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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas
The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Civil Action No. 2018-CP-30-00378
Appellate Case No.: 2020-000799

Christopher Abrams

Appellant,

v.

Melinda Humphries

Respondent.

INITIAL BRIEF OF RESPONDENT

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I. STATEMENT OF THE ISSUES ON APPEAL

- 1) DID THE CIRCUIT COURT CORRECTLY GRANT RESPONDENT'S MOTION TO ENFORCE PARTIAL SATISFACTION OF JUDGMENT PURSUANT TO RULE 60(B), SCRPC?
- 2) DID THE CIRCUIT COURT CORRECTLY RULE ON THE RESPONDENT'S MOTION TO ENFORCE PARTIAL SATISFACTION AND FIND THE APPELLANT'S MOTION TO DISMISS WAS THEREFORE MOOT?
- 3) DID THE CIRCUIT COURT HAVE JURISDICTION TO DECIDE THE MOTION TO ENFORCE PARTIAL SATISFACTION OF JUDGMENT?

II. STATEMENT OF THE CASE

This matter arises out of a motor vehicle accident that occurred in Laurens County on or about September 2, 2017 involving the Appellant, Mr. Abrams, and the Respondent, Ms. Humphries. [Complaint]. As a result of the accident, Mr. Abrams sustained injuries. *Id.* Approximately one month later on October 4, 2017, Mr. Abrams and Ms. Humphries' liability carrier, Progressive, agreed to resolve Mr. Abrams' property damage claim for \$1,747.96. [Property Damage Release; Settlement Check]. Mr. Abrams, while represented by the Lake Law Firm, executed a Full Release of all property damage claims and demands, and deposited the settlement check. *Id.*

Progressive offered to tender its full bodily injury liability coverage limit in the amount of \$25,000.00. However, counsel for Mr. Abrams rejected the tender and despite having previously executed a full release of all property damage claims and having already deposited the property damage settlement check, listed a property damage cause of action in his complaint. [Complaint]. As such, counsel for Ms. Humphries moved to enforce the settlement and dismiss Mr. Abrams' property damage claim, which was subsequently granted by Judge Griffith on September 9, 2019. [Order Granting Motion to Dismiss and Enforce Settlement]. Counsel for Mr. Abrams did not appeal Judge Griffith's ruling. Nevertheless, counsel for Ms. Humphries communicated that the tender of the \$25,000.00 liability limits would remain open and valid all the way up to, and through trial.

This matter was tried before a jury on October 21 and 22, 2019. At the conclusion of the trial, the jury returned a verdict for the plaintiff in the amount of \$225,000.00. On October 29, 2019, counsel for Mr. Abrams filed a Motion for Costs, seeking \$1,017.72. [Motion for Costs]. On

November 11, counsel for Mr. Abrams drafted an email to counsel for Mr. Humphries that read, “If they, (Progressive), chose to pay costs, then Progressive needs to send both the judgment amount and/or costs to my attention within the next ten business days.” [November 2019 Email]. On November 22, 2019, after the 30 days appeal period of the jury verdict had passed, Progressive issued a check for \$25,000.00 (respondent’s liability limits), to be forwarded to the office of counsel for Mr. Abrams, along with a Partial Satisfaction of Judgment. On December 9, 2019, counsel for Mr. Abrams filed a Writ of Execution for \$225,000.00 against Ms. Humphries. [Writ of Execution]. One day later, counsel for Mr. Abrams returned the \$25,000.000 check with a letter that stated that Progressive was acting in bad faith for not tendering the liability limits within 10 days as requested in his November 11, 2019 email. [See December 10, 2019 letter]. Counsel for Mr. Abrams had no authority to support his contention that he may set arbitrary post-judgment deadline for the receipt of the judgment funds and then immediately decline the funds. Id.

Since counsel for Mr. Abrams unreasonably refused to accept the \$25,000.00 bodily injury limit towards the judgment, counsel on behalf of Ms. Humphries filed a Motion to Enforce Partial Satisfaction of Judgment on January 6, 2020. [Motion to Enforce Partial Satisfaction of Judgment]. Three days later on January 9, 2020, and in effort to circumvent S.C. Statute 56-9-480, counsel for Mr. Abrams filed an Affidavit for Order of Suspension of Ms. Humphries’ driver’s license. [Affidavit for Order of Suspension].

Once counsel for Ms. Humphries was made aware of the potential suspension and given the unfair consequences Ms. Humphries would suffer should her license become suspended, counsel for Ms. Humphries’ respectfully requested an emergency hearing regarding the Motion to Enforce Partial Satisfaction of Judgment on March 31, 2020. [See March 31, 2020 Email]. On April 1, 2020, counsel for Mr. Abrams filed a Motion to Dismiss the Respondent’s Motion to

Enforce Partial Satisfaction of Judgement on the grounds that the circuit court lacked subject matter jurisdiction. [See Motion to Dismiss]. However, counsel for Mr. Abrams never filed a memorandum in response to the Motion to Enforce Partial Satisfaction of the Judgment. Pursuant to South Carolina Supreme Court's April 3, 2020 Order, Judge Griffith rendered his decision without holding a hearing and considered the written submissions and submitted memorandums by all counsel of record. [Judge Griffith Email]. On April 6, 2020, Judge Griffith granted the Motion to Enforce Partial Satisfaction of Judgement. [April 6, 2020 Order]. Following Judge Griffith's Order, counsel for Mr. Abrams filed a Motion to Reconsider on April 6, 2020, and subsequently filed a memorandum in support on April 10, 2020. [Motion to Reconsider]. On May 8, 2020, by way of Order, Judge Griffith denied Appellant's Motion to Reconsider. [May 8, 2020 Order]. On May 14, 2020, Appellant filed his Notice of Appeal. [Notice of Appeal].

III. STANDARD OF REVIEW

The decision to deny or grant a motion for relief from judgment or order based on mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, or void judgment is within the sound discretion of the trial judge. Ware v. Ware, 743 S.E.2d 817 (S.C. 2013). On review of a trial court ruling on a motion to set aside a judgment, the Court of Appeals is limited to determining whether the trial court abused its discretion in granting or denying such a motion. Rules Civ. Proc., Rule 60(b). Auto-Owners Ins. Co. v. Rhodes 385 S.C. 83, 682 S.E.2d 857 (S.C. App. 2009).

A respondent may argue any additional reasons why an appellant court should affirm the appealed ruling, "regardless of whether those reasons have been presented to or ruled on by the lower court." Jon, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). A reviewing court may, in its discretion, review the additional reasons presented by the respondent and "if convinced it is proper and fair to do so, rely on them or any other reason appearing in the

record to affirm the lower court's judgment.” Id. at 420, 526 S.E.2d at 723. See also Rule 220(c), SCACR.

IV. ARGUMENT

A. Abrams Cannot Rely Upon Arguments That Were Not Properly Preserved.

As an initial matter, the arguments presented in Abrams’ Initial Brief regarding his criticisms of the circuit court’s Order Granting Humphries’ Motion to Enforce Partial Satisfaction of Judgment were not raised in Abrams’ Motion to Dismiss. Rather, the arguments were raised for the first time in Abrams’ Motion to Reconsider. The South Carolina Supreme Court has explained that “[a]n issue may not be raised for the first time in a motion to reconsider.” Johnson v. Sonoco Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (citing Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 276, 186, 512 S.E.2d 123, 129 (Ct. App. 1999)). Therefore, these arguments are not properly before this Court.

In the Initial Brief, counsel for Mr. Abrams includes a lengthy argument regarding the alleged prejudice endured as a result of the April 6, 2020 Order and further argues the Order made Ms. Humphries essentially judgement proof. [App.’s Initial Brief, p. 15]. Notably, this discussion is missing from Abrams’ Motion to Dismiss and he did not submit a memorandum in opposition to Humphries’ Motion to Enforce Partial Satisfaction of Judgment. Counsel for Abrams appears to be contending that the circuit court improperly rendered the balance of the judgement void, which it clearly and explicitly did not. [April 6, 2020 Order]. Again, these specific arguments regarding how Mr. Abrams would be prejudiced by enforcing the partial satisfaction of judgment was not presented to the circuit court by way of response to Humphries’ motion nor was it presented to the circuit court on Abrams’ Motion to Dismiss. Therefore, because the arguments

were raised for the first time on Abrams' Motion to Reconsider, this issue should not be considered on appeal.

Notwithstanding the fact these arguments are not properly before this Court, even if the Court were to consider these arguments, they fail. There is no question that circuit court's Order did not preclude Mr. Abrams from pursuing any relief towards collecting the balance of the judgment.

B. The Circuit Court Did Not Abuse its Discretion When Granting Respondent's Motion to Enforce Partial Satisfaction of Judgment.

The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the Trial Court and will not be disturbed on appeal absent an abuse of discretion." Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 336, 644 S.E.2d 793, 795 (Ct. App. 2007). "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." Id.

First, the circuit court correctly recognized that Progressive was legally obligated to pay its \$25,000.00 liability limit to Mr. Abrams following the jury verdict. The court correctly held that Ms. Humphries' Motion was to compel counsel for Mr. Abrams to accept partial payment towards the judgment. As such, \$200,000.00 of the judgment remains. Neither counsel for Ms. Humphries nor the circuit court sought to address, modify, reconsider, or otherwise alter the verdict or seek a new trial. Therefore, counsel for Mr. Abrams' argument that Ms. Humphries failed to timely file the motion pursuant to Rule 59(e), SCRPC, as well as his argument that Ms. Humphries failed to state the relief she sought, is misplaced.

Counsel for Mr. Abrams also argues that the circuit court abused its discretion when granting the Motion to Enforce Partial Satisfaction of Judgement without stating the specific statutes or rules in which it relied upon. [App.'s Initial Brief, p. 12]. However, Judge Griffith's Order clearly, and correctly, set forth that the Motion was granted pursuant to Rule 60(b), SCRC, and that Rule 60(b) was triggered by Appellant's post-trial misconduct of improperly refusing the \$25,000.00 payment that Ms. Humphries' insurance carrier was obligated to tender based on the judgement entered by the circuit court (and had previously tendered prior to trial) [See April 6, 2020 Order].

Mr. Abrams fails to allege any errors of law and fails to put forth any evidence that the circuit court abused its discretion when it properly granted Ms. Humphries' Motion to Enforce Partial Satisfaction of the Judgement. Therefore, this Court should affirm the April 6, 2020 and May 8, 2020 Orders. See Stearns Bank, *supra*.

C. The Circuit Court Properly Considered/heard the Motion to Enforce Partial Satisfaction of Judgement First Because the Motion to Dismiss Was Without Merit and Became Moot.

Counsel for Ms. Humphries filed the Motion to Enforce Partial Satisfaction of Judgment on January 6, 2020. [See Motion to Enforce Partial Satisfaction of Judgment]. Counsel for Mr. Abrams did not file anything until almost three months later on April 1, 2020 after counsel for Ms. Humphries requested an emergency hearing on the matter. [See Motion to Dismiss]. At that time, rather than responding to Ms. Humphries Motion, counsel for Mr. Abrams filed a Motion to Dismiss due to "lack of subject matter jurisdiction." *Id.* As a preliminary matter, the circuit court correctly found and in no way abused its discretion in determining that it had jurisdictional authority to consider, rule, and issue an order regarding Ms. Humphries Motion. The issues raised within Ms. Humphries motion were directly related to the judgement rendered in circuit court. As

such, it was not inappropriate to consider Ms. Humphries Motion first, which subsequently made the Motion to Dismiss moot.

Counsel for Mr. Abrams contends he was “prejudiced” in several ways regarding the circuit court’s handling of the Motions. First, counsel for Mr. Abrams argues he was prejudiced for having to file his Motion to Dismiss while under protection. [App.’s Initial Brief, p. 18]. However, counsel for Ms. Humphries filed the Motion to Enforce Partial Satisfaction of Judgment three months prior to counsel for Abrams’ protective order. Second, counsel for Mr. Abrams’ alleges that he was prejudiced when the circuit court “abused its discretion” and allowed the Motions to be considered by way of written submissions and written memorandums only. [See App.’s Initial Brief, p. 18-19; Motion to Reconsider, ¶9, subparts a,b, and c]. He further contends he was not afforded the opportunity to be “heard” on the matter. [App. Initial Brief, p. 18]. The South Carolina Supreme Court issued an Order regarding the operation of the trial courts during the coronavirus emergency. Section (C)(4) of that Order states in relevant part, “A trial judge may elect **not to hold a hearing** when the judge determines the motion may readily be decided without further input from the lawyers.” [See 2020-04-03-01- Order of the Supreme Court]. As stated above, the parties had ample opportunity to file its written memorandums for the court to consider on the matter and Judge Griffith clearly requested the parties do so. [See Email from Judge Griffith]. Rather than filing a response to Ms. Humphries’ Motion, counsel for Mr. Abrams elected to file a Motion to Dismiss only. It cannot be disputed that both counsel for Mr. Abrams and counsel for Ms. Humphries had the opportunity to be heard by way of written submissions and written memorandums. Judge Griffith promptly reviewed the submissions, found the issues involved statutory interpretation and interpretation of the South Carolina Rules of Civil Procedure, and made his ruling.

Mr. Abrams fails to allege any errors of law and fails to put forth any evidence that the circuit court abused its discretion when it considered and ruled on both motions by way of written submissions. Therefore, this Court should affirm the April 6, 2020 and May 8, 2020 Orders.

D. The Circuit Court Had Jurisdiction to Hear the Motions Because The Issues Presented Involved Statutory Interpretation, Interpretation of the South Carolina Rules of Civil Procedure, and the Judgement Rendered From Trial in Circuit Court.

The circuit court has original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction is given to inferior courts, and has such appellate jurisdiction as provided by law. Article V, Section 11, South Carolina Constitution. “In determining whether the Legislature has given another entity exclusive jurisdiction over a case, a Court must look to the relevant statute.” Dema v. Tenet Physician Servs.—Hilton Head, Inc., 383 S.C. 115, 121, 678 S.E.2d 430, 433 (2009).

Counsel for Mr. Abrams argues that Judge Griffith did not have authority to rule on the Motions because the case by which the judgment was rendered, was tried before the Honorable Roger L. Couch. [App.’s Initial Brief, p. 25]. He supports this contention with legal authority from the South Carolina Supreme Court which states, “the power to open, modify, or vacate a judgment is possessed solely by the court that rendered the judgment.” Coleman v. Dunlap, 306 S.C. 491, 413 S.E.2d 15 (1991); See, also Tri-county Ice and Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 399 S.E.2d 779 (1991). First, the Motion to Enforce the Partial Satisfaction of the Judgment does not seek to open, modify, or vacate a judgment. Further, counsel for Mr. Abrams misinterprets the Supreme Court’s holding in Coleman, which is not to be read as to require the same trial judge to hear all post-trial motions. Instead, the holding requires that the same court hear such motions, which directly supports why Judge Griffith and the circuit court had jurisdiction to hear the Motion to Enforce the Partial Satisfaction of Judgment.

Absent an abuse of discretion, an appellate court should not disturb the trial court's discretionary decision on appeal. Id. First, the circuit court did not abuse its discretion in exercising its jurisdiction because the Motion to Enforce Partial Satisfaction of the Judgment related directly to the judgement rendered during trial heard in circuit court. Second, the circuit court did not abuse its discretion in determining it had jurisdiction because Rule 60(b) of the SCRCP, SC Code § 56-9-430, and SC Code § 56-9-48, are all directly correlated with Ms. Humphries' Motion to Enforce Partial Satisfaction of Judgment and required interpretation by the court. None of the aforementioned statutes requires that an Administrative Court shall exercise exclusive jurisdiction over any issues arising out of those statutes. Therefore, absent abuse of discretion, and having properly heard the motions in circuit court, the April 6, 2020 and May 8, 2020 Orders should be affirmed.

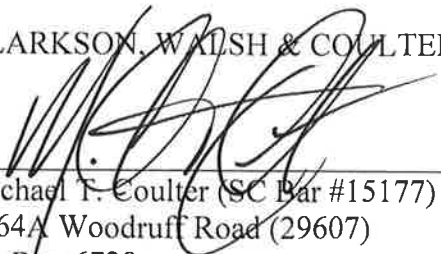
V. CONCLUSION

The circuit court correctly granted Respondent's Motion to Enforce Partial Satisfaction of Judgment and correctly denied Appellant's Motion to Reconsider. Therefore, Respondent respectfully requests the circuit court's April 6, 2020 Order and the May 8, 2020 Order both be affirmed.

[signatures on following page]

Respectfully Submitted by:

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