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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

The Honorable Roger E. Henderson, Circuit Court Judge

Civil Action No. 2018-CP-16-00696
Appellate Case No. 2020-001268

James Roosevelt Gee Respondent,

v.

Hartsville, LLC d/b/a Carolina Pines Medical
Center Appellant.

**APPELLANT'S PETITION FOR REHEARING
OR MOTION FOR REINSTATEMENT
AND SUPPORTING MEMORANDUM**

Appellant Hartsville, LLC d/b/a Carolina Pines Medical Center, through its undersigned counsel and pursuant to Rules 221 and 240, SCACR, respectfully petitions the court for rehearing of its Order filed September 23, 2020 dismissing this appeal. In the alternative, Appellant respectfully moves pursuant to Rules 240 and 260, SCACR, for reinstatement of the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant operates a hospital in Hartsville known as Carolina Pines Regional Medical Center ("Carolina Pines") that contracts with private security companies for the provision of security services. On January 11, 2016, while he was working as a security

guard at Carolina Pines on behalf of his employer, Security Management of South Carolina, LLC, Respondent James Roosevelt Gee was stabbed by an emergency psychiatric patient. He subsequently filed suit against Appellant on August 24, 2018.

Following discovery and Respondent's deposition, Appellant filed a Motion for Summary Judgment.¹ In its motion and supporting memorandum, Appellant argued that it was entitled to judgment as a matter of law because, among other reasons, Respondent was a statutory employee of Carolina Pines at the time of the stabbing incident, and thus his exclusive remedy was under the South Carolina Workers' Compensation Law, S.C. Code Ann. § 42-1-10 et seq. (the "Act").

Appellant's Motion for Summary Judgment was heard on November 14, 2019 by The Honorable Roger E. Henderson. On December 11, 2019, Judge Henderson issued an Order Denying Defendant's Motion for Summary Judgment (the "Summary Judgment Order"). On December 17, 2019, Appellant filed a Motion to Alter or Amend, which was heard on August 5, 2020. Following that hearing, on September 11, 2020, Judge Henderson entered an Order Denying Defendant's Motion to Alter or Amend (the "59(e) Order"). Appellant timely served a Notice of Appeal of both orders (collectively, the "Orders") on September 15, 2020.²

¹ Though Appellant's motion was styled as one for summary judgment, it effectively requested a non-jury hearing on the merits of Appellant's exclusivity defense similar to the hospital's motion in Cooke v. Palmetto Health Alliance, 367 S.C. 167, 624 S.E.2d 439 (Ct. App. 2005).

² Copies of the Orders were attached to the Notice of Appeal pursuant to Rule 203(d)(1)(B)(ii), SCACR, and are also attached hereto for the court's convenience of reference.

On September 23, 2020, this court entered an Order dismissing the appeal, finding that the Orders are not immediately appealable based on the principle that denials of motions for summary judgment may not be appealed. Appellant now seeks a rehearing of that finding or, in the alternative, reinstatement of the appeal.

ARGUMENT

Appellate jurisdiction exists with respect to “[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas[.]” S.C. Code Ann. § 14-3-330(1). In this case, though the Orders were issued in response to a motion for summary judgment, they “involved the merits” in that they found that Respondent was not Appellant’s statutory employee. See Summary Judgment Order at 5 (“I find that [Respondent] cannot be considered a statutory employee of [Appellant] and therefore [Respondent] is not barred from any additional recovery from [Appellant] due to the exclusive remedy clauses under the South Carolina Worker’s Compensation Act, S.C. Code Ann. §§ 42-1-10 to 42-19-50.”); 59(e) Order at 1 (denying Appellant’s Motion to Alter or Amend based on a finding that Respondent was not Appellant’s statutory employee). Pursuant to Cooke, the Orders are thus appealable because they determined a substantial matter forming a part of Appellant’s exclusivity defense. 367 S.C. at 174, 624 S.E.2d at 442.

Cooke reached this court in almost the exact same procedural posture as this case. An employee of a hospital’s subcontractor was injured on the job and filed suit against the hospital. Id. at 170-71, 624 S.E.2d at 440. The hospital moved for summary judgment, and the circuit court held a hearing on the merits of the hospital’s statutory employment defense. Id. at 171-72, 624 S.E.2d at 441. Following the hearing, the circuit

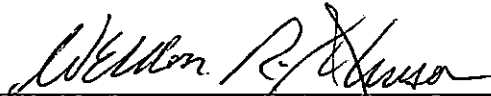
court issued an order finding that the plaintiff was not a statutory employee of the hospital, and the hospital appealed. Id. at 172-73, 624 S.E.2d at 441. Addressing the issue of appealability, this court wrote:

Here, the circuit court weighed the evidence and concluded that the exclusivity provision did not apply because Cooke was neither a statutory employee nor a borrowed servant of the Hospital. In so holding, the circuit court ‘finally determined a substantial matter forming a part of the Hospital’s defense,’ and thus, the order is appealable.

The same is true in this case. Regardless of how Appellant’s motions or the Orders were styled, the bottom line is that the circuit court weighed the evidence and concluded that the exclusivity provision of the Act did not apply because Respondent was not Appellant’s statutory employee. In so holding, the circuit court finally determined a substantial matter forming a part of Appellant’s defense, and thus the Orders are appealable.

CONCLUSION

For the reasons stated herein, Appellant respectfully requests that the court grant rehearing of its Order filed September 23, 2020 or, in the alternative, reinstate the appeal.


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Attorneys for Appellant

September 24, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	2018-CP-16-00696
	)	
James Roosevelt Gee,	)	
	)	ORDER DENYING
Plaintiff,	)	DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT
v.	)	
	)	
Hartsville. LLC d/b/a Carolina	)	
Pines Medical Center,	)	
	)	
Defendant.	)	
	)	

On November 14, 2019, this matter came before the Court for the purpose of hearing Defendant's Motion for Summary Judgment. After oral argument and review of the pleadings and supporting memoranda of law of both parties in this case, I issue the following Order:

STATEMENT OF FACTS:

On or about January 11, 2016, the Plaintiff was working as an unarmed security guard for Security Management of South Carolina, LLC. Plaintiff was assigned to work their site at Carolina Pines in Hartsville, South Carolina. A Sheriff Deputy for Darlington County brought a violent criminal suspect in handcuff for a psychiatric evaluation. After a period of time, the Deputy stated he could not wait any longer. The Deputy then proceeded to remove the patient's handcuff and left the premise. Shortly after the officer left, the patient/suspect became agitated, took a knife out of his pocket and attacked Plaintiff with said knife. As the result of this violent attack, Plaintiff received multiple stab wounds and laceration all over his body. Plaintiff's left arm was so severely damaged that he lost partial use of it and my hand. Plaintiff brought this action against Defendant based on several cause of actions of Negligence/Gross-Negligence, Negligent Hiring/Retention, Negligent Supervision/Training and Negligent.

Defendant in its Motion for Summary Judgment argues that Plaintiff is Defendant's statutory employee and therefore is barred from any additional recovery from this Defendant due to the exclusive remedy clauses under the South Carolina Worker's Compensation Act, S.C. Code Ann. §§ 42-1-10 to 42-19-50. Furthermore, Defendant asserts that as matter of law it does not a duty to the Plaintiff and thereby Defendant shall be entitled to a judgment as matter of law.

The Plaintiff in his response to this motion argues that the Plaintiff is not a statutory employee of the Defendant and that there are genuine issues as to material facts, and the moving party is not entitled to a Judgment as a matter of law.

I. IS THE PLAINTIFF A STATUTORY EMPLOYEE OF THE DEFENDANT?

In South Carolina, "[D]etermination of the employer-employee relationship for workers' compensation purposes is jurisdictional. Consequently, the Court has the power and duty to review the entire record and decide the jurisdictional facts in accord with the preponderance of the evidence." Poch v. Bayshore Concrete Prod./S.C., Inc. , 405 S.C. 359, 367, 747 S.E.2d 757, 761 (2013)

The statutory employee doctrine converts non-employees into employees for purposes of the Workers' Compensation Act. Indeed, "The rationale is to prevent owners and contractors from subcontracting out their work to avoid liability for injuries incurred in the course of employment." Keene v. CAN Holdings, LLC, 426 S.C. 357 (S.C. App., 2019). However, S.C. Code § 42-1-400 created the concept of a statutory employee:

When any person, in this section and sections 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute any work which is *a part of his trade, business[,] or occupation* and contracts with any other person (in this section and Sections 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this title [that] he would have been

liable to pay if the workman had been immediately employed by him. S.C. Code Ann. § 42-1-400 (2015) (emphasis added)

Pursuant to S.C. Code § 42-1-540, the exclusive remedy for an injured statutory employee is the Workers' Compensation Act. Therefore, even if a business organization does not have a direct employment relationship with a worker, the Workers' Compensation Act limits the worker to its provisions as the exclusive remedy for injuries he received while engaged in activity considered part of the organization's trade, business, or occupation.

However, South Carolina Courts have traditionally applied three tests in determining whether a worker is engaged in activity that is part of the organization's trade, business, or occupation: (1) the activity is an important part of the organization's business or trade; (2) the activity is a necessary, essential, and integral part of the organization's business; or (3) the activity has previously been performed by the organization's employees. Olmstead v. Shakespeare , 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003) (emphases added) The South Carolina Supreme Court has also acknowledged that "Since no easily applied formula can be laid down for determining whether work in a particular case meets these tests , each case must be decided on its own facts." Id. (emphasis added)

The South Carolina Supreme Court further determined that the question as to whether a person must be considered a statutory employee centers around "the guidepost as to whether or not that which is being done is or is not a part of the general trade, business [,] or occupation of the owner." Olmstead v. Shakespeare, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003). However, the Court has also established that "simply asserting than an activity is part of the owner's trade, business or occupation does not make it so". Poch v. Bayshore Concrete Prod./S.C., Inc., 405 S.C. 359, 367, 747 S.E.2d 757, 761 (2013). The South Carolina Supreme Court further ruled that while a mere activity may be perceived has important to, or necessary for the Defendant's operation it is

not necessarily part of the Defendant's operation. See Keene v. CAN Holdings, LLC, 426 S.C. 357 (S.C. App., 2019) and Olmstead v. Shakespeare, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003). Finally, South Carolina courts have held that "[e]mployees who work for the subcontractor but are not employed to do the work that the owner would normally do would not have a statutory employment relationship with the owner." Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 323, 523 S.E.2d 766, 771 (1999).

In the present case, I find that it is undisputed that Defendant operates as a hospital, whose primary and sole mission is to provide healthcare. The Defendant in this case is not engaged in the business of providing security. Defendant also contracted an independent contractor to furnish security on its premises. Plaintiff was an employee of that independent contractor.

In South Carolina, private security providers and their employees must be licensed and certified by SLED as required under S.C. Code §40-18-20 et seq. and S.C. Ann. Regs. 73-400 et seq. (2006). Defendant in any event is not established, licensed or certified to perform or provide any security services as required by S.C. Code §40-18-20 et seq. and S.C. Ann. Regs. 73-400 et seq. (2006). Defendant's employees, through their employment with Defendant, are not required to train, qualify and maintain licenses as required by the laws of this state and SLED pursuant to S.C. Code §40-18-20 et seq. and S.C. Ann. Regs. 73-400 et seq. (2006).

Additionally, I find that the activity of providing security is not a service that is an actual part of the Defendant's business or operation. Hospitals, such as the Defendant, are not statutorily required to have security on its premises. It is apparent that Defendant's operation would not necessarily shut down if all of the security guards were not to show up to work on its premises; however, Defendant's operation would shut down if no nurse or doctor were present. Defendant also does not charge for any security services nor advertise as providing any security services.

Therefore, it appears that the service provided by Plaintiff may be perceived as important to, or necessary for the Defendant's operation, it is not actual part of the Defendant's operation, as required under Keene v. CAN Holdings, LLC, 426 S.C. 357 (S.C. App., 2019) and Olmstead v. Shakespeare, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003). Hence, I find that the Plaintiff cannot be considered a statutory employee of the Defendant and therefore the Plaintiff is not barred from any additional recovery from this Defendant due to the exclusive remedy clauses under the South Carolina Worker's Compensation Act, S.C. Code Ann. §§ 42-1-10 to 42-19-50.

II. WHETHER DEFENDANT IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW

Under South Carolina Rule of Civil Procedure Rule 56, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) Furthermore, in reviewing all ambiguities, conclusions, and inferences arising in and from the evidence, the court must construct them in a light most favorable to the non-moving party below. Willis v. Wu, 362 S.C. 146, 150-51, 607 S.E.2d 63, 65 (2004); see also, Schmidt v. Courtney, 357 S.C. 310, 316-17, 592 S.E.2d 326, 330 (Ct.App.2003) (stating all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party.)

The Defendant in this case has asked that all the cause of action in this case be dismissed as matter of law, however, I find that there are genuine issues as to material facts, and the Defendant is not entitled to a Judgment as a matter of law.

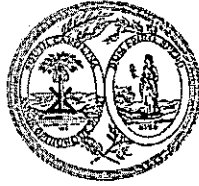
THEREFORE, based on the foregoing, the Defendant's Motion for Summary Judgment is denied.

AND IT IS SO ORDERED.

The Honorable Roger E. Henderson
Presiding Judge

Darlington, South Carolina

_____, 2019



Darlington Common Pleas

Case Caption: James Roosevelt Gee VS Hartsville LLC , defendant, et al
Case Number: 2018CP1600696
Type: Order/Summary Judgment

So Ordered

s/Roger E. Henderson 2754

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	2018-CP-16-00696
	)	
James Roosevelt Gee,	)	
	)	ORDER DENYING
Plaintiff,	)	DEFENDANT'S MOTION TO
	)	ALTER OR AMEND
v.	)	
	)	
Hartsville. LLC d/b/a Carolina	)	
Pines Medical Center,	)	
	)	
Defendant.	)	
	)	

On August 5, 2020, this matter came before the Court for the purpose of hearing Defendant's Motion to Alter or Amend the Court's Order Denying Defendant's Motion for Summary Judgement, which was entered December 11, 2019. The hearing was conducted via video conference pursuant to Supreme Court Order of April 3, 2020 as amended April 22, 2020 (Appellate Case No. 2020-000447). Counsels for all parties were present.

Upon reviewing the record, the evidence, the applicable law and considering the arguments of counsel, I find that Defendant's Motion to Alter or Amend should be denied. Specifically, I do not believe, despite the admissions made and deposition testimony, that Plaintiff's job was being done or a part of the general trade, business or occupation of Carolina Pines, and that Plaintiff was a statutory employee of the Defendant. Further I find that it is not necessary for the Plaintiff to file an affidavit of an expert in this type of case.

THEREFORE, based on the foregoing, the Defendant's Motion Defendant's Motion to Alter or Amend is denied.

AND IT IS SO ORDERED.

The Honorable Roger E. Henderson
Presiding Judge

Darlington, South Carolina

_____, 2020



Darlington Common Pleas

Case Caption: James Roosevelt Gee VS Hartsville LLC , defendant, et al
Case Number: 2018CP1600696
Type: Order/Other

So Ordered

s/Roger E. Henderson 2754

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In the Court of Appeals

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APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Roger E. Henderson, Circuit Court Judge

Civil Action No. 2018-CP-16-00696
Appellate Case No. 2020-001268

James Roosevelt Gee Respondent,

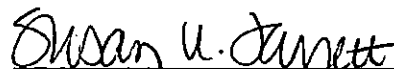
v.

Hartsville, LLC d/b/a Carolina Pines Medical
Center Appellant.

PROOF OF SERVICE

I, the undersigned employee of Barnes, Alford, Stork & Johnson, LLP, do hereby state that I have on September 24, 2020 served copies of **APPELLANT'S PETITION FOR REHEARING OR MOTION FOR REINSTATEMENT AND SUPPORTING MEMORANDUM** by depositing copies of the documents in the United States Mail, sufficient postage prepaid, with the return address clearly noted, addressed as follows:

J. David Weeks, Esquire
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(1917-1995)
JAMES W. ALFORD
(1930-2008)

September 24, 2020

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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SEP 25 2020

SC Court of Appeals

Re: James Roosevelt Gee v. Hartsville, LLC d/b/a Carolina Pines Regional
Medical Center
Case No. 2018-CP-16-00696
Appellate Case No. 2020-001268
BASJ File No. 213.21605
Client File No. 009726

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Proof of Service and Appellant's Petition for Rehearing or Motion for Reinstatement and Supporting Memorandum in the above-referenced matter. Please file the original and return the clocked-in copy in the envelope provided for your convenience.

By copy of this letter to the Plaintiff's attorney, I am serving him with a copy of our Proof of Service and Appellant's Petition for Rehearing or Motion for Reinstatement and Supporting Memorandum.

With best personal regards, I am

Very truly yours,

Weldon R. Johnson

WRJ/suj
Enclosures

cc: J. David Weeks, Esquire (w/enc.)

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