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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Appellate Case No. 2024-000020
Trial Court Case No. 2023-CP-32-01750

Glenna Gray; and Michael W. Gray, as
Personal Representative for the Estate
of Joseph S. Gray Appellants,

v.

Larousse Lamur, Phoenix Grand, LLC,
and Lamur Transportation Services, LLC..... Respondents.

**RESPONDENTS' RETURN TO APPELLANTS'
MOTION FOR REHEARING**

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Come now the Respondents Larousse Lamur, Phoenix Grand, LLC, and Lamur Transportation Services, LLC, and do respectfully submit this Return to Appellants' Motion for Rehearing. The Court of Appeals properly affirmed the Circuit Court's Order in its decision dated February 26, 2025.

SUMMARY

Specifically, the Court of Appeals Opinion is correct for the following reasons:

- I. The Circuit Court considered "all circumstances" in declining to apply the doctrine of equitable tolling. Thus, the Court of Appeals' Opinion that Appellants failed to establish sufficient facts to apply equitable tolling is support.

- II. A recent decision from the South Carolina Supreme Court further supports the Circuit Court's refusal to apply equitable tolling because there were no circumstances outside of the Appellants' conduct. Here, the Appellants voluntarily dismissed their actions in state court, which ultimately led to the expiration of the statute of limitations.
- III. The trial court decision cited in Appellants' Motion for Rehearing does not have any precedential value to this action. Likewise, despite the Appellants' contention they cite to in their Motion for Rehearing supports the Circuit Court's decision to refrain from applying equitable tolling.

RECITATIONS OF PERTINENT FACTS

The recitation of facts in this Return is largely lifted from Respondents' previous briefs but are provided to the Court for ease of access.

Appellants and Respondents stipulated the pertinent factual and procedural background of the Order Granting Defendants' Motion to Dismiss.

On March 30, 2021, Appellant Glenna Gray filed her Complaint in Federal Court against Respondents (hereinafter the "Federal Court Action"). In the Federal Court Action, Appellant Glenna Gray asserted causes of action for negligence, gross negligence, and negligence per se. Respondents filed their Answer on June 2, 2021, and then filed an Amended Answer on June 6, 2021. On June 22, 2021, Appellant Glenna Gray filed a Motion to Amend her Complaint to assert causes of action for wrongful death and a survival action and to add Appellant Michael W. Gray, as Personal Representative of the Estate of Joseph S. Gray (hereinafter "Appellant Michael Gray"), to the Federal Court Action. Respondents opposed the Appellants' Motion to Amend their Complaint in the Federal Court Action, but the Federal Court ruled for the Appellants.

On August 30, 2021, Appellant Michael Gray filed a Complaint in the Lexington County Court of Pleas against the Respondents (hereinafter the “Initial State Court Action”), asserting causes of action for wrongful death, pursuant to S.C. Code Ann. § 15-5-10 *et seq.*, and a survival action pursuant to S.C. Code Ann. § 15-5-90 (1976). Respondents filed their Answer to the Initial State Court Action on September 13, 2021.

On January 10, 2022, Appellant Glenna Gray filed her Amended Complaint in the Federal Court Action, adding Appellant Micheal W. Gray as a party and asserting causes of action for wrongful death and a survival action. Respondents filed their Answer to the Amended Complaint in the Federal Court Action on January 13, 2022. Appellant Michael Gray voluntarily dismissed the Initial State Court Action under Rule 41(a), SCRPC on February 18, 2022. Thereafter, the claims of Appellant Michael Gray and Appellant Glenna Gray were situated in the Federal Court Action.

On February 16, 2023, the Federal Court Action was dismissed by the Court *sua sponte* for lack of subject matter jurisdiction. Appellants filed a Motion to Reconsider, which was denied by the Court on May 2, 2023.

On May 8, 2023, Appellants filed a Complaint in the Lexington County Court of Common Pleas, with Appellant Glenna Gray asserting negligence and Appellant Micheal Gray asserting causes of action for wrongful death and a survival action (hereinafter the “Second State Court Action”). Respondents filed a Motion to Dismiss Appellant Glenna Gray’s cause of action for negligence and Appellant Michael Gray’s survival action on July 20, 2023, citing the applicable statute of limitations. Appellants filed an Answer responding to Appellant Michael Gray’s wrongful death cause of action on July 21, 2023. Appellants filed a Memorandum in Opposition

to Respondents' Motion to Dismiss on October 9, 2023, requesting equitable tolling of the statute of limitations for the first time.

Respondents' Motion to Dismiss was heard before the Court on October 10, 2023, with the Honorable Judge Walton J. McLeod. The Circuit Court issued an Order Granting the Motion to Dismiss on December 4, 2023. This appeal followed.¹

The Court of Appeals issued an Opinion on February 26, 2025, affirming the Circuit Court's Order.

ARGUMENT

I. **The Circuit Court correctly considered "all circumstances" in denying the application of equitable tolling. Therefore, the Court of Appeals correctly held the Appellants failed to establish facts sufficient to warrant equitable tolling.**

The Circuit Court, despite the assertions of the Appellants, examined "all circumstances" in rendering its Order to Dismiss. The Appellants relied heavily in their briefing to the Court of Appeals and the Circuit Court on the case *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (2009). The Circuit Court also examined *Hooper* in its Order. In *Hooper*, the Supreme Court reversed the Circuit Court's order granting summary judgment on the lapsing of the applicable statute of limitations because the defendant's failure to list a registered agent, as required by statute, delayed plaintiff's service of process until the limitations period lapsed. 386 S.C. at 118, 687 S.E.2d at 34.

The decision in *Hooper*, despite the Appellant's claims, never enumerated "an appropriate standard" for the application of equitable tolling. Rather, the Court gave a list of examples from other jurisdictions where equitable tolling was applied, and the Court ultimately held that equitable

¹ Appellants dismissed their wrongful death action with prejudice on May 13, 2024, after the Appellants' Motion for Continuance was denied on May 9, 2024.

tolling may be applied where it is justified under “all circumstances.” *Id.* at 117, 687 S.E.2d at 33. The Court in *Hooper* also cited an earlier S.C. Supreme Court decision, *Hopkins v. Floyd’s Wholesale*, where the Court equitably tolled the statute of limitations in a workers’ compensation claim because the plaintiff delayed filing suit due to assurances from his employer they would continue to pay for his medical expenses. *Hopkins*, 299 S.C. 127, 129, 382 S.E.2d 907, 128-29 (1989).

Here, the Circuit Court did not use an “inappropriate standard” in refusing to apply equitable tolling. The Circuit Court examined, in detail, the very authority that Appellants state the Circuit Court misconstrued.

The Appellants failed to highlight in their Brief the appropriate standard the Circuit Court failed to apply. The Circuit Court, examining the circumstances presented, decided the uncontested facts showed that the Respondents did not prevent the Appellants from filing the Second State Court Action. Namely, the Circuit Court found that nothing precluded the Appellants from filing the Second State Court Action before the applicable statute of limitation elapsed. The Circuit Court’s decision is supported by the Appellants’ voluntarily dismissing the Initial State Court Action via Rule 41(a), SCRCF on February 18, 2022, without needing the Respondents’ consent. *Id.* Again, the Circuit Court noted that this dismissal, as noted by the Circuit Court, did not hinge upon removal by Respondents nor the presence of any defective pleading. *Id.* The Circuit Court also recognized that the Federal Action was dismissed by the Federal Court, *sua sponte*, not from the Respondents’ motion. *Id.* In fact, the Circuit Court noted that the Respondents objected and opposed the Appellants’ effort to consolidate the State Court Action and the Federal Court Action in Federal Court. The Circuit Court found that the Respondents did not use deceit or fraud to prevent Appellants from filing the

Second State Court Action, and that the Appellants' failure to file within the applicable statute of limitations was the result of a strategic decision.

The facts thoroughly examined by the Circuit Court are unlike those faced in *Hooper* or in *Hopkins*. In *Hooper*, the plaintiff failed to serve the defendant within the applicable statute of limitations because the defendant failed to name a registered agent as required by statute. Likewise, in *Hopkins*, the plaintiff relied upon the repeated assurances from the Defendant that they would compensate the plaintiff for medical expenses and compensation. Nothing in the record before the Circuit Court mirrored such fact patterns.

The Court of Appeals agreed with the Circuit Court's determination and considered the filings of Respondents and Appellants. A rehashing of these facts will not change that they occurred, or that the Circuit Court's decision was correct.

II. Case law decided after the Circuit Court's Order to Dismiss further shows the Circuit Court utilized the correct standard in its equitable tolling analysis and supports the Court of Appeals February 26, 2025, Opinion.

In a January 17, 2024 decision, the South Carolina Supreme Court held that the equitable tolling standard enumerated by the Fourth Circuit Court of Appeals fits within South Carolina's conception of the equitable tolling doctrine. *Hughes on behalf of Est. of Hughes v. Bank of Am. Nat'l Ass'n*, 442 S.C. 113, 137, 898 S.E.2d 102, 114 (2024). The Court, agreeing with the Fourth Circuit Court of Appeals, held that equitable tolling is only available if the plaintiff diligently pursued her rights and if extraordinary circumstances external to her own conduct prevented her from filing within the applicable limitations period. *See Id.* ("The Fourth Circuit reviewed the District Court's findings on those points and concluded that a party such as Mrs. Hughes would be entitled to equitable tolling only if she has pursued her rights diligently and extraordinary circumstances external to her own conduct prevented her from commencing the action on time.")

(internal citations omitted). The Court, again citing the Fourth Circuit Court of Appeals, held, “the use of equitable tolling must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes.” *Id.* (citing *Lawrence v. Lynch*, 826 F.3d 198, 203 (4th Cir. 2016)). The Supreme Court stated that this standard is consistent, “with what we declared in *Hooper* to be the law in South Carolina.” *Id.*

The Circuit Court’s Order to Dismiss, while certainly appropriate under prior case law, is bolstered by the decision in *Hughes*. In fact, *Hughes* did not supplant *Hooper*, but merely clarified that the standard for equitable tolling for the Fourth Circuit is consistent with S.C. law. The Appellants’ conduct, according to the Circuit Court, was the action which prevented the filing of the Second State Court Action within the applicable statute of limitations. The Appellants voluntarily dismissed their action without the Respondents’ consent. The Respondents objected to the Appellants’ effort to amend their Complaint in Federal Court to consolidate. Nothing in the factual record presented to the Circuit Court fits within the proper standard for applying equitable tolling. Likewise, the finding that the Appellants “made a strategic decision to consolidate their Action in Federal Court and was not the consequence of any third-party actions” clearly fits into the S.C.’s equitable tolling standard. Therefore, the Circuit Court’s Order and the Court of Appeals Opinion do not need alteration.

III. The trial court order attached to Appellants’ Petition for Rehearing not only lacks precedential value, but it also supports the Court of Appeals February 26, 2025 Opinion.

The trial court order attached to Appellants’ Petition for Rehearing was not presented to this Court, and it was not considered by the Circuit Court. Therefore, the Court of Appeals does not need to consider it. *See* Rule 210 SCACR (“The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal.”);

see also Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 339, 611 S.E.2d 485, 487 (2005) (where the Court of Appeals refused to consider a jury charge because Appellant failed to include it on the Record on Appeal).

However, if the Court of Appeals is inclined to consider the trial court decision, dated December 4, 2018 in the case Scanwell Logistics (CHI), Inc. v. VIS, LLC, C/A No.: 2018-CP-23-04175, then it should hold it supports the Circuit Court's Order and affirms its Opinion for two reasons.

First, the actions of Scanwell Logistics and Appellants are dissimilar because Appellants filed their case in the correct court, but then voluntarily dismissed their case and refiled in a different court. Scanwell Logistics, in contrast, never filed their case in the correct venue until it reached the Greenville County Court of Common Pleas.

Secondly, the trial court in Scanwell found VIS's statute of limitations argument was barred on the doctrine of equitable estoppel because VIS assured Scanwell it would pay the contested amount. This conforms to the holdings in *Hooper*, *Hughes*, and *Hopkins* where the party asserting the statute of limitations acted in a manner preventing, or enticing, the opposing party from filing their claim. As mentioned previously, Respondents did not force the Appellants to voluntarily dismiss their action and refile it in a different court.

Therefore, even if this Court wishes to consider the Scanwell trial court decision, it still leads to the obvious conclusion supporting the February 26, 2025 Opinion.

CONCLUSION

For the reasons stated above, the Appellants' Petition for Rehearing should be denied.

Respectfully Submitted,

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PROOF OF SERVICE

I certify that I have served the Respondents' Return to Appellants' Motion for Rehearing, by depositing a copy of it in the United States Mail, postage prepaid, on April 17, 2025, addressed to her attorneys of record, Lane D. Jefferies, Esquire, Poulin Willey Anastopoulos, LLC, 32 Ann Street, Charleston, SC 29403, and by electronic mail at teamjefferies@poulinwilley.com and Jonathan M. Riddle, Esquire, Poulin Willey Anastopoulos, LLC, 32 Ann Street, Charleston, SC 29403 and by electronic mail at teamriddle@poulinwilley.com.

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