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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2020-000938

Katrina Stroman.....Respondent/Appellant,

v.

Samuel Jeffords..... Appellant/Respondent.

APPELLANT/RESPONDENT’S FINAL REPLY BRIEF

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REPLY TO RESPONDENT'S STATEMENT OF FACTS

A. Facts as to directed verdict motions for strict liability

Respondent/Appellant (“Stroman”), states that dog owner Payten Padgett’s (“Tenant”) father, Greg Brooks, helped Appellant/Respondent (“Landlord”) maintain and monitor Tenant’s house at the time of the incident. [Resp. Brief, p. 2]. Stroman also states that Landlord and Mr. Brooks took several steps to secure Tenant’s house including providing a doghouse, providing a dog runner.¹ [*Id.*].

Mr. Brooks testified that if he provided his daughter a doghouse, dog runner, or monitored or maintained Tenant’s house, he did those things for his daughter and not for Landlord. [R. p. 164, line 16-p. 165, line 7].

Stroman states “[Tenant] also testified [Landlord] was aware, or should have been aware that the pit-bull was on the property . . .” because Landlord came to the house once or twice, the pit-bull ran free, and the dog runner and doghouse “were in plain view from the front of the house.” [Resp. Brief, pp. 2-3].

Tenant never testified Landlord was aware or should have been aware the dog was living on the property, as evidenced by the citations to the record. While tenant testified she believed Landlord came to the property once or twice,² that the dog roamed

¹ The brief also states a fence was built to secure and protect the property while Tenant lived there. It is not contested that Landlord hired Mr. Brooks to install a fence to prevent people from walking across the property *after* Landlord became aware of the bite. [R. p. 166, line 18-p. 167, line 5]. In fact, it was only *after* Stroman’s attorney contacted Landlord about the dog bite that he became aware of it and decided to have a fence installed because he did not know where the bite occurred and wanted to keep people from crossing over the property. [R. p. 200, line 22-p. 201, line 15].

² Landlord expressly denied knowing Tenant had a dog and there is no evidence showing Landlord knew of Tenant’s dog. [R. p. 170, lines 22-25; p. 176, lines 7-11; p. 183, lines 23-25; p. 185, lines 13-16; p. 201, lines 16-19].

free, and the doghouse and dog runner located in the backyard where “in plain view,” she never testified as to what Landlord saw or should have seen and she did not testify the doghouse and dog runner were “in plain view from the front of the house” as stated in the brief. [R. p. 175, line 5-p. 176, line 3].

B. Facts as to jury selection and *Batson* motion

Stroman states the trial court “expressed concern over [Landlord’s] explanations of not understanding Juror No. 9 and Juror No. 70 working in a low-income position.” [Resp. Brief p. 4]. While the trial court did express concern over the explanation as to Juror No. 9, no such concern was raised by the trial court as to Juror No. 70. [R. p. 130, line 24-p. 131, line 15].

REPLY ARGUMENTS

I. THE TRIAL COURT ERRED IN DENYING LANDLORD’S MOTIONS FOR DIRECTED VERDICTS, AND, THEREFORE, THE POST-TRIAL MOTION WAS MOOT.

A. There was no evidence of Landlord’s ownership, care, or keeping of Tenant’s dog.

Stroman presents no arguments or citations to the record to contradict Landlord’s contention there was no evidence that he cared for or kept Tenant’s dog. Stroman’s sole argument in opposition is there was evidence of an agency between Landlord and Tenant’s father, and the acts of the father towards his daughter’s dog were imputed to Landlord. [Resp. Brief, pp. 5-6].

B. There was no evidence of Mr. Brook’s ownership, care, or keeping of Tenant’s dog.

Stroman contends Tenant’s father, Mr. Brooks, manifested an acceptance of the care and keeping of Tenant’s dog because he knowingly provided her a doghouse, dog runner, and installed a fence to house the dog. [Resp. Brief pp. 6-7].

First, it is uncontested that the fence was installed *after* Stroman's counsel notified Landlord of the dog bite. [R. p. 166, lines 22-25; p. 122, line 22-p. 123, line 15]. The evidence further shows the fence was built to prevent people from crossing over the property, and not for the purpose of housing, containing, caring, for or keeping Tenant's dog. [R. p. 166, lines 24-25; p. 179, lines 2-5; p. 201, lines 11-15].

Second, the fact that Tenant's father brought over a doghouse and either provided and/or helped install a dog runner is insufficient to show he was caring for or keeping Tenant's dog in December 2014 when the bite occurred.

Tenant moved into the house in late 2012 or early 2013. [R. p. 173, lines 10-11]. Tenant and her children were moving from a 2300 square foot house to Landlord's 800 square foot house. At that time, she began keeping the dog outside. [R. p. 180, line 21-p. 181, line 20]. When Tenant began keeping the dog outside, her father provided the doghouse and dog runner. [R. p. 181, line. 21-p. 182, line 15]. The bite did not happen until December 2014.

It is uncontested that the sole owner of the dog was Tenant and that Tenant was the one that was responsible for the dog when it bit Stroman. It is also undisputed that Tenant's father, Mr. Brooks, did not own the dog, did not provide food, water, or vet care for the dog. Mr. Brooks did not keep the dog or visit the Property to care for the dog. Mr. Brooks was not doing any work on the Property, or taking care of the dog, when Stroman was bitten. Finally, Landlord never paid Mr. Brooks to go to the Property to take care of the dog. [R. p. 169, line 8-p. 170, line 21].

Moreover, Tenant testified that she owned the dog, that she was responsible for the dog, and her father wasn't responsible for feeding or watering the dog or paying vet bills. [R. p. 183, lines 1-13].

“If a person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the dog owner or person having the dog in the person’s care or keeping, *the dog owner or person having the dog in the person’s care or keeping* is liable for the damages suffered by the person bitten or otherwise attacked. S.C. Code § 47-3-110.

“The Legislature’s use of the phrase ‘care or keeping’ clearly requires that the ‘other person’ act in a manner which manifests an acceptance of responsibility for the care or keeping of the dog.” *Clea v. Odom*, 394 S.C. 175, 180, 714 S.E.2d 542, 545 (2011) *citing Harris v. Anderson County Sheriff’s Office*, 381 S.C. 357, 364, 673 S.E.2d 423, 427 (2009).

Stroman states in a conclusory fashion, without legal analysis, that “knowingly providing a doghouse, runner, and fence ‘manifests an acceptance of responsibility for the care or keeping of the dog.’” [Resp. Brief, p. 6]. A father providing his daughter a doghouse and dog runner almost a year before the bite, and having no other interaction or care with the dog, is insufficient as a matter of law to show actions which manifests an acceptance of responsibility for the care or keeping of the dog. The statement also directly conflicts with the sole evidence at trial that only Tenant was responsible for the care and keeping of the dog in December 2014 when Stroman was bit.

Regardless, even if there was evidence for a jury to decide if Tenant’s father was caring for or keeping Tenant’s dog in December 2014, Stroman has failed to present a sufficient argument establishing Mr. Brooks was acting with Landlord’s apparent authority as his agent with regard to Tenant’s dog.

“The principal is responsible for the acts of the agent *within the scope of his apparent authority*, although he may act contrary to the directions of the principal.” *Williams v. Tolbert*, 76 S.C. 211, 56 S.E. 908, 910 (1907) (emphasis added).

Stroman contends Mr. Brooks was Landlord’s agent because Mr. Brooks helped maintain and monitor his properties, secure tenants, he had keys to the properties, and he was a signatory on one of Landlord’s bank accounts. [Resp. Brief p. 6]. Assuming this argument as true, it fails to establish Mr. Brooks was acting as Landlord’s agent concerning Plaintiff’s dog.

Mr. Brooks testified at trial that if he provided his daughter with a doghouse or dog runner, or if he helped her with the property, he was doing that for his daughter and not Landlord. [R. p. 164, line 16-p. 165, line 7]. Accordingly, any acts by Mr. Brooks concerning Tenant’s dog was outside the agency relationship with Landlord and Landlord was entitled to a directed verdict in his favor.

II. THE TRIAL COURT ERRED IN GRANTING STROMAN’S MOTION TO RECONSIDER ITS *BATSON* RULING AND ORDERING A NEW TRIAL.

A. Findings unsupported by the record.

Stroman argues the fact the trial court indicated the wrong order of jurors struck in the Order was a harmless error, which only underlined Landlord’s efforts to strike African American females by jumping around the list. [Resp. Brief p. 9].

Landlord argues the error is not harmless as the trial court failed to recognize the argument that of nineteen (19) available juror to strike from, Landlord utilized his first strike to remove Juror #9 based on the reasons articulated during the *Batson* hearing and set forth in Landlord’s brief. *See State v. Tucker*, 334 S.C. 1, 8, 512 S.E.2d 99, 102 (1999). (stating parties "must be allowed to make credibility determinations" when evaluating jurors

and must be allowed to consider intangible factors such as the "tone, demeanor, facial expression, and any other race-neutral factors when striking jurors.").

Landlord also argued the trial court Order makes findings as to whether a similarly situated Caucasian female juror was seated. The trial court's Order states that Landlord did not hear the full information conveyed from juror #140, a female Caucasian. The Order states juror #140 stated her occupation was a "CSR employed by Sunset." [R. p. 7]. The trial court concluded that because Landlord did not hear the complete response and elected to seat the juror but struck juror #9 for not understanding her, the reason was not race neutral. [*Id.*].

Stroman argues the record reflects the undersigned did not understand Juror # 140, and relies on the court reporter's transcript. [Resp. Brief p. 10]. However, while it is evident the undersigned did not hear the place of employment and only "CSR", the undersigned *did* understand the juror, unlike that of Juror #9.

Regardless, no argument was raised during the *Batson* hearing or in Stroman's Rule 59 motion stating that juror #140 was employed as a "CSR at Sunset" and Landlord seated her without understanding her. [R. pp. 45-51].

As the Order is based on findings unsupported by the record on appeal, the holdings are clearly erroneous and Order granting a new trial should be reversed.

B. Rulings made outside of the grounds set forth in the Rule 59 Motion.

"After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion." Rule 59(d), SCRCP.

Stroman does not contest Landlord's argument that the Order grants relief based on matters outside of the Rule 59 motion. Rather, Stroman argues the argument is waived because a second Rule 59 motion was not filed. [Resp. Brief pp. 11-12].

Stroman relies on *Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993), for the proposition that Landlord should have filed a Rule 59 motion because the trial court's Order granted additional relief. [Resp. Brief pp. 12]. However, unlike the facts in *Dutton*, the trial court did not grant additional relief, but based the granting of the relief requested on reasons not set forth in the motion and without the opportunity to be heard as required by Rule 59(e). Therefore, a Rule 59(e) motion was not required to preserve the issue of compliance with Rule 59(d), SCRPC.

CONCLUSION

For the reasons set forth, Appellant/Respondent respectfully requests that the trial court's Order granting a new trial be reversed and that the jury verdict be affirmed. In the alternative, Appellant/Respondent respectfully requests that the Court determine the trial court erred in denying the Motions for Directed Verdict, find that Appellant/Respondent is entitled to a directed verdict in his favor, and dismiss the remaining issues as moot.

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