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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

Jocelyn Newman, Circuit Court Judge

Appellate Case Number: 2025-000221

Franklin J. Boyles,

Appellant,

vs.

C and C Masonry, Inc.,
Juneau Construction Company, LLC., and
University of South Carolina,

Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err in holding that Appellant's claims were time-barred and in concluding that equitable tolling did not apply to Appellant's claims?
2. Did the trial court err in dismissing Appellant's claim for intentional infliction of emotional distress against Respondent University of South Carolina based on *Gore v. Dorchester County Sheriff's Office*, 900 S.E.2d 428, 439 (S.C. 2024)?
3. Whether the Joint and Several Liability Doctrine Requires That Respondent University of South Carolina Remain in This Action?

STATEMENT OF THE CASE

Appellant Franklin J. Boyles (“Appellant” or “Mr. Boyles”) filed the Complaint on September 25, 2024, asserting claims against Respondents University of South Carolina (“USC”), C and C Masonry, Inc. (“C&C”), and Juneau Construction Company, LLC (“Juneau”). The claims against USC were negligence and intentional infliction of emotional distress. The claims arose from a September 13, 2022 forklift accident at USC’s Campus Village construction site, which resulted in severe injuries to Appellant.

USC filed a Motion to Dismiss on October 31, 2024, under South Carolina Rule of Civil Procedure (“SCRCP”) 12(b)(6), arguing that Appellant’s claims were time-barred under the South Carolina Tort Claims Act’s (“SCTCA”) two-year statute of limitations since Appellant had not filed a verified claim per S.C. Code Ann. §15-78-80. USC also argued that the SCTCA bars claims for intentional infliction of emotional distress. The trial court granted USC’s motion on February 3, 2025, dismissing the claims with prejudice. Appellant now appeals.

This appeal centers on the improper granting of USC’s Motion to Dismiss and order of the Honorable Jocelyn Newman dated February 3, 2025. Appellant, Plaintiff in the underlying action, appeals the trial court’s Order granting USC’s Motion to Dismiss pursuant to SCRCP 12(b)(6). The trial court found that Appellant’s claims were barred by the SCTCA statute of limitations and rejected Appellant’s argument for equitable tolling. Additionally, the court dismissed Appellant’s claim for intentional infliction of emotional distress based on *Gore v. Dorchester County Sheriff’s Office*, 900 S.E.2d 428 (S.C. 2024).

On February 4, 2025, the Appellant received written notice of entry of this order, improperly granting the USC’s 12(b)(6) Motion of Dismissal on the legal issue and question of law. Appellant filed and served his Notice of Appeal on February 5, 2025. A written Order was filed on February 24, 2025. Appellant contends that the trial court erred in dismissing the

claims and respectfully requests this Court to reverse the dismissal and remand for further proceedings.

STATEMENT OF FACTS

Respondents C and C Masonry, Inc. and Juneau Construction Company, LLC were managing various construction activities for the Respondent University of South Carolina Campus Project at the Campus Village. (“USC Campus Project”). USC owned the construction site property. Appellant worked for Island Masonry Construction (“Island Masonry”), a subcontractor of C&C.

On September 13, 2022, Appellant worked as a forklift operator at USC’s construction site. Complaint ¶17. During this time, while Appellant attempted to lower a mason box from a mast climber scaffold, the forklift tripped and fell to the ground. Id. at ¶18. The forklift was positioned on an unstable base of loose sand and this caused the forklift to lose stability and tip over. Id. at ¶19. Despite Appellant’s use of safety measures, the sudden and severe shift in balance caused Appellant to eject from his seat causing him to fall onto the ground. Id. at ¶20. This incident resulted in substantial injuries to Appellant, including psychological distress due to the trauma of the event. Id. at ¶21.

Appellant’s injuries required immediate medical attention, and he continues to suffer from the physical and emotional impact of the accident. Id. at ¶22. USC’s construction site lacked adequate safety measures to prevent the forklift from tipping over, and USC, as the property owner, failed to ensure the safety of all individuals on-site by overseeing compliance with safety standards and ensuring that the contractors provided adequate training and resources. Id. at ¶24.

On September 25, 2024, the Plaintiff filed a complaint seeking damages against Juneau, C&C, and USC, asserting multiple causes of action, including Negligence and Intentional Infliction of Emotional Distress against USC. On October 31, 2024, USC filed a

Motion to Dismiss Plaintiff/Appellant's claims under South Carolina Rules of Civil Procedure Rule 12(b)(6). USC contended that the negligence claim is barred by the two-year statute of limitation under the SCTCA and that Appellant could not recover for intentional infliction of emotional distress claim against USC. On November 18, 2024, Appellant filed a Response to USC's Motion to Dismiss. On December 6, 2024, Appellant filed an Additional Response to USC's Motion to Dismiss.

The Court of Common Pleas, Richmond County, held a hearing on February 3, 2025, and entered its Order, granting USC's Motion to Dismiss. (Order granting USC's MTD). On February 4, 2025, the Appellant received written notice of entry of this order, which improperly granted USC's 12(b)(6) Motion to Dismiss on a legal issue and question of law. Appellant filed and served his Notice of Appeal on February 5, 2025. A written Order was filed on February 24, 2025. This appeal follows.

STANDARD OF REVIEW

“In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC, the appellate court applies the same standard of review as the trial court.” *Rice-Marko v. Wachovia Corp.*, 398 S.C. 301, 307, 728 S.E.2d 61, 64-65 (Ct. App. 2012) (quoting *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010)). “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.* (quoting *Id.*) “If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.” *Id.* at 64-65. (quoting *Id.*) “In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” *Id.* at 65. (quoting *Id.*)

The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 248 (2007) (citing *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987)).

In a motion to dismiss based on the statute of limitation, “[e]quitable tolling may be applied where it is justified under all the circumstances.” *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009). The courts apply this doctrine “to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.” *Id.* (internal quotation marks and citation omitted).

ARGUMENT

I. The Trial Court Erred in Holding That Appellant’s Claims Were Time-Barred and in Concluding That Equitable Tolling Did Not Apply to Appellant’s Claims

“Equitable tolling is judicially created; it stems from the judiciary’s inherent power to formulate rules of procedure where justice demands it.” *Magnolia N. Prop. Owners’ Ass’n v. Heritage Cmtys., Inc.*, 397 S.C. 348, 371, 725 S.E.2d 112, 125 (Ct. App. 2012) (quoting *Hooper*, 386 S.C. at 115). “Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.” *Id.* (quoting *Hooper*, 386 S.C. at 115).

The *Hooper* Court observed that:

The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other.

Hooper, 386 S.C. at 116-17 (quoting *Hausman v. Hausman*, 199 S.W.3d 38, 42 (Tex. App. 2006)).

“The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff....” *Ross v. Ross*, 394 S.C. 261, 264, 715 S.E.2d 359, 360 (Ct. App. 2011) (internal quotation marks and citation omitted). “The supreme court explained the doctrine of equitable tolling may be applied to toll the running of the statute of limitations ‘to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits’” *Id.* (quoting *Hooper*, 386 S.C. at 115).

In South Carolina, equitable tolling has been deemed available where:

- extraordinary circumstances prevented the plaintiff from filing despite his or her diligence.
- the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass.
- the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.

Pelzer v. State, 378 S.C. 516, 521, 662 S.E.2d 618, 620-21 (Ct. App. 2008) (citation omitted). “It has been held that equitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights.” *Id.* at 621. However, in the same paragraph, the *Pelzer* court stated that, “it has also been held that the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation.” *Id.*

A. The Trial Court Misapplied the Legal Standard for Equitable Tolling

As established from the foregoing law, equitable tolling is an extraordinary remedy that courts may apply when a plaintiff is unable to timely file a complaint due to extraordinary circumstances in spite of exercising due diligence. In this case, the trial court erroneously concluded that Appellant’s claims were time-barred and that equitable tolling did not apply. The trial court selectively relied on language from *Pelzer v. State, supra*, and failed to consider the full scope of equitable tolling jurisprudence. The trial Court focused on

the principle that equitable tolling applies mainly if the Defendant actively misled the Plaintiff about the cause of action or prevented Plaintiff from asserting his or her rights. Relying on the above language, the trial court found “that the Plaintiff did not allege any wrongdoing by USC in his November 18, 2024 response.” (Order, p.6).

The trial court incorrectly concluded that Appellant was required to establish misconduct by USC to warrant equitable tolling. The court’s Order specifically states that “nothing in the record supports any allegation of wrongdoing by USC such that USC actively misled the Plaintiff about his two (2) causes of action against it or that USC prevented the Plaintiff in some extraordinary way from asserting his right to file them.” (Order, Pg.6). This reasoning is legally flawed. Under *Pelzer, supra*, active misconduct by the defendant is not a necessary condition for equitable tolling. It is only one among several circumstances under which equitable tolling may be applied. Extraordinary circumstances that prevent a plaintiff from asserting their rights are sufficient to apply equitable tolling.

Thus, the court misapplied the legal standards, which resulted in unjustly dismissing Appellant’s claims. There were clear grounds for tolling the limitation period based on extraordinary circumstances. The trial court’s failure to apply the well-established principle of law constitutes reversible error. Therefore, the trial court’s Order must be reversed.

B. Extraordinary Circumstances Justified Equitable Tolling in This Case

The record demonstrates that extraordinary circumstances prevented Appellant from filing his claims within the statutory period. The complaint was filed just 12 days after the statute of limitations expired. The delay occurred due to the complex nature of the legal relationships among the various entities at the project site. Appellant was employed by a subcontractor of a contractor working on USC’s property, creating layered legal obligations. It took time to determine the proper party to be sued, which required careful legal analysis of USC’s role and liability. This complexity constitutes exceptional circumstances that justify

equitable tolling. Only a short delay occurred in this case. This underscores Plaintiff's intent to comply with the deadline, warranting equitable tolling.

Further, in this case, Appellant suffered serious injuries and ongoing physical and psychological challenges that reasonably affected his ability to meet the filing deadline. His 12-day delay in filing was not due to inaction but rather extraordinary circumstances and efforts to resolve complex legal issues. Appellant was diligent in pursuing the claims. He filed a workers compensation case earlier. South Carolina courts favor equitable tolling when barring a claim would undermine fair adjudication. USC, as the property owner, had knowledge of the incident and potential liability, minimizing any prejudice from the short delay. The trial court failed to consider these factors, and dismissed the claim on a technicality, despite USC's responsibility for site safety. The trial Court's dismissal of the case was unjust and a "gross wrong" to the Appellant, who has suffered harm due to Respondents' including USC's negligence.

Appellant pursued a workers' compensation claim after the September 13, 2022 forklift accident. This required obtaining documentation from USC. On August 12, 2024, Appellant's counsel subpoenaed USC for relevant materials. USC provided responsive materials on August 23, 2024, leaving Appellant with only 22 days to assess, analyze, and act upon the newly obtained information. The compressed timeline resulting from USC's delayed disclosure created an extraordinary circumstance that prevented Appellant from filing his claims in a timely manner. The situations involving delays in obtaining necessary information may justify equitable tolling, particularly when such information is within the Respondents' control. Appellant was actively pursuing legal remedies during the relevant period, further demonstrating due diligence. Equity does not favor barring claims where a plaintiff, despite diligent efforts, is prevented from timely filing due to circumstances beyond his control.

USC Campus Project's faulty grounds and soil were discovered during the discovery produced by USC Campus Project on or about August 22, 2024, from the Deputy General Counsel of USC and the emails from Juneau Construction's attorney on September 12, 2024. (See email communications from the Respondents' attorneys.) Additionally, Appellant's employer failed to produce any discovery evidence or employment records as to his forklift accident despite numerous emails and request for such evidence. (See email communications from Appellant's employer's attorney).

The trial court failed to consider all these facts and erred in failing to recognize that these circumstances warrant equitable tolling. Appellant asserts that the interests of justice strongly support equitable tolling and granting Appellant an opportunity to decide the claims on merits.

II. The Trial Court Erred In Dismissing Appellant's Claim For Intentional Infliction Of Emotional Distress Against USC.

A. Appellant's IIED claim is not barred by the SCTCA and the Trial court erred in disregarding persuasive federal authority that recognized IIED claims outside SCTCA

The trial court improperly dismissed Appellant's claim for Intentional Infliction Of Emotional Distress ("IIED") by misapplying *Gore v. Dorchester County Sheriff's Office*, 900 S.E.2d 428, 439 (S.C. 2024). Further, the trial court failed to recognize that Appellant's claim falls outside the scope of the SCTCA.

Appellant's IIED claim is not barred by the SCTCA. Admittedly, the case *Gore, supra*, held that the definition of "loss" under South Carolina Code Annotated §15-78-30(f) excludes recovery for IIED against a governmental entity. However, the trial court failed to consider that Appellant's claim involves conduct that falls within the exceptions enumerated in South Carolina Code Annotated §15-78-70(b). Specifically, a governmental entity is not afforded immunity for conduct that amounts to actual fraud, actual malice, or an intent to

harm. See *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 187, 826 S.E.2d 585, 591 (2019).

The trial court also erred by disregarding persuasive federal authority that has recognized IIED claims against state employees or agents outside the SCTCA. In *Gee Gary v. S.C. Dep't of Corr.*, No. 8:10-2037-MBS-JDA, 2011 U.S. Dist. LEXIS 76518, at *4-5 (D.S.C. July 14, 2011), the court explicitly held that IIED claims “fall outside the SCTCA.” Moreover, in *Smith v. Ozmint*, 394 F. Supp. 2d 787, 792 (D.S.C. 2005), the court reaffirmed that governmental employees may be held personally liable for intentional torts committed within the scope of employment. These decisions support Appellant’s contention, but the trial Court did not give due weight to these decisions.

The trial court relied on *Gore* to conclude that the SCTCA bars claims for intentional infliction of emotional distress. However, *Gore* does not preclude such claims against individual state employees acting outside the scope of their employment or with actual malice. See *Skydive Myrtle Beach v. Horry Cty.*, 826 S.E.2d 585, 591 (S.C. 2019). Appellant’s Complaint sufficiently alleged reckless conduct by USC and its agents, warranting further proceedings rather than outright dismissal.

Here, Appellant alleged that USC’s reckless disregard for worker safety, in spite of knowing the instability of the sand for supporting heavy machinery, constituted extreme and outrageous behavior. This conduct, if proven, falls within the exception outlined in South Carolina Code Annotated §15-78-70(b), thereby removing immunity under the SCTCA. The trial court did not address this argument, leading to reversible error.

B. USC’S Conduct Was Sufficiently Extreme And Outrageous To Support An IIED Claim

To establish IIED, a plaintiff must show: (1) intentional or reckless infliction of severe emotional distress; (2) extreme and outrageous conduct; (3) causation; and (4) severe distress. *Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981).

Appellant's complaint alleged that USC knew of the instability of the sand, failed to take corrective action, and exposed workers to severe risks, resulting in a catastrophic accident. USC's failure to provide safe premises for persons lawfully present at its premises particularly when it knows the instability of the sand for supporting heavy machinery constitutes a clear and reckless disregard for the safety of workers and others at the construction site. USC's reckless disregard was the cause for Appellant's injuries resulting in emotional distress. Furthermore, Appellant experiences psychological trauma, including persistent anxiety and depression making it difficult for him to lead a normal life.

Therefore, USC's conduct in disregarding the safety at the construction site was so extreme and outrageous that it exceeded all possible bounds of decency and should have been regarded as atrocious and utterly intolerable in a civilized community. Appellant sustained serious injuries that are ongoing and causing psychological trauma as a direct and proximate result of USC's intentional acts and recklessness. Appellant is entitled to an award of damages. The emotional trauma from this avoidable incident, combined with Appellant's ongoing physical and psychological suffering, meets the threshold for IIED. The trial court did not weigh or assess these allegations under the appropriate standard.

The trial court erred in finding that the Intentional Infliction of Emotional Distress claim is barred. Appellant's claim may be permitted to proceed outside the South Carolina Tort Claims Act against the staff/agents of USC. Additionally, the three-year statute of limitations under South Carolina Code Annotated §15-3-530 applicable to IIED claims in South Carolina may be applied in this case. Appellant's claim is timely under this statute and should be allowed to stand.

South Carolina courts favor allowing claims to proceed where dismissal would preclude fair adjudication. Here, USC does not dispute that the accident occurred on its property or that it had a duty to provide a safe environment. Given the significant public

interest in workplace safety, dismissing the claim on a technicality rather than on its merits undermines the purpose of South Carolina's tort law.

For these reasons, the trial court erred in dismissing Appellant's IIED claim. Appellant's allegations fall within an exception to governmental immunity, and federal precedent supports allowing the claim to proceed. Moreover, the complaint sufficiently pleads extreme and outrageous conduct.

Therefore, this Court should reverse the trial court's dismissal and permit Appellant's IIED claim to stand against USC and its staff/agents.

III. The Joint and Several Liability Doctrine Requires That All Defendants Including University of South Carolina Remain in This Action

The Supreme Court of the United States has observed that "when two or more persons share responsibility for a wrong, it is inequitable to require one to pay the entire cost of reparation, and it is sound policy to deter all wrongdoers by reducing the likelihood that any will entirely escape liability." *Northwest Airlines, Inc. v. Transp. Workers Union*, 451 U.S. 77, 87-88, 101 S. Ct. 1571, 67 L. Ed. 2d 750 (1981); see also *Smith v. Tiffany*, 419 S.C. 548, 566, 799 S.E.2d 479, 489 (2017). "[P]ure joint and several liability allows a plaintiff to decide from which defendant she would like to seek payment of her damages...." *Tiffany*, 419 S.C. at 568. In South Carolina, the General Assembly "altered the concept of joint and several liability when it amended the Act and made allocation of fault central to the determination of an individual defendant's liability to a plaintiff." *Id.* (citing 2005 S.C. Act Nos. 27, § 6; 32, § 16.). Now, "the public policy of South Carolina favors fair apportionment of liability among joint tortfeasors where the common law did not." *Id.* at 570.

Here, even if it is admitted for argument sake that the trial court had properly found that the statute of limitations had expired for one defendant, it erred in dismissing USC because the defendants in this action are jointly and severally liable for Appellant's injuries. Under South Carolina law, joint tortfeasors are equally liable for the plaintiff's damages, and

dismissal of one defendant, while allowing claims to proceed against other Defendants, is unjust and prejudicial.

The trial court's order, if not reversed, would allow one culpable defendant to escape liability while the remaining defendants bear the full financial burden of Appellant's injuries. Such an outcome is contrary to the principles of equity and fairness, particularly when all defendants share responsibility for the underlying harm. The court's failure to consider joint and several liability principles further supports the need for reversal of its Order.

Further, the trial court's dismissal of USC prejudices Appellant's ability to recover full compensation for his injuries. Given that all defendants are equally culpable for Appellant's injuries, dismissing one defendant while requiring the others to defend the case creates an inequitable result. The piecemeal dismissals of joint tortfeasors can result in undue prejudice and inconsistent verdicts. The claims against multiple defendants should be adjudicated together where liability is intertwined.

The trial court undermined the fundamental principles of fairness and judicial economy by improperly dismissing Appellant's claims against USC. Therefore, this Court should reverse the trial court's dismissal and reinstate Appellant's claims against USC.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court. The Appellant Franklin J. Boyles respectfully requests that this Honorable Court reverse the trial court's Order dismissing his claims against the Defendant University of South Carolina and remand the case for further proceedings on the merits.

Dated: Monday, March 17, 2025
Greenville, South Carolina.

Respectfully submitted,

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