

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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MAY 25 2022
S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Daniel D. Hall, Circuit Court Judge

Case No. 2022-000503

Winston Shell,Respondent,

v.

Nathaniel Shell,Appellant.

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ATTORNEY FOR RESPONDENT

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SCRCP, 40(j)2

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QUESTION PRESENTED FOR REVIEW

I. Can Appellant identify any abuse of discretion by the trial judge when the evidence presented shows that Appellant, the party to this action, made a decision not appear at the trial of this case?

STATEMENT OF THE CASE

Winston Shell (“Respondent”) filed suit against Nathaniel Shell (“Appellant”) for monies owed as a result of loans made to Appellant as well the payment to Respondent regarding from Appellant’s purchase of Respondent’s interest in land that had been jointly owned by the parties.

Appellant does not have any compelling basis for this Court to grant this Writ for Certiorari. Although one judge dissented in the decision to deny the Petition for Rehearing, for reasons not stated, it is clear that Appellant has simply repeated arguments made earlier, which have no basis in fact and are either mischaracterizations of the evidence or claims not supported by any evidence in the record.

Once again, Appellant argues that he a victim of an abuse of judicial discretion because the Court did not give him an opportunity to appear at trial. It is essential that this Court, at this stage, focus on one statement, which is the only evidence submitted by Appellant about his absence from the trial of this case. In Appellant’s own affidavit, submitted with his petition for rehearing before the lower court, and a part of the record submitted to the Court of Appeals, he states “I made plans for Tuesday and was not available to appear in trial when the case was called on Tuesday.” It could not be clearer that Appellant was aware of the Court’s schedule, which was the case was going to be tried the week of November 9, 2019 and made a decision not to appear. He provides no explanation for his alleged unavailability; instead, he now attempts to cast himself as a victim when the result was of his doing.

Throughout this entire appeal, Appellant and his counsel have chosen to mischaracterize the facts surrounding the events leading up to the trial and the trial itself. Appellant has presented no evidence or legal basis for a new trial. His argument is not based on evidence or the truth. Appellant claims that there was only one notice of the trial; in its Opinion, the Court of Appeals identified three contacts from the Court announcing the Court term beginning December 9, 2019. The Court also noted that a roster meeting was held on December 9, 2019, with at least three follow-up contacts from the Court about the trial of the case. In a self-serving statement, Appellant claims that his attorney told him “it would be highly unlikely for the case to be called that week,” however, Appellant did not support that assertion with any evidence such as an affidavit or as a result of the deposition of the attorney. Appellant also contends that his then counsel asked for more time, which is not true. See Opinion and Trial Transcript at pp. 83-84. Interestingly, during the course of the trial, the judge provided for a lunch break to allow Appellant’s counsel an opportunity to contact the client in order to testify. Trial Transcript at p.153 ll. 18-23. After lunch, Appellant’s counsel reported to the Court “My client is not going to appear today.” Trial Transcript at p.154 ll.21-25. It appears clear that the attorney and Appellant had spoken and again, Appellant decided not to appear. Appellant contends that his counsel made a motion for a continuance; as the Court of Appeals noted, that was not the case as evidenced by the transcript. The entire tenor of Rule 40(i), SCRCP, is that continuance may be considered by the Court if counsel seeking a continuance provides an oath that the motion is not intended for delay. It is plausible that counsel could not do so when Appellant himself simply said he was not going to attend the trial without any explanation. Surely Appellant should not be allowed to blatantly disregard the directives of the Court.

Respondent asserts that the granting of a Writ of Certiorari is not appropriate or warranted in this matter.



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