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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY COURT OF COMMON PLEAS

DEADRA L. JEFFERSON, CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2021-000420

Donna Bell Sellers, a/k/a Donna Bell Peclet,Appellant

vs.

Grover Seaton, III,Respondent

**INITIAL BRIEF
OF APPELLANT**

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STATEMENT OF ISSUES ON APPEAL

DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENT BECAUSE THE APPELLANT RAISED FACTUAL QUESTIONS THAT SHOULD BE ADDRESSED BY A FACT FINDER.

STATEMENT OF THE CASE

On February 23, 2017, Donna Bell Sellers, a/k/a Donna Bell Peclet (Appellant) filed an action in Greenville County against Grover Seaton, Sr. alleging causes of action for negligence misrepresentation and fraud. In March, 2017, Appellant filed an Amended Complaint naming Grover Seaton, III (Respondent) as the Defendant.

By Consent Order filed March 30, 2017, the action was transferred to Berkeley County, the home of Defendant. Defendant timely filed an answer in which he denied negligent misrepresentation or fraud. In addition, the Defendant pled the affirmative defenses of failure to state a cause of action pursuant to Rule 12(b)(6), S.C.R.C.P., failure to plead fraud in particularity, lack of standing, res judicata or collateral estoppel, statute of limitations, laches, failure to join necessary parties, consent or ratification, the exercise of the necessary degrees of care and skill, lack of duty to Plaintiff, release and/or accord and satisfaction, waiver, failure to exhaust available remedies, comity under international law, Plaintiff's own negligence, failure to state any claim for attorney fees, failure to sufficiently allege grounds for punitive damages, unconstitutionality of punitive damages, and the reservation to file additional defenses if such appeared from investigation and discovery.

On November 2, 2020, the parties filed Joint Stipulation of Facts.

On the same day, November 2, 2020, the Defendant filed a Motion for Summary Judgment. On December 8, 2020, the Plaintiff filed her Motion for Summary Judgment.

On March 24, 2021, the Honorable Deadra L. Jefferson filed an Order granting summary judgment to the Defendant and an Order denying summary judgment to Plaintiff.

On April 14, 2021, the Plaintiff filed her Notice of Appeal of the Order Granting Summary Judgment to Defendant.

ARGUMENT

THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO RESPONDENT BECAUSE THE APPELLANT RAISED FACTUAL QUESTIONS THAT SHOULD BE ADDRESSED BY A FACT FINDER.

As was pointed out in Fabian v. Lindsay, 410 S.C. 475, 765 S.E.2d 132 (2014), lawyers were relieved of their mistakes that effected non-clients because there was no privity between the lawyer and the injured party. The Fabian case recognized that a third-party beneficiary of a will could sue an attorney for negligence in drafting that will. Fabian calls into question whether other mistakes by a lawyer not in privity with the injured party can result in a valid cause of action.

In granting summary judgment to the Respondent, the circuit court concluded that because the respondent did not make a direct representation to the Appellant her claim of a false representation must fail. *Black's Law Dictionary*, 9th Ed. (2009), defines representation as "A presentation of fact – either by words or conduct – made to induce someone to act."

Stipulation of Fact 2 and 3 present a question of fact that the Respondent was involved in conduct that represented to Appellant that she was being legally divorced from her husband.

In essence, the court ruled as a matter of law that the Respondent's participation in securing a worthless Dominican Republic divorce is not a representation. This begs the question, if the Respondent's actions is not a presentation of fact, then what is it?

“Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law.” Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRCP. “Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, “the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party.” Id.

Moreover, in considering a motion for summary judgment, the nonmoving party receives every benefit of the doubt. See Watters v. Terminix Service, Inc., 376 S.C. 632, 635, 658 S.E.2d 110, 111 (Ct. App. 2008). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.... Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 796 (2008).

The court also based its decision in part on the lack of duty of care owed to the Appellant in obtaining a worthless divorce.

Divorce is a unique legal proceeding. One important feature of divorce is that it provides a divorcee with the legal ability to enter into another contract of marriage with all the attendant obligations and responsibilities.

Upon obtaining what was presented to her as a lawyer approved valid divorce, remarriage was foreseeable.

If an attorney has an obligation to correctly write a will to benefit a third-party beneficiary, is it not fair and equitable that a lawyer be obligated to obtain a valid divorce for the other party as well as his own client?

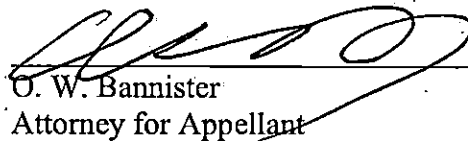
Finally, the court below limited Fabian to the facts of that case, thereby freeing the Respondent of any responsibility for the devastation caused by or at least contributed to by his ignorance of the law. Thus a wrong goes without a remedy.

CONCLUSION

The Court should reverse the grant of summary judgment and remand the matter for trial.

Respectfully submitted,

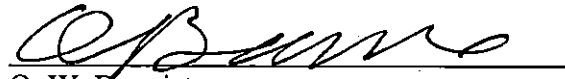
BANNISTER, WYATT & STALVEY, LLC


O. W. Bannister
Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief complies with Rule 208, *SCACR* and, further, complies with Supreme Court Order dated August 13, 2007, regarding personal identifiers and sensitive information as well as Supreme Court Order dated March 20, 2020, regarding the operation of appellate courts during the Coronavirus emergency.

BANNISTER, WYATT & STALVEY, LLC



O. W. Bannister

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vs.

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PROOF OF SERVICE



The undersigned hereby certifies that on June 14, 2021 the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal in the above-captioned matter was served upon counsel of record by placing a copy of same in the U.S. Mail, sufficient postage affixed thereto, addressed as follows, and via electronic mail:

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Via E-mail & First Class Mail

The Hon. V. Claire Allen, Deputy Clerk
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RE: Donna Bell Sellers, a/k/a Donna Bell Peclet, Appellant vs.
Grover Seaton, III, Respondent
Appellate Case No.: 2021-000420

Dear Ms. Allen:

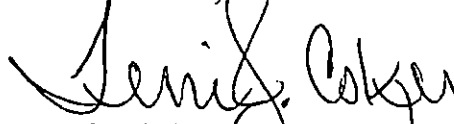
Enclosed are the original and one copy of the Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal in the above-referenced matter.

I have also enclosed our Proof of Service and a self-addressed, stamped envelope. Please return a stamped copy of the enclosed documents.

By copy of this letter and the enclosed Proof of Service, I am serving opposing counsel with the documents referenced herein.

Yours truly,

BANNISTER, WYATT & STALVEY, LLC



Terri J. Coker, ACP, SCCP
Paralegal to O. W. Bannister

Enclosures

cc: Michael B. McCall, Esq., w/enclosures
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