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Aug 30 2024
SC Court of Appeals

August 30, 2024

Via Email Only
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: Cassiopia Rhoads v. Aiken County Sheriff's Office
Appellate Case Number: 2024-000592
Civil Action Number: 2020-CP-02-2238
Claim Number: 2020G00077
Our File Number: 333.20304

Dear Ms. Kitchings:

In compliance with the Court's Order filed July 1, 2024, please accept this letter as a thirty-day status update on the partial remand to the Circuit Court. On August 19, 2024, Judge Eugene C. Griffith, Jr. issued an Order Granting Defendant's Motion to Alter or Amend Order and JNOV Motion, a copy of which is attached. Thereafter, on August 29, 2024, the Plaintiff filed a Motion for Reconsideration of that order, and that motion is now pending before Judge Griffith.

If you require any additional information, please advise.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosure

cc: Francis M. Hinson, IV, Esquire *(Via Email Only)(w/Enclosure)*
Patrick J. McLaughlin, Esquire *(Via Email Only)(w/Enclosure)*

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF AIKEN	)	
Cassiopia Rhoads,	)	
	)	Civil Action No. 2020-CP-02-2238
Plaintiff,	)	
	)	
v.	)	**ORDER GRANTING DEFENDANT'S MOTION TO ALTER OR AMEND ORDER AND JNOV MOTION**
	)	
Aiken County Sheriff's Office,	)	
	)	
Defendant.	)	
	)	

This matter came before the Court on the Motion to Alter or Amend Order and/or Motion to Reconsider filed by the Defendant Aiken County Sheriff's Office. In its motion, the Defendant argues that the Court failed to address its defense that the Plaintiff's gross negligence cause of action is barred by operation of Section 15-78-70(d) of the South Carolina Code as a result of the settlement entered in this action between the Plaintiff and the Southern Health Partners Defendants ("SHP Defendants"). Upon further consideration, the Court agrees that that particular defense, which was raised at directed verdict and against in the JNOV motion, has not been addressed.

The Court then advised the parties on May 20, 2024, that after further review and consideration of the Section 15-78-70(d) defense, the Court would grant reconsideration and the JNOV motion in the Defendant Sheriff Office's favor. On May 22, 2024, the Plaintiff filed a motion requesting a hearing on this issue before a final order was issued. The Court granted that motion, received further briefing on the issue, and held a hearing on June 13, 2024, with counsel for both parties present. After full consideration of the motions filed, the arguments made by the parties at trial and at the June 13, 2024 hearing, and the written submissions of the parties, the Court hereby grants the Defendant's Motion to Alter or Amend Order and/or Motion to Reconsider

and further grants a JNOV in favor of the Defendant Aiken County Sheriff's Office for the reasons discussed in this Order.

LEGAL ANALYSIS

At both the directed verdict stage and in its post-trial motions, the Defendant Sheriff's Office argued that the Plaintiff's cause of action for gross negligence is barred by operation of Section 15-78-70(d) of the South Carolina Code, as a result of the settlement entered in this action between the Plaintiff and the SHP Defendants. Section 15-78-70(d) states: "A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence." S.C. Code Ann. § 15-78-70(d).

As the record reflects per a stipulation of the parties, the Plaintiff settled this action against the SHP Defendants following mediation and prior to trial. At trial, the Defendant Sheriff's Office moved for a directed verdict on the basis that the Plaintiff's gross negligence cause of action is barred by virtue of that settlement and then renewed that motion by way of its JNOV motion. Specifically, the Defendant Sheriff's Office argues that the prior settlement in this same civil action for the same occurrence constitutes a complete bar to any further action by the Plaintiff against the Defendant Sheriff's Office pursuant to Section 15-78-70(d) of the South Carolina Tort Claims Act. This Court agrees.

Section 15-78-70(d) has been previously interpreted by the South Carolina Supreme Court in the case of *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002). That case arose out of a motor vehicle accident. The at-fault driver was employed at the time of the accident by Berkeley County although he was driving his personal vehicle. The plaintiff in *Wade* initially sued only the driver individually and reached a settlement. Following that settlement, the plaintiff then

sued Berkeley County, which raised Section 15-78-70(d) as a bar to that action. The Supreme Court ultimately concluded that "the General Assembly intended 'under this chapter' to modify both a 'settlement or judgment in an action' and a 'settlement of a claim.'" 559 S.E.2d at 588. The "chapter" as referenced is the Tort Claims Act. Therefore, because the settlement with the driver individually was not in an action under the Tort Claims Act, the Supreme Court concluded that Section 15-78-70(d) was not applicable. The Supreme Court emphasized that, when the settlement was reached,

> [N]o action [under the Tort Claims Act] has been initiated, nor had any claim been filed, against County. At the time of the settlement, Wade had only initiated an action against Pierce in his individual capacity, not against County as Pierce's employer. Accordingly, at the time Wade and Pierce executed the settlement document, there were no actions "under this chapter." Wade and Pierce's settlement did not invoke the provisions of § 15-78-70(d) barring Wade from further action against County.

559 S.E.2d at 589.

The Supreme Court in *Wade*, nonetheless, explained the scope of Section 15-78-70(d). The Court held that "to invoke the provisions of § 15-78-70(d), there must be a settlement or judgment in an action under the Act or a settlement of a claim under the Act." 559 S.E.2d at 588-589. Therefore, if there is a settlement in an action brought under the Tort Claims Act, Section 15-78-70(d) may be invoked as a bar to any further proceedings or recovery against a governmental entity arising out of the same occurrence.

The Court finds the bar of Section 15-78-70(d) applies to this case. There is no dispute that the Plaintiff brought suit simultaneously against all Defendants, including the Defendant Sheriff's Office as well as the SHP Defendants, which were named as parties in the original Complaint. The suit was brought pursuant to the Tort Claims Act in that the Plaintiff asserted a negligence/gross negligence cause of action against all Defendants, and as discussed above, the Tort Claims Act is the exclusive means by which the Defendant Sheriff's Office, as a governmental entity, may be

sued in tort. The Plaintiff also cited the Tort Claims Act in her Complaint. *See* Complaint, ¶¶ 4-5. All of the Defendants, including the SHP Defendants, also cited Tort Claims Act defenses in their Answers, with the Plaintiff never moving to strike those defenses. *See*, SHP Answer, ¶ 83, Sheriff's Office Answer, ¶¶ 51-52, 57. Thus, it is indisputable that the Plaintiff brought this action under the Tort Claims Act.

There is likewise no dispute that the Plaintiff settled with the Defendant SHP. A release has been executed, and the SHP Defendants have been dismissed from this action with prejudice. Unlike *Wade*, however, there were not separate suits filed. The Plaintiff did not settle with the SHP Defendants and then sue the Sheriff's Office in a separate action. To the contrary, the settlement occurred within the confines and context of this very Tort Claims Act case. As the Sheriff's Office argues, this is the very scenario described by the Supreme Court in *Wade* where the bar of Section 15-78-70(d) may be invoked.

At the directed verdict stage, the Plaintiff argued that the limitations provided by Section 15-78-70(d) are not applicable in this case because the settlements are with non-governmental defendants that fall outside of the Tort Claims Act. The Court adopted that reasoning in denying the directed verdict. The Court has now reconsidered that ruling and finds that the bar of Section 15-78-70(d) applies to this case for the following reasons.

First, the precise language of Section 15-78-70(d) is as follows:

> A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.

S.C. Code Ann. § 15-78-70(d). Contrary to the Plaintiff's position, there is no requirement that the settlement or judgment must be with another governmental party. There is no language to that effect in the statute, and if that were the intent of the General Assembly, such language could have been included. What is required is that the settlement must occur within the context

of an action brought pursuant to the Tort Claims Act. In *Wade, supra*, the Supreme Court examined that very question and concluded that "the General Assembly intended 'under this chapter' to modify both a 'settlement or judgment in an action' and a 'settlement of a claim.'" 559 S.E.2d at 588. The "chapter" as referenced is the Tort Claims Act. Thus, if there is a settlement is effected within the context of an action filed pursuant to the Tort Claims Act, Section 15-78-70(d) applies.[1]

The present case is indisputably an action brought pursuant to the Tort Claims Act for the reasons discussed above. The suit was brought pursuant to the Tort Claims Act in that the Plaintiff has asserted a gross negligence cause of action against the Sheriff's Office, and the Tort Claims Act is the exclusive means by which the Sheriff's Office may be sued in tort. *See,* S.C. Code Ann. § 15-78-200.

Additionally, to the extent that the interpretation of Section 15-78-70(d) may be unclear as the Plaintiff appears to suggest, it is important to recognize that the Tort Claims Act includes its own rules of statutory construction, including Section 15-78-20(f), which states: "The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, *must* be liberally construed *in favor of limiting the liability of the State*." S.C. Code Ann. § 15-78-20(f). (Emphasis added). Thus, the limitation on liability as set forth in Section 15-78-70(d) must be liberally construed in favor of limiting the liability of the State and its political subdivisions as

[1] In her supplemental brief, the Plaintiff suggests that the settlement with the SHP Defendants is not a settlement of a "claim" brought pursuant to the Tort Claims Act. The Plaintiff argues that SHP is not a governmental entity and hence has not brought a "claim" against SHP pursuant to the Tort Claims Act. However, Section 15-78-70(d) applies to "[a] settlement or judgment in an action ***or*** a settlement of a claim under this chapter." (Emphasis added). The use of the disjunctive "or" is important. Section 15-78-70(d) is applicable to the settlement of an "action" or the settlement of a "claim." Within the context of the Tort Claims Act, the General Assembly has used the terms "action" and "claim" in such manner to indicate that an "action" pertains to a matter in suit and a "claim" pertains to a matter prior to suit being filed. *See e.g.*, S.C. Code Ann. § 15-78-90(b) ("Whether or not the claim is filed, the claimant is entitled to institute an action against the appropriate agency or political subdivision").

mandated by Section 15-78-20(f) and the supporting case law. *See, Faile v. South Carolina Department of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"); *Baker v. Sanders*, 301 S.C. 170, 391 S.E.2d 229 (1990) (same).

Finally, the Plaintiff's position disregards or is otherwise inconsistent with the well-settled rule of statutory construction that "[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196, 198 (2002). The Court finds that the reason that the General Assembly adopted Section 15-78-70(d) was to be read and applied *in pari materia* with Section 15-78-100(c) of the Tort Claims Act, which reads: "In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined." S.C. Code Ann. § 15-78-100(c). Section 15-78-100(c) requires that a jury return a special verdict specifying the proportional liability of each joint tortfeasor, both governmental and non-governmental. The reason for this is clear and supported by constitutional principles: the government and the taxpayers are not jointly and severally liable and instead are only liable for its own proportioned share of liability. The right to apportioned fault under Section 15-78-100(c) is lost, however, if a joint tortfeasor is able to settle out of the litigation. That is the reason that Section 15-78-70(d) was enacted with and must be read *in pari materia* with Section 15-78-100(c). Contrary to the Plaintiff's argument, the General Assembly did not deny a plaintiff's or claimant's right to settle with less than all alleged joint tortfeasors, but if the plaintiff or claimant does settle with a joint tortfeasor, that then bars any further recovery from a governmental entity because the governmental entity has lost the critical right to apportionment. As the current case

demonstrates, if Section 15-78-70(d) is read in any other manner than what the Defendant argues, a plaintiff or claimant may settle with the primary wrongdoer (here Southern Health Partners) for less than its share of the total liability and then attempt to hold the governmental entity for damages based on a greater degree of fault than it would otherwise have, thereby resulting from the loss of its right of apportionment under Section 15-78-100(c). That was clearly not the intent of the General Assembly in enacting both Section 15-78-70(d) and Section 15-78-100(c) and the statutory scheme that was created for allowing qualified but not unlimited liability for governmental entities. *See, Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564, 570 (1990) (recognizing the "legislative objectives" of the Tort Claims Act are "relieving the government from hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed for an effective and efficient government"). To reiterate, the Section 15-78-70(d) was not enacted by the General Assembly to have no purpose, meaning, or application. As the Supreme Court spelled out in *Wade*, Section 15-78-70(d) is intended to apply in the scenario before this Court in the case at bar.[2]

The Plaintiff further disputes that the settlement with the SHP Defendants was "by reason of the same occurrence." The term "occurrence" means "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). In *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011), which is the leading case on the application of the "occurrence" language in the Tort Claims Act, our Supreme Court explained that the number of "occurrences" is not tied to the number of acts of

[2] The Court is also not persuaded by the Plaintiff's reliance on the case of *Chester v. South Carolina Department of Public Safety*, 388 S.C. 343, 698 S.E.2d 559 (2010), in which the Supreme Court ruled that Section 15-78-100(c) does not authorize a court to join co-tortfeasors who had settled pre-suit. This Court notes that that ruling in *Chester* is consistent with the scenario in *Wade*. Notably, however, the Supreme Court did not reference Section 15-78-70(d) nor address its meaning or application in *Chester*, and the Court did not preclude the proper application of Section 15-78-70(d) as was previously outlined in *Wade*.

negligence. 712 S.E.2d at 406 ("we do not adopt a bright-line test based on the existence of multiple acts of negligence"). As *Boiter* further instructs, multiple acts of negligence may give rise to a single occurrence. The Supreme Court, in fact, recognized that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. This case presents that very scenario. Here, the Defendant Sheriff's Office was sued for its alleged failure to provide appropriate medical care for the Plaintiff. While the Sheriff's Office's liability was not premised on vicarious liability for the acts or omissions of the SHP Defendants, the Plaintiff alleged that the Sheriff's Office should have sought additional care for the Plaintiff, including a referral to the hospital, in light of the insufficiencies in the care provided by the SHP Defendants. The Court agrees with the Defendant that any gross negligence by the Sheriff's Office is part of the same "unfolding sequence of events" proximately flowing from the acts or omissions by the SHP Defendants in its provision of medical care. In effect, from a causation standpoint, if the medical care provided by the SHP Defendants had met the standard of care and the Plaintiff had been properly cared for, there would have been no breach of duty on the part of the Sheriff's Office. The liability of all Defendants was inextricably linked, and as a result, this Court agrees that the liability of the SHP Defendants and the Sheriff's Office arose out of the same occurrence, thereby making Section 15-78-70(d) applicable.

In sum, after careful consideration of the issue, the Court concludes that the Defendant Aiken County Sheriff's Office is entitled to the dismissal of the Plaintiff's gross negligence cause of action on the basis of Section 15-78-70(d).

IT IS, THEREFORE, ORDERED that the Motion to Alter or Amend Order and/or Motion to Reconsider filed by the Defendant Aiken County Sheriff's Office is granted.

IT IS FURTHER ORDERED that the Defendant's JNOV motion is hereby granted for the reasons stated herein, and the judgment and the Orders previously entered by the Court

addressing the parties' post-trial motions are vacated. The Plaintiff's gross negligence cause of action against the Defendant Aiken County Sheriff's Office is dismissed with prejudice.

AND IT IS SO ORDERED.

_____

EUGENE C. GRIFFITH, JR.
Presiding Judge,
Second Judicial Circuit

Aiken Common Pleas

Case Caption: Cassiopia Rhoads VS Southern Health Partners Inc , defendant, et al

Case Number: 2020CP0202238

Type: Order/Amend

It is so ordered

Eugene C. Griffith, Jr. 2154