

SUPREME COURT OF THE STATE OF DELAWARE

Baize v. Vincent

No. 30, 2016 · No. No. 30, 2016 · Decided October 10, 2016

SUMMARY

The Delaware Supreme Court affirmed a Superior Court judgment entered after a jury found Joseph and Danielle Vincent not liable for malicious prosecution and defamation. The court held that Baize’s evidentiary and subpoena arguments were not fairly presented below and did not warrant review under the interests-of-justice exception to Supreme Court Rule 8.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	James T. Vaughn, Jr.; Leo E. Strine, Jr., Chief Justice; Holland, Justice; James T. Vaughn, Jr., Justice
JURISDICTION	Delaware
DECIDED	October 10, 2016
DOCKET	No. 30, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Baize appealed after a jury verdict for the defendants in his malicious-prosecution and defamation action, challenging the exclusion of an expungement motion and the quashing of a subpoena.
STANDARD OF REVIEW	Under Delaware Supreme Court Rule 8, an issue not fairly presented to the trial court will not be considered on appeal unless the interests of justice require review. That exception is limited to material defects apparent on the face of the record that are basic, serious, and fundamental, clearly deprive a party of a substantial right, or clearly demonstrate manifest injustice.
PRECEDENTIAL VALUE	Not stated in the opinion
PARTIES	Michael R. Baize v. Joseph Vincent, Danielle Vincent

TOPICS

preservation of error

appellate procedure

judicial notice

evidence

torts

PRACTICE AREAS

appellate procedure

evidence

torts

civil procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court should consider Baize's argument that the expungement motion was admissible because it contained admissions by a party opponent when that argument was not presented to the trial court.
2. Whether the Supreme Court should consider Baize's challenge to the quashing of his subpoena when he did not object to the order in the trial court.
3. Whether the interests-of-justice exception to Delaware Supreme Court Rule 8 warranted review of either unpreserved claim.

HOLDINGS

1. The court would not consider the argument because Baize did not present it to the trial court and did not satisfy the demanding interests-of-justice exception to Supreme Court Rule 8.
2. The court would not consider the challenge because Baize did not object to the subpoena being quashed in the trial court and did not satisfy the interests-of-justice exception.

KEY QUOTATIONS

“Review of an alleged error under the interests of justice exception is “limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive [a party] of a substantial right, or which clearly show manifest injustice.”” (¶ 9)

FACTUAL BACKGROUND

Following disputes concerning trust assets, Joseph Vincent and his wife accused Michael Baize of forging Joseph's name on six checks. Baize was arrested and charged with six counts of second-degree forgery, but the State entered a nolle prosequi on all counts and successfully obtained expungement of the arrest record. In Baize's later malicious-prosecution and defamation action, he sought to introduce the State's expungement motion and subpoenaed the deputy attorney general who prepared it; the trial court excluded the motion and quashed the subpoena.

PROCEDURAL HISTORY

Baize sued Joseph and Danielle Vincent in the Superior Court. After a jury found that the Vincents were not liable, Baize appealed. The Supreme Court held that his appellate arguments were not fairly presented below and affirmed the Superior Court's final judgment.

DISPOSITION

affirmed

CASES CITED

- Wainwright v. State, 504 A.2d 1096, 1100 (Del. 1986)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE MICHAEL R. BAIZE, § § No. 30, 2016 Plaintiff Below, § Appellant, § § Court Below - Superior Court v. § of the State of Delaware § JOSEPH VINCENT and DANIELLE, § C.A. No. K13C-04-034 VINCENT, Husband and Wife, § § Defendant Below, § Appellee. § Submitted: September 14, 2016 Decided: October 10, 2016 Before STRINE, Chief Justice; HOLLAND and VAUGHN, Justices.

ORDER This 10th day of October 2016, upon consideration of the parties' briefs and the record of the case, it appears that: 1. Michael R. Baize filed a complaint in the Superior Court alleging claims of malicious prosecution and defamation against Dr. Joseph Vincent and Danielle Vincent. A jury rendered a verdict in favor of the Vincents, and Baize now appeals, asserting two claims.

He contends that the trial court abused its discretion by (1) excluding from evidence a motion, filed by the State, to expunge a record of Baize's arrest on forgery charges and (2) quashing a subpoena which Baize served upon the deputy attorney general who had prepared and filed the expungement motion. 2. Joseph Vincent and his sister were raised by their grandfather.

The grandfather named Donna C. Baize as guardian of Joseph and his sister and trustee of a trust for their benefit in the event of his death. He died shortly thereafter, and Joseph and his sister, who were teenagers, were then cared for by Donna Baize and her husband Michael. 3. Various disputes arose concerning the trust assets which resulted in litigation in the Court of Chancery.

After that litigation was resolved, Joseph, who by then had become Dr. Vincent, and his wife, Danielle, accused Michael of forging Dr. Vincent's name on six checks. Michael was arrested and charged with six counts of Forgery in the Second Degree. Eventually the State entered a nolle prosequi on all counts.

The State then filed a motion to expunge Michael's arrest record. The motion was granted and the record was expunged. Michael then initiated this litigation. 4. A pre-trial stipulation was prepared on or about November 20, 2015. Baize listed the motion to expunge his arrest record as a trial exhibit.

The Vincents listed a number of objections to introduction of the motion. At about the same time, Baize had a subpoena served upon Stephen Welch, the deputy attorney general who had prepared and filed the motion to expunge Baize's arrest record. Baize also listed the deputy attorney general as a witness in the pre-trial stipulation. 5.

On the same day that the parties filed their pre-trial stipulation, counsel for Baize sent a letter to the trial judge arguing that the motion to expunge Baize's arrest record was admissible under Delaware Rule of Evidence 201(b)(2). That rule allows a court to take judicial notice of adjudicative facts if such facts are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Baize argued that because the motion was from a docket in an underlying action, and "from a source whose accuracy cannot be reasonably questioned," it fell under Rule 201(b)(2).

In his letter, counsel further stated that it was his position that if the motion could be introduced as evidence, he would prefer to withdraw the subpoena. Counsel for the Vincents responded with a letter in which they continued to object to the admissibility of the motion, but stated that they were willing to stipulate that the forgery charges were expunged.

6. On November 30, 2015, the trial court ruled that the motion to expunge Baize's arrest record was not admissible under Rule of Evidence 201(b)(2), noting that the motion contained statements which were unproven and that the document contained statements that may be unfairly prejudicial to the Vincents.

The trial court also took note of the Vincents' offer to stipulate that the arrest record was expunged. 7. In the meantime, the Department of Justice sent a letter to the trial court dated November 25, 2015 asking it to quash the subpoena. By order dated December 10, 2015, the Superior Court quashed the subpoena.

The court stated, "It will not be necessary for Mr. Welch to appear for the sole purpose of testifying as to the dismissal and/or nolle prosequi of the criminal charges." The court further stated that "[t]he parties may submit an appropriate stipulation," no doubt referring to the offer of the Vincents to stipulate to the dismissal and expungement of the charges.

Baize's counsel did not assert any objection to the trial court's order. 8. A three-day trial commenced on December 14, 2016. As mentioned, the jury returned a verdict for Dr. and Mrs. Vincent finding that they were not liable for malicious prosecution and defamation of Mr. Baize. This appeal followed. 9.

On appeal, Baize argues that the motion to expunge his arrest record was admissible because it contained admissions by Dr. Vincent as a party-opponent. However, this argument was not presented to the trial court. In the trial court, Baize relied solely on his judicial notice argument. Baize also argues that the trial court abused its discretion by quashing the subpoena.

However, in the trial court Baize never objected to the subpoena being quashed. Under these circumstances, we find that the arguments which Baize raises on appeal were not fairly presented to the trial court. Therefore, under Supreme Court Rule 8, they will not be considered on appeal, unless the interests of justice so require. Review of an alleged error under the interests of justice

exception is “limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive [a party] of a substantial right, or which clearly show manifest injustice.”¹ Baize has not met this demanding standard.

NOW, THEREFORE, IT IS ORDERED that the final judgment of the Superior Court is AFFIRMED. BY THE COURT: /s/ James T. Vaughn, Jr. Justice 1 Wainwright v. State, 504 A.2d 1096, 1100 (Del. 1986).