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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1139

Filed: 7 June 2016

Guilford County, No. 11-CvS-6901

GERALD ALLMOND, as ADMINISTRATOR OF THE ESTATE OF SANDRA GAIL ALLMOND, Plaintiff,

v.

JAMES D. GOODNIGHT, Individually and JAMES D. GOODNIGHT, in his capacity as a member of the North Carolina Highway Patrol, Defendants.

Guilford County, No. 11-CvS-8578

GERALD ALLMOND, as Guardian ad Litem for ELIJAH ALLMOND, a minor, Plaintiff,

v.

JAMES D. GOODNIGHT, Individually and JAMES D. GOODNIGHT, in his capacity as a member of the North Carolina Highway Patrol, Defendants.

Appeal by Plaintiffs from order entered 22 April 2015 by Judge Richard D. Boner in Guilford County Superior Court. Heard in the Court of Appeals 30 March 2016.

Abrams & Abrams, P.A., by Douglas B. Abrams, and Davis Law Group, P.A., by Brian F. Davis, for Plaintiffs-Appellants.

Roberts & Stevens, P.A., by Wyatt S. Stevens and Ann-Patton Hornthal, for the Defendant-Appellee.

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DILLON, Judge.

This matter arises out of a tragic traffic accident. This present appeal is the second to this Court in this matter.¹ Following the first appeal, the jury returned a verdict against Plaintiffs. The trial court denied Plaintiffs' motion for relief from the judgment. We affirm.

I. Background

Defendant James D. Goodnight ("Officer Goodnight") is a North Carolina State Highway Patrolman. On 23 May 2010, Officer Goodnight was involved in a car accident. As he was traveling at a high rate of speed through an intersection (allegedly chasing a speeding vehicle), his patrol car collided with a car driven by Sandra Allmond ("Sandra" or "Ms. Allmond"). Ms. Allmond died at the scene, and a minor traveling with her, Elijah Allmond ("Elijah"), sustained severe injuries.

Gerald Allmond, acting in his capacity as the administrator of Sandra's estate and in his capacity as guardian *ad litem* for Elijah, filed these civil actions seeking to recover compensatory and punitive damages from Officer Goodnight, both individually and in his official capacity as a member of the North Carolina Highway Patrol. These civil actions have been consolidated (Plaintiffs separately filed claims in the North Carolina Industrial Commission (the "Commission") for damages

¹ *Allmond v. Goodnight*, 230 N.C. App. 413, 753 S.E.2d 400 (2013) (unpublished).

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against the North Carolina State Highway Patrol (“SHP”) under the Tort Claims Act.

The Commission proceeding against SHP is not part of this appeal.)

In the consolidated civil action, Officer Goodnight appealed an interlocutory order denying his motion to dismiss, relying on the doctrine of public official immunity. Specifically, Officer Goodnight contends that the doctrine applies as he was in pursuit of a speeding vehicle when he collided with Ms. Allmond’s vehicle. In that first appeal, this Court, in an unpublished opinion, held that Officer Goodnight would be immune from liability if it was determined that he was, in fact, in pursuit of a speeding vehicle when he collided with Ms. Allmond’s vehicle, specifically holding as follows:

In the event that the jury determines that [Officer Goodnight] was pursuing a speeding motorist at the time that he entered the intersection in which the collision occurred, he will be immune from liability In the event that the jury determines that [Officer Goodnight] was not pursuing such a speeding motorist at that time, the jury must then determine whether, applying the applicable substantive legal principles, Plaintiffs are entitled to recover damages from [Officer Goodnight].

Allmond, 230 N.C. App. at 426-27, 753 S.E.2d 400, 2013 WL 6096549, at *10.

On remand, the jury returned a verdict finding that Officer Goodnight was, in fact, in pursuit of a speeding motorist at the time his vehicle entered the intersection, and judgment was entered in favor of Officer Goodnight.

Sometime after the entry of the judgment, Plaintiffs filed a Rule 60(b) motion for relief from the judgment, based on evidence that came to light in the Commission

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proceeding against SHP. The trial court, however, denied Plaintiffs' motion for relief from judgment. Plaintiffs timely appealed.

A. Basis of Rule 60(b) Motion

On appeal, Plaintiffs argue that the trial court abused its discretion in denying their motion for relief from the judgment. Plaintiffs' motion is based on Officer Goodnight's failure to disclose certain evidence prior to trial which shows discrepancies among the witnesses about the race of the occupants of the vehicle Officer Goodnight was allegedly pursuing when the accident occurred.

At trial, Officer Goodnight testified that he clocked a blue vehicle traveling southbound on a roadway at 80 miles per hour in a 55 mile per hour zone while he was traveling southbound on the same roadway. He reports activating his lights, making a U-turn, and pursuing the vehicle at high speeds before colliding with Ms. Allmond's car.

Statements from several witnesses were also introduced into evidence at trial. One witness stated that he observed a blue Dodge Neon carrying three or four young black males traveling 90 to 100 miles per hour shortly before the crash. Another witness, traveling northbound when the accident occurred, maintained that he saw Officer Goodnight pass him, apparently in pursuit of a vehicle with black occupants that had sped by him moments before. Two other witnesses testified that they saw

Officer Goodnight with his blue lights on, but could not confirm whether he was in pursuit of a speeding vehicle.

During discovery in the Commission proceeding, SHP produced a CD containing a significant number of emails and documents from its investigation of the accident. A dispute arose as to whether the CD was also produced during the civil actions against Officer Goodnight. Plaintiffs filed a motion for a new trial on the grounds that Officer Goodnight's counsel committed fraud, misrepresentation, and misconduct, and that a CD storing e-mails constituted newly discovered evidence that could not have been brought to light by due diligence in time to move for a new trial under Rule 59(b) of the North Carolina Rules of Civil Procedure.

Plaintiffs argue that a particular e-mail on the CD, between law enforcement officers investigating the circumstances surrounding the crash, would have had a strong bearing on the outcome of the case because discrepancies about the race of the occupants of the speeding vehicle would lead to uncertainty over the existence of the speeding vehicle. The email reads: "After talking with [Officer Goodnight] in more detail about this, unless someone comes out and admits to it[,] I don't think there is any way of identifying the car or driver. [Officer Goodnight] told me he thinks it was a white male even though the witness [] stated he was black."

II. Analysis

A motion for relief from judgment under Rule 60(b) of the North Carolina Rules of Civil Procedure "is addressed to the sound discretion of the trial court and appellate

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review is limited to determining whether the court abused its discretion.” *Sink v. Easter*, 288 N.C. 183, 198, 217 S.E.2d 532, 541 (1975). A trial court’s order on such a motion may only be reversed for an abuse of discretion “upon a showing that [the trial court’s] actions are manifestly unsupported by reason.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

Plaintiffs’ main point of contention on appeal is that Officer Goodnight did not produce a CD containing e-mails concerning law enforcement’s investigation of the crash and its efforts to identify the speeding vehicle at any time prior to the state trial or during discovery for that trial. Specifically, Plaintiffs argue that one e-mail revealed that Officer Goodnight described the driver of the speeding vehicle as “white” shortly after the crash, contradicting his testimony at trial that he did not remember the race of the driver. Consequently, Plaintiffs contend that Officer Goodnight committed perjury and that two law enforcement officers also committed perjury when they testified that they were not part of the investigation into the crash when e-mails contained on the CD may contradict those statements.

Officer Goodnight relies on the Supreme Court’s determination that a court should deny a motion for a new trial on the basis of newly discovered evidence after trial unless the evidence is “material and will probably change the result.” *Mottu v. Davis* 153 N.C. 160, 69 S.E. 63, 64 (1910). Although Plaintiffs correctly note that our Supreme Court’s decision in *Mottu* was issued before the North Carolina Rules of

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Civil Procedure were enacted, this Court still looks to a similar test for interpretation of Rule 60(b)(2):

Prior to the enact-ment [sic] of the Rule, but to the same end, our courts formulated the following prerequisites: “(1) [t]hat the witness will give newly discovered evidence; (2) that it is probably true; (3) that it is competent, material, and relevant; (4) that due diligence has been used and the means employed, or that there has been no laches, in procuring testimony at the trial [sic]; (5) that it is not merely cumulative; (6) that it does not tend only to contradict a former witness or to impeach or discredit him; (7) *that it is of such a nature as to show that on another trial a different result will probably be reached and that the right will prevail.*”

Cole v. Cole, 90 N.C. App. 724, 727, 370 S.E.2d 272, 273-74 (1988) (emphasis added) (citing *Brown v. Sheets*, 197 N.C. 268, 273–74, 148 S.E. 233, 236 (1929)).

The material issue at hand is whether or not Officer Goodnight was pursuing a speeding vehicle at the time of the crash. The race of the occupant or occupants of the vehicle is irrelevant and would not change the result of this case. Several witnesses who identified the occupants of the speeding vehicle as black corroborated Officer Goodnight’s testimony regarding the vehicle and its occupants. None of the witnesses contradicted Officer Goodnight’s account that he was in pursuit of a vehicle. The jury found these witnesses to be credible. The alleged new evidence would only serve to contradict or impeach former witnesses. Therefore, we believe the trial judge was correct in denying relief from judgment based on Rule 60(b)(2).

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Even assuming *arguendo* that Plaintiffs' discovery request was sufficiently specific to compel SHP to produce the CD, we hold that the trial judge did not abuse its discretion in denying relief from judgment. His denial of Plaintiffs' motion was manifestly supported by a reasoned review of the evidence at hand.

AFFIRMED.

Judges CALABRIA and DIETZ concur.

Report per Rule 30(e).