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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2020-CP-10-03999
Appellate Case No. 2021-001398

Paulette Lawrence, ... Appellant,

v.

City of North Charleston .... Respondent.

FINAL BRIEF OF RESPONDENT

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ISSUES ON APPEAL

I. WHETHER THE TWO YEAR STATUTE OF LIMITATIONS HAS EXPIRED.

II. WHETHER THE LAWRENCE SUBMITTED ARGUMENT ON THE TORT CLAIM ACT IMMUNITIES UPON WHICH SUMMARY JUDGMENT WAS GRANTED.

III. WHETHER IT IS NECESSARY TO CONSIDER THE FACTUAL BASIS OF THE CLAIMS WHEN THE STATUTE OF LIMITATIONS IS EXPIRED AND THE IMMUNITIES WERE NOT ADDRESSED.

STATEMENT OF THE CASE

The original Summons and Complaint was filed in the Charleston County Court of Common Pleas on June 18, 2019. Respondent filed a partial motion to dismiss on August 29, 2019. In late January or early February, 2020, Lawrence settled with Wells Fargo Bank and its employee, and filed a motion to amend her Complaint on February 19, 2020. Respondent's partial motion to dismiss was granted on May 12, 2020. Thereafter, on May 13, 2020, Lawrence filed an SCRCP Rule 41(a) voluntary dismissal. Lawrence has since acknowledged that the original Complaint was defective.

On September 10, 2020, Appellant filed a new Summons and Complaint in Charleston County Court of Common Pleas. North Charleston filed a motion to dismiss, which was granted in part on April 12, 2021. North Charleston then filed a motion for summary judgment on August 3, 2021, and the court granted the motion on November 16, 2021. Appellant filed her Notice of Appeal on November 23, 2021. Appellant failed to request the transcript of the hearing within the time set forth in SCACR Rule 207(a)(1) or to request an extension from the Court, but filed her initial brief on February 14, 2022.

STATEMENT OF THE FACTS

On February 7, 2018, the family of an elderly woman ("victim") reported to the North Charleston Police Department that they had been contacted by Wells Fargo about fraudulent banking activity on the victim's account. Checks had been deposited into the ATM and immediately the money was withdrawn from the ATM. It appeared that a stranger had convinced the victim to deposit the checks at the ATM after they were refused inside due to the accounts being closed. (R. P. 84).[1] The only information the victim had about the suspect was that she was

[1] Appellant included at least one document in the Record on Appeal that was not designated by any party. (Rp. 97).

a black female. (R. P. 84). The family had gone to the bank to obtain copies of the deposits and had a phone number that was used to authorize the deposits.

On February 26, 2018, Detective Bousquet requested the video of the original incident and other deposits. (R. P. 84). On February 28, 2018, instead of sending video, Danny Conyers from Wells Fargo sent what he identified as still shots of all of the transactions requested. (R. P. 84). On March 16, 2018, multiple photos from the still shots were sent to SLED for facial recognition. (R. P. 84). On March 20, 2018, SLED returned a hit for a possible second suspect, who deposited a check on January 29, 2018 – Paulette Lawrence. (R. P. 84). As of May 3, 2018, no hits were located by SLED for the first suspect. (R. P. 84). On June 28, 2018, Detective Bousquet sent out a "request for information" and was contacted by Narcotics with the name Tanisha Simmons. (R. P. 84).

Bousquet also asked Conyers for the bank transactions showing how much money was taken out by the suspects. (R. P. 84). She received that information from Wells Fargo on July 11, 2018, and also discussed the three hour time difference on the video surveillance photos. (R. P. 84). On July 26, 2018, Det. Bousquet applied for three warrants for Tanisha Simmons and one warrant for Paulette Lawrence. (R. P. 85-86).

On August 10, 2018, uniformed officers went to the home of Paulette Lawrence and placed her under arrest. (R. P. 87). Lawrence immediately told officers that she had not committed any crimes. (R. P. 22 ¶ 9). After receiving the warrant Ms. Lawrence informed officers that she did not know Ms. Pinckney and had not committed any crimes against her. (R. P. 22 ¶ 12; R. P. 92, lines 1-8). At the detention center, Lawrence again told officers that there was a mistake and she had not forged any documents. (R. P. 23 ¶ 17). Lawrence was then booked at the detention center. (R. P. 22 ¶ 14). She received a bond hearing and was thereafter released from the detention center.

On October 17, 2018, the case was bound over at preliminary hearing. However, immediately after the hearing, Lawrence's attorney looked at the discovery she received from the solicitor's office during the hearing and found that the date on the photos was January 29, 2018. (R. P. 25 ¶ 31). The deposit was actually made on January 26, 2018, but was credited to the account on the 29th. Therefore, the video should have been from the 26th, not the 29th. The bank pulled the video for the date the deposit was credited instead of the date the deposit was made. The detective did not notice the discrepancy. Lawrence's attorney contacted the detective and told her what she had found. The detective then saw it and immediately notified the solicitor who dismissed the charge.

STANDARD OF REVIEW

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP; summary judgment is proper when there is no genuine issue as to any material fact and the nonmoving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the non-moving party. Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Curiel v. Hampton County E.M.S.*, 401 S.C. 646, 649, 737 S.E.2d 854, 855 (Ct. App. 2012)(*internal citations and quotations omitted*).

A respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by

the lower court." *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id.* at 420, 526 S.E.2d at 723; *see also* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

ARGUMENT

I. THE TWO YEAR STATUTE OF LIMITATIONS HAS EXPIRED.

A. THE PLAINTIFF'S PLEADINGS DO NOT EXTEND THE STATUTE AND NOTICE IS CLEAR ON THE DATE OF ARREST.

The allegations in this case are subject to the two-year statute of limitations as set forth in S.C. Code Ann. § 15-78-110 of the Act:

> Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claiming first filed a claim pursuant to this chapter, then the actin for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

A three-year statute of limitations is only available to a party who files a "verified claim". *See* S.C. Code Ann. § 15-78-80 (Supp. 2002); *Flateau v. Harrelson*, 355 S.C. 197, 207, 584 S.E. 2d 413 (SC App. 2003); *see also Joubert v. South Carolina Dept' of Soc. Servs.,* 341 S.C. 176, 534 S.E. 2d 1 (Ct. App. 2000) (if plaintiff files statutorily-defined claim within one year of loss or injury, statute of limitations is extended to three years). The South Carolina Court of Appeals, in *Searcy v. South Carolina Dept. of Educ., Transp. Div.,* 303 S.C. 544, 548, 402 S.E. 2d 486, 488 (1991), said that,

> Sections 15–78–90(b), 15–78–100(a) and 15–78–110 must be read with Section 15–78–80 because together they are a constituent part of a scheme designed to encourage a person first to seek by a route other than litigation the recovery of damages for a loss proximately caused by a tort of a governmental entity, while at the same time affording a governmental entity a measure of protection against fraudulent claims. *See* 73 Am.Jur.2d *Statutes* § 189 at 388 (1974) ("Statutes which are parts of the same general scheme or plan, or are aimed at the accomplishment of the same results and the suppression of the same evil, are ... considered as in pari materia."). **When these statutes are so read, the "claim" mentioned in these code sections can only refer to the "verified claim" mentioned in Section 15–78–80.** *(emphasis added)*

The Court of Appeals has made clear that a prior lawsuit does not count to extend the statute of limitations. This was reiterated by the Court of Appeals in *Joubert v. South Carolina Dept. of Social Services*, 341 S.C. 176, 534 S.E. 2d 1 (2000), when it relied on *Searcy – "*§ 15–78–80 expressly requires the person to file a verified claim in order to benefit from the three-year limitations period." The *Joubert* Court went on to say "[i]n order to trigger the three-year statute of limitations under § 15–78–110, a party <u>must</u> follow the procedure outlined in S.C. Code Ann. § 15–78–80". Finally, the *Joubert* Court clearly set out how important compliance with the verified claim requirements is to the extension of the statute.

> Most importantly, our courts have repeatedly held strict compliance with the verified claim statute is mandatory. *See, e.g., Vines v. Self Mem'l Hosp.,* 314 S.C. 305, 307, 443 S.E.2d 909, 910 (1994) ("A claim against a state entity under the Tort Claims Act must be verified to entitle a plaintiff to the three-year statute of limitations. Substantial compliance is not sufficient." The verified claim must set forth the extent and amount of the loss sustained); *Rink v. Richland Mem'l Hosp.,* 310 S.C. 193, 196–197, 422 S.E.2d 747, 748–749 (1992) ("[W]hen a plaintiff seeks to sue a political subdivision he 'must fully comply with the prescribed terms and conditions of the statute, and the filing of a claim as required is an essential prerequisite to a right of action.'") (quoting *Cochran v. City of Sumter,* 242 S.C. 382, 386, 131 S.E.2d 153, 155 (1963), *overruled on other grounds by McCall v. Batson,* 285 S.C. 243, 329 S.E.2d 741 (1985)); *Pollard v. County of Florence,* 314 S.C. 397, 400, 444 S.E.2d 534, 536 (substantial compliance with the statute is not enough; the "verified claim" procedure must be strictly complied with in order to trigger the three-year limitations period). Accordingly, because [Lawrence] did not comply fully with the statutory mandate, no verified claim was filed, and the statute of limitations on the underlying actions was two years, not three.

Here, Lawrence did not file a statutorily compliant verified claim. Instead, she argues that her initial Complaint should be considered a "claim", and then that it should be considered a "verified claim". The Complaint does not set out the extent of loss or the amount of loss. Additionally, and very importantly, the original Complaint was admittedly defective to the point that counsel dismissed it voluntarily instead of pursuing the previously filed motion to amend. Appellant's brief repeatedly refers to the original Complaint as a defective pleading. It is axiomatic that a defective pleading that was later withdrawn and dismissed cannot serve as proper notice of anything. As there is no evidence that Lawrence filed a verified claim, the three-year statute of limitations does not apply and the two-year statute of limitations is applicable. The arrest in this case occurred on August 10, 2018. The allegations relating to False Arrest, Assault and Battery and Negligence are all tied to the date of arrest, as the plaintiff has testified that she knew when the officers told her they had a warrant for her, that she had not committed any crimes, let alone the crime she was accused of committing. (R. P. 91 line 17 - P. 92 line 8). The Complaint itself asserts that the plaintiff immediately knew that she had not committed the crime and that she went so far as to tell the arresting officers that she did not know the victim and had not committed any crimes against her. (R. P. 22 ¶ 12).

False arrest relates, obviously, to the actual arrest. The assault and battery claim is for the handcuffing and possibly the transport to the police station and detention center. Additionally, the negligence claim specifically alleges that the investigation was negligent. (R. P. 24 ¶ 27)[2] All investigation was done <u>before</u> the warrant was executed and before the plaintiff was arrested.

Plaintiff's argument that she did not "discover" her claim until her preliminary hearing is

[2] In the Complaint there are two consecutive paragraphs numbered 27. Both contain similar information and therefore when paragraph 27 is referenced, defendant includes both paragraphs with this number.

to no avail. She knew that she did not intentionally steal money from another person by defrauding that person at an ATM when she was served with the warrant on August 10, 2018. The information contained in the warrant affidavit provided Lawrence with facts and information related to the crime sufficient for her to know whether or not she committed that crime. Further, she testified that on the date of her arrest, she knew with "1,000% confiden[ce]" that she had not committed any crime. (R. P. 91 line 25). Plaintiff's admits that she received the warrants at the detention center (R. P. 93 lines 15-20; R. P. 23, ¶ 15) and that she claims she told officers that she had not forged any documents (R. P. 23, ¶ 17). This is clear evidence of notice. Further, at her deposition, she was asked if she ever questioned herself about whether or not she might have committed the crime she was being accused of, and she adamantly answered no. (R. P. 91, line 17-P. 93, line 20). She was very clear that without a doubt, she knew that she had not committed the crime for which she was arrested at the time of the arrest. She argues that she did not know who to bring a claim against as of the date of her arrest, but that is no avail. The warrant was signed by Detective Bousquet and clearly listed her. That is what is required for notice.

B. Equitable Tolling is Not Applicable to this Matter.

Lawrence argues that even though she missed the statute of limitations by more than a month, she should be permitted to go forward with her claims under the doctrine of equitable tolling. Lawrence admits that she filed a defective pleading that she later dismissed. She then had two months in which to refile her pleadings before the statute expired. While she claims that she did not sleep on her rights, no explanation has been provided for why the pleadings were not re-filed during the two months between when the defective pleading was voluntarily dismissed and the expiration of the statute of limitations. Therefore, there is no evidence that Lawrence was

actively pursuing her judicial remedies. Equitable tolling is not applicable to this matter and should not be considered by this court.

The Complaint in this case was filed on September 10, 2020, a full month after the expiration of the two-year statute of limitations for these claims. Therefore, the claims for False Arrest, Assault and Battery and Negligence should all be dismissed on the basis that the statute of limitations has expired. That leaves only Malicious Prosecution which is discussed in Section II below.

II. NORTH CHARLESTON IS ENTITLED TO THE PROTECTION OF THE SOUTH CAROLINA TORT CLAIMS ACT, S.C. CODE ANN. §15-78-10, *ET. SEQ.* WITH REGARD TO PLAINTIFF'S STATE LAW CLAIMS.[3]

The South Carolina Tort Claims Act, S.C. Code Ann. 15-78-10, *et. seq.* (Supp. 1997), which provides the exclusive remedy in tort against North Charleston, is a limited waiver of governmental immunity, *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994). *See also* S.C. Code Ann. § 15-78-20(b) (Supp. 1997) (while acting within the scope of official duty, the State, its political subdivisions and employees are immune from liability and suit for any tort except as waived by the Tort Claims Act); S.C. Code Ann. § 15-78-40 (Supp. 1997) ("The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.").

[3] Defendant asserts that the statute of limitations should eliminate all but the Malicious Prosecution claim, but includes this argument in the alternative and to address the Malicious Prosecution cause of action.

Importantly, the Act also spells out that the exceptions to the waiver of immunity "must be **liberally construed in favor of limiting the liability of the state**." S.C. Code Ann. § 15-78-20(f) (Emphasis added).

Respondent asserts that Appellant did not properly preserve her appeal as to this argument. Appellant spent more than three pages of her brief arguing that North Charleston is not entitled to discretionary immunity and that the court should apply the gross negligence exception to that immunity because she alleged gross negligence. North Charleston asserts that gross negligence should not be interpolated because no immunity containing a gross negligence exception was asserted. However, before the court even considers gross negligence, the bigger issue is that North Charleston <u>never asserted</u> discretionary immunity.

North Charleston filed for summary judgment asserting immunity pursuant to S.C. Code Ann. § 15-78-60 (23), immunity for a loss resulting from the institution or prosecution of any judicial proceeding and S.C. Code Ann. § 15-78-60 (20), immunity for a loss resulting from the act or omission of a person other than an employee, including but not limited to the criminal actions of third persons. Neither of these subsections includes a gross negligence exception. Appellant has not made any argument regarding either of these immunities. The court granted summary judgment based on both of them, in addition to the statute of limitations. Summary judgment was granted for malicious prosecution based on § 15-78-60 (23), and for all causes of action based on § 15-78-60 (20).

With no appeal as to this aspect of the order, the two issue rule applies. Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case. *Jones v. Lott*, 387 S.C. 339, 346–47, 692 S.E.2d 900, 903–04 (2010), *abrogated*

on other grounds by Repko v. Cty. of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018); *See Anderson v. Short,* 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996); *see also First Union Nat'l Bank of S.C. v. Soden,* 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct.App.1998) (holding an "unchallenged ruling, right or wrong, is the law of the case and requires affirmance"). "Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." *Forest Dunes Assocs. v. Club Carib, Inc.,* 301 S.C. 87, 89, 390 S.E.2d 368, 370 (Ct.App.1990) (citation omitted). The statement of each issue on appeal shall be concise and direct, and broad general statements of issues may be disregarded by this Court. Rule 208(b)(1)(B), SCACR. "Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." *Id.* The South Carolina Court has stated that the two issue rule is applicable in situations not involving a jury:

> It should be noted that although cases generally have discussed the "two issue" rule in the context of the appellate treatment of general jury verdicts, the rule is applicable under other circumstances on appeal, including affirmance of orders of trial courts. For example, if a court directs a verdict for a defendant on the basis of the defenses of statute of limitations and contributory negligence, the order would be affirmed under the "two issue" rule if the plaintiff failed to appeal both grounds or if one of the grounds required affirmance.

Anderson v. S.C. Dep't of Highways & Pub. Transp., 322 S.C. 417, 420 n. 1, 472 S.E.2d 253, 255 n. 1 (1996). See also *Jones*, 387 S.C. at 346–47, 692 S.E.2d at 903–04 (2010), *abrogated on other grounds by Repko v. Cty. of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018).

Appellant's second issue on appeal states, "Did the trial court err in granting immunity to respondent under the Tort Claims Act?" There was no mention of §15-78-60(20) or §15-78-60(23). Moreover, the second issue does not reference a "gross negligence" standard, nor was one asserted by North Charleston. Additionally, a review of the statutory law cited in the Appellant's

Table of Authorities shows that neither of sections upon which the summary judgment order was based, is mentioned anywhere in the Appellant's brief. Instead, the entire argument relates to a subsection that is not at issue in this case (discretionary immunity). This leaves the court of appeals to do more than "grope in the dark." It asks them to reverse a ruling that was never made. The issue raised by Petitioner was not concise and direct, but rather an argument about subsection that is not at issue and never has been. The argument should be disregarded by this Court.

Because Lawrence failed to preserve the issue of immunity pursuant to § 15-78-60 (20) and (23) for review, it became the law of the case under the two issue rule. Therefore, the court of appeals should affirm the ruling that Respondent is entitled to immunity under § 15–78–60(20) and § 15–78–60(23). Additionally, Appellant's argument that § 15-78-60(25)'s gross negligence standard should be interpolated into the other pleaded exceptions should be disregarded, as she has only asked to have it interpolated into a subsection that was not ruled on by the trial court. Respondent never raised an affirmative defense that contained a gross negligence standard, and Appellant has not challenged the two immunities for which North Charleston was granted summary judgment. Thus, under the Supreme Court's holding in *Steinke v. S.C. Dep't of Labor, Licensing and Regulation,* 336 S.C. 373, 397, 520 S.E.2d 142, 154 (1999), the gross negligence standard is not interpolated into either § 15–78–60(20) or (23) and the immunities should be affirmed.

III. IT IS NOT NECESSARY FOR THE COURT TO CONSIDER THE FACTUAL BASIS FOR THE CLAIMS DUE TO THE EXPIRATION OF THE STATUTE OF LIMITATIONS AND THE TWO ISSUE RULE.

Lawrence has submitted a lengthy argument on each of the causes of action in her second Complaint. She appears to argue that because she believes she has a factual ground for the claims,

the court should ignore the statute of limitations and the grant of immunity pursuant to the Tort Claims Act.

In this case, the trial court considered the two immunities asserted by North Charleston - S.C. Code § 15-78-60(23) and S.C. Code § 15-78-60(20), and determined that they were applicable, even with the factual allegations made by the plaintiff. Subsection (23) provides immunity to North Charleston with regard to the malicious prosecution claim, and subsection (2) applies to all claims and provides North Charleston with absolute immunity. As there is no argument on appeal regarding these subsections, they are the law of the case. Additionally, the statute of limitations is two years and had expired a month before the filing of the second Complaint.

CONCLUSION

For all of the reasons stated herein, Respondent respectfully requests that this Court affirm the November 16, 2021, grant of summary judgment in favor of Respondent on all causes of action; for costs and fees; and for all other measures of relief as this Court deems just and proper.

Respectfully submitted,

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June 30, 2022

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City of North Charleston ....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final brief complies with Rule 211(b), SCACR.

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