons for this Court to grant writ of certiorari as provided in Rule 242, SCACR. However, Petitioners respectfully submit they have petitioned upon the existence of novel questions of law and that the decision of the Court of Appeals below is in conflict with prior decisions of this Court.

1. Novel Question of Law and or Conflict with Precedent for Timely Preservation of Objection to "Irreconcilable Verdict"

The Court of Appeals in this matter held:

> As to whether the "irreconcilable verdict" issue was preserved for appellate review: *Wilder Corp v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Camden v. Hilton*, 360 S.C. 164, 171, 600 S.E.2d 88, 91 (Ct. App. 2004) ("[P]arties seeking to reform a verdict must voice their objection before the jury is discharged . . . .") *Dykema v. Carolina Emergency Physicians*, P.C., 348 S.C. 549, 554, 560 S.E.2d 894, 896 (2002) ("[F]ailure to challenge a verdict upon being given the opportunity to do so results in waiver.") The magistrate court excused the jury before either party had an opportunity to question the jury's intentions in rendering its verdict. Upon being given the opportunity by the court, Respondent raised her concerns regarding the verdict.

App at 209. Petitioners agree with the Court of Appeals as to the applicability of the cases cited above and their holdings, however, respectfully submit that the Court of Appeals' finding below has modified the responsibility of a party to preserve the issue of "irreconcilable verdict" where Respondent did not, in fact, timely object and/or has never preserved the issue for review of the magistrate court's supposed denial of her opportunity to timely challenge the verdict.

As provided in the Petition, Petitioners argue that Respondent failed on three (3) occasions to challenge the verdict and never objected to the magistrate court's supposed denial of an opportunity to challenge the verdict either at trial or on appeal. Petition at 4. The Court of Appeals' holding below effectively creates a rebuttable presumption of denial of opportunity to challenge if the presiding trial judge does not affirmatively pause and inquire as to any challenge

to the verdict. This holding is in conflict with the longstanding responsibility of the parties to timely raise objection and effects a modification of the holding in *Camden v. Hilton* creating affirmative judicial responsibilities not previously recognized by this Court. *Camden v. Hilton*, 360 S.C. 164, 171, 600 S.E.2d 88, 91 (Ct. App. 2004). The holding of the Court of Appeals below also excuses a party seeking to challenge a verdict from raising an objection to a denied opportunity to challenge and substitutes preservation of the issue by belated motion for new trial for irreconcilability.

Alternatively, a novel issue exists for this Court to determine the standard for the timeliness of a challenge to a verdict if evidence exists the court denied an opportunity to so challenge. For these reasons, Petitioners disagree with Respondent's argument that issues as contemplated by Rule 242, SCACR have not been presented in the Petition.

2. Novel Question of Law and/or Conflict in Establishing an Elemental Requirement of De Minimis or Nominal Damages Pursuant to S.C. CODE § 27-40-660

The trial court below, in applying S.C. Code § 27-40-660, correctly stated:

> Defendant [] argues that a new trial must be granted because the jury's verdict of zero dollars is irreconcilable as a matter of law. . . . At the conclusion of the trial the jury returned a verdict for each Plaintiff for unlawful ouster but awarded $0 (Zero dollars) in damages. . . . . Had there been not statutory right to changes in the verdict, the Defendant would have 'netted' Four hundred one dollars and 74/100 ($401.75) [H]owever, . . . if a landlord unlawfully removes or excludes the tenant from the premises, the tenant may . . . recover an amount equal to three months' periodic rent or twice the actual damages sustained by him, whichever is greater . . . . In this case, the damages awarded by the jury were zero and the Plaintiffs requested that the alternative treble rent award be made. There is no requirement that actual damages exist under the statute and the jury's award is therefore not irreconcilable.

App. 76. However, the Court of Appeals below affirmed the Court of Common Plea's order vacating the trial court's finding and granting a new trial in citing, "*Stevens v. Allen*, 342 S.C. 47, 53, 536 S.E.2d 663, 666 (2000) ("A verdict assessing liability against the defendant but awarding the plaintiff zero damages is inconsistent and contrary to South Carolina law.")

As provided in the Petition, in determining the meaning of a statute, the terms used therein must be taken in their ordinary and popular meaning, nothing to the contrary appearing.

Citizens for Lee County v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992). If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning. *Wynn v. Doe*, 255 S.C. 509, 180 S.E.2d 95 (1971). The Court of Appeals' holding below first conflicts with precedent and S.C. Code § 27-40-660 in recognizing a statutory requirement that the plaintiff prove de minimis or nominal damages in order to invoke the remedy afforded in S.C. Code § 27-40-660 where no such requirement is provided in the statute. The Court of Appeals and Respondent's reliance on *Stevens v. Allen* and all other cited cases is inapplicable where they considered common law instead of statutory causes of action further creating conflict with this Court's precedent. *Stevens v. Allen*, 342 S.C. 47, 53, 536 S.E.2d 663, 666 (2000) ("Considering irreconcilability of a zero damages verdict in an action for negligence."); *Daves v. Cleary*, 355 S.C. 216 (Ct. App. 2003) ("Considering irreconcilability of a zero damages verdict in an action for medical malpractice); *Buxton v. Thompson Dental Co*., 415 S.E.2d 844 (Ct. App. 1992) (Considering irreconcilability in a negligence action); *Krepps by Krepps v. Ausen*, 324 S.C. 597 (Ct. App. 1996) (Considering irreconcilability of a zero damages verdict in a negligence action); *Johnson v. Phillips*, 315 S.C. 407 (Ct. App. 1993) Considering irreconcilability of zero damages verdict in an action regarding real property at common law).

Alternatively, the question of whether S.C. Code § 27-40-660 requires a finding of de minimis or nominal damages preceding a statutory award is a novel question not previously addressed by this Court.

CONCLUSION

For the reasons stated, Petitioner respectfully submits there exists novel questions of law and/or the holding of the Court of Appeals below conflicts with precedent and asks the Court to grant the petition for a writ of certiorari.

(*Signature page to follow*)

Respectfully submitted,

s/ Chris S. Truluck

September 24, 2020

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PROOF OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Appellants' Reply in the above-referenced case has been served upon Andrew J. Toney, Counsel of Record, by delivering same this date to him by Electronic Mail on September 25, 2020 at dtoney@mullenwylie.com.

TRULUCK LAW FIRM, LLC

s/ Chris S. Truluck

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