THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Appellate Case No. 2022-000399
Civil Action No. 2021-CP-10-3740

Amenhotep Myers, Appellant,

v.

South Carolina Department of Motor Vehicles and Kevin Shwedo, in his official capacity as Executive Director of Motor Vehicles, Respondent.

FINAL BRIEF OF APPELLANT

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s/ Amenhotep Myers
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Appellant

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STATEMENT OF ISSUES ON APPEAL

I. **Did the Trial Court err in dismissing Appellant's Complaint without ruling on Appellant's request to amend its pleadings?**

II. **Did the Trial Court commit reversible error by failing to rule on Appellant's Rule 59(e) motion?**

STATEMENT OF THE CASE

On August 16, 2021, this matter was filed in Circuit Court. Compl. p. 1. On February 11, 2022, the Trial Court held a hearing on Respondents' motion to dismiss. February Order. p. 1. At Respondents' motion to dismiss hearing, Appellant requested leave from the Trial Court to amend its Complaint. Transcript. p. 7: 17-19; p. 9: 20-21. Appellant explained to the Trial Court that (1) The relevant statute of limitations has not expired on all claims; (2) Promissory Estoppel is not subject to any statute of limitations; and (3) An amendment would address all of Respondents' and the Trial Court's remaining concerns. Transcript. p. 6: 14-19; 7: 12-24; 9: 5-25; 10: 1-3. However, on February 16, 2022, the Trial Judge effectively denied Appellant's motion to amend by failing to address Appellant's motion when granting Respondents' motion to dismiss. February Order. p. 6.

Following the hearing, Appellant filed a motion to reconsider, requesting the Trial Court reconsider, amend or alter, and provide relief from the Trial Court's February Order that effectively denied Plaintiff's oral motion to amend its Complaint. Plaintiff's Rule 59 p. 1-4. On March 2, 2022, without hearing oral arguments, the Trial Court effectively denied Appellant's motion to reconsider by failing to address Appellant's motion. Order Denying Rule 59(e) Motion. p. 1-2. On March 22, 2022, Appellant filed and served the notice of appeal and the appeal is properly before this Court.

STATEMENT OF FACTS

This case arises out of Respondents' letter, directing Appellant to visit a "local DMV Office", "[present Respondents' letter to DMV staff]", to attempt to "make application for a driver's license", and Respondents' subsequent refusal of Appellant's application. Compl. p. 5. Appellant original claim alleged that Respondents' exercise of licensing powers or functions in a grossly negligent manner. Compl. 7-9. However, since Appellant has filed its Complaint, all of Appellant's attempts to address Respondents' motion to dismiss or amend Appellant's Complaint to add a cause of action have been denied. Transcript. p. 10: 2-3. February Order. p. 6. Order Denying Rule 59(e) Motion. p. 1-2.

The Underlying Case

Following Appellant's implied consent driver's license suspension on 07/07/2018, Appellant challenged the suspension, and a hearing was scheduled for 10/08/2018. Compl. p. 3. However, on 08/13/2018, Respondents issued Appellant an "official notification that the information on [Appellant's] driving record has changed effective 08/13/2018," mooting Appellants challenge to the suspension. Compl. p. 3. "This official notice cancels" Appellant's implied consent suspension, promising to delete both the implied consent violation and suspension from Appellant's driving record stating. Compl. p. 3-4. Appellant's "DRIVING STATUS: No Suspension No Disqualification". Compl. p. 4. The letter defines "No Suspension" as "[Appellant's] driving privileges are clear." Compl. p. 4. Significantly, the letter states, "If your driving status shows 'No Suspension', you may make application for a driver's license by presenting this notice to your local DMV Office." Compl. p. 4. After August 16, 2019, Appellant visited a "local DMV Office", "[presented the SCDMV letter]", and attempted to "make

application for a driver's license". Compl. p. 5. Appellant's application was refused. Compl. p. 5.

Among other acts and/or omissions complained of, Appellant complained that Respondents' application refusal constitutes an exercise of licensing powers or functions in a grossly negligent manner. Compl. p. 7-8. However, instead of recognizing that some of Appellant's claims arose less two-years than from the date of filing its Complaint, the Trial Court ruled that "[Appellant's] Complaint is dismissed on the basis that "the [Appellant] failed to file within the relevant statute of limitations" using August 13, 2018 (the date of the letter), as the date the statute of limitations began to run. February Order. p. 2-4 & 6. The Trial Court also ruled that Appellant "failed to properly serve the [Respondents]" and the Complaint "fails to state a claim for which relief may be granted." February Order. p. 6.

STANDARD OF REVIEW

There are "two basic situations in which a party should consider filing a Rule 59(e) motion." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Per the rule, "[a] party may wish to file such a motion when [the party] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Id. However, "[a] party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Id.

A motion to reconsider under Rule 59(e) is granted to correct a clear error of law or prevent manifest injustice. Lewis v. Hoke Cty., No. 1:17CV987, 2022 U.S. Dist. LEXIS 18149, at *5 (M.D.N.C. Feb. 1, 2022). When a Court is left with the definite and firm conviction that a mistake has been committed, a clear error occurs. Id. Manifest injustice is an error by the court that is

direct, obvious, and observable. Id. "Whether to alter or amend a judgment under Rule 59(e) is within the sound discretion of the district court." Zimmerman v. Coll. of Charleston, No. 2:12-cv-505-DCN, 2013 U.S. Dist. LEXIS 164838, at *3 (D.S.C. Nov. 20, 2013). A Court's failure to exercise its discretion is itself an abuse of discretion. Patton v. Miller, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017). An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support. Lambries v. Saluda Cty. Council, 409 S.C. 1, 5, 760 S.E.2d 785, 787 (2014).

ARGUMENT

I. The Trial Court erred dismissing Appellant's Complaint without ruling on Appellant's request to amend its pleadings.

A. Appellant filed within the relevant statute of limitations.

Court erred in dismissing Appellant's Complaint without ruling on Appellant's request to amend its The Trial Court erred in granting Respondents' motion for judgement on pleadings. During the Respondents' February 11, 2022 motion to dismiss hearing ("the hearing"), the Trial Court expressed the "need to focus on this statute of limitations question first." Transcript 6: 10-12. [App:]. During the hearing, the following statements were made:

> MR MYERS: Yes, your Honor. Thank you, your Honor. Well the statute of limitations, as far as this case, was filed August 16, 2021. I believe in my complaint I have alleged that after August 16 of 2019 the state has – the state's conduct through acts or omissions have basically created independent acts of gross negligence that I can claim that I've included in my complaint.
>
> Transcript 6: p. 13-19.
>
> MR MYERS: But what I've claimed is I've taken that letter to the DMV as the letter instructs to take it to the DMV to get a new license. That's what I've done after August 16, 2019. And that's just one example of the acts and omissions that the state has been accused of committing in this action.
>
> Transcript 7: p. 12-16.

> THE COURT: Well I understand, but the way the law works on statute of limitations questions is when is the first time that you knew or should have known that you had a problem.

Transcript 7-8: 25-2. [App:].

Ultimately, the Trial Court misunderstood that the Complaint complained of several acts and/or omissions, some of which satisfy Respondents and the Court's two-year statute of limitations concerns. Transcript 8: 3-15. [App:]. While at least one of Appellant's claims was filed within the relevant statute of limitations, the Trial Court nonetheless ruled in favor of Respondents. Order Granting Respondents' motion for judgement on pleadings. [App:]. In so doing, the Trial Court shields Respondents from liability for all loss resulting from exercising the licensing powers or functions in a grossly negligent manner, regardless of whether a single, subsequent, or multiple acts and/or omissions are complained of. The Court heard – and granted – Respondents' motion notwithstanding Appellant's filing within the relevant statute of limitations. It was error to do so.

B. Appellant's proposed amendment does not prejudice Respondents, is not futile, and the Trial Court failed to rule on it.

The Trial Court erred when it effectively denied Appellant's motion to amend. Rule 15(a) of the SCRCP states that "a party may amend [its] pleading…by leave of court; and leave shall be freely given when justice so requires and does not prejudice any other party." Our Courts have interpreted this rule liberally. See *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (S.C. App. 1998). The language in Rule 15 that envisions prejudice to the adverse party contemplates a "lack of notice that the new issue is going to be tried, and lack of opportunity to refute it." *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462 (Ct. App. 2004). However, "[T]his rule strongly favors amendments and the Court is encouraged to freely grant leave to amend." *Jarrell v. Seaboard Sys.*

R.R., 294 S.C. 183, 363 S.E.2d 398 (S.C. App. 1987); *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005). It is well established that a motion to amend a pleading is addressed to the sound discretion of the trial judge. *Duncan v. CRS Sirrine Eng'rs. Inc.*, 337 S.C. 537, 524 S.E.2d 115 (C. App. 199); see *Berry v. Mcleod*, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997) (Courts have wide latitude in amending pleadings).

Regarding whether to grant or deny a Rule 15 motion, the Supreme Court of South Carolina has expressed the following:

> A trial court has discretion to grant a motion to amend if the party opposing the amendment cannot show a valid reason for denying the motion. The burden of establishing a reason for denying the motion is on the party opposing the amendment. A court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint but may be based on the on the amendment's futility.

Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 182, 826 S.E.2d 585,588 (2019).

During the February hearing, the following statements were made:

> MR MYERS: But all of the other remaining concerns that opposing counsel has can be dealt with with an amended complaint with leave from the Court. To include a claim of promissory estoppel, which does not have a statute of limitations according to the Supreme Court of South Carolina. It states in the letter that there are several promises that this information is deleted, that I may make application to the DMV for a new license, all of which was refused.
> THE COURT: Well I understand, but the way the law works on statute of limitations questions is when is the first time that you know or should have known that you had a problem.....So you missed the statute of limitations.

Transcript. p. 7: 17-25; 8: 1-15.

> MR MYERS: With leave from the Court, I can amend my complaint to include ---
> THE COURT: Well it's too late. That doesn't start the clock over again.
> MR MYERS: The estoppel claim, as stated by the Supreme Court of South Carolina, it does not have a statute of limitations on that issue.
> THE COURT: Well I kind of disagree with you on that. But you are welcome to appeal my order.

Transcript. p. 9: 20-25; 10: 1-3.

Here, the Trial Court's Order fails to address whether Appellant's proposed amendment would prejudice Respondents, is clearly futile, and failed to rule on Appellant's motion to amend. Instead of confirming the Court's disagreement regarding whether Promissory Estoppel is subject to a statute of limitations, the Court effectively denied Appellant's motion to amend when it ruled that Appellant "failed to file within the relevant statute of limitations", "failed to properly serve the [Respondents]" and the Complaint "fails to state a claim for which relief may be granted." February Order. p. 6. However, in so finding, the Court ignored whether "justice so requires" the Court to grant Appellant leave to amend, whether Respondents would suffer any prejudice, whether the proposed amendment is clearly futile.

Plaintiff asserts that no prejudice as envisioned by Rule 15 will result if the Court should grant Plaintiff leave to amend the Complaint and the proposed amendment is not clearly futile. The proposed additional claim arises out of the same facts, circumstances, transactions and/or occurrence that gave rise to the original action. Therefore, Defendants have had ample notice of the issues underlying the new claim and had sufficient opportunity to refute it. Further, because Rule 15 allows for the Promissory Estoppel claim to be brought, it is not clearly futile. This case is very far from the trial stage and there is no reason that amending the Complaint to add an

additional claim would in any way prejudice the Respondents' ability to refute those claims or be clearly futile. Appellant's proposed amendment does not prejudice Respondents, is not clearly futile, and the Trial Court failed to rule on it notwithstanding Appellant's proposal to amend. It was error to do so.

II. The Trial Court committed reversible error by failing to rule on Appellant's Rule 59(e) motion.

A Court should grant a Rule 59(e) motion to correct a clear error of law or prevent manifest injustice. Hutchinson v. Stanton, 994 F2d 1076, 1081 (4th Cir. 1993).

However:

> [A] motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. Lexis 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to the judgement but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling...warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017; see also Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

Order Denying Motion to Reconsider Pursuant to Rule 59(e). p. 1.

Here, Appellant's Rule 59 Supporting Memorandum request reconsideration of the following issues concerning the proposed amendment: (1) Whether Promissory Estoppel is subject to a statute of limitations and (2) Whether Respondents would suffer prejudice under Appellant's proposed amendment to add an additional claim. Plaintiff's Rule 59(e) Supporting Memorandum. P. 3-4. Appellant's Rule 59 Supporting Memorandum echoes the Thomerson v. DeVito ruling

stating that "statute of limitations does not apply to promissory estoppel claims," and details the lack of prejudice suffered by Respondent under Appellant's proposed amendment. Plaintiff's Rule 59 Supporting Memorandum. P. 3-4. However, the Trial Court committed reversable error when the Court failed to address either. Order Denying Plaintiff's Rule 59(e) Motion. p. 1-2. Additionally, none of the Court's stated reasons to deny a motion to reconsider apply to Appellant's motion. The Court's failure to rule on issues raised in Appellant's Rule 59(e) Supporting Memorandum is a clear error of law or manifestly unjust. The Court denied Appellant's motion notwithstanding the Court's need "to correct a clear error of law or prevent manifest injustice." Order Denying Plaintiff's Rule 59(e). p. 1. It was an error to do so and must be reversed.

CONCLUSION

Wherefore, based on the aforementioned, the Trial Court's Order Denying Appellant's Motion to Reconsider Pursuant to Rule 59(e) should be reversed and remanded with an Order directing the Trial Court to grant Appellant's Rule 59(e) motion or with an Order directing the Trial Court to hold a hearing on Appellant's Rule 59(e) motion. That the hearing should proceed with findings that the Trial Court's prior denial of Appellant's Rule 59 motion as to the promissory estoppel claim, statute of limitations, and Appellant's motion to amend were in error.

Respectfully submitted,

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Dated this 8th day of July, 2022
Charleston, South Carolina