

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

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

Plaintiffs,

vs.

Stephanie Davidson & Drew P. Finnegan,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2024-CP-08-01894

**ORDER GRANTING DEFENDANT
DAVIDSON'S MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED
COMPLAINT AND DISMISSING THIS
ACTION WITH PREJUDICE**

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SC Court of Appeals

THIS MATTER came before this Court on February 20, 2025, pursuant to Defendant Davidson's Motion to Dismiss Plaintiff's Second Amended Complaint, filed on November 14, 2024, and Defendant Finnegan's Motion to Dismiss Plaintiff's Second Amended Complaint, filed on November 21, 2024. Present at the hearing were Paul Ferrera 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 submission of the parties, applicable law, oral arguments, and the reasons set forth below, this Court hereby GRANTS Defendant Davidson's Motion to Dismiss.

BACKGROUND

This matter arises out of a dog bite incident that occurred on July 10, 2021 at the property owned by Stephanie Davidson while Plaintiff Erik Lebkicher was dog sitting for the defendants and plaintiffs' minor child was bitten. USAA issued a homeowner's policy to defendant Davidson and offered payment of the policy limits in settlement of the minor's claim before plaintiffs were represented or this suit filed. Mr. Lebkicher accepted the offer to settle the minor's claim, and USAA remains ready and willing to tender payment of the

policy limits in settlement of the minor's claim and proceed with a court approval hearing. State Farm issued a policy to Defendant Davidson and offered its policy limits to settle which was accepted as well. Plaintiffs retained Paul Ferrera III, Esq. sometime thereafter.

On July 10, 2024, Plaintiffs' counsel filed a Summons and Complaint that, in addition to the minor's claim, included claims on behalf of the minor's parents, plaintiffs Erik Lebkicher and Carissa Lebkicher. Plaintiffs' Summons and Complaint was never served on defendant Davidson. Plaintiffs' counsel did not provide the defense with a courtesy copy of the Summons and Complaint, nor provide any notice that litigation was being instigated.

The statute of limitations expired on July 10, 2024. On July 12, 2024, Plaintiffs' counsel filed an Amended Summons and Complaint which was filed after the statute of limitations expired and never served on defendant Davidson. Plaintiffs' counsel did not provide the defense with a courtesy copy of the Amended Summons and Complaint, nor provide any notice that litigation was being instigated.

On October 17, 2024, Plaintiffs' counsel filed a purported Second Amended Summons and Complaint which was filed after the statute of limitations expired and was served on defendant Davidson on or about October 25, 2024. Defendant Davidson's Motion to Dismiss was filed on November 14, 2024 on the grounds that plaintiffs did not obtain leave of court or consent of defendants to amend their complaint a second time, that process and service of process on defendant Davidson is insufficient, and that this Court lacks jurisdiction over defendant Davidson.

LAW/ANALYSIS

"Civil actions may only be commenced within the periods prescribed in this title

after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.” S.C. Code Ann. § 15-3-20(A). A civil action is commenced upon the filing of the summons and complaint, *if*:

- (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 (emphasis added). 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). Other than amending its pleading once as a matter of course, “a party may amend his pleading *only* by leave of court or by written consent of the adverse party” Id. (emphasis added).

In the case before this Court it is undisputed that defendant Davidson was never served with Plaintiffs’ Summons and Complaint, nor had notice of its filing. Plaintiffs’ Summons and Complaint did not “commence” a civil action, nor provide this Court with jurisdiction over Defendant Davidson. It is also undisputed that Plaintiffs’ Amended Summons and Complaint was filed after the expiration of the statute of limitations and never served on Defendant Davidson. Plaintiffs’ Amended Summons and Complaint did not “commence” a civil action, nor provide this Court with jurisdiction over Defendant Davidson. A civil action was never commenced within the statute of limitations.

It is undisputed that Plaintiffs did not obtain leave of court, nor consent of the adverse parties to file its purported Second Amended Summons and Complaint. Plaintiffs’

purported Second Amended Summons and Complaint was not filed within the statute of limitations. Plaintiffs' purported Second Amended Summons and Complaint is void. Plaintiffs' argument that leave of court was not required to file a second amended complaint does not comport with the law as discussed above. Even if leave of court to file a second amended complaint was granted at this time, Plaintiffs failed to commence a civil action within the statute of limitations and the relation back doctrine would not cure this defect.

CONCLUSION

For the foregoing reasons, Plaintiffs' purported Second Amended Complaint is void, Plaintiffs failed to commence a civil action within the statute of limitations, and this Court lacks personal jurisdiction over defendant Davidson. Therefore, this Court GRANTS Defendant Davidson's motion to dismiss Plaintiffs' Second Amended Complaint, and this action shall be dismissed with prejudice. The Clerk is directed to close this case.

AND IT IS SO ORDERED.

-ELECTRONIC SIGNATURE PAGE TO FOLLOW-



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