

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Apr 01 2021
SC Court of Appeals

APPEAL FROM COLLETON COUNTY AND DORCHESTER COUNTY

Court of Common Pleas

Patrick R. Watts, Special Referee

Appellate Case No. 2020-001489

John Murray Gibbs, Respondent,

vs.

Henderson Gibbs, Jr., Appellant.

INITIAL REPLY BRIEF OF APPELLANT

P. Brandt Shelbourne, Esq. (#15143)
John T. Kornegay, Esq. (#102294)
SHELBOURNE LAW
131 E. Richardson Avenue
Summerville, SC 29483
843.871.2210 (ph)
843.875.2224(f)
Counsel for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT OF REPLY 1

I. Appellant is Not Shifting the Burden as Respondent Claims 1

CONCLUSION 2

TABLE OF AUTHORITIES

Cases

Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987)..... 1, 2

State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282 (2001) 1

ARGUMENT OF REPLY

Without restating the issues or making arguments which have already been set forth in Appellant's Initial Brief, Appellant offers the following points of clarification and rebuttal to the arguments that Respondent raised.

I. Appellant is Not Shifting the Burden as Respondent Claims

“An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.” Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) (citations omitted). “An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support.” State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282 (2001).

In his brief, respondent argues that Appellant “attempts to shift the burden” either to the Respondent or to the Special Referee. See Initial Brief of Respondent, p. 5. In the Motion to Set Aside Judgment, the Appellant is the only party that presented any evidence. See Def. Mot. to Set Aside J. Ex. A and B. Both an Affidavit from Appellant as well as a note from the hospital which was treating Appellant's wife. Id. In the initial brief, Appellant is not arguing that either the Special Referee or Respondent were required to present any evidence, only that the reasoning for, and conclusions that were drawn, in denying Appellant's motion is not supported by any evidence presented before the Special Referee. Respondent only presented an argument – not evidence – pointing to Appellant's prior actions during the litigation of the case and how, in his view, Appellant should have acted during a medical emergency. Therefore, the conclusion that was drawn by the Special Referee in his order denying Appellant's motion was “without evidentiary

support.” Fontaine, 291 S.C. at 538, 354 S.E.2d at 566; see also Order filed October 07, 2020, p. 7-8. The evidence that was presented by Appellant, though, is sufficient to grant the motion to set aside judgement or for a new hearing.

Furthermore, Respondent mischaracterizes the proposal for an evidentiary hearing. See Initial Brief of Respondent, p. 5. Appellant’s suggestion of an alternate resolution, holding an evidentiary hearing, is certainly not making any concession as to the sufficiency of the evidence that was presented in the Motion to Set Aside Judgement. See Def. Mot. to Set Aside J. Ex. A and B. Rather, an evidentiary hearing would be to address credibility concerns that were raised by the Special Referee based on perceived behavior and actions of Appellant during the course of the case. See Order filed October 07, 2020, p. 7-8. If the Special Referee had concerns about the credibility of the medical emergency due to unrelated behavior or actions by Appellant, which were not put in evidence before the Special Referee, then an evidentiary hearing should have been held prior to making his ruling. Because this step was not taken there was an abuse of discretion by the Special Referee.

CONCLUSION

Because the basis for the Special Referee’s Order Denying Appellant’s Motion to Reconsider was not supported by evidence, an abuse of discretion occurred, and the ruling should be reversed, and this Court should grant Appellant’s Motion for a New Hearing or in the alternative to Set Aside Judgment in this case.

[SIGNATURE BLOCK ON NEXT PAGE]

Respectfully Submitted,

SHELBOURNE LAW

s/John T. Kornegay

P. Brandt Shelbourne, Esq. (#15143)

John T. Kornegay, Esq. (#102294)

131 E. Richardson Avenue

Summerville, SC 29483

843.871.2210 (ph)

843.875.2224(f)

Counsel for Appellant

April 01, 2021

RECEIVED

Apr 01 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY AND DORCHESTER COUNTY

Court of Common Pleas

Patrick R. Watts, Special Referee

Appellate Case No. 2020-001489

John Murray Gibbs, Respondent,

vs.

Henderson Gibbs, Jr, Appellant.

PROOF OF SERVICE FOR INITIAL REPLY BRIEF OF APPELLANT

I certify that I have served a copy of *Appellant's Initial Reply Brief* by e-mail on Respondent, John Murray Gibbs counsel, Andrew Shepherd, Esq at andrew@sheplawfirm.com on April 1, 2021.

SHELBOURNE LAW

s/John T. Kornegay
P. Brandt Shelbourne, Esq. (#15143)
John T. Kornegay, Esq. (#102294)
131 E. Richardson Avenue
Summerville, SC 29483
843.871.2210 (ph)
843.875.2224(f)
Counsel for Appellant

April 1, 2021

From: [Yvonne Franklin](#)
To: ["andrew@sheplawfirm.com"](mailto:andrew@sheplawfirm.com)
Cc: [John Kornegay](#)
Subject: Gibbs v. Gibbs Appeal; Appellate Case No. 2020-001489
Date: Thursday, April 1, 2021 2:45:00 PM
Attachments: [Appellant Initial Reply Brief.pdf](#)
[POS Initial Reply Brief of Appellant.pdf](#)

Good afternoon,

Attached please find Appellant's Initial Reply Brief in the above referenced matter which is being electronically filed with the Court of Appeals this afternoon along with a Proof of Service. We will email you a copy of the file stamped copy upon receipt. Please let me know if you would prefer a paper copy of the attached and I will place it in the U.S. Mail.

Thank you.

Yvonne

Yvonne Franklin
Civil Litigation Paralegal
Shelbourne Law
131 E. Richardson Ave.
Summerville, SC 29483
843-871-2210 (ph)
843-875-2224 (fax)
civlit@shelbournelaw.com