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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

Appellate Case No. 2024-000183

Common Pleas Case No. 2021CP1700284

Elizabeth Denice McLeod, Appellant,

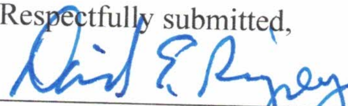
v.

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

Of which Dillon County is the Respondent.

FINALREPLY BRIEF OF APPELLANT

Respectfully submitted,



January 17, 2025

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II. The lower court properly ruled that 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. 3

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. 4

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. 4

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. 5

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. 5

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STATEMENT OF ISSUES ON APPEAL

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.

II. The lower court properly ruled that 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.

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.

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.

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.

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.

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.

Contrary to the assertion of Defendant, the trial court abused its discretion in granting the Defendant's motion to dismiss. While it is true that the subsections of the statute mentioned by Defendant (South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(1), (2)), do not specifically mention applying a gross negligence standard to the statutory provisions cited by Defendant, the statute (S.C. Code Ann § § 15-78-10 et. seq.) which is the basis for this action also does not explicitly prohibit the application of the gross negligence standard to the applicable provision.

In the Answer of Defendant Dillon County, paragraph 20, Defendant asserted immunity from the suit "…pursuant to the South Carolina Tort Claims Act, S.C. Code Ann § 15-78-60(1), (2), (3), (4), (5), (6), (9), (17), (20), (21), (23), and (25)…" S.C. Code Ann § 15-78-60(25) does in fact include gross negligence language.

In reviewing a claim brought under S.C. Code Ann. § 15-78-60(21), which does not contain a gross negligence exception, the Court in Faile v. South Carolina Department of Juvenile Justice, 350 S.C. 315, 333, 566 S.E.2d 536 (2002), stated that "when a governmental entity asserts various exceptions to the waiver of immunity… [the court] must read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard." The court further stated that "…even if [defendant]'s actions fell within the release

exception, a jury could find his actions were grossly negligent." Faile v. South Carolina Department of Juvenile Justice, 350 S.C. 315, 333, 566 S.E.2d 536 (2002),

Thus, it is clear that the gross negligence standard may be applied in this case. Therefore, Plaintiff is entitled to rely on the gross negligence exception to immunity. "In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." Faile v. South Carolina Department of Juvenile Justice, 350 S.C. 315, 332, 566 S.E.2d 536 (2002).

Additionally, in Faile v. South Carolina Department of Juvenile Justice, 350 S.C. 315, 324, 566 S.E.2d 536 (2002), the Court rejected the defendant's claim of judicial immunity under S.C. Code Ann § 15-78-60(1), observing that "...even judges are not insulated by judicial immunity when they act in an administrative capacity." Therefore, since the "...burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense," Plyler v. Burns, 373 S.C. 637, 651, 647 S.E.2d 188 (2007), the question of whether the alleged exception to the waiver of immunity is applicable in this case required that the trial court address this issue.

Plaintiff is therefore entitled to have her claims presented to a jury to determine if the conduct and actions of the officials in question rose to the level of gross negligence.

II. The lower court properly ruled that 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 relevant question in relation to this matter is when the loss should have been discovered. This matter presents a fact question which is appropriate for a trier of fact to determine after

evidence is presented. The Plaintiff herein asserts that because the wrong CDR code was listed on the sentencing sheet and on records available for inspection by the public, through no fault of her own, she was not aware of the error until she received a letter from the Internal Revenue Service (IRS) stating she would not receive a payment she had been expecting, and soon thereafter, received a letter from Dillon County's office of the South Carolina Department of Social Services (DSS) stating that she had a felony conviction on her record which she had failed to report and that was the cause of an overpayment of benefits and the payment from the IRS being withheld. Upon learning this, Plaintiff took prompt action and filed her claim within the limitations period from the date she discovered the error on the sentencing sheet and in the public records incorrectly showing she had a felony conviction. The question here is a question of fact: given the circumstances, when should the mistake have been discovered? As such, this is a question for the jury. "Juries resolve questions of fact." Collins v. Frasier, 378 S.C. 249, 252, 772 S.E.2d 464 (Ct.App. 2008).

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.

This argument by the Defendant relates back to a basic question underlying this entire case: when should the Plaintiff have discovered the mistake in the CDR code which was incorrectly listed on the sentencing sheet and in the public records? We believe this is a question of fact appropriate for the trier of fact, to be decided after presentation of the evidence to support the claim of the Plaintiff. See Collins v. Frasier, 378 S.C. 249, 252, 772 S.E.2d 464 (Ct.App. 2008).

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.

Once again, this argument addresses a basic matter at issue in this case: when should the Plaintiff have discovered the error which caused the harm? Given the nature of the case, Plaintiff did in fact act in a timely manner upon discovering the error in the sentencing sheet and in the public records. Further, Plaintiff asserts that she could not have known of the error earlier because she had no reason to believe the judicial system had made a mistake in the CDR code associated with her case until she was so informed after investigating with the appropriate county authorities once she received the IRS and DSS letters, subsequent to which she learned that the problem was that the records incorrectly showed that she had a felony conviction on her record. We believe the facts of this case present a question of fact as to whether Plaintiff acted within the time required, thus requiring that evidence be presented at trial and a decision made on this issue by a jury. See Collins v. Frasier, 378 S.C. 249, 251, 772 S.E.2d 464 (Ct.App. 2008).

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.

These assertions made by the Defendant ignore the requirement that issues of fact must be determined by a trier of fact after a litigant is given the opportunity to present evidence to support the alleged claim. The appropriate time to make a factual determination regarding this issue would be after a jury hears evidence at trial. "Juries resolve questions of fact." Collins v. Frasier, 378 S.C. 249, 252, 772 S.E.2d 464 (Ct.App. 2008).

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

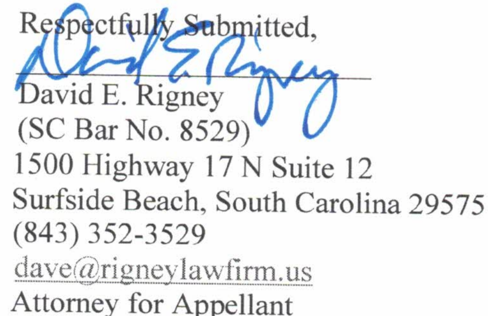
Defendant exhibited at least "slight care" when the Plaintiff and her criminal defense attorney were allowed to review and sign the sentencing sheets for her criminal conviction.

As noted above, this is a case where the gross negligence standard should be applied. The argument presented here deals with issues of fact, which should be decided by a jury. See Collins v. Frasier, 378 S.C. 249, 251, 772 S.E.2d 464 (Ct.App. 2008). "Gross negligence is defined as 'the failure to exercise slight care.'" Plyler v. Burns, 373 S.C. 637, 651, 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. Once again it is worth noting that even judges are not insulated by judicial immunity when they act in an administrative capacity. Faile v. South Carolina Department of Juvenile Justice, 350 S.C. 315, 324, 566 S.E.2d 536 (2002).

CONCLUSION

For the foregoing reasons, along with the reasoning set forth in Appellant's Brief, 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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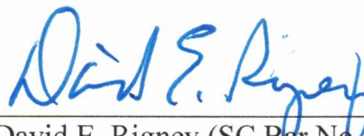
RULE 211 CERTIFICATION

I certify that the Appellant's Final Reply Brief complies with Rule 211(b), SCACR.

Respectfully submitted,



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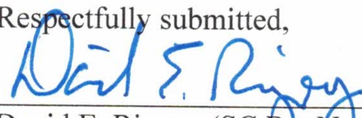
PROOF OF SERVICE

I certify that I have served the Appellant's Final Reply Brief on opposing counsel David Leon Morrison by depositing a copy of it in the United States Mail, postage prepaid addressed to him at 7453 Irmo Dr., Suite B, Columbia South Carolina 29212, and by sending an email to opposing counsel at david@dmorrison-law.com on January 17, 2025.

Respectfully submitted,



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