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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2020-000936

Skip Hoagland,

Plaintiff – Appellant,

v.

John Tecklenburg, in his official capacity, the City of Charleston, and the City of Charleston Police Department,

Defendants – Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. THE CIRCUIT COURT CORRECTLY DISMISSED APPELLANT'S CAUSES OF ACTION FOR VIOLATION OF THE SOUTH CAROLINA CONSTITUTION AND CIVIL CONSPIRACY.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN NOT ALLOWING PLAINTIFF TO AMEND HIS AMENDED COMPLAINT, AS ANY AMENDMENT WOULD HAVE BEEN FUTILE.

III. THE CIRCUIT COURT ADDRESSED APPELLANT'S REQUEST FOR DECLARATORY RELIEF, AND DISMISSAL WAS APPROPRIATE.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY DISMISSED APPELLANT'S CAUSES OF ACTION FOR VIOLATION OF THE SOUTH CAROLINA CONSTITUTION AND CIVIL CONSPIRACY.

A. South Carolina Constitutional Violation

Our South Carolina courts have held that "the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute…." *Palmer v. State*, 427 S.C. 36, 46, 829 S.E.2d 255, 261 (Ct. App. 2019). Appellant's first cause of action is seeking monetary damages for an alleged violation of his South Carolina constitutional rights. Appellant argues that the court abused its discretion in dismissing this cause of action, citing to inferences that the court could have drawn in his favor. This argument is without merit as, regardless of what inferences may have been drawn, this Court has expressly stated that there is no cause of action for a violation of the South Carolina Constitution. As such, Appellant's first cause of action was appropriately dismissed.

Even if our State Constitution allowed such a claim, the facts as alleged by Appellant do not rise to the level of a constitutional violation. Appellant stood up during the public comment section of a Charleston City Council meeting and commenced his speech by effectively defaming a woman. The Mayor, who runs the City Council meetings and who has rather broad discretion in how the meetings are conducted,[1] determined that Plaintiff was in violation of the Rules of Decorum. *See* Charleston, S.C., City Code § 2-28 (R. p. 101). This means that the Mayor determined that Appellant's choice to call a woman a liar indicated that Appellant was not

[1] *See, e.g.*, Charleston, S.C., City Code § 2-39 (Council members are prohibited from leaving Council meeting without permission of Mayor) (R. p. 103); Charleston, S.C., City Code § 2-40 (Council members have to be recognized by the Mayor before they can speak on a topic) (R. p. 104); Charleston, S.C., City Code § 2-44 (Mayor shall decide all questions of order) (R. p. 105); Charleston, S.C., City Code § 2-28(a) (Mayor has discretion to bar a person for violating Rules of Decorum) (R. p. 101); and Charleston, S.C., City Code § 2-28(b) (the sergeant-at-arms shall carry out all orders and instructions given by the Mayor for the purpose of maintaining order and decorum) (R. p. 101).

conducting himself in a "manner appropriate to the decorum of the meeting" or that Appellant's calling a woman a liar was an action that "disrupts, disturbs, or otherwise impedes the orderly conduct of a City Council meeting." *Id.* Either way, the Ordinance specifically states that in the event of actions such as Appellant's, the Mayor has the discretion to bar that person from the meeting and remove him or her from the building. *Id.* This is precisely what happened here and Respondents' actions were completely within the rights and abilities granted to them by the ordinances. Simply because Appellant does not think that calling someone a liar is disruptive, disturbing, or inappropriate at a City Council meeting does not change the discretionary power of the Mayor to limit public comment at City Council meetings.

Moreover, Appellant, as a citizen of Beaufort County, did not have the right to petition City Council in the first instance. Appellant admits in his Complaint that he is a resident of Beaufort County. (Am. Compl. ¶ 1) (R. p. 22). The claims in this case involve a Charleston City Council meeting and Appellant's allegation that he was wrongfully prevented from providing a public comment at a Council meeting. However, the ordinances in question do not provide Appellant the right to provide public comment.

Section 2-37 of the Charleston City Code outlines the order of business at Council meetings. Charleston, S.C., City Code § 2-37 (R. p. 102). This section states that the "Citizens participation period" is governed by Section 2-69. That section reads as follows:

> All communications to the city council shall be by petition or memorial. None other than members of council shall be heard on any petition or memorial without the unanimous consent of council, except that during a period of thirty (30) minutes of each regular meeting the mayor **may** recognize **citizens of Charleston** who wish to address council on matters of city business.…

Charleston, S.C., City Code § 2-69 (emphasis added) (R. p. 106).

In this case, Appellant alleges that his "right" to address the Charleston City Council was violated. However, Appellant cannot point to any provision in the City Code that indicates that he, as a non-citizen, has a specific right to address City Council. According to the ordinances, there is no "right" to address City Council at all. Rather, "the mayor **may** recognize citizens of Charleston" and only during the public comment period of the meeting. Charleston, S.C., City Code § 2-69 (emphasis added) (R. p. 106). Thus, although a public comment section was allowed at this particular meeting, Appellant, as a non-citizen of Charleston, did not have any ordinance-based right to address City Council. Therefore, Appellant failed to state facts sufficient to constitute a cause of action, and his case was properly dismissed.

B. Civil Conspiracy

The Circuit Court correctly held that Appellant's Civil Conspiracy claim failed as a matter of law on three grounds: 1) Appellant failed to allege any separate and distinct acts to further the conspiracy; 2) Appellant failed to allege any separate special damages other than those that had been alleged in his other causes of action, and 3) Appellant's claims were barred by the Intracorporate Conspiracy Doctrine. (Order on Defs.' Mot. to Dismiss at 2) (R. p. 2).

In this matter, Appellant only appeals the lower court's ruling that Appellant did not allege separate and distinct acts. (Br. of Appellant at 10 (*i.e.*, it was "each respondent's individual actions that combined to create the censorship of Appellant's views…."))). "A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than re-allege other claims within the complaint." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). Failure to properly plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the Complaint will merit dismissal of the claim. *Id.* at 115–16, 682 S.E.2d at 875.

Appellant alleged that Respondents conspired to harm him, and did so harm him, by cutting short his speech at the City Council meeting and removing him from the building. Appellant alleged in his first cause of action that this was a violation of his constitutional rights and then simply reiterated the same allegations in his third cause of action to claim that there was a civil conspiracy. Appellant's failure to plead that Respondents took any separate and independent actions outside of stopping his comments and removing him from the building is fatal to his civil conspiracy claim. Thus, the lower court was correct in ruling that Appellant failed to state facts sufficient to constitute a civil conspiracy cause of action.

Moreover, Appellant has not appealed the lower court's ruling that he did not allege separate special damages or that the Intracorporate Conspiracy Doctrine barred his claims. Therefore, Appellant's Third Cause of Action for Civil Conspiracy is barred by the "two-issue rule." "Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealled ground will become the law of the case." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 328, 730 S.E.2d 282, 284–85 (2012) (quoting *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)).

The Circuit Court correctly held that Appellant had not alleged separate special damages that were distinct from other damages claims by Appellant and correctly ruled that the Intracorporate Conspiracy Doctrine barred Appellant's Civil Conspiracy claim. (Order on Defs.' Mot. to Dismiss at 2) (R. p. 2). Appellant did not appeal these grounds spelled out in the Order, and therefore, these unappealled grounds become the law of this case. Even if these issues were raised on appeal, the Circuit Court was correct in its conclusions on these issues for the reasons more thoroughly argued by Respondents in the lower court. (*See* Defs.' Mem. in Supp. of Mot. to

Dismiss) (R. pp. 51-63). As such, Appellant's arguments regarding his Civil Conspiracy claim are without merit.

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN NOT ALLOWING PLAINTIFF TO AMEND HIS AMENDED COMPLAINT, AS ANY AMENDMENT WOULD HAVE BEEN FUTILE.

Appellant argues that he should have been provided an opportunity to amend his Amended Complaint, but what would that amendment look like? Appellant made it clear during the motion to reconsider that he would drop the Freedom of Information Act ("FOIA") cause of action, leaving only the state constitution violation and civil conspiracy causes of action. (Tr. of R. of May 27, 2020 Hr'g. at 16) (R. p. 89). With regard to those, Appellant advised the court "If we have an opportunity to amend then I believe we would have an opportunity to show both Your Honor and the defense to give them proper notice as to which identical legal theories and vehicles we would use to try to get recovery in a way that perhaps was not done to satisfy Your Honor or defendants in this case…." (Tr. of R. of May 27, 2020 Hr'g. at 9) (R. p. 82).

Appellant further stated that if an amendment would be allowed, he would more "artfully" lay out the facts and the legal claims associated with his causes of action. (Tr. of R. of May 27, 2020 Hr'g. at 8) (R. p. 81). But there is no real dispute regarding the facts, which Appellant describes as "just the pure facts as to what happened in the meeting that night." (*Id.*). The facts cannot change regardless of how artfully a complaint is pled. Further, as Appellant advised the lower court, the amendment would include "identical legal theories," which the court considered and found to be without merit. (*Id.* at 9) (R. p. 82).

Based on Appellant's arguments, any amendment would be futile. Appellant cannot change the fact that City of Charleston police officers and the Mayor are employed by the same entity. Therefore, Appellant cannot overcome the Intracorporate Conspiracy Doctrine. Thus,

allowing an amendment to his civil conspiracy claim would be futile. Similarly, even if Appellant fleshed out pages of facts and legal theories regarding his cause of action for violation of his South Carolina constitutional rights, Appellant cannot change the fact that our Courts have held that there is no legal vehicle to bring a claim for a violation of the South Carolina Constitution.

Appellant argued at length about amending his Amended Complaint. The lower court heard arguments about how Appellant should be able to rewrite his constitutional claims and civil conspiracy claims. The court also heard arguments from Respondents about how allowing an amendment would be futile. (Tr. of R. of May 27, 2020 Hr'g. at 20–21) (R. pp. 93-94). Then the lower court correctly ruled that based on the facts of this case, Appellant had not and could not state facts sufficient to succeed on those causes of action.

Although leave should be freely given to amend one's complaint, that leave is not without limits. If the proposed amendment would be futile, it is within the court's discretion to not allow the amendment. Here, based on Appellant's arguments to the court, an amendment to the two causes of action on appeal would have been futile, and therefore, the circuit court did not abuse its discretion in not allowing Appellant to amend his Amended Complaint.

III. THE CIRCUIT COURT ADDRESSED APPELLANT'S REQUEST FOR DECLARATORY RELIEF, AND DISMISSAL WAS APPROPRIATE.

Appellant asserts that the lower court did not consider his Fourth Cause of Action for declaratory judgment. The transcript shows otherwise, however, as the lower court did in fact consider arguments on the Fourth Cause of Action. (*See* Tr. of R. of May 27, 2020 Hr'g. at 18–19, 21–22) (R. pp. 91-91, 94-95). Further, and as will be argued below, the lower court's dismissal of the declaratory judgment action was proper as the issues raised in the declaratory judgment action were adjudicated in Appellant's other pending causes of action.

Appellant asked the lower court to declare that the following City of Charleston Ordinance Section is unconstitutionally vague:

> Sec. 2-28. - Rules of decorum.
>
> (1) *Rules of decorum.*
>
> While any meeting of city council is in session, the following rules of decorum shall be observed:
>
> (a) Any person who speaks at a city council meeting shall conduct himself or herself in a manner appropriate to the decorum of the meeting and shall not use any profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct. Any person who makes such remarks or otherwise engages in disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of a city council meeting shall, at the discretion of the mayor, or in his absence, the mayor pro tempore, be barred from further audience before city council during that meeting and may be removed from the building.
>
> (b) Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the mayor or in his absence, the mayor pro tempore, for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the mayor, or in his absence, the mayor pro tempore, it shall be the duty of such law enforcement officer to remove from the city council meeting any person who is disturbing the proceedings of city council.
>
> (c) This section in no way limits any person from being charged or arrested for criminal conduct which occurs during the course of a city council meeting or during the course of a person being removed from a city council meeting pursuant to this section.

Charleston, S.C., City Code § 2-28 (R. p. 101). Appellant alleges in his Amended Complaint that "a person of common intelligence cannot know in advance what Mayor Tecklenburg considers" to be in violation of this section of the Ordinances. (Am. Compl. ¶ 33) (R. pp. 27-28).

In this appeal, Appellant argues that the lower court never addressed whether the ordinance was unconstitutionally vague. A review of the record shows this not to be the case. (*See* Tr. of R. of May 27, 2020 Hr'g. at 17–19, 21–22) (R. pp. 90-92, 94-95). After both Appellant and Respondent addressed the declaratory judgment cause of action, the lower court likened the inherent discretionary powers granted to the Mayor during City Council meetings to that of a judge having the inherent discretionary powers to control his or her courtroom. (*Id.* at 21–22) (R. pp. 94-95). The lower court then stated, "that is the way I keep reasoning this when I am making these decisions on the case and the way I hear it." (*Id.* at 22) (R. p. 95).

The lower court did address the ordinance itself and was able to make reasoned decisions based on the plain language of the ordinance. This in and of itself indicates that the ordinance is not unconstitutionally vague. This argument is supported by this Court's ruling in *Wessinger v. Rauch*, 288 S.C. 157, 341 S.E.2d 643, (Ct. App. 1986), which stated,

> A declaratory judgment action is not a substitute for a new trial or an appeal, nor can it operate to supersede former adjudications or proceedings already pending. As a general rule, courts will not entertain an action for declaratory judgment if there is pending, at the time the action is commenced, another action between the same parties in which the same issues presented in the action for declaratory judgment can be adjudicated.

Wessinger, 288 S.C. at 160, 341 S.E.2d at 644 (citations omitted).

The issues in Appellant's declaratory judgment cause of action involve the same issues presented by Appellant in his other causes of action. All of Appellant's causes of action require the court to look at the ordinances at issue and determine whether the ordinances were violated or whether Appellant's rights were violated based on the ordinances. As such, the lower court was required to review the ordinances and come to a determination of whether the ordinances were

violated. It necessarily follows, then, that the lower court would also need to make a determination that the ordinances were not unconstitutionally vague.

The issues in Appellant's conspiracy and constitutional claims are inextricably intertwined with those of his declaratory judgment claim, such that one cannot be decided without deciding the other. Here, the lower court ruled correctly that the Mayor properly exercised the discretion he is afforded under the City ordinances, which necessarily means that the ordinances were not unconstitutionally vague. Therefore, the declaratory judgment action was properly dismissed as the issues therein were decided by the other pending causes of action.[2]

CONCLUSION

Wherefore, and based on the above arguments and the Record on Appeal, Respondents respectfully request that this Court affirm the lower court's granting of Respondents' Motion to Dismiss, and thereby, affirm the dismissal of this matter with prejudice.

Respectfully submitted,

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[2] As an alternate ground for affirming the dismissal of the declaratory judgment cause of action, Appellant did not properly serve the action. *See* S.C. Code Ann. §15-53-80 ("If the statute, ordinance or franchise is alleged to be unconstitutional the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard."); (*See also* Proof of Service) (R. pp. 18-20).