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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Bryantavious K. Murray, Appellant

v.

Lt. Geoffrey Rice, Lt. Ronald Cook, Lt. James Thompkins,
Sgt. Jeremy McCary, Major Frank Mursier, Joseph Stevens,
Leroy Cartledge, Vera Courson, and South Carolina Department of
Corrections

Appellate Case No. 2023-001375

The Honorable R. Lawton McIntosh
McCormick County
Trial Court Case No. 2018CP3500074

RESPONDENTS' INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. Did the lower court properly grant Respondent's motion to dismiss because Appellant's action had been previously dismissed pursuant to Rule 5(d) of the South Carolina Rules of Civil Procedure? (Appellant's Statement of Issues on Appeal 1)
- II. Did the lower court correctly find that this action was barred by the statute of limitations under S.C. Code Section 15-78-110 of the South Carolina Tort Claims Act? (Appellant's Statement of Issues on Appeal 1)
- III. Did the trial court properly decline to address the merits of the Appellant's excessive force claim because his action had been previously dismissed? (Appellant's Statement of Issues on Appeal 2).

STATEMENT OF THE CASE

Appellant filed this action on August 28, 2018, in the Court of Common Pleas for McCormick County alleging employees or agents of the South Carolina Department of Corrections (hereinafter referred to as "Respondent") used excessive force against him on April 8, 2016. (See Complaint). Plaintiff failed to serve any of the defendants, including the Respondent. On February 1, 2019, Appellant was provided by the lower court a Dormant File Notice. (See Dormant File Notice). Appellant was instructed to file "an appropriate motion or Affidavit of Service" within 10 days or his action would be dismissed. The court records do not contain any evidence that Appellant filed a motion or affidavit of service. On February 25, 2019, the court issued an order dismissing Appellant's action for failing to serve the defendants, including Respondent. (Order dated February 25, 2019).

Subsequently, according to court records, Appellant sent a letter to the court dated April 19, 2021, requesting copies of the lawsuit. (Letter dated April 19, 2021). On April 17, 2023, Appellant filed a packet of documents with the court. One copy of the materials was delivered to

Respondent's general counsel on May 25, 2023, by the Richland County Sheriff's Department.¹ (Affidavit of Service filed May 25, 2023).

Respondent filed a motion to dismiss on June 12, 2023 on the grounds that Appellant's action was previously dismissed and that Appellant's action is barred by the applicable statute of limitations. (Respondent's Motion to Dismiss and Memorandum in Support of Motion to Dismiss). A hearing was held on July 17, 2023. The court issued its order granting Respondent's motion to dismiss on July 20, 2023. (Order dated July 20, 2023). In its order, the court found that that Appellant's action had been previously dismissed on February 25, 2019, and that his action was barred by the applicable statute of limitations. The lower court further held that the order granting the motion to dismiss would apply to all defendants since there was no evidence in the record that any of the other named defendants had been served. Therefore, the court dismissed Appellant's action as to all defendants.

STANDARD ON REVIEW

An appellate court reviews a trial court's findings of fact regarding service of process under an abuse of discretion standard. Graham Law Firm, P.A. v. Makawi, 396 S.C. 290, 294-95, 721 S.E.2d 430, 432 (2012) ("The trial court's findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard.").

On review of a motion to dismiss on the pleadings, "the appellate tribunal applies the same standard of review that was implemented by the trial court." Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001). In considering a motion to dismiss for failure to state a cause of action, the trial court must base its ruling solely on allegations set forth in the

¹ There is no indication that this was served on the Attorney General as required by SCRCF Rule 4(d)(5). Furthermore, there is no indication that even an attempt of service has been made on any of the individual defendants.

complaint. Viewed in the light most favorable to the plaintiff, if the facts and inferences reasonably drawn from the facts alleged in the complaint would entitle the plaintiff to relief under any theory, the motion to dismiss should be denied. Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 395, 596 S.E.2d 42, 45 (2004). The complaint should not be dismissed merely because the court doubts the plaintiff will prevail. Id.

An issue “must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). An appellate court need not address an appellant’s remaining issues when its decision on a prior issue is dispositive. Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

ARGUMENTS

I. THIS COURT SHOULD AFFIRM THE LOWER COURT’S ORDER DISMISSING APPELLANT’S ACTION BECAUSE HIS ACTION WAS PREVIOUSLY DISMISSED AND CANNOT BE MAINTAINED.

Appellant filed this action on August 28, 2018, but he failed to serve any of the defendants, including Respondent. The court sent Appellant a Dormant File Notice on February 1, 2019, providing Appellant with an opportunity to submit evidence of service. Appellant did not respond so on February 25, 2019, as permitted by Rule 5(d) of the South Carolina Rules of Civil Procedure, the court dismissed Appellant’s action. See Rule 5(d), SCRPC (“Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court’s own initiative or upon application of any party.”). Appellant did not attempt to appeal the order dismissing his action under Rule 5(d), SCRPC. Instead, Appellant attempted to restart this action by filing a packet of materials in April of 2023, over four years after his action was dismissed, and by having these materials served on Respondent in May of 2023. The lower court correctly granted

Respondent's Motion to Dismiss because the action had been previously dismissed by an Order dated February 25, 2019. Once, an action is dismissed, the case is over, and Appellant cannot continue to pursue the same action. Therefore, this Court should affirm the lower court's order dismissing Appellant's action on this ground.

II. THIS COURT SHOULD AFFIRM THE LOWER COURT'S ORDER DISMISSING APPELLANT'S ACTION BECAUSE HIS ACTION IS BARRED BY THE STATUTE OF LIMITATIONS.

The lower court correctly found that Appellant's action was barred by the two-year statute of limitations found in the South Carolina Tort Claims Act. S.C. Code Ann §15-78-110. Section 15-78-110 of the South Carolina Code states "[e]xcept 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 of loss was or should have been discovered" Appellant filed this action on August 28, 2018.² Appellant claims in his Complaint that the incident which is the subject of his lawsuit occurred on April 8, 2016. (Appellant's Complaint). Based on Appellant's pleadings, he filed this action more than four months beyond the two-year statute of limitations. Therefore, this Court should affirm the lower court's order dismissing Appellant's action because his action is barred by the applicable statute of limitations.

III. FINDING THE ACTION DISMISSED, THE LOWER COURT PROPERLY DID NOT ADDRESS THE MERITS OF THE APPELLANT'S EXCESSIVE FORCE CLAIM.

Appellant claims that the lower court should have addressed his excessive force claim. Appellant further claims the lower court erred when it failed to admit its requested jury charge. Neither of these issues were raised or ruled on by the lower court. An issue "must have been raised

² While Appellant claims in his brief that this case was filed on March 16, 2018, he has offered no evidence to support his claim. (Appellant's Initial Brief, p.1). According to court records, the action was filed on August 28, 2018.

to and ruled upon by the trial judge to be preserved for appellate review.” Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). An appellate court need not address an appellant’s remaining issues when its decision on a prior issue is dispositive. Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999). The hearing held on July 17, 2023, was simply to address Respondent’s motion to dismiss. There was no evidence presented on the merits of Appellant’s excessive force claim. Further, there was no jury present at this hearing in which a jury charge could have been presented. Appellant’s issues on appeal are not properly before this Court, are without merit and should not be addressed on appeal. Further, the dismissal of this action under Rule 5(d) of the SCRCP and the two-year statute of limitations is dispositive so there is no need to address Appellant’s remaining issues.

CONCLUSION

This Court should affirm the lower court’s order dated July 20, 2023, granting Respondent’s motion to dismiss.

RESPECTFULLY SUBMITTED,

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