

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Submitted on Briefs August 23, 2006

MARCIE BEGLEY v. STEPHEN B. WLODARZ

**Appeal from the Circuit Court for Hawkins County
No. CV 185 (J) John K. Wilson, Judge**

No. E2005-01453-COA-R3-CV - FILED SEPTEMBER 19, 2006

In this wrongful death action, the issue presented is whether an uncertified copy of the Defendant's guilty plea to murder is sufficient to support a grant of summary judgment to the Plaintiff. Marcie Begley's father, Gerald Gibson, was a sheriff's deputy who was killed in the line of duty. Stephen Wlodarz was sued for the wrongful death of Mr. Gibson. Ms. Begley filed a motion for summary judgment asserting that Mr. Wlodarz pleaded guilty to the murder of Gerald Gibson and should, therefore, be estopped from denying responsibility for her father's death. The motion was not supported by an affidavit, but only by an uncertified copy of Mr. Wlodarz's guilty plea. The plea agreement indicated that Mr. Wlodarz pleaded guilty to first-degree murder; however, the document failed to identify the murder victim. The trial court granted Ms. Begley's motion for summary judgment and awarded her one million dollars in compensatory damages. Mr. Wlodarz appeals. After careful review, we hold that an uncertified copy of a plea agreement is inadmissible evidence and should not have been considered by the trial court for purposes of the summary judgment motion. Because Ms. Begley submitted no additional evidence to support her motion, we hold that the trial court erred in granting summary judgment to Ms. Begley. We reverse the decision of the trial court and remand.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed;
Case Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and D. MICHAEL SWINEY, JJ., joined.

Stephen B. Wlodarz, Tiptonville, Tennessee, *pro se* Appellant.

Marcie Begley, Rogersville, Tennessee, *pro se* Appellee.

OPINION

I.

Gerald Gibson, a Hawkins County sheriff's deputy, was killed in the line of duty on July 13, 2000. On December 9, 2002, Roxie Gibson, the wife of Gerald Gibson, filed a complaint for wrongful death against Stephen B. Wlodarz in Hawkins County Circuit Court.¹ Marcie Begley, the daughter of Roxie and Gerald Gibson, was later added as a plaintiff to the lawsuit and Roxie Gibson took a voluntary nonsuit as to her claim against Mr. Wlodarz. Mr. Wlodarz filed an answer denying that he killed Mr. Gibson.

On April 26, 2005, Ms. Begley filed a motion for summary judgment, asserting that Mr. Wlodarz pleaded guilty to the murder of Gerald Gibson and was, therefore, estopped from denying that he was responsible for the deputy's death. In support of her motion, Ms. Begley submitted only an uncertified copy of the plea agreement signed by Mr. Wlodarz, which did not reference the identity of the victim. The trial court granted summary judgment to Ms. Begley and awarded her one million dollars in compensatory damages. Mr. Wlodarz appeals.

II.

The issue we address in this appeal is whether the trial court erred in granting summary judgment to Ms. Begley. Summary judgment is appropriate only when the moving party demonstrates that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. The burden of proof rests with the moving party, who must establish that its motion satisfies these requirements. *Staples v. CBL & Associates, Inc.*, 15 S.W.3d 83, 88 (Tenn. 2000). If the moving party makes a properly supported motion, the burden shifts to the nonmoving party to establish the existence of disputed material facts. *Id.* (citing *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993)). If, however, the moving party fails to make a properly supported motion, "the non-moving party's burden to produce evidence establishing the existence of a genuine issue for trial is not triggered and the motion for summary judgment must fail." *Staples*, 15 S.W.3d at 88.

The standards governing the assessment of evidence in the summary judgment context are well established. Trial courts are obligated to consider pleadings, depositions, answers to interrogatories, admissions, and affidavits, to the extent that these are part of the record, in determining whether a genuine issue of material fact exists. See *AmSouth Bank v. Soltis*, No. E2005-00452-COA-R3-CV, 2005 WL 3601460, at *2 (Tenn. Ct. App. E.S., filed Dec. 29, 2005); Tenn. R. Civ. P. 56.04. They must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in the nonmoving party's favor. See *Robinson v. Omer*, 952 S.W.2d 423, 426 (Tenn. 1997), *Byrd v. Hall*, 847 S.W.2d at 210-211. Summary judgment is appropriate only when the facts and the inferences to be drawn from the facts permit a reasonable person to reach only one conclusion. See *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995); *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995).

¹ This lawsuit was filed nearly two and a half years after the death of Gerald Gibson and more than a year after Defendant's guilty plea. The Defendant did not properly raise a statute of limitations defense at the trial court level and so we do not address that issue here.

Because a trial court's decision to grant a motion for summary judgment is solely a matter of law, it is not entitled to a presumption of correctness. See *Staples*, 15 S.W.3d at 88 ; *Carvell*, 900 S.W.2d at 26. Consequently, our task is to review the record to determine if the requirements of Rule 56.04 of the Tennessee Rules of Civil Procedure have been met. *Staples*, 15 S.W.3d at 88.

III.

Ms. Begley asserts that because Mr. Wlodarz pleaded guilty to the first-degree murder of her father, Mr. Wlodarz is estopped from denying responsibility for Mr. Gibson's death. In support of her motion for summary judgment, Ms. Begley submitted only an uncertified copy of a plea agreement signed by Mr. Wlodarz on September 18, 2001.

As an initial matter, we note that the plea agreement submitted by Ms. Begley in support of her motion for summary judgment does not identify the victim of the murder for which Mr. Wlodarz pleaded guilty. In fact, the document does not even list the date(s) of the offenses. Thus, there is nothing in the plea agreement filed by Ms. Begley that connects Mr. Wlodarz to the murder of her father. However, even if the documentation did set forth Mr. Gibson's name as the murder victim, we find as a matter of law that Ms. Begley has failed to meet her burden of proof for summary judgment purposes, and thus, the trial court erred in granting summary judgment. The basis for our ruling is that Ms. Begley was required by Tennessee Rule of Civil Procedure 56 to support her motion with an affidavit or other admissible evidence.² Ms. Begley filed no affidavit, but only the plea agreement which was not certified and therefore, not admissible evidence pursuant to Tennessee Rules of Evidence 901 and 902.

As we discussed above, the moving party bears the burden of proof when it seeks summary judgment. *Staples v. CBL & Associates, Inc.*, 15 S.W.3d 83, 88 (Tenn. 2000). This means that Ms. Begley must support her motion "with affidavits or other admissible evidence showing that there are no disputed material facts and that the facts demonstrate that [she] is entitled to a judgment as a matter of law." *Heatherly v. Campbell County School Board*, No. 03A01-9505-CH-00155, 1995 WL 491002, at *2 (Tenn. Ct. App. E.S., filed Aug. 18, 1995). If the moving party does not satisfy its burden of proof, its motion for summary judgment must be denied. *Staples*, 15 S.W.3d at 88; see also *McCarley v. West Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998).

The requirement that evidence supporting a motion for summary judgment be admissible at trial reflects the fact that summary judgment is intended to be a quick, less expensive means of concluding cases that can be decided on legal issues alone. *Price v. Murphy Supply Co.*, 682 S.W.2d 924, 929 (Tenn. Ct. App. 1984). Courts are limited to considering admissible evidence because a grant of summary judgment "based on evidence that would not be admissible at trial would undermine the goal of the summary judgment process to prevent unnecessary trial since

² "Allegations in pleadings are not, by themselves, evidence of facts. Likewise, arguments of counsel in briefs and otherwise are not evidence." *Price v. Mercury Supply Co.*, 682 S.W.2d 924, 929 n.5 (Tenn. Ct. App. 1984).

inadmissible evidence could not be used to support a jury verdict.” *Ward v. Glover*, No. E2004-02864-COA-R3-CV, 2006 WL 1517057, at *2, 4-5 (Tenn. Ct. App. E.S., filed June 2, 2006).

For documents and other tangible evidence, authentication “is one essential step toward admissibility of an item.” Neil P. Cohen, et al., *Tennessee Law of Evidence* § 9.01[2][b] (4th ed. 2000); see also *Tenn. R. Evid.* 901. Under Tennessee Rule of Evidence 902(4), “a document that is authorized to be and is actually filed in a public office is deemed self-authenticating if certified as correct by the custodian or other person authorized to issue a certification.” *Id.* § 9.02[6]. Thus, a certified copy of a plea agreement would be admissible evidence. However, the plea agreement presented by Ms. Begley was neither certified nor otherwise authenticated; therefore, it would have been inadmissible at trial.

The trial court granted Ms. Begley’s motion for summary judgment “[b]ased upon the record, the pleadings, the plea of the Defendant in his criminal case and the Affidavits in the file.”³ However, because the copy of Mr. Wlodarz’s plea agreement filed by Ms. Begley in support of her motion for summary judgment was not authenticated as required by Tennessee Rules of Evidence 901 and 902, we hold that the trial court erred in considering that document when ruling on Ms. Begley’s motion.

When a motion for summary judgment has been filed, the moving party must demonstrate the absence of any genuine material, disputed facts and show that it is entitled to judgment as a matter of law. Unless it does so, the nonmoving party has no burden to submit evidence of any kind. Because Ms. Begley failed to meet her burden of proof in this case, Mr. Wlodarz’s burden to produce evidence was never triggered. After careful review, we hold that Ms. Begley has not established as a matter of law that she is entitled to summary judgment.

IV.

In summary, we find that the trial court erred in granting summary judgment to Ms. Begley. We reverse the judgment of the trial court and remand for further proceedings consistent with this opinion. All costs of appeal are taxed against the Appellee, Marcie Begley.

SHARON G. LEE, JUDGE

³ There were no affidavits filed by Ms. Begley.