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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

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APPEAL FROM DILLON COUNTY
Court of Common Pleas

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Appellate Case No. 2024-000183

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Common Pleas Case No. 2021CP1700284

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Elizabeth Denice McLeod, Appellant,

v.

Dillon County, City of Latta,
Kernard Redmond and Derrick Cartwright,
Defendants,

Of which Dillon County is the Respondent.

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# INITIAL BRIEF OF APPELLANT

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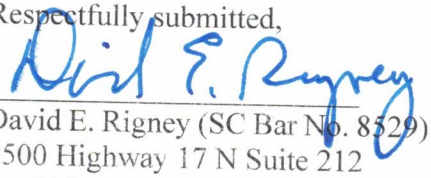
April 30, 2024

Respectfully submitted,



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## STATEMENT OF ISSUES ON APPEAL

I. **Did the Trial Court err in granting the Defendant's Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6), SCRCP based on the immunity provision of the South Carolina Tort Claims Act, S.C. Code Ann § § 15-78-10 et. seq.?**

II. **Did the Trial Court err in granting the Defendant's Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6), SCRCP based on the Plaintiff failing to file a claim for relief within the applicable statute of limitations?**

## STATEMENT OF THE CASE

Facts

Plaintiff Elizabeth McLeod was arrested on or about July 1, 2005, in Latta, Dillon County, South Carolina, and charged with the felonies of (1) Possession of Cocaine W/Intent to Distribute (Arrest Warrant I835108). and (2) Distribution Within Proximity to a School (Arrest Warrant I835109). On or about July 25, 2005, Plaintiff entered a guilty plea to a misdemeanor charge of Possession of Cocaine, 1st Offense, thus resolving the felony charge. (Sentencing Sheet dated 7/25/2005). The charge alleging violation of the statute prohibiting Distribution Within Proximity to a School was Dismissed/Not Indicted on or about July 25, 2005 (Public Index record printed 12/5/2019).

Unknown to Plaintiff, Court records available to the public indicated that Plaintiff had pled guilty to a felony drug offense, and such records continued to show that incorrect information at least until late in the year 2019. (Public Index record printed 10/9/2019).

Plaintiff, on or about September 16, 2019, received a letter from the Internal Revenue Service which stated that a payment she had expected to receive from the Internal Revenue Service had been applied to a debt she owed to the SC Department of Social Services (Internal Revenue Service Letter dated 9.11.19).

Not long after receiving said letter from the Internal Revenue Service, Plaintiff received an OVERPAYMENT DEMAND LETTER in October 2019 from the Dillon County DSS, stating that her household had received an overpayment of benefits in the SNAP program and that she owed $7453.00 for the overpayment (DSS Letter dated October 7, 2019). This letter further stated that the reason for the overpayment was that Plaintiff had failed to report a felony drug conviction on two applications and five mail recert forms.

The foregoing letters led Plaintiff to inquire at the offices of local Dillon County officials regarding the cause of this problem, and ultimately led to the discovery that the public records showed that the Plaintiff had pled guilty to a felony drug offense, when in fact that was not true. (Plaintiff's Complaint, paragraphs 15-17). Eventually, Plaintiff received a letter from Assistant Solicitor Shipp Daniel stating that she was correct and she had not in fact entered a guilty plea to the felony conviction which was showing on her public record. (Letter from Shipp Daniel dated October 15, 2019). That letter went on to state that while the General Sessions Sentencing Sheet listed the charge to which she had entered a guilty plea as "Possession of Cocaine," which is a misdemeanor, the CDR code on the sentencing sheet was incorrectly listed as that of a felony. (Sentencing Sheet dated 7/25/2005). That same incorrect CDR Code was listed on the records available to the public. (Public Index record printed 10/9/2019).

Once the public records had been corrected regarding the incorrectly labeled felony drug offense, there is nothing in the record to indicate that either the Internal Revenue Service or South Carolina DSS alleged that Plaintiff had any other convictions which would bar her from receiving benefits.

Based on the foregoing, Plaintiff filed an action alleging that her difficulties in obtaining employment were a direct and proximate result of the above referenced incorrect placement of a

felony drug offense in the public records, and that Plaintiff had been unable to obtain gainful employment for a period of approximately fifteen (15) years. (Complaint paragraphs 23, 28, 33)

Procedural History

Plaintiff initiated this action by filing a Complaint on or about July 19, 2021 with the Dillon County Court of Common Pleas, setting forth claims based on Negligence, Defamation – Libel, and Defamation – Libel Per Se. The original Defendants in the action were the State of South Carolina, Dillon County, City Of Latta, Kernard Redmond, and Derrick Cartwright.

Defendant State of South Carolina was voluntarily dismissed as a Defendant pursuant to Rule 41(a), SCRCP, on or about August 25, 2021. Following a hearing on his Motion to Dismiss, Defendant Kernard Redmond was dismissed as a Defendant by Court order filed April 18, 2022. The City of Latta, and Derrick Cartwright were dismissed as defendants subsequent to a hearing on their Motion to Dismiss by order filed on June 15, 2022.

Defendant Dillon County moved to dismiss the Complaint and oral arguments were heard by the Court at a hearing held at the Court of Common Pleas on September 27, 2023 in Dillon County. On January 9, 2024, an order granting Defendant Dillon County's Motion to Dismiss was filed.

On or about February 6, 2024, Plaintiff filed her notice of appeal.

## STANDARD OF REVIEW

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." Hotel & Motel Holdings, LLC v. BJC Enters., LLC, 414 S.C. 635, 650, 780 S.E.2d 263, 271 (2014). "[A] 12(b)(6) motion should not

be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory of the case." Gentry v. Yonce, 337 S.C. 1, 4, 522 S.E.2d 137, 138 (1999).

In evaluating a motion to dismiss for failure to state facts sufficient to constitute a cause of action, "the circuit court must view the facts alleged in the complaint and any reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff. If those facts and inferences would entitle the plaintiff to relief on any theory, then a dismissal for failure to state a claim is improper." Benedict College v. National Credit Systems, Inc., 400 S.C. 538, 544, 735 S.E.2d 518, 521 (Ct. App. 2012). "In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). "Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim." Skydive Myrtle Beach, Inc. v Horry County, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019).

## ARGUMENT

### I. The Trial Court erred in granting Defendant's motion to dismiss based on the immunity provisions of the South Carolina Tort Claims Act, S.C. Code Ann § § 15-78-10 et. seq.

The Defendant moved to dismiss pursuant to Rule 12(b)(6), SCRCP, based on the immunity provisions of the South Carolina Tort Claims Act, S.C. Code Ann § § 15-78-10 et. seq. While the South Carolina Tort Claims Act generally provides for immunity to political subdivisions and employees, such immunity is not necessarily granted in cases involving gross negligence. "When a governmental entity asserts an exception to the waiver of immunity and any other applicable

exception contains a gross negligence standard, the Court must read the gross negligence standard into all of the exceptions under which the entity seeks immunity." Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007). "Gross negligence is defined as 'the failure to exercise slight care.'" Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007). In this case, the failure to accurately place on the public records the information relating to the crime to which the Plaintiff pled guilty, as alleged in the Plaintiff's Complaint, at a minimum raises the factual question of whether such failure constitutes the "failure to exercise slight care," and therefore Defendant's Motion to Dismiss should have been denied.

## II. The Trial Court erred in granting Defendant Dillon County's motion to dismiss based on the Plaintiff's failure to bring the action within the applicable statute of limitations.

The Defendant moved to dismiss pursuant to Rule 12(b)(6), SCRPP, based on the failure of the Plaintiff to file her action within the time set forth by the applicable statute of limitations. In the circumstances of this case, the Plaintiff was unaware of the incorrect statement in the public records of the crime to which she pled guilty until after the statute of limitations had expired.

By statute, South Carolina, has adopted a discovery rule, subject to certain limitations, in medical malpractice cases, S.C. Code Ann § 15-3-545 (2005), thus recognizing that in certain circumstances the strict application of the statute of limitations is inappropriate. This statute provides that in appropriate circumstances, the statute of limitations in medical malpractice cases does not begin to run until the problem arising from the malpractice is discovered.

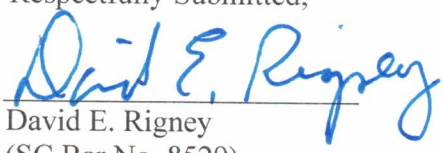
The Maryland Court of Appeals applied the discovery rule to a case involving a false credit report which had been filed with a credit agency. The Court observed that "[u]ntil he applied for credit and was turned down…the plaintiff did not know, and would not reasonably have been expected to know, that Sears had filed a false credit report with the credit agency.' Sears, Roebuck & Co. v. Ulman, 287 Md. 397, 403, 412 A.2d 1240, 1244 (1980). Other Courts have applied the discovery rule in similar circumstances. See Tom Olesker's Excit. W., Etc. v. Dun & Bradstreet, Inc., 61 Ill. 2d 129, 136, 334 N.E.2d 160, 164 (1975) and Kelley v. Rinkle, 532 S.W.2d 947 (1976).

The case presented by the Plaintiff in this instance is very similar to the credit report case scenario. As stated in her Complaint (Complaint, paragraphs 14-19), the Plaintiff was not aware of the incorrect labeling in the public records of the crime to which she pled guilty until after the statute of limitations had expired. Therefore, based on the facts alleged in the Plaintiff's Complaint, this action should not be dismissed based on the failure of the Plaintiff herein to file her action within the statute of limitations period. The Court should have applied the discovery rule to this case because of the unusual fact situation. Sufficient facts were asserted in Plaintiff's Complaint to give rise to an issue as to whether the facts of this case would permit application of the discovery rule. The application of the discovery rule should be extended to permit Plaintiff herein to have her case heard on the merits in court. Therefore, Plaintiff's asserts that the trial court erred in dismissing Plaintiff's Complaint pursuant to Rule 12(b)(6), SCRCP based on her failure to comply with the applicable statute of limitations.

## CONCLUSION

For the foregoing reasons, Appellant respectfully submits that this Court should reverse the Trial Court's decision in this matter and remand the case to the Dillon County Court of Common Pleas for a trial on the merits.

Respectfully Submitted,



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