
IN THE
Supreme Court of Virginia

RECORD NO. 091493

BENJAMIN AGUILERA,

Appellant,

v.

JOHN ANDREW CHRISTIAN,

Appellee.

OPENING BRIEF OF APPELLANT

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NATURE OF THE CASE

This is a personal injury case. However, the matter which brings Appellant to this Court involves whether it was proper for a case to be dismissed because a person not a party to the action signed an initial pleading rather than the party or the party's counsel.

On November 12, 2008, BENJAMIN AGUILERA ("Petitioner"), pro se, filed a Complaint for Personal Injury in the Circuit Court of Prince William County. App. 1.

On December 15, 2008, and Answer and Grounds of Defense was filed on behalf of Defendant JOHN ANDREW CHRISTIAN ("Christian"). App. 4.

On December 18, 2008, Christian served upon Appellant a Request for Admission to Plaintiff. App. 17. On or about January 21, 2009, Appellant, pro se, served upon Christian a Response to Defendant's Request for Admission. App. 25.

On January 23, 2009, a Motion to Associate Counsel Pro Hac Vice was filed by Y.T. Hung, Esquire ("Hung"), an attorney licensed to practice in Virginia. App. 6. The Motion was filed seeking to have the trial court admit B. Marian Chou, Esquire, ("Chou") a member in good standing of the Bar of the District of Columbia, for

the limited purpose of appearing and participating as co-counsel with Hung in the instant litigation. Accompanying the Motion was a notarized application of Chou.

On March 17, 2009, Christian filed with the Trial Court a Motion To Have Requests for Admission Deemed Admitted and Motion for Summary Judgment in Favor of Defendant (“Motion for Summary Judgment”). App. 14. Christian included as part of his Motion for Summary Judgment several exhibits, including Appellant’s Response to Defendant’s Request for Admissions (Exhibit D to Motion for Summary Judgment App. 25).

On March 27, 2009, Appellant filed an Opposition to Christian’s Motion for Summary Judgment. App. 27.

On March 27, 2009, the parties appeared before the Trial Court to argue Christian’s Motion. No testimony of witnesses was received by the court, nor was any evidence presented by either party. The hearing consisted solely of the oral argument of counsel based upon the pleadings filed.

After hearing the argument of counsel, the trial court granted Christian’s Motion for Summary Judgment. However, no order was entered by the trial Court on that date.

Thereafter, a Motion for Reconsideration was filed by Appellant.

On April 24, 2009, the parties again appeared before the Trial Court, this time to argue Appellant's Motion for Reconsideration. No testimony of witnesses was received by the court, nor was any evidence presented by either party. The hearing consisted solely of the oral argument of counsel.

After hearing the argument of counsel, the trial court denied Appellant's Motion for Reconsideration.

On April 24, 2009, the trial court entered a Dismissal Order which:

- granted Christian's Motion for Summary Judgment;
- denied Appellant's Motion for Reconsideration; and
- dismissed Appellant's case.

App. 37.

It is from the Dismissal Order entered on April 24, 2009, that Appellant notes his Appeal to this Court.

ASSIGNMENT OF ERROR

Petitioner bases his appeal on the following:

1. That the Trial Court erred in dismissing Petitioner's Complaint for Personal Injury on the ground that a person not a party to the action signed the Plaintiff's Complaint on the Plaintiff's behalf where Plaintiff authorized the person who signed the Complaint on his behalf to do so.

QUESTION PRESENTED

1. Did the Trial Court err in dismissing Appellant's Complaint for Personal Injury on the ground that a person not a party to the action signed the Appellant's Complaint on the Appellant's behalf where Appellant authorized the person who signed the Complaint on his behalf to do so? (Assignment of Error 1)

STATEMENT OF FACTS

No testimony was received by the Court at any hearing in this case.

No evidence was received by the Court at any hearing in this case.

The material proceedings in this case are set forth above in Appellant's statement as to the Nature of the Case.

Appellant offers no Statement of Facts other than that set forth above in his statement of the nature of the case.

ARGUMENT

THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S COMPLAINT FOR PERSONAL INJURY ON THE GROUND THAT A PERSON NOT A PARTY TO THE ACTION SIGNED THE APPELLANT'S COMPLAINT ON THE APPELLANT'S BEHALF WHERE APPELLANT AUTHORIZED THE PERSON WHO SIGNED THE COMPLAINT ON HIS BEHALF TO DO SO.

In the present case, as indicated in its dismissal order, App.37, the trial court found that the Complaint was not signed by Appellant, nor by someone who was counsel for Appellant, but that the Complaint was signed by someone who was not a party to the action, and who was not Appellant's counsel. Thus, the trial court concluded that the Complaint was not in compliance with Rule 1: 4 (c) of the Rules of this Court which requires that "Counsel or an unrepresented party who files a pleading shall sign it and state his address."

Appellant concedes that he did not personally write his signature on the Complaint. Appellant also concedes that the Complaint was not signed by a person who was at the time acting as his counsel. Appellant does assert, and did before the trial court, that he authorized B. Marian Chou, a friend and neighbor of his, to sign

the Complaint on his behalf, and that such authorization effectively made the signature *his* signature.

Appellant has found no case authority in Virginia from this court or from the Court of Appeals to support the proposition that an individual may authorize or delegate to another person, not his counsel, authority to sign a legal pleading on behalf of the individual in order to satisfy the requirements of Rule 1:4 (c).

However, in the Virginia Circuit Court case of Bernhard v. Washington, 69 Va. Cir. 195, 2005 WL 3604210 (Va. Cir. Ct.), the Circuit Court of Fauquier County considered a situation very similar to the present case. In Bernhard, Defendant sought to have a Motion for Judgment in an automobile case dismissed pursuant to Rule 1A:4 upon the ground that the Motion for Judgment was invalid because it was not signed by a Member of the Virginia Bar. The Motion for Judgment appeared to be signed by Virginia counsel and by Maryland counsel. However, it turned out that Virginia counsel had not signed the pleading but that Maryland counsel had signed both for himself and for Virginia counsel. Virginia counsel conceded under oath in testimony before the trial court that he had not signed the Motion for Judgment but had authorized Maryland counsel (who was

not admitted to practice in Virginia) to sign on his behalf. The Circuit Court determined that the Virginia attorney *could* authorize the Maryland attorney to sign the pleading on his behalf and thereby meet the requirements of Rule 1A:4.

The Circuit Judge in Bernhard analyzed the issue as being the meaning of the words “signature” and “signed.” In reaching that definition the Judge in Bernhard noted the following:

The Uniform Commercial Code defines signature as “any name, mark, or writing used with the intention of authenticating a document.” UCC Section 1-201(39). The Restatement (second) of Contracts, Section 134 (1979) contains the statement that “the signature to a memorandum maybe any symbol made or adopted with an intention, actual or apparent to authenticate the writing as that of a signer.” *Black’s Law Dictionary* (7th Ed. 1999) defines signature as “a person’s name or mark written by that person or at that person’s direction.”

Thus, it would appear that the word “signature” is more than merely writing of a name by the individual bearing that name, but is the use of that individual’s name with the intention to authenticate the writing in the document as that of the signer.

In anticipating his argument, counsel for defendant argued that the term “signed” requires a physical act of the named individual and that if the Supreme Court had wanted to use a broader definition of the term it could have done so in the Rules by using the term “affixing a signature” to a document, rather than using the word “signed.”

While at first blush this may appear persuasive the Court would observe that Black’s Law Dictionary reads to “sign” is to

“identify (a record) by means of a signature, mark, or other symbol with the intent to authenticate it as an act or agreement of the person identifying it.” Therefore, “signed” means placing a signature with permission upon the document. A “Signature” is more than the mere physical act of signing the document by that specific individual, but represents an endorsement or approval of the document.

As is often observed, stamped signatures, are used by parties, including this Judge's predecessor, on many official documents. Such stamps, when used with proper authority, have the same efficacy as a physical signature upon the document. Bernhard, *supra*, at 196.

Appellant respectfully suggest that the analysis of Judge Parker in Bernhard, is persuasive and directly on point to the present case. In the present case Appellant maintains that he gave permission to Ms. Chou to sign his name to the Motion for Judgment with the intent for the writing of his name on the document by Ms. Chou to have the intent to authenticate it as an act of his. As such he was in compliance with Rule 1:4 and his Motion for Judgment should not have been dismissed by the Court.

Summary Judgment is a drastic remedy that is available only where there is no material fact genuinely in dispute. See Smith v. Smith, 254 Va. 99, 103, 487 S. E. 2d 212, 215 (1997). “It should not

be used to short circuit litigation by deciding disputed facts without permitting the parties to reach a trial on the merits.” Renner v. Stafford, 245 Va. 351, 429 S. E. 2d, 218, 219 (1993). In light of the above analysis, Appellant respectfully suggests that this Court should not deny Appellant his rightful day in court to have his case heard, on its merits, and decided according to law.

CONCLUSION

For the foregoing reasons, Appellant requests that this Court reverse the decision of the Circuit Court of Prince William County rendered on April 24, 2009.

Respectfully submitted,
BENJAMIN AGUILERA

A handwritten signature in black ink, appearing to read "Michael A. Ward", is written over a horizontal line.

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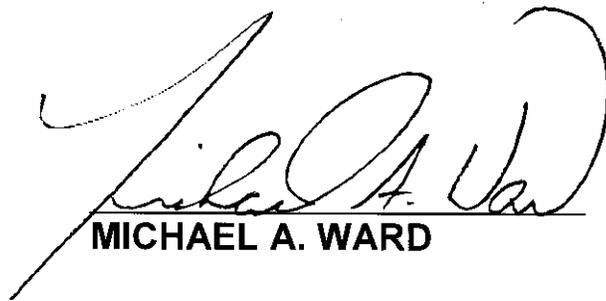
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CERTIFICATE

I, Michael A. Ward, Esquire, Counsel for Appellant, do hereby certify that on December 14, 2009, I filed by hand fifteen copies of Appellant's Opening Brief with the Clerk, Supreme Court of Virginia, and provided an electronic copy of the Brief by sending it to scvbriefs@courts.state.va.us and on the same day mailed three copies of this Brief to Counsel for the Appellee, Lewis D. Morris, Esquire, MICHAEL A. DAVIS & ASSOCIATES, 5285 Shawnee Road, Suite 110, Alexandria, Virginia 22312; Telephone: (703) 813-4400; Facsimile: (703) 813-4430.

Counsel for Appellant requests oral argument.



MICHAEL A. WARD