

SUPREME COURT OF SOUTH CAROLINA

Pye v. Estate of Fox ex rel. Estate of Fox, 369 S.C. 555

633 S.E.2d 505 (2006) · No. No. 26193 · Decided July 24, 2006

SUMMARY

The Supreme Court of South Carolina affirmed summary judgment dismissing a civil conspiracy claim against an attorney and a directed verdict for the remaining defendants. The court held that the plaintiffs failed to present evidence of an agreement among the defendants to injure them, an essential element of civil conspiracy. The court also addressed preservation of appellate issues concerning an attorney's alleged independent duty and conduct outside the scope of representation.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Acting Justice Anderson; Chief Justice Toal; Justice Moore; Justice Burnett; Justice Pleicones
JURISDICTION	South Carolina
DECIDED	July 24, 2006
DOCKET	No. 26193
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Pyes appealed from orders granting summary judgment to attorney G. Thomas Hill on the civil-conspiracy claim and directing a verdict for the Fox defendants on the civil-conspiracy claim.
STANDARD OF REVIEW	Summary judgment is reviewed under the Rule 56(c), SCRPC, standard, viewing the evidence and reasonable inferences in the light most favorable to the nonmoving party and determining whether a genuine issue of material fact exists. A directed verdict is reviewed by viewing the evidence and inferences favorably to the opposing party; the motion should be denied when the evidence permits more than one reasonable inference. The appellate court reverses only when no evidence supports the ruling or the ruling is controlled by an error of law.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Russ Pye, Lee Pye, Justin Enterprises, a South Carolina General Partnership v. Estate of Dorothy T. Fox, John Richard Fox, III, as

TOPICS

summary judgment motion for directed verdict civil procedure appellate procedure preservation of error

PRACTICE AREAS

civil procedure appellate procedure torts real estate probate

QUESTIONS PRESENTED

1. Whether the circuit court erred in granting summary judgment dismissing the civil-conspiracy claim against Hill.
2. Whether the circuit court erred in directing a verdict for the Foxes on the civil-conspiracy claim.
3. Whether the Pyes' theory that Hill owed them an independent duty based on Rule 11, SCRCP, and the barratry statute was preserved for appellate review.
4. Whether the Pyes preserved their alternative theory that Hill acted outside the scope of his professional duties and in his own interest.

HOLDINGS

1. The Pyes' theory that Hill breached an independent duty arising from Rule 11, SCRCP, and the barratry statute was not preserved because it was raised for the first time on appeal and was not presented to or ruled upon by the circuit court.
2. An issue raised at the summary-judgment hearing and again in a Rule 59(e) motion is preserved even if the circuit court does not specifically rule on that issue at the Rule 59(e) hearing.
3. Summary judgment for Hill was proper because the Pyes failed to produce evidence of an agreement between Hill and the Foxes to injure the Pyes, an essential element of civil conspiracy.
4. The directed verdict for the Foxes was proper because the Pyes presented no evidence of an agreement by Hill and the Foxes to injure them, a necessary element of civil conspiracy.

KEY QUOTATIONS

“The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages.” (567)

“There was absolutely no evidence submitted at the summary judgment stage supporting an agreement between Hill and Richard Fox to injure the Pyes.” (568)

“Therefore, we affirm the court's directed verdict in favor of the Foxes based on the Pyes' failure to present evidence of a necessary element of civil conspiracy.” (569)

FACTUAL BACKGROUND

The Pyes owned two adjacent Charleston County parcels, including Encampment Plantation Drive, over which the Foxes held an easement for ingress and egress. After disputes concerning the road's alignment, attorney G. Thomas Hill filed two lawsuits involving the Fox estates and the Pyes; the first was filed in the name of an already-closed estate, and the Foxes were ultimately dismissed from both actions. The Pyes then sued the Foxes and Hill for abuse of process, civil conspiracy, and violation of the Frivolous Civil Proceedings Sanctions Act, but presented no evidence showing an agreement between Hill and the Foxes to injure them.

PROCEDURAL HISTORY

The Pyes sued the Fox estates, John Richard Fox, III, and attorney G. Thomas Hill for abuse of process, civil conspiracy, and violation of South Carolina's Frivolous Civil Proceedings Sanctions Act. The circuit court dismissed Hill at the summary-judgment stage and later directed a verdict for the Foxes after the Pyes presented their case. The Supreme Court of South Carolina affirmed both rulings.

DISPOSITION

affirmed

CASES CITED

- Pittman v. Grand Strand Entertainment, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005)
- B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004)
- Medical University of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004)
- Rife v. Hitachi Construction Machinery Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005)
- Mulherin-Howell v. Cobb, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005)
- Steinke v. South Carolina Department of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999)
- Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281 (2003)
- Adams v. G.J. Creel & Sons, Inc., 320 S.C. 274, 465 S.E.2d 84 (1995)
- Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002)
- Clark v. South Carolina Department of Public Safety, 362 S.C. 377, 608 S.E.2d 573 (2005)
- Abu-Shawareb v. South Carolina State University, 364 S.C. 358, 613 S.E.2d 757 (Ct. App. 2005)
- Welch v. Epstein, 342 S.C. 279, 536 S.E.2d 408 (2000)
- Harvey v. Strickland, 350 S.C. 303, 566 S.E.2d 529 (2002)
- Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997)
- Gaar v. North Myrtle Beach Realty Co., Inc., 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986)
- Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995)
- Holy Loch Distributors, Inc. v. Hitchcock, 340 S.C. 20, 531 S.E.2d 282 (2000)
- Staubes v. City of Folly Beach, 339 S.C. 406, 529 S.E.2d 543 (2000)
- Elam v. South Carolina Department of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2004)
- Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)

- Budinich v. Becton Dickinson and Co., 486 U.S. 196, 108 S. Ct. 1717, 100 L. Ed. 2d 178 (1988)
- Coward Hund Construction Co., Inc. v. Ball Corp., 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999)
- Collins Music Co., Inc. v. IGT, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2003)
- Pressley v. Lancaster County, 343 S.C. 696, 542 S.E.2d 366 (Ct. App. 2001)
- LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988)
- Cowburn v. Leventis, 366 S.C. 20, 619 S.E.2d 437 (Ct. App. 2005)
- Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004)
- Lyon v. Sinclair Refining Co., 189 S.C. 136, 200 S.E. 78 (1938)
- Lee v. Chesterfield General Hospital, Inc., 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986)
- Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987)
- Gynecology Clinic v. Cloer, 334 S.C. 555, 514 S.E.2d 592 (1999)
- Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989)
- I'On, L.L.C. v. Town of Mount Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000)
- Carolina Home Builders, Inc. v. Armstrong Furnace Co., 259 S.C. 346, 191 S.E.2d 774 (1971)