

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Erik Lebkicher, Carissa Lebkicher, E.L., a
minor child,

Plaintiff,

v.

Stephanie Davidson & Drew P. Finnegan

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 2024-CP-08-01894

**ORDER GRANTING DEFENDANT
FINNEGAN'S MOTION TO DISMISS
SECOND AMENDED COMPLAINT**

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SC Court of Appeals

THIS MATTER is before the Court on the Motions of Defendants Davidson and Defendant Finnegan seeking the Court to dismiss Plaintiff's Second Amended Complaint. Defendant Davidson filed her Motion to Dismiss on November 14, 2024, and Defendant Finnegan filed his Motion to Dismiss on November 21, 2024. The Court held a hearing on Defendants' respective Motions on February 20, 2025. Attorneys present at the hearing included Paul Ferrara III on behalf of the Plaintiff, Daniel Ranaldo on behalf of Defendant Davidson, and Carlisle Allen on behalf of Defendant Finnegan. After careful review and consideration of the submissions of the parties, applicable law, oral arguments, the extensive record, and for the reasons set forth below, the Court hereby **GRANTS** Defendant Finnegan's Motion to Dismiss.

PROCEDURAL HISTORY

This case encompasses a dog bite accident involving Plaintiffs' minor child on July 10, 2021 at Defendant Davidson's property. Prior to the filing of this action, Defendant Finnegan's homeowner's policy, State Farm, offered its policy limits to settle this claim with Plaintiffs which was accepted by Plaintiffs. Simultaneously, Defendant Davidson's homeowner's policy insurance

carrier, USAA, offered its policy limits to resolve this claim with Plaintiffs. Plaintiffs retained Mr. Ferrara sometime thereafter.

On July 10, 2024, Plaintiffs' counsel filed a Summons and Complaint, which included claims for Plaintiffs Erik and Carissa Lebkicher in addition to the minor's claim. However, this Summons and Complaint was never served on Defendant Davidson or Defendant Finnegan, and the statute of limitations expired the same day.

On July 12, 2024, Plaintiffs' counsel filed an Amended Summons and Complaint, which was never served upon Defendants and the statute of limitations had already expired.

On October 17, 2024, Plaintiffs filed a purported Second Amended Summons and Complaint. Plaintiffs served it upon Defendant Finnegan on October 22, 2024 and Defendant Davidson on October 25, 2024. Again, the statute of limitations had already passed when Plaintiffs filed the purported Second Amended Complaint.

Defendants subsequently filed their respective Motions to Dismiss the purported Second Amended Summons and Complaint.

LAW/ANALYSIS

Rule 3, SCRCP, governs commencement of actions and provides in pertinent part as follows:

- (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or
- (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

Rule 3, SCRCP. *See* S.C. Code Ann. § 15-3-20(B).

“A party may amend his pleading *once* as a matter of course at any time before or within 30 days after a responsive pleading is served” Rule 15(a), SCRCP (emphasis added). Thereafter, “a party may amend his pleading *only* by leave of court or by written consent of the

adverse party” *Id.* (emphasis added).

Plaintiffs failed to serve the first Summons and Complaint and the Amended Summons and Complaint upon Defendant Finnegan and Defendant Davidson. Defendant Finnegan did not have knowledge of the lawsuit’s filing as a result of this failure to serve. Plaintiffs’ first and Amended Summons and Complaint never commenced an action as a result of Plaintiffs’ failure to serve the pleadings upon Defendants. Additionally, Plaintiffs filed the Amended Summons and Complaint on July 12, 2024 which occurred after the three-year statute of limitations expired further supporting a failure to commence an action.

The only pleading served upon Defendants was the purported Second Amended Complaint in October 2024. However, the purported Second Amended Complaint was filed after the statute of limitations expired. Rule 15(a), SCRCP only allows a party one opportunity to file an amended complaint without leave of court. *See* Rule 15(a), SCRCP. Here, Plaintiffs filed the purported Second Amended Complaint without leave of Court or consent from Defendants as required by Rule 15(a), SCRCP. Even if the court granted leave to file a second amended complaint, Plaintiffs failed to initiate a civil action within the statute of limitations, and the relation back doctrine cannot remedy this issue. Therefore, Plaintiffs’ Second Amended Complaint is void and shall be dismissed for failure to comply with Rule 15(a), SCRCP.

CONCLUSION

After careful consideration of all the pleadings, filings and extensive record, applicable law, arguments of counsel, and for the reasons set forth above, the Court **GRANTS** Defendant Finnegan’s Motion to Dismiss Plaintiffs’ Second Amended Complaint, and this action shall be dismissed with prejudice.

IT IS SO ORDERED.

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Berkeley Common Pleas

Case Caption: Erik Lebkicher , plaintiff, et al VS Stephanie Davidson , defendant, et al
Case Number: 2024CP0801894
Type: Order/Dismissal

So Ordered

s/Jennifer B. McCoy #2764