RECEIVED
Oct 30 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Michel S. Holt, Circuit Court Judge

Appellate Case No. 2024-000183
Case No. 2021-CP-17-0284

Elizabeth Denice McLeod... Appellant

v.

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

Of which Dillon County is the .... Respondent.

FINAL BRIEF OF RESPONDENT

DAVID L. MORRISON
MORRISON LAW FIRM, LLC
7453 Irmo Drive, Suite B
Columbia, South Carolina 29204
T: (803) 661-6285
E-mail: david@dmorrison-law.com
Counsel for Respondent

TABLE OF CONTENTS

Table of Authorities iii

Statement of the Case........ 1

Statement of the Facts........ 2

Standard of Review........ 4

Argument 5

I. The lower court did not abuse its discretion when it granted the Defendant's motion to dismiss because even if the Plaintiff's allegations were true, the mistake made on her sentencing sheet was a judicial and/or prosecutorial function for which governmental entities are immune pursuant to the South Carolina Tort Claims Act § 15-78-60 (1),(2) and gross negligence cannot be imputed to either of those immunities in this case........ 5

II. The lower court properly ruled that the Plaintiff's lawsuit must be dismissed because it was brought over a decade after the applicable statute of limitation had run pursuant to S.C. Code Ann. § 15-78-110........ 7

A. The only applicable statute of limitations for the Plaintiff's case is the two-year statute of limitations enumerated S.C. Code Ann. § 15-78-110 that started running on the day the loss should have been discovered 7

B. The Plaintiff's argument that the date of actual discovery should apply to toll the statute of limitations in her case is misplaced because there is no evidence of fraud or concealment of the loss on the part of the Defendant such that tolling the statute beyond two years from the day that the loss should have been discovered is inappropriate in this case 9

C. The principles of statutory interpretation in this case show the Legislative intent is for the statute of limitations to run from the date of the loss should have been discovered rather than the date of the loss' actual discovery 11

III. The lower court properly determined that even if the South Carolina Tort Claims Act did not grant immunity for judicial and / or prosecutorial functions, and even if the Plaintiff had brought her

lawsuit within the applicable statute of limitations pursuant to S.C. Code Ann. § 15-78-110, the Defendant was not the cause of the Plaintiff's damages such that the Plaintiff is not entitled to recovery against this Defendant. 12

IV. While the Defendant believes it would be improper to impute gross negligence to the applicable S.C. Code Ann. § 15-78-60 immunities in this case, even if gross negligence could be imputed to the applicable immunities in this case, and even if the Plaintiff can show the Defendant was the cause of her damages, the Defendant exhibited at least "slight care" when the Plaintiff and her criminal defense attorney were allowed to review and sign the sentencing sheets for her criminal conviction 16

Conclusion 18

TABLE OF AUTHORITIES

Cases

Ashley River Props. I, LLC v. Ashley River Props. II, LLC,
374 S.C. 271, 648 S.E.2d 295 (Ct. App. 2007)..4

Capital City Ins. Co. v. BP Staff, Inc.,
382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009)..4

Chakrabarti v. City of Orangeburg,
403 S.C. 308, 743 S.E.2d 109 (Ct. App. 2013)..13

Crider v. Infinger Transp. Co.,
248 S.C. 10, 148 S.E.2d 732 (1966) 13

Doe v. Marion,
373 S.C. 390, 645 S.E.2d 245 (2007) 4

Fountain v. First Reliance Bank,
398 S.C. 424, 730 S.E.2d 305 (2012) 15

Hamilton v. Regional Medical Center,
440 S.C. 605, 891 S.E.2d 682 (Ct. App.2023)..16

Hodges v. Rainey,
351 S.C. 65, 533 S.E.2d 578 (2000) 12

Holtzscheiter v. Thomson Newspapers, Inc.,
332 S.C. 502, 506 S.E.2d 497 (1998) 15

Howard v. Riddle,
266 S.C. 149, 221 S.E.2d 865 (1976) 13

Hughes on behalf of Estate of Hughes v. Bank of America National Association,
442 S.C. 113, 898 S.E.2d. 102 (2024) 9,10,11

In re Richland County Magistrate's Court,
389 S.C. 408, 699 S.E.2d 161 (2010) 6,13,14

Mellen v. Lane,
377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008)..13

Parks v. Characters Night Club,
345 S.C. 484, 548 S.E.2d 605 (Ct. App. 2001).. 13

Plyler v. Burns,
373 S.C. 637, 647 S.E.2d 188 (2007) 4,7,16

Proctor v. Dept. of Health and Environmental Control,
368 S.C. 279, 628 S.E.2d 496 (Ct. App. 2006)....................16

Sears, Roebuck and Co. v. Ulman,
287 Md. 397, 412 A.2d 1240 (Ct. App. Md. 1980) 9

State v. Thrift,
312 S.C. 282, 440 S.E.2d 341 (1994) 6

State v. Mattoon,
287 S.C. 493, 339 S.E.2d 867 (1986) 13

Tant v. South Carolina Dept. of Corrections,
395 S.C. 446, 718 S.E.2d 753 (Ct. App. 2011)....................5,13

Tant v. South Carolina Dept. of Corrections,
408 S.C. 334, 759 S.E.2d 398 (2014) 5,6

Statutes and Rules

S.C. Code Ann. § 1-7-325....................14

S.C. Code Ann. § 1-7-406....................14

S.C. Code Ann. § 1-7-405....................15

S.C. Code Ann §§ 15-78-10, *et seq*. 7

S.C. Code Ann. § 15-78-60....................16

S.C. Code Ann. § 15-78-60 (1) 3,5,6,7,17

S.C. Code Ann. § 15-78-60 (2) 3,5,6,7,16

S.C. Code Ann. § 15-78-110....................3,7,8,9,12

Rule 12(b)(6), SCRCP 4

STATEMENT OF THE CASE

Elizabeth Denice McLeod (hereinafter "Appellant") was indicted for possession with intent to distribute cocaine (05-GS-17-0763). R. 58, 60 – 61. Appellant entered a valid and undisputed guilty plea on July 25, 2005, to reduce her felony charge of possession with intent to distribute to possession of cocaine to possession of cocaine, first offense, and to dismiss her charge for distribution within proximity of a school. R. 41, l. 21 – 44, l. 15.

The Plaintiff's sentencing sheet, which she and her criminal defense attorney reviewed and signed, still showed the CDR code for Possession with Intent to Distribute Cocaine rather than the lesser offense, she had reduced pursuant to her guilty plea, of simple possession of cocaine, first offense. R. 62. That error remained from 2005 until 2019.

During October of 2019, the solicitor at the time Dainiel Shipp corrected the scrivener's error on the sentencing sheet. R. 57. After that correction, the Plaintiff brought the underlying lawsuit.

On September 27, 2023, a motion to dismiss, or in the alternative a motion for summary judgment, was held before the Honorable Michael S. Holt. R. 39. Joshuan Golson represented the Defendant. R. 39. David Rigney represented the Plaintiff. R. 39.

In an order filed on January 9, 2024, the lower court granted the Defendant's motion to dismiss on several grounds. R. 1 – 5. This appeal follows.

STATEMENT OF THE FACTS

On July 1, 2005, the Plaintiff was arrested and within her possession were three small baggies of a white powdery substance that tested positive for cocaine. R. 58. She was arrested and charged with possession of cocaine with intent to distribute. R. 60.

On July 25, 2005, the Plaintiff pled guilty to the reduced charge of possession of cocaine, first offense. R. 41, l. 21 – 42, l. 17. However, the sentencing sheet still listed the CDR for possession with intent to distribute cocaine. Id. The Plaintiff and her criminal defense attorney reviewed the sentencing sheet, they signed off on its accuracy, but both the Plaintiff *and her attorney* did not correct the discrepancy. Id.

The Plaintiff alleges that in 2019 she was denied some benefits from the IRS because the discrepancy on her sentencing sheet showed she was convicted for the felony of possession with intent to distribute cocaine rather than the misdemeanor of simple possession of cocaine. R. 4, l. 42 – 43, l. 2; R. 46, l. 5 – 16.

After being denied the alleged benefits, the Plaintiff claims she finally discovered the discrepancy on her sentencing sheet. R. 46, ll. 5 – 24; R. 52, ll. 6 – 14; R. 10. She notified assistant solicitor Daniel Shipp, and he corrected the mistake. R. 46, ll. 5 – 24; R. 57. The Plaintiff then brought the present lawsuit.

On May 9, 2023, the Defendant filed a Motion to Dismiss, the Plaintiff's lawsuit. R. 29 - 32. On September 27, 2023, a motion to dismiss, or in the alternative a motion for summary judgment, was held before the Honorable Michael S. Holt. R. 39. Joshuan Golson represented the Defendant. R. 39. David Rigney represented the Plaintiff. R. 39.

The Plaintiff claimed in her Complaint and during the Motion to Dismiss hearing that the discrepancy on her sentencing sheet caused her to lose out on benefits from IRS programs and

caused her to miss out on employment opportunities. R. 7 – 26; R. 52, ll. 1 – 5.

The lower court issued an order of dismissal on January 9, 2024, that properly ruled for the Defendant on several issues. First, the lower court ruled that the Defendant was immune from suit under S.C. Code Ann. § 15-78-60 (1), (2). R. 2 – 4. Additionally, the lower court determined that the statute of limitations provided by the South Carolina Tort Claims Act § 15-78-110, of *two years from the date of the loss occurred or should have been discovered* warranted dismissal of the Plaintiff's lawsuit. R. 2 – 4. Lastly, and unaddressed by the Plaintiff's initial brief of appellant, the lower court also determined that this Defendant was not the cause of the Plaintiff's alleged damages because no employee of Dillon County "had the capacity to issue a sentence and the corresponding sentencing sheet in conjunction with the Plaintiff's guilty plea to possession of cocaine. *Such matters are within the exclusive province of the presiding Judge for the Court of General Sessions*." R. 3 – 4 (emphasis added).

STANDARD OF REVIEW

An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP. Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (citing Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Id. The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved on his behalf, the complaint states any valid claim for relief. Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). Dismissal under Rule 12(b)(6) is improper if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory. Doe, 373 S.C. at 395, 645 S.E.2d at 247. Moreover, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Id. at 395, 645 S.E.2d at 248. The trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law. Ashley River Props. I, LLC v. Ashley River Props. II, LLC, 374 S.C. 271, 278, 648 S.E.2d 295, 298 (Ct. App. 2007).

ARGUMENT

I. The lower court did not abuse its discretion when it granted the Defendant's motion to dismiss because even if the Plaintiff's allegations were true, the mistake made on her sentencing sheet was a judicial and/or prosecutorial function for which governmental entities are immune pursuant to the South Carolina Tort Claims Act § 15-78-60 (1),(2) and gross negligence cannot be imputed to either of those immunities in this case.

This case is simple. The lower court recognized its simplicity and made the proper rulings in the Order of Dismissal. R. 1 – 4. As will be explained below, the lower court's order granting dismissal must be affirmed.

In 2019 the Plaintiff filed this Complaint alleging damages resulting from an error on her Plaintiff's sentencing sheet following her guilty plea in 2005. As will be discussed in the South Carolina jurisprudence below, such an act is primarily a judicial function, and secondarily a prosecutorial function. The Defendant properly argued as much at the Motion to Dismiss hearing and reached the logical conclusion that the Plaintiff's lawsuit must be dismissed because the government is immune from suit for judicial and prosecutorial negligent actions pursuant to S.C. Code Ann. § 15-78-60 (1), (2). R. 41, l. 21 – 44, l. 13. The lower court then properly filed an order granting dismissal in accord with that reasoning. R. 3 – 4.

It is axiomatic in South Carolina that it is the trial courts that impose sentences by filling out the sentencing sheets. See Tant v. South Carolina Dept. of Corrections, 395 S.C. 446, 449, 718 S.E.2d 753, 755 (Ct. App. 2011) (holding that "SCDC must determine *the sentence imposed by the trial court from the sentencing sheet.* If there is some ambiguity in the sentencing sheets, SCDC may examine the transcript of record to *determine the intent of the sentencing judge*.") (emphasis added). The Court of Appeals[1] further explained in Tant that "sentencing sheets are

[1] Notably, our Supreme Court reviewed the Court of Appeals decision in Tant, affirmed the Court of Appeals' decision as modified, and did not disturb any of the quoted reasoning cited in this brief. See Tant v. South Carolina Dept. of Corrections, 408 S.C. 334, 759 S.E.2d 398 (2014).

provided by the judiciary." Tant, at 342, n. 2, 759 S.E.2d at 401 n. 2.

It follows then that the production of a sentencing sheet is a judicial function within the province of the South Carolina Courts of General Sessions. As such, the Plaintiff's lawsuit must be dismissed because the government is absolutely immune from suit for any claims regarding sentencing sheets pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(1).

While the Defendant believes the above analysis ends the inquiry and requires this Court to affirm the lower court's dismissal, because the lower court also determined that S.C. Code Ann. § 15-78-60 (2) applied as well, an examination into the applicability of Tort Claims Act prosecutorial immunity would be fruitful as well. Similarly to judicial immunity, in this case prosecutorial immunity applies and necessitates affirming the dismissal of the Plaintiff's case.

As to the applicability of prosecutorial immunity under S.C. Code Ann. § 15-78-60(2), in South Carolina the levying criminal charges against criminal defendants is the province of the office of the Solicitor under the South Carolina Attorney General. See In re Richland County Magistrate's Court, 389 S.C. 408, 412, 699 S.E.2d 161, 163 (2010) ("The South Carolina Attorney General, under the state constitution, has substantial authority over the prosecution of criminal cases."). The South Carolina Constitution and case law give solicitors the unfettered discretion to prosecute crimes. See In re Richland County Magistrate's Court, at 411 – 12, 699 S.E.2d at 163; see also S.C. Const. art. V, § 24. Solicitors have the discretion to decide when and where to present an indictment, pursue a case to trial, plea bargain it down to a lesser offense, or decide not to prosecute the offense in its entirety. See State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 346 – 47 (1994). Accordingly, in this case, the handling of the Plaintiff's prosecution and plea negotiations was the responsibility of the assistant solicitor and if the solicitor

negligently informed the sentencing court of the wrong CDR code, that would still be an immune governmental function pursuant to S.C. Code Ann. § 15-78-60(2).

Despite the applicability of both of the above explained immunities, the Plaintiff argues that gross negligence should be imputed into those immunities. R. 44, l. 22 – 45, l. 10. Specifically, the Plaintiff argues in their appeal that the Defendant should not be entitled to immunity pursuant to the South Carolina Tort Claims Act because gross negligence should be imputed to S.C. Code Ann. § 15-78-60(1), (2). That argument is a misunderstanding of prior South Carolina jurisprudence, and as such, imputing gross negligence into governmental immunities is not applicable in this case. In Plyler v. Burns, 373 S.C. 637, 651, 647 S.E.2d 188, 196 (2007), the South Carolina Supreme Court held that "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." (emphasis added).

In this case, the only two applicable immunities do not have a gross negligence standard in them. See S.C. Code Ann. § 15-78-60(1), (2). Accordingly, gross negligence cannot be imputed in this case, and the lower court's granting of dismissal pursuant to S.C. Code Ann. § 15-78-60 (1), (2) must be affirmed.

II. The lower court properly ruled that the Plaintiff's lawsuit must be dismissed because it was brought over a decade after the applicable statute of limitation had run pursuant to S.C. Code Ann. § 15-78-110.

A. The only applicable statute of limitations for the Plaintiff's case is the two-year statute of limitations enumerated S.C. Code Ann. § 15-78-110 that started running on the day the loss should have been discovered.

The Plaintiff brings this case against the Defendant pursuant to the South Carolina Tort Claims Act. See Plaintiff's Complaint, generally; see also S.C. Code Ann. §§ 15-78-10 et. seq.

The South Carolina Tort Claims Act has a specific statute of limitations applicable to all lawsuits brought against governmental entities in South Carolina. See S.C. Code Ann. § 15-78-110. The applicable statute of limitations states that "any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date of the loss was *or should have been discovered*." Id. (emphasis added). A loss "should have been discovered" when "such facts as would have led to knowledge thereof, if pursued with reasonable diligence." Burgess v. American Cancer Co., South Carolina Div., Inc., 300 S.C. 182, 185, 386 S.E.2d 798, 799 (Ct. App. 1989). Furthermore, "a party cannot escape the application of this rule by claim ignorance of existing facts and circumstances, because the law provides that if such facts and circumstances *could have been known* to the party through the exercise of ordinary care and reasonable diligence, the same result follows." Id. (emphasis in original).

In this case, loss should have been discovered on the day of the Plaintiff's guilty plea because that is when the scrivener's error on the sentencing sheet appeared and that is when the Plaintiff and her criminal defense attorney, acting as her agent, reviewed and signed it. R. 62. Accordingly, the statute of limitations began on July 25, 2007. The Plaintiff's defense to the claim she should have discovered the scrivener's error on her sentencing sheet when she and her criminal defense attorney reviewed it was that she[2] was ignorant to the significance of CDR codes. R. 52, ll. 1 – 14. However, in Burgess this Court has already held that "ignorance of [the] existing facts and circumstances" is not a defense. See Burgess, supra.

As a result, the lawsuit brought by the Plaintiff on July 18, 2021, is woefully, and impermissibly, late and the lower court's dismissal must be affirmed. Accordingly, the statute of limitations in this case must be the two-year statute of limitations enumerated in S.C. Code Ann.

[2] The Defendant would also point out that her criminal defense attorney, acting as the Plaintiff's agent, reviewed and signed the sentencing sheet and failed to discover the scrivener's error and certainly would have been aware of the significance of the CDR code.

§ 15-78-110 that started running when the loss should have been discovered on the day of her guilty plea and the lower court's dismissal of the Plaintiff's lawsuit for failing to meet the statute of limitations must be affirmed.

B. The Plaintiff's argument that the date of actual discovery should apply to toll the statute of limitations in her case is misplaced because there is no evidence of fraud or concealment of the loss on the part of the Defendant such that tolling the statute beyond two years from the day that the loss should have been discovered is inappropriate in this case.

In the Initial Brief of Appellant, the Plaintiff cited Sears, Roebuck and Co. v. Ulman, 287 Md. 397, 412 A.2d 1240 (Ct. App. Md. 1980) for the argument that the actual date of discovery for tolling the statute of limitations was applicable in this case. See Initial Brief of Appellant, p. 9. However, the Plaintiff notably failed to discuss why the Court in Sears, Roebuck and Co., chose to toll the statute of limitations because an explanation of that reasoning illustrates that Sears, Roebuck and Co. is clearly distinguishable from this case.

In Sears, Roebuck and Co., the Maryland Court of Appeals explained that the normal statute of limitations that begins to run on the date of conversion would be unfair in cases where "a defendant's fraud" prevents the plaintiff from discovering the loss until a later date. See Sears, Roebuck and Co., at 401 – 03, 412 A.2d at 1242 – 44. The Maryland Court of Appeals went on to explain that until the plaintiff in Sears, Roebuck and Co. applied for credit and was turned down he did not know, and "would not reasonably be expected to know, that Sears had filed a false credit report with the credit agency." Id., at 403, 412 A.2d at 1244 (emphasis added).

Rather than rely on an outside jurisdiction, the Defendant would point this Court to South Carolina jurisprudence on the requirements for tolling the applicable statute of limitations to the date of actual discovery. In Hughes on behalf of Estate of Hughes v. Bank of America National Association, 442 S.C. 113, 898 S.E.2d 102 (2024), Bank of America was sued for fraud,

fraudulent concealment, and breach of contract for a fraudulent act. Hughes, at 119, 898 S.E.2d at 105. The statute of limitations for those claims was three years as set forth in S.C. Code Ann. 15-3-530(7). Hughes, at 132 – 33, 898 S.E.2d at 112. The applicable statute of limitations in that case was akin to the one in this case as it began to run "until the discovery of the fraud itself or [the discovery] of 'such facts as would have led the knowledge thereof, if pursued with reasonable diligence.'" Id. Put differently, our Supreme Court explained, "the statute [of limitations] runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." Id., at 133, 898 S.E.2d at 112 (quoting Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996) (citing Johnston v. Bowen, 313 S.C. 61, 437 S.E.2d 45 (1993)).

In Hughes, the Plaintiff's claims stemmed from his mother's line of credit closing in 2006. Hughes, at 133, 898 S.E.2d at 112 – 113. Shortly after the line of credit was closed, Mrs. Hughes suffered from dementia, impaired vision, decisional incapacity, and other health problems, but Bank of America did not inform the plaintiff of the now-disputed charges until March of 2015. Id. However, the charges appeared on every statement the Plaintiff received regarding his mother's account with Bank of America from 2006 to March of 2015. Id. Nonetheless, the plaintiff argued such facts required the statute of limitations to be tolled until Bank of America disclosed the existence of the charges in 2015. Id., at 133, 898 S.E.2d at 112.

In applying those facts to the above statute of limitations in Hughes, our Supreme Court disagreed with the plaintiff. Id., at 133, 898 S.E.2d at 113. The Court held that because the charges were on the statements sent to the Plaintiff, "*even in the light most favorable to the [Plaintiff], Mr. and Mrs. Hughes knew, or by the exercise of reasonable diligence, should have known, they were being charged $28.40 for something.*" Id., at 133 – 34, 898 S.E.2d at 113.

(emphasis added). Accordingly, it was incumbent upon the plaintiff in Hughes to conduct a reasonably diligent inquiry into the nature of the charges on the statements, and they did not do so, such that the limitations ran from the first statement with the charge on it and the limitations period expired before the plaintiff commenced the lawsuit. Id.

In this case, there is no evidence of any fraud or concealment on behalf of the Defendant preventing the Plaintiff from discovering the error on her sentencing sheet the day she pled signed it. Similarly to the plaintiff in Hughes, the Plaintiff here and her criminal defense attorney, who was acting as her agent at the time of the guilty plea, "through the exercise of reasonable care and diligence should have discovered" the error on the day of the guilty plea when they reviewed and signed the defective sentencing sheet. R. 62; R. 42, ll. 4 – 17.

Much like the charge sitting on the monthly statements in Hughes, the scrivener's error on the Plaintiff's sentencing sheet was sitting on the sentencing sheet to be seen. R. 62; Hughes, at 133 – 34, 898 S.E.2d at 113. The Plaintiff in this case has made no allegation, and has provided no evidence, that the scrivener's error on her sentencing she was concealed by the Defendant, or anyone else. Accordingly, the Plaintiff's loss clearly should have been discovered when *the Plaintiff and her criminal defense attorney* had the opportunity to discover the error on the face of her sentencing sheet on the day of her guilty plea *when they both reviewed and signed the sentencing sheet.* R. 42, ll. 4 – 17.

C. The principles of statutory interpretation in this case show the Legislative intent is for the statute of limitations to run from the date of the loss should have been discovered rather than the date of the loss' actual discovery.

The statutory interpretation rule of *expressio unius est exclusio alterius* dictates that "the expression of one thing implies the exclusion of the other." See Hodges v. Rainey, 341 S.C. 79, 86 – 87, 533 S.E. 578, 582 (2000). In the present case, our Legislature clearly stated its

expressed intention that for cases brought pursuant to the South Carolina Tort Claims Act the specifically enumerated two-year statute of limitations "*from the date the loss was discovered or should have been discovered*" must apply. <u>See</u> S.C. Code Ann. § 15-78-110. (emphasis added) The Legislature had the opportunity to enact a statute of limitations that began to run from the "date of actual discovery," as the Plaintiff argues for in this case. However, tellingly, the Legislature chose to create a blanket two-year statute of limitations from the date the loss should have been discovered. <u>See</u> S.C. Code Ann. § 15-78-110. Accordingly, this Court should apply the intent of the Legislature and affirm the lower court's dismissal of the Plaintiff's lawsuit because it was filed well outside of the sole applicable, enumerated, and intended statute of limitations codified in S.C. Code Ann. § 15-78-110.

III. The lower court properly determined that even if the South Carolina Tort Claims Act did not grant immunity for judicial and / or prosecutorial functions, and even if the Plaintiff had brought her lawsuit within the applicable statute of limitations pursuant to S.C. Code Ann. § 15-78-110, the Defendant was not the cause of the Plaintiff's damages such that the Plaintiff is not entitled to recovery against this Defendant.

In this case, the Plaintiff cannot prove the Defendant was responsible for the alleged negligent act /omission. The lower court properly ruled in the Order of Dismissal that this Defendant did not have the "capacity to issue a sentence and the corresponding sentencing sheet [because]… *Such matters are within the exclusive province of the presiding Judge for the Court of General Sessions*." R. 3. (emphasis added) The Defendant, County of Dillon, does not employ Judges for the Court of General sessions such that or assistant solicitors, so even if this Court were to assume the Plaintiff's claims were true, this Defendant did not cause the Plaintiff's alleged damages.

The Plaintiff's claims are for negligence, defamation, and defamation- libel *per se*. <u>See</u> Plaintiff's Complaint, generally. The elements for negligence are: (1) a duty of care owed by the

defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach. See Chakrabarti v. City of Orangeburg, 403 S.C. 308, 314, 743 S.E.2d 109, 112 (Ct. App. 2013). "It is apodictic that a plaintiff may only recover for injuries proximately caused by the defendant's [conduct]." Mellen v. Lane, 377 S.C. 261, 278, 659 S.E.2d 236, 345 (Ct. App. 2008) (quoting Parks v. Characters Night Club, 345 S.C. 484, 491, 548 S.E.2d 605, 609 (Ct. App. 2001); (citing Howard v. Riddle, 266 S.C. 149, 151, 221 S.E.2d 865, 865–866 (1976); (also citing Crider v. Infinger Transp. Co., 248 S.C. 10, 16, 148 S.E.2d 732, 734–735 (1966)).

In this case, the negligent act the Plaintiff alleges is that her sentencing sheet had the possession of cocaine with intent to distribute CDR code written on it rather than the lesser offense of possession of cocaine CDR code. See Plaintiff's Complaint, generally. That act was either committed by the lower court judge or the assistant solicitor, not any employee subject to the direction of the Defendant County of Dillon. As such, the Plaintiff cannot prove two of the elements of negligence, namely 1) that the Defendant committed a negligent act and 2) it was the Defendant's negligent act that caused the Plaintiff's damages.

The Defendant did not fill out the Plaintiff's sentencing sheet, which is the lower court's judicial function or in the alternative the assistant solicitor's prosecutorial function. See Tant v. South Carolina Dept. of Corrections, 395 S.C. 446, 449, 718 S.E.2d 753, 755 (Ct. App. 2011) (holding that "SCDC must determine *the sentence imposed by the trial court from the sentencing sheet.* If there is some ambiguity in the sentencing sheets, SCDC may examine the transcript of record to *determine the intent of the sentencing judge*.") (emphasis added); see also In re Richland County Magistrate's Court, at 411 – 12, 699 S.E.2d at 163 (The South Carolina Constitution and case law gives solicitors the unfettered discretion to prosecute). That reasoning

underpins the lower court's Order of Dismissal ruling that the Defendant did not have the capacity to alter the sentencing sheet after it was entered. R. 3.

Given the actions of the Plaintiff in attempting to correct the scrivener's error on her sentencing sheet, the Plaintiff seemingly agreed with the above propositions. R. 46, ll. 10 – 24; R. 57. The Plaintiff *reached out to the assistant solicitor to fix the sentencing sheet*; she did not reach out to a Defendant County of Dillon employee. R. 57. Furthermore, the assistant solicitor was able to make the correction to the sentencing sheet that she requested. R. 46, ll. 10 – 24; R. 57. Notably, the assistant solicitor did not request permission from the Defendant and the Defendant did not order the assistant solicitor to make the correction, the assistant solicitor acted entirely independently from the Defendant.

The independence of assistant solicitors from the Defendant is indicated throughout the South Carolina Code and case law. Solicitors in South Carolina are full-time employees of the state, assistant solicitors are appointed by the solicitor of their respective circuit. See S.C. Code Ann. § 1-7-325. The appointment of at least one assistant solicitor is mandated by statute pursuant to S.C. Code Ann. § 1-7-406 and that same statute explains that assistant solicitors "serve at [the solicitor's] pleasure and shall have such responsibilities as the solicitor directs" further underpinning the assistant solicitor's role as a state employee. See S.C. Code Ann. § 1-7-406.

Assuredly, the Defendant County of Dillon did not have the authority to order the assistant solicitor in this case to fill out the Plaintiff's sentencing sheet and Defendant similarly did not have the authority to order the assistant solicitor to correct the sentencing sheet in 2019. In State v. Mattoon, 287 S.C. 493, 494, 339 S.E.2d 867, 869 (1986) our Supreme Court explained that S.C. Code Ann. § 1-7-405 "grants solicitors authority to appoint assistant

solicitors and *to vest them with 'such responsibility as he directs.'"* (emphasis added).

It is in recognition of the above statutory framework and jurisprudence that the lower court's order of dismissal can be viewed as a proper determination that the Defendant did not have the capacity to produce and/or alter the Plaintiff's erroneously filled out sentencing sheet. Accordingly, if it was the assistant solicitor responsibility for the scrivener's error, the Defendant did not commit the negligent act the Plaintiff complains of, and as a result, the Defendant cannot have been the cause of the Plaintiff's damages. As such, the lower court's dismissal of her claim of negligence for this reason was proper and must be affirmed by this Court.

The same analysis applies to both of the Plaintiff's claims for defamation and libel *per se* because even if the Plaintiff's claims were true, this Defendant did not cause her damages. The elements of defamation are: (1) a false or defamatory statement is made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. See Fountain v. First Reliance Bank, 398 S.C. 424, 441, 730 S.E.2d 305, 309 (2012). The elements of libel per se are: 1) a defamatory statement is written or printed; 2) the words degrade a person, reduce their character or reputation in the estimation of their friends, acquaintances, or the public, disgrace them or render them odious contemptible, or ridiculous; 3) the nature of the statement allows a legal presumption that the plaintiff's reputation was hurt as a consequence of its publication and; 4) the defamatory action is actionable without the need for pleading or proving special damages. See Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 511, 506 S.E.2d 497, 502 (1998). In this case because the Defendant did not fill out the Plaintiff's sentencing sheet, there is no defamatory action or statement that the Defendant has made. As a result, the Plaintiff cannot show that the Defendant was the cause of her alleged

defamation or defamation *per se*. Accordingly, the lower court properly filed an order of dismissal regarding all the Plaintiff's claims against the Defendant and this Court should affirm that order.

IV. While the Defendant believes it would be improper to impute gross negligence to the applicable S.C. Code Ann. § 15-78-60 immunities in this case, even if gross negligence could be imputed to the applicable immunities in this case, and even if the Plaintiff can show the Defendant was the cause of her damages, the Defendant exhibited at least "slight care" when the Plaintiff and her criminal defense attorney were allowed to review and sign the sentencing sheets for her criminal conviction.

The Defendant disputes the Plaintiff's argument immunities S.C. Code Ann. § 15-78-60 that have a gross negligence standard are applicable in this case. Furthermore, as explained above, the Defendant disputes that it was the cause of the Plaintiff's alleged damages. However, assuming *arguendo* that both gross negligence can be imputed and the Defendant was the cause of the Plaintiff's damages, this Court must still affirm the lower court's dismissal of the Plaintiff's lawsuit.

Gross negligence is a standard of care in South Carolina that is defined as "the failure to exercise a slight degree of care." See Hamilton v. Regional Medical Center, 440 S.C. 605, 627, 891 S.E.2d 682, 694 (Cr. App. 2023); see also Proctor v. Dept. of Health and Environmental Control, 368 S.C. 279, 294, 628 S.E.2d 496, 504 (Ct. App. 2006) (holding that gross negligence is the failure to exercise "even the slightest care."). This is an exceptionally low threshold of care, suggesting that any care or precaution taken could preclude actions from being classified as grossly negligent. While gross negligence should not be imputed to the Tort Claims Act immunities in this case, even if it was imputed pursuant to Plyler, there was at least slight care exercised.

In this case, it is undisputed that after the sentencing sheets were filled out, the Plaintiff

and her criminal defense attorney reviewed and signed the sentencing sheet without making any corrections. R. 50, l. 24 – 51, l. 24; R. 62. The Plaintiff and her criminal defense attorney being given the sentencing sheet to review for accuracy and sign, as required by South Carolina Criminal Procedure, shows that there was at least *slight care* exhibited by whomever made the scrivener's error such that they could not have been grossly negligent. Accordingly, even if the Plaintiff can impute gross negligence into S.C. Code Ann. § 15-78-60 (1), (2), and even if the Plaintiff can somehow show the Defendant was responsible for the scrivener's error on her sentencing sheet, summary judgment must be granted in favor of this Defendant for the Plaintiff's gross negligence claim pursuant to S.C. Code Ann. § 15-78-60 (1), (2) judicial and prosecutorial immunity because slight care was clearly exhibited when the Plaintiff and her criminal defense attorney were allowed to review and sign the sentencing sheet during the guilty plea hearing.

CONCLUSION

Based on the foregoing reasons, the Respondent respectfully requests this Court to affirm the lower court's order dismissing the Plaintiff's lawsuit in this case.

By: *s/ David L. Morrison*
David Morrison (SC Bar No. 4101)
Morrison Law Firm, LLC
7453 Irmo Drive, Suite B
Columbia, South Carolina 29204
T: (803) 661-6285
E-mail: david@dmorrison-law.com
Counsel for Respondent

October 30, 2024

RECEIVED
Oct 30 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Michael Holt, Circuit Court Judge

Appellate Case No. 2024-00183
Case No. 2021-CP-00284

Elizabeth Denice McLeod, Appellant

v.

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

Of which Dillon County is the Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondent, Dillon County, certifies that the Final Brief of Respondent Dillon County complies with Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

MORRISON LAW FIRM, LLC

By: *s/ David L. Morrison*___________

David L. Morrison (Bar #4101)
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212
Phone: (803) 661-6285
E-mail: david@dmorrison-law.com

Attorney for Respondent Dillon County

Columbia, South Carolina

October 30, 2024

RECEIVED
Oct 30 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Michael Holt, Circuit Court Judge

Appellate Case No. 2024-00183
Case No. 2021-CP-00284

Elizabeth Denice McLeod, Appellant

v.

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

Of which Dillon County is the Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondent, Dillon County, certifies that the Final Brief of Respondent Dillon County complies with Rule 211(b), SCACR.

MORRISON LAW FIRM, LLC

By: *s/ David L. Morrison*
David L. Morrison (Bar #4101)
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212
Phone: (803) 661-6285
E-mail: david@dmorrison-law.com

Attorney for Respondent Dillon County

Columbia, South Carolina

October 30, 2024

RECEIVED
Oct 30 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Michael Holt, Circuit Court Judge

Appellate Case No. 2024-00183
Case No. 2021-CP-00284

Elizabeth Denice McLeod, Appellant

v.

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

Of which Dillon County is the Respondent.

CERTIFICATE OF SERVICE

The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendant, Dillon County, does hereby certify that service of the Respondent's Final Brief in the above-captioned action was made upon counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 30th day of October, 2024 addressed as follows, and by email:

David E. Rigney, Esquire
1500 Highway 17 North, Suite 212
Surfside Beach, South Carolina 29575
E-mail: dave@rigneylawfirm.us
Attorney for Plaintiff

By: *s/ David L. Morrison*
David L. Morrison (Bar #4101)

Columbia, South Carolina