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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge

Appellate Case No. 2024-000347

Ramona D. Byers, as Personal Representative of the Estate of Mario Byers, Respondent,

v.

Greenville County and South Carolina Department of Corrections, Defendants,

of whom South Carolina Department of Corrections is Appellant.

PETITION FOR REHEARING

March 28, 2024

Stephanie H. Burton
GIBBES BURTON, LLC
308 East Saint John Street
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: (864) 327-5000
Facsimile: (864) 342-6884

*Attorneys for Petitioner South Carolina
Department of Corrections*

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GROUND FOR THE PETITION FOR REHEARING

In this case of first impression in South Carolina, Petitioner South Carolina Department of Corrections petitions this Court, pursuant to Rule 221 of the South Carolina Appellate Court Rules, to consider the merits of the appeal filed by Petitioner. This Petition is based upon the following grounds:

1. On May 3, 2023. Plaintiff initiated this action against Defendants Greenville County and the South Carolina Department of Corrections (SCDC). This case involves a question of first impression - whether SCDC owes a legal duty to detainees housed in local jails because it performs annual inspections of local jail facilities pursuant to S.C. Code §24-9-20.
2. Plaintiff filed an Amended Complaint on June 6, 2023, asserting claims for damages against SCDC for negligence, gross negligence, violation of the South Carolina Constitution, and seeking a declaration that SCDC violated the Freedom of Information Act. Plaintiff's claims arise from the death by suicide of her husband who was a detainee at the Greenville County Detention Center awaiting trial.
3. On June 21, 2023, SCDC filed a motion to dismiss Plaintiff's claims. Specifically, SCDC argued in pertinent part that:
 - a. It does not owe any legal duty to Plaintiff's Decedent.
 - b. Section 24-9-20 does not create a private right of action in favor of Plaintiff's Decedent.
 - c. The public duty rule applies in this case.
 - d. SCDC is immune from liability under certain exceptions to the waiver of sovereign immunity in the South Carolina Tort Claims Act.

4. On February 7, 2024, the trial court heard SCDC's motion.
5. On March 1, 2024, the trial court issued an order which decided the merits of several of SCDC's defenses and affects its substantial rights. Specifically, the trial court held:
 - a. That "SCDC is not immune" and thus has no defense under Sections 15-78-60(2), (4), (5), and (13) of the South Carolina Tort Claims Act.
 - b. That gross negligence applies to Sections 15-78-60(2), (4), (5), and (13) of the South Carolina Tort Claims Act even though SCDC did not contend that any exception which includes gross negligence applies in this case.
 - c. That Section 24-9-20 relating to annual inspections of local jail facilities creates a duty of care owed by SCDC to Plaintiff's Decedent, a detainee at a local jail facility awaiting trial.
 - d. That "the public duty rule does not provide SCDC a defense in this case."
6. On March 11, 2024, Petitioner timely filed a notice of appeal from the trial court's order.
7. Four days later, on March 15, 2024, this Court summarily dismissed the appeal ruling that an order denying a motion to dismiss is not appealable regardless of the effect of the trial court's order.
8. The trial court's order is immediately appealable under Sections 14-3-330(1) and 14-3-330(2) of the South Carolina code because it addresses a novel issue of law in this state, involves the merits of the case, the ability of SCDC to assert legal defenses, and affects substantial rights of SCDC.

9. This Court should conduct the required case-by-case analysis to determine if the order is appealable.
10. SCDC is entitled to an order granting its petition and permitting it to proceed with its appeal of the trial court's order.

ARGUMENT

The Trial Court's Order is Immediately Appealable

This Court has jurisdiction to review any “intermediate judgment, order or decree in a law case **involving the merits** in actions commenced in the court of common pleas...” S.C. Code Ann. § 14-3-330(1) (2017) (emphasis added). An order “involves the merits,” when it “**finally determines** some substantial matter forming the whole or part of some cause of action **or defense.**” Mid-State Distributions, Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (emphasis added). This Court also has jurisdiction to review any an order affecting a substantial right in an action when such order “strikes out an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14-3-330(2)(c) (2017). Whether an order is immediately appealable must be determined on a case-by-case basis. Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015). This Court did not conduct a case-by-case analysis and SCDC is entitled to a rehearing accordingly.

In Stone v. Thompson, 426 S.C. 291, 826 S.E.2d 868 (2019), the South Carolina Supreme Court granted certiorari to determine whether a family court order which found that a common-law marriage existed was immediately appealable under S.C. Code Ann. 14-3-330. Id. at 292, 826 S.E.2d at 868. Notably, the appealed order did not end the case because divorce and equitable distribution causes of action were still pending. Id. at 294, 826 S.E.2d at 869. This Court held that the order was interlocutory because it did not end the case, and further, that it was not immediately appealable under the statute. Id. at 292-93, 826 S.E.2d at 868-69.

The South Carolina Supreme Court disagreed and reversed. Id. at 293, 826 S.E.2d at 869. The Court found that the order was appealable under 14-3-330(1) because it finally determined a substantial matter forming part of a cause of action and a defense to it, and therefore involved the

merits. Id. at 295, 826 S.E.2d at 870. The Court noted that the family court’s determination “finally determined a substantial matter” – i.e. whether the parties were married. Id. That issue was key to the defense in the case; “Thompson’s primary – and to this point, exclusive – defense to the family court causes of action was that the parties were not married. Accordingly, the court weighed the evidence and finally determined a substantial matter forming part of Stone’s causes of action, as well as Thompson’s defense, which satisfies the test we clarified in Mid-State.” Id.

In Thornton v. South Carolina Elec. & Gas Corp., 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011), this Court considered whether a trial court order granting the defendants’ motion to strike class action allegations was immediately appealable under 14-3-330(2)(c). This Court noted that a trial court has the authority to strike allegations in pleadings. Id. at 303, 705 S.E.2d at 479. Such an action limits the evidence and issues submitted to a jury. Id. It also prevents the affected party from litigating the merits of the stricken issue. Id. at 304, 705 S.E.2d at 479. As such, if the trial court incorrectly strikes material allegations of a legitimate cause of action or defense, it is impossible to remedy the error. Id. at 303-04, 705 S.E.2d at 479. Accordingly, this Court held that an order which removes a material issue from the case, thereby preventing the issue from being litigated on its merits, affects a substantial right. Id. at 304, 705 S.E.2d at 479. This Court noted that when determining the appealability of an interlocutory order, it focuses upon the effect of the order, not the label given to the motion or to the order. Id. at 303, 705 S.E.2d at 478. Ultimately, this Court found that the trial court’s order was not immediately appealable because its effect was not to strike a pleading, but rather to deny class certification. Id. at 304-05, 705 S.E.2d at 479.

Similar to the order in Stone, the trial court’s order in this case determined elements of Plaintiff’s claims and eviscerated SCDC’s defenses. Specifically, the trial court found that that “S.C. Code Ann. § 24-9-10, *et seq.*, creates a statutory duty owed by SCDC to Plaintiff in this

case.” (Order 5.) This determination of a novel question of law is a substantial matter underpinning the entire basis of Plaintiff’s causes of action and SCDC’s defenses to those causes of action. As such, the order involves the merits and is immediately appealable.

In addition, the trial court’s order in this case precludes SCDC from asserting and pursuing valid defenses under the Tort Claims Act, namely that it has immunity. The trial court did not simply find that the Plaintiff had pled a plausible claim for which SCDC might not have immunity, thus leaving the issue open for discovery and resolution at trial. Instead, the trial court actually decided the immunity issue. In its order, the trial court summarily held that “SCDC is not immune from liability.” (Order 9.) The trial court found Plaintiff’s claims against SCDC “are not barred by the South Carolina Tort Claims Act” which dismisses legitimate defenses available to SCDC under Sections 15-78-60(2), (4), (5), and (13) the South Carolina Tort Claims Act. (Order 8.) Beyond this, the trial court decided on its own that the gross negligence standard applies to those exceptions in the Tort Claims Act, even though SCDC did not contend that any section that includes gross negligence applies in this case and specifically told that Court that it did not make such a contention. The trial court’s holding that “the public duty rule does not provide SCDC a defense in this case” is also dispositive of another viable legitimate defense. (Order 5.)

CONCLUSION

In this case of first impression, the trial court finally determined several substantial matters forming parts of Plaintiff’s causes of action and SCDC’s defenses. Therefore, the underlying order is immediately appealable pursuant to Sections 14-3-330(1) and 14-3-330(2). Accordingly, Petitioner South Carolina Department of Corrections respectfully petitions this Court to reconsider its order issued on March 15, 2024, and consider the merits of SCDC’s appeal.

March 28, 2024

s/Stephanie H. Burton
Stephanie H. Burton
GIBBES BURTON, LLC
308 East Saint John Street
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: (864) 327-5000
Facsimile: (864) 342-6884

*Attorneys for Petitioner South Carolina
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Ramona D. Byers, as Personal Representative of the Estate of Mario Byers, Respondent,

v.

Greenville County and South Carolina Department of Corrections, Defendants,

of whom South Carolina Department of Corrections is Appellant.

PROOF OF SERVICE

I certify that I have served Appellant’s Petition for Rehearing on Ramona D. Byers, as Personal Representative of the Estate of Mario Byers, and Greenville County by depositing a copy of it in the United States mail, postage prepaid, on March 28, 2024, addressed to their respective attorneys of record as follows:

Kyle J. White
J. Drew Bradshaw
White, Davis, and White Law Firm, P.A.
Post Office Box 1346
Anderson, SC 29622
(864) 231-8090

Sam B. Tooker
David R. Price, Jr., P.A.
Post Office Box 2446
Greenville, SC 29602
(864) 271-2636

*Attorneys for Respondent Ramona
D. Byers, as Personal Representative of
the Estate of Mario Byers*

William U. Gunn
Holcombe Bomar, PA
P.O. Box 1897
Spartanburg, SC 29304
(864) 594-5300

Attorneys for Defendant Greenville County

s/Stephanie H. Burton
Stephanie H. Burton
GIBBES BURTON, LLC
308 East Saint John Street
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: (864) 327-5000
Facsimile: (864) 342-6884

*Attorneys for Petitioner South Carolina
Department of Corrections*

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SC Court of Appeals

Stephanie H. Burton
sburton@gibbesburton.com



March 28, 2024

By United States Mail and by email

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201
ctappfilings@sccourts.org

Re: Ramona D. Byers, as Personal Representative of the Estate of Mario Byers v. Greenville
County and South Carolina Department of Corrections
C.A. No.: 2023-CP-40-02273
Appellate Case No. 2024-000347

Dear Ms. Kitchings:

Enclosed for filing are:

- (1) The South Carolina Department of Corrections' Petition for Rehearing;
- (2) Proof of service of the petition for rehearing on all parties; and
- (3) Filing fee of \$50.00.

With kind regards,

Yours very truly,

GIBBES BURTON, LLC

A handwritten signature in blue ink that reads "Stephanie H. Burton". The signature is written in a cursive style with a large, flowing "S" at the beginning.

Stephanie H. Burton

SHB/leg
Enclosures

cc: Mr. Kyle J. White (w/enclosures)(by email)
Mr. J. Drew Bradshaw (w/enclosures)(by email)
Mr. Samuel B. Tooker (w/enclosures)(by email)
Mr. William U. Gunn (w/enclosures)(by email)

308 East Saint John Street
Spartanburg, South Carolina 29302
Telephone 864.327.5000 • Facsimile 864.342.6884
www.gibbesburton.com