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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Donald B. Hocker, Circuit Court Judge

Trial Court Case No. 2020-CP-36-00506
Appellate Case No. 2021-000817

Terence L. Rush, Appellant,

v.

Michael B. Stribble, Respondent.

FINAL BRIEF OF RESPONDENT MICHAEL B. STRIBBLE

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COUNTER-STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court properly grant the motion to dismiss filed by Respondent by finding that Appellant had failed to file his Complaint within the applicable statute of limitations?
2. Did the trial court properly determine that Respondent was not a proper party pursuant to S.C. Code Ann. § 15-78-10?

INTRODUCTION

The trial court's granting of the motion to dismiss as to Respondent should be affirmed. As set forth herein, Appellant's claims are barred by the applicable statute of limitations, and further, Respondent is not a proper party to this lawsuit pursuant to S.C. Code Ann. § 15-78-10.

STATEMENT OF THE CASE AND FACTS

This civil action involves the arrest of Plaintiff-Appellant, Terrence L. Rush ("Rush"), on or about October 2, 2015 in Newberry County. According to Appellant's pleadings, he was in his backyard and working at his residence when three uniformed individuals came from the northside of the house and on to his property. (ROA 6). Appellant then alleges that these three uniformed individuals trespassed on his property. (ROA 7). Respondent Michael Stribble then came forward and advised Appellant that he had a warrant for "Corey Pena" and Appellant denied being "Corey Pena". Appellant then demanded that Respondent produce the warrant for "Corey Pena" and Respondent allegedly failed to do so.

Respondent then requested that Appellant identify himself. At that point, Appellant identified himself as "Alfred T. Jackson"¹. Subsequently, Appellant

¹ Appellant is clearly not "Alfred T. Jackson" as shown in Appellant's Corrections Offender Information Network picture from the Florida Department of Corrections and attached to his Complaint. (ROA 15). Giving that false identification was in violation of S.C. Code Ann. §16-17-0725(b) – "Misrepresenting identity to law enforcement officers".

alleges that he allowed his finger to be scanned. (ROA 8). Upon his finger being scanned, it was determined that Appellant was Terence L. Rush who was wanted for attempted murder in Florida.

Appellant was then arrested when his true identity was discovered, issued a ticket for “giving false information to police” and transported to the Newberry County Detention Center. (ROA 40). On October 3, 2015, a “Fugitive from Justice Warrant” arrest warrant was issued by Magistrate Judge Ronald C. Halfacre that stemmed from Appellant fleeing from Florida to evade an arrest for “attempted murder”. (ROA 19). Appellant then then filed the subject lawsuit on October 20, 2020 and brought a claim of “fraud” against Respondent. (ROA 10).

A motion to dismiss on behalf of Respondent was filed on March 10, 2021. (ROA 27-28). A memorandum in support of the motion to dismiss was filed on April 30, 2021. (ROA 34-39). Respondent served his reply brief to the motion to dismiss on April 30, 2021. (ROA 41-57). The trial court granted Respondent’s motion to dismiss and filed an Order of Dismissal on July 6, 2021. (ROA 60-64).

A Notice of Appeal, dated July 27, 2021, was thereafter filed by Respondent on July 30, 2021. (ROA 65).

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 circuit court. *Rydde v. Morris*, 381

S.C. 643, 646, 675 S.E.2d 431, 433 (2009). The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). A 12(b)(6) motion should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

When reviewing a dismissal for failure to state a claim, an appellate court applies the same standard as the trial court – the pleadings are construed liberally, and all well-pled facts are presumed true. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134, 754 S.E.2d 105, 109 (2013). The court need not, however, presume the truth of the allegations pled merely in conclusory fashion or stating legal conclusions. *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 635, 699 S.E.2d, 705 (Ct. App. 2010). Under this standard, a claim should be dismissed when the facts alleged in the complaint do not support relief. *Brouwer v. Sisters of Charity Providence Hospital*, 409 S.C. 514, 519, 763 S.E.2d 200, 202 (2014).

ARGUMENT

I. THE TRIAL COURT PROPERLY GRANTED RESPONDENT’S MOTION TO DISMISS BY FINDING THAT APPELLANT’S CLAIMS WERE BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

Respondent set forth several grounds in his motion to dismiss for which he sought dismissal of this action as a matter of law. (ROA 27-28). The primary argument asserted by Respondent was premised upon Appellant's failure to file his Complaint within the applicable statute of limitations.

The South Carolina Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity."² S.C. Code Ann. § 15-78-70(a). Under the Tort Claims Act, the statute of limitations for suit against a state agency or its employees is two years after the "date the loss was or should have been discovered." S.C. Code Ann. § 15-78-110. If the action is not brought within the required statute of limitations it is "forever barred." *Id.*

A loss should be discovered when the "circumstances would put a person of common knowledge and experience on notice that some right has been invaded, or that some claim against another party might exist." *Joubert v. DSS*, 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000). "The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of [the] wrongdoer." *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994).

² As will be explained in the following section, the only proper party to this lawsuit would have been the Sheriff of Newberry County.

Appellant does not deny that he gave Respondent the wrong identity when first asked to identify himself or dispute the validity of the arrest warrant. Moreover, Respondent, at the time of his arrest on October 2, 2015, clearly knew that he was not “Corey Pena” so any alleged discovery of “fraud” some years after his arrest is without merit. Respondent did not need to see a photograph of “Corey Pena” to determine that he was not “Corey Pena” so any allegation he only discovered some years after he is not “Corey Pena” is baseless.

Because Respondent’s Complaint is solely related to his arrest that occurred on October 2, 2015, it is clear that any injury related to that arrest is beyond the two-year statute of limitations as his Complaint was filed on October 20, 2020. It follows that Respondent’s sole cause of action for “fraud” is barred by the Tort Claims Act’s two-year statute of limitations, and the Trial Court was correct in dismissing the Complaint.

Even assuming that the appropriate statute of limitations for Appellant’s claim of fraud is three years, his claims still fail. Our courts have found claims for fraud are subject to the three-year statute of limitations period provided in S.C. Code Ann. § 15-3-530. *Mazloom v. Mazloom*, 382 S.C. 307, 323, 675 S.E.2d 746, 755 (Ct. App. 2009); *see also, Moore v. Benson*, 290 S.C. 153, 160, 700 S.E.2d 272, 277 (Ct. App. 2010). “The three-year statute of limitations ‘begins to run when the underlying cause of action reasonably ought to have been discovered’.” *Holly Woods Ass’n of*

Residence Owners v. Hiller, 392 S.C. 172, 183, 708 S.E.2d 787, 793 (Ct. App. 2011) (quoting *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 575, 593 S.E.2d 624, 627 (Ct. App. 2004).

Moreover, the elements of fraud are as follows:

(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). As alleged by Appellant in his Complaint, he knew he was not "Corey Pena" at the time Respondent came to his residence on October 2, 2015. (ROA 7). In fact, Appellant specifically denied that he was "Corey Pena" when asked by Respondent. Appellant clearly was aware of the alleged falsity of Respondent's statement and cannot now claim he was ignorant as required to meet the elements of fraud. (ROA 7).

Appellant was arrested on October 2, 2015. (ROA 40). It cannot be disputed that Appellant was aware that he was not "Corey Pena" on the date he was arrested. Appellant should have known that a cause of action may exist on the date of his arrest. Appellant did not file his lawsuit until October 20, 2020. (ROA 10). Therefore, even assuming the three-year statute of limitations applies, Appellant's claims are still barred by the statute of limitations.

The trial court therefore correctly ruled that Appellant's claims are barred by the applicable statute of limitations. As such, the trial court's Order granting Respondent's motion to dismiss should be affirmed.

II. THE TRIAL COURT PROPERLY DETERMINED THAT RESPONDENT WAS NOT A PROPER PARTY PURSUANT TO S.C. CODE ANN. § 15-78-10.

The South Carolina Tort Claims Act defines "employee" as "any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty." S.C. Code Ann. § 15-78-30(c). "Scope of official duty or scope of state employment means (1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C. Code Ann. § 15-78-30(i).

Pursuant to Section 15-78-70(a), individuals who qualify as employees are not subject to suit as personal defendants for the alleged tort claims committed within the course and scope of their employment. Specifically, §15-78-70(a) provides in that "[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b)." S.C. Code Ann. § 15-78-70(a). Subsection (b) declares: "Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the

employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(b).

Importantly, the Tort Claims Act is intended to cover those actions committed by an employee within the scope of the employee's official duty. "The provisions of [the Tort Claims Act] 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); *see also Wade v. Berkeley County*, 330 S.C. 311, 498 S.E.2d 684 (Ct.App.1998) (noting that § 15-78-20(f) limits coverage to employees acting within the scope of official duty).

Here, it is undisputed that the Sheriff of Newberry County³ is a "governmental entity" within the meaning of the Act. The record further reflects that Respondent was an "employee" of the Sheriff of Newberry County pursuant to the definition of employee contained in S.C. Code Ann. § 15-78-30(c) when conducting police activities while as a law enforcement officer employed by the Sheriff of Newberry County. (ROA 2). The Complaint does not specifically allege nor is there any evidence that Respondent was acting outside the course and scope of his

³ There is no entity known as the Newberry County Sheriff's Department under the laws of South Carolina, and therefore, the only proper party for any state law claims is the Sheriff of Newberry County.

employment with the Sheriff of Newberry County. (ROA 2-10). Therefore, the trial court was correct in finding that Respondent was entitled to be dismissed as he is not a proper party to the lawsuit.

III. APPELLANT’S ISSUES IDENTIFIED IN HIS INTIAL BRIEF ARE NOT PROPERLY BEFORE THIS COURT. SPECIFICALLY, ISSUES I, II, III, AND IV.

In his initial brief, Appellant raises five issues on appeal:

- I. “Did the Respondent submit an application for a search warrant in Newberry County before conducting a search of seizure?”
- II. “Did the Respondent have probable cause to search for a black male at 2809 S.C. Hwy 66, Whitmire, S.C. 29178?”
- III. “Could the personal description of Corey Pena be mistaken for a black male?”
- IV. “Has the Petitioner been discriminated against by the lower tribunal court?”
- V. “Are the Plaintiff’s claims barred by the South Carolina Tort Claims Act (SCTCA)?”

Because Appellant failed to raise Issues I through IV in his response to Respondent’s motion to dismiss, these alleged issues are unpreserved for appellate review. *See Portman v. Garbade*, 337 S.C. 186, 189-90, 522 S.E.2d 830, 832 (Ct. App. 1999) (holding an issue not raised to the circuit court in a Rule 12(b)(6), SCRCR, motion, was not preserved for appellate review). “Matters not argued to or ruled on by trial court are not preserved for appellate review. *Food Mart v. South Carolina Dep’t of*

Health and Env'tl. Control, 322 S.C. 232, 471 S.E.2d 688 (1996). Thus, Appellant has failed to preserve these issues for appellate review.

As such, Respondent requests that the Court find Issues I through IV in Appellant's brief be treated as waived.

CONCLUSION

For the foregoing reasons, Respondent Michael Stribble respectfully requests this Court affirm the Trial Court's Order granting the motion to dismiss and dismissing this action.

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