THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2025-CP-10-01024

City of Isle of Palms and Isle of Palms Police Dept.,

Respondents,

v.

Teqyah Campbell and Lamona Armstrong as parent and Legal Guardian of R.C., a minor,

Appellants.

INITIAL BRIEF OF APPELLANT

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I. Whether the trial court erred by dismissing Appellant's Complaint under Rule 12(b)(6), SCRCP, based solely on S.C. Code Ann§ 15-78-60(20), without considering other applicable provisions of the South Carolina Torts Claims Act or applying gross-negligence standard.

II. Whether the trial court erred by resolving fact-intensive issues – including gross negligence, foreseeability, notice, and proximate cause—on a motion to dismiss, where South Carolina law reserves those issues for a jury.

III. Whether the trial court abused its discretion in denying Appellants' Rule 59(e) motion where controlling law and newly discovered evidence demonstrated legal error and manifest injustice.

IV. Whether the trial court erred by dismissing the complaint without granting appellants leave to amend and permitting the city to relitigate an immunity defense previously rejected in actions arising from the same incident.

STATEMENT OF THE CASE

Appellants filed this action on January 10, 2025, alleging that Respondents were liable for injuries sustained by R.C., a minor, during a "Senior Skip Day" gathering at the Isle of Palms beach on April 7, 2023, when R.C. was shot by an unknown third party. Appellants asserted claims for gross negligence and failure to protect, alleging that law enforcement failed to adequately supervise the event.

On March 28, 2025, Respondents moved to dismiss in lieu of answer, asserting immunity

under the South Carolina Tort Claims Act ("SCTCA"), including the criminal-act immunity set forth in S.C. Code Ann. § 15-78-60(20). After briefing and a hearing, the trial court granted Respondents' motion solely under S.C. Code Ann. § 15-78-60(20), concluding that the injury resulted from a third-party criminal act and the statute was dispositive.

Appellants subsequently filed a Rule 59(e) motion raising legal error, manifest injustice, and newly discovered evidence, which the trial court denied without a hearing. This appeal followed.

STATEMENT OF THE FACTS

A. The City's long-term knowledge of Senior Skip Day

For years prior to April 7, 2023, the City of Isle of Palms had actual notice of "Senior Skip Day," an annual tradition in which senior students from surrounding high schools skip school to congregate and party in large groups on the public beach. (Compl. ¶ 11).

The City had long-term actual notice that during Senior Skip Day, large groups of senior students would illegally drink alcohol, consume illegal drugs, become violent, and use guns on the public beach. (Compl. ¶ 12). This knowledge is evidenced by communications of record in a related case, *Julia Dehn v. City of Isle of Palms and City of Isle of Palms Police Department*, No. 2025-CP-10-00179, (S.C. Ct. Com. Pl. Jan. 10, 2025), including an email stating: "This gathering occurs every year and violence has broken out along with shootings in the past." (Compl. ¶ 12).

B. The City's actual notice before April 7, 2023

On or before April 7, 2023, the City received actual notice that Senior Skip Day would occur on the public beach that day through concerned parents, members of the public, and social-media posts. (Compl. ¶ 13). The City received this notice through concerned parents, other

members of the public, and social media. (Id.).

Social media communications show that the City was notified that "about 4 high schools are planning to gather out here at 2. A lot of parents have called concerned." (Compl. ¶ 13). The City's police chief responded that they were "notifying Charleston County" and that "halfway personnel have been in standby mode all week in case this happened." (Id.).

Social media posts advertising the event circulated widely, with one showing "SENIOR SKIP DAY" in large letters promoting a gathering from "2PM - 6 PM" at "ISLE OF PALMS BEACH." (Compl. ¶ 14).

C. The City's inadequate response

Although the City increased police presence and contacted surrounding agencies for assistance, those measures were insufficient to control the event. (Compl. ¶¶ 14, 16). The City's press release acknowledged a heightened police presence and that additional officers were called to assist once Senior Skip Day was reported. (Compl. ¶ 14). However, according to emails obtained from the *Dehn* case, "Most public safety entities across our area are very short staffed at the present, especially the county, so they can help as their staffing allows." (Compl. ¶ 16). The City contacted Charleston County Sheriff's Office and surrounding municipalities when they received information about a "potential gathering of high school students that morning" but agencies were "on the island providing assistance" yet "unable to provide sufficient personnel." (Id.).

D. The growing dangerous conditions on April 7, 2023

Throughout April 7, 2023, the crowd on the beach grew larger and more volatile. Communications among Isle of Palms police personnel reflect concern about large teenage groups and a deteriorating situation (e.g., "There is a large amount of people out here"; "I'm more

concerned about large teenage groups") (Compl. ¶ 15). Despite police presence, the Complaint alleges the City allowed the crowd to grow out of control; multiple fights and physical altercations occurred, and photographic and video evidence shows massive crowds and repeated confrontation. (Compl. ¶¶ 15–17).

E. Actual notice of firearms in the crown

A witness affidavit filed in the *Dehn* litigation, which would have been obtained by Appellants in this matter through discovery, states that a witness informed an Isle of Palms police officer that a female student reported seeing a gun in the crowd, and that the officer who received the report did not go onto the beach, did not radio other officers, and took no apparent action in response to the report of a weapon (Dehn Aff. (E. Yungwirth) ¶¶ 11–13). The Complaint alleges this report was made before the shooting and that no effective response followed (Compl. ¶¶ 15–17, 26(c)).

F. The City's failure to Act

Despite actual notice of intoxication, drug use, escalating fights, and reports of firearms, the Complaint alleges the City failed to supervise the students, restrict access to the beach, control or disperse the growing violent crowd in a reasonable time, warn beachgoers, or otherwise protect innocent members of the public. (Compl. ¶ 18).

G. The shooting and Appellants' injuries

On April 7, 2023, while present on the Isle of Palms beach, Appellants Teqyah Campbell and R.C. were injured when a high-school student, Davion Bobby Del'Shawn Singleton, discharged a firearm into the crowd. (Compl. ¶¶ 19–21). News reports confirm that five victims were injured in the shooting, including two fifteen-year-olds, one sixteen-year-old, one seventeen-

year-old, and one twenty-eight-year-old. (Compl. ¶ 21).

Appellants Teqyah Campbell and R.C. suffered traumatic, life-changing, severe injuries. Plaintiff R.C. sustained a gunshot wound to his right shoulder and a highly comminuted ballistic fracture of the proximal humeral shaft. He was transported to MUSC for immediate medical care. (Compl. ¶ 21).

Singleton was subsequently charged with five counts of attempted murder. (Order at 2).

ARGUMENT

Standard of Review. A dismissal under Rule 12(b)(6), SCRCP, presents a pure question of law and is reviewed de novo. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). In conducting this review, the appellate court applies the same standard required of the trial court: it must accept all well-pled allegations as true, construe the complaint liberally in the plaintiff's favor, and draw all reasonable inferences in favor of the non-moving party. *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

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. *Clearwater Tr. v. Bunting, 367 S.C. 340, 626 S.E.2d 334 (2006).* Courts may not weigh evidence, resolve factual disputes, or determine the merits of the claim at the pleading stage, especially if the pleadings raise a novel question of law. *Chestnut v. AVX Corp., 413 S.C. 224, 228, 776 S.E.2d 82, 84 (2015); Madison v. Am. Home Prod. Corp., 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004)*.

Whether immunity applies under the South Carolina Tort Claims Act is generally a mixed question of law and fact, and dismissal at the pleading stage is rarely appropriate where gross negligence, foreseeability, proximate cause, or notice are at issue. *Repko v. Cnty. of Georgetown*, 424 S.C. 494, 507, 818 S.E.2d 743, 750 (2018); *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 571, 780 S.E.2d 252, 259 (2015).

The denial of a Rule 59(e) motion is reviewed for abuse of discretion**.** *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). A trial court abuses its discretion when its ruling is based on an error of law, fails to consider controlling authority, or results in manifest

injustice.

I. THE TRIAL COURT ERRED BY DISMISSING THE COMPLAINT BASED SOLELY ON S.C. CODE ANN § 15-78-60(20) WITHOUT APPLYING THE GROSS NEGLIGENCE STANDARD THAT MUST BE READ INTO ALL APPLICABLE SCTCA IMMUNITIES.

The trial court dismissed Appellants' Complaint solely on the ground that S.C. Code Ann. § 15-78-60(20) bars claims arising from the criminal acts of third parties. (Order at 2). That ruling reflects a fundamental misapplication of the South Carolina Tort Claims Act ("SCTCA") and ignores binding precedent requiring courts to consider all applicable SCTCA provisions, including those containing gross-negligence or notice-based standards.

A. The gross negligence standard from § 15-78-60(25) must be read into § 15-78 60(20) and all other SCTCA immunity provisions when the government undertakes duties of supervision, protection, or control.

South Carolina law is unequivocal: when a governmental entity asserts immunity under the SCTCA, and any applicable exception contains a gross negligence standard, that standard must be read into all other immunity provisions relied upon by the entity. Otherwise, portions of the Act would be rendered meaningless. *Steinke v. S.C. Dep't of Labor, Licensing & Reg.*, 336 S.C. 373, 398, 520 S.E.2d 142, 154 (1999); *Repko v. County of Georgetown*, 424 S.C. 494, 507, 818 S.E.2d 743, 750 (2018); *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 320, 743 S.E.2d 109, 115 (Ct. App. 2013); *Plyler v. Burns*, 373 S.C. 637, 646, 647 S.E.2d 188, 196 (2007).

Section 15-78-60(25) governs duties of "supervision, protection, [and] control" and removes immunity when those duties are exercised in a grossly negligent manner. Appellants' Complaint specifically alleges that the City undertook, and grossly mishandled, duties of supervision, protection, and control during the Senior Skip Day event. (Compl. ¶¶ 23–26).

By increasing police presence, deploying additional officers, and publicly acknowledging its role in supervising the event, the City placed its conduct squarely within § 15-78-60(25). Once that exception applies, the gross negligence standard must be read into § 15-78-60(20). The trial court's failure to do so was reversible legal error.

B. Section 15-78-60(16) independently applies and further precludes dismissal at the pleading stage.

Section 15-78-60(16) governs the "maintenance, security, or supervision" of public recreational property and permits liability when a governmental entity fails to correct a dangerous condition within a reasonable time after actual notice.

The Complaint alleges that the Isle of Palms beach is public recreational property, that the City was responsible for its security and supervision, that the City had actual notice of escalating violence and the presence of firearms, and that the City failed to correct the dangerous condition despite that notice.

Whether the City had actual notice, whether the condition was dangerous, and whether the City acted within a reasonable time are fact-intensive questions that cannot be resolved on a Rule 12(b)(6) motion. The trial court erred by ignoring § 15-78-60(16) entirely and by resolving factual issues that must be left to the jury. In fact, other courts, such as the court in *Dehn* and *Latasha Mack as parent and guardian of Z.B. v. City of Isle of Palms and City of Isle of Palms Police Department*, No. 2025-CP-10-01670, (S.C. Ct. Com. Pl. Mar. 6, 2025), heard cases with identical facts and identical law and found that Respondents did in fact have actual notice.

II. THE TRIAL COURT ERRED BY CONCLUDING APPELLANTS' CLAIMS WERE BARRED BY THE CRIMINAL ACTS OF A THIRD PARTY WHERE THE COMPLAINT ALLEGED THE CITY'S OWN NEGLIGENT AND GROSSLY NEGLIGENT CONDUCT AS AN INDEPENDENT AND FORESEEABLE PROXIMATE CAUSE OF APPELLANTS' INJURIES

Even if the trial court had properly considered all applicable SCTCA provisions, which it did not, the dismissal still cannot stand because the court resolved factual questions that South Carolina law reserves for the jury. Gross negligence, foreseeability, actual notice, the existence of a dangerous condition, and proximate cause are all fact-intensive inquiries that cannot be decided at the pleading stage.

Gross negligence is defined as the "absence of care that is necessary under the circumstances." *Bass*, *414* S.C. at 571. South Carolina appellate courts have repeatedly emphasized that gross negligence is ordinarily a mixed question of law and fact and "its determination best rests with the jury." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 332, 566 S.E.2d 536 (2002). The Supreme Court reaffirmed this principle in *Bass v. S.C. Dep't of Soc. Servs.*, holding that gross negligence is "a factually controlled concept" that rarely can be resolved as a matter of law. *Bass*, *414* S.C. at 571. Only when the facts support one reasonable inference may a court decide gross negligence as a matter of law. *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 310, 534 S.E.2d 275 (2000). This case does not present such a circumstance.

Section 15-78-60(20) does not provide blanket immunity whenever a criminal act occurs. South Carolina courts have long held that governmental entities may be liable where their own negligence creates or enhances the foreseeable risk of third-party criminal conduct. *Greenville Memorial Auditorium v. Martin*, 301 S.C. 242, 246–47, 391 S.E.2d 546 (1990); *Woodell v. Marion Sch. Dist.*, 307 S.C. 297, 414 S.E.2d 794 (Ct. App. 1992).

Appellants do not seek to impose liability merely because a third party pulled the trigger. The Complaint alleges that the City had long-standing knowledge of violence and firearms at Senior Skip Day events, had actual notice of the specific April 7, 2023, gathering, received a direct

report that a firearm was present in the crowd, and failed to take reasonable steps to supervise, control, disperse, warn, or protect. These allegations support multiple reasonable inferences, including that the City acted with gross negligence. At a minimum, they create factual disputes that cannot be resolved on a Rule 12(b)(6) motion, which is the exact conclusion that the court in the *Dehn* and *Mack* matter came to.

Foreseeability and proximate cause are likewise jury questions. The Supreme Court has held that foreseeability "is ordinarily a question of fact for the jury" unless the evidence admits of only one inference. *Young v. Tide Craft, Inc.*, 270 S.C. 453, 462, 242 S.E.2d 671 (1978). Whether the City's conduct created or enhanced a foreseeable risk of third-party criminal conduct is a classic jury issue, not a basis for dismissal.

The same is true for actual notice and the existence of a dangerous condition under § 15-78-60(16). Whether the City's conduct constituted negligence or gross negligence, whether the harm was foreseeable, and whether the City's failures were a proximate cause of the injuries are classic questions for the jury. The trial court erred by resolving these factual issues at the pleading stage and by treating § 15-78-60(20) as absolute immunity contrary to controlling precedent.

By resolving these factual questions in the City's favor, the trial court improperly weighed evidence, drew inferences against the non-moving party, and invaded the province of the jury. South Carolina law does not permit such an approach at the Rule 12(b)(6) stage. The dismissal must be reversed for this reason alone.

III. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANTS' RULE 59(E) MOTION WHERE CONTROLLING LAW AND NEWLY DISCOVERED EVIDENCE DEMONSTRATED LEGAL ERROR AND MANIFEST INJUSTICE.

A trial court abuses its discretion when it denies Rule 59(e) relief despite clear legal error or

newly discovered evidence that would alter the outcome. Even if this Court were to find deficiencies in the Complaint (which Appellants respectfully submit it should not), the trial court committed reversible error by dismissing the action with prejudice without first affording Appellants an opportunity to amend.

The South Carolina Supreme Court has made clear that "[w]hen a trial court finds a complaint fails 'to state facts sufficient to constitute a cause of action' under Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal." *Skydive Myrtle Beach, Inc. v. Horry County,* 426 S.C. 175, 179, 826 S.E.2d 585, 587 (2019) (emphasis added).

This is not merely a suggestion; it is a requirement. The Supreme Court used the word "should," which in the context of procedural rules has been interpreted as mandatory. The purpose of this requirement is to ensure that cases are decided on their merits rather than on technical pleading deficiencies.

Appellants' Rule 59(e) motion identified controlling SCTCA precedent the trial court failed to apply and presented newly discovered evidence showing that an Isle of Palms officer received a direct report of a firearm in the crowd before the shooting and took no action. This evidence directly undermines the trial court's conclusion that the City lacked responsibility for the dangerous condition and that the criminal act was unforeseeable.

The trial court denied the motion without addressing this evidence, the Appellants' specific request to amend the Complaint in the event the Court found the Complaint deficient, or the controlling authority cited. Where a ruling is based on an error of law or perpetuates manifest injustice, denial of Rule 59(e) relief constitutes an abuse of discretion. The trial court's summary

denial of the motion, without analysis or acknowledgment of the newly discovered evidence, was an abuse of discretion requiring reversal.

IV. THE TRIAL COURT'S RULING CREATES INCONSISTENT AND INEQUITABLE RESULTS ON FACTS AND IDENTICAL SCTCA ISSUES, UNDERMINING THE UNIFORM ADMINISTRATION OF JUSTICE AND VIOLATING PUBLIC PRINCIPLES OF EQUAL PROTECTION AND PUBLIC POLICY.

A. Public policy requires uniform rulings in cases with the same facts, same law, and same circumstances.

While trial judges are generally independent, the appellate courts in South Carolina place a high value on judicial economy and consistency. Allowing the third ruling to stand creates an "arbitrary and capricious" result where similarly situated citizens are treated differently by the state. The case-at-bar is an "outlier" and goes against two rulings on identical facts and identical law. If the same facts led to liability in two courtrooms but immunity in the third, the appellate court must intervene to ensure the SCTCA is interpreted uniformly across the state.

Here, two trial courts found justiciable issues of fact as to whether the SCTCA is abridged by the City's conduct, whereas the trial court here did not. See *Dehn.* And while reasonable people (and judges) may approach the same facts with a different perspective, what cannot be tolerated is that two courts have already found that the City's SCTCA arguments do not shield it *at the pleadings stage.* That is precisely why this appeal is critical: Appellants are not arguing that the City can't apply SCTCA at all, just that at this early stage in the pleadings, based on identical facts, identical defenses, and identical claims, the SCTCA cannot prophylactically deny Appellants their rights to try to prove their claim.

Furthermore, the very grounds asserted by the City are issues of fact, not law, and given that other plaintiffs have had access to witnesses to demonstrate these facts make plain that it is not

the *law* the City relies on, but the hindrance and denial to Appellants of their ability to access the same witnesses and facts held by other plaintiffs.

Hearing this appeal and ruling for the Appellant will minimize litigation, because it will mean litigants in this state have a uniform interpretation of the SCTCA. Appellant is not seeking a determination that the SCTCA does not grant immunity—that code may apply and yet be demonstrated at the proper time, either for summary judgment or at trial. But separate and inconsistent ruling at the pleadings stage in identically situated cases cuts against public policy of uniform interpretation of the laws. Resolving "splits" in decisions involving identical law and identical facts, this Court can ensure the protection of public policy and ensure equal protection to the citizens of this state.

Finally, while a trial judge certainly has discretion in issuance of rulings, judges must generally prevent a party from relitigating a loss to avoid "inconsistent results" that undermine public confidence in the law. *See* e.g. Restatement (Second) of Judgments at Sec. 29.

B. Offensive non-mutual collateral estoppel precludes the City from relitigating the identical SCTCA issues after two prior adverse rules on the same facts.

There are presently two concurrent cases arising from the same April 7, 2023, incident in which the County asserted the identical SCTCA defenses the County asserts here, and in both matters the trial courts held that the Tort Claims Act did not bar the plaintiffs' claims at the pleadings stage. see *Dehn;* see *Mack* Because the issue—whether the SCTCA bars these claims at the Rule 12(b)(6) stage—was identical, actually litigated, and directly determined against the City in those actions, and because the City had a full and fair opportunity to litigate the issue, offensive non-mutual collateral estoppel precludes the City from relitigating the same immunity defense here.

South Carolina has abandoned the strict mutuality requirement and recognizes offensive non-mutual collateral estoppel in appropriate circumstances; the County therefore should not be permitted a "third bite at the apple" after losing the identical issue twice (see *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984); *Graham v. State Farm Fire & Cas. Co.,* 277 S.C. 389, 287 S.E.2d 495 (1982); *S.C. Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 337 S.C. 141, 522 S.E.2d 605 (Ct. App. 1999)). Because the facts and the legal question are the same, the trial court committed reversible error by failing to give preclusive effect to the prior rulings and by allowing the County to relitigate an issue already decided against it.

CONCLUSION

The trial court's dismissal of Appellants' Complaint rests on multiple errors of law. The court failed to apply the well-established principle that where a gross-negligence standard appears in one applicable exception to the South Carolina Tort Claims Act, that standard must be read in conjunction with other asserted immunities. It further erred by characterizing Appellants' claims as arising solely from the criminal acts of a third party, when the Complaint alleges that the City's own acts and omissions—independent of any third-party conduct—created and exacerbated a dangerous condition and proximately caused Appellants' injuries.

The court also improperly resolved fact-intensive issues at the pleading stage, including whether the City acted with gross negligence, whether the risk of harm was foreseeable, whether the City had actual or constructive notice, and whether the City's conduct was a proximate cause of the injuries sustained. Under longstanding South Carolina law, those determinations are reserved for the jury and cannot be decided on a Rule 12(b)(6) motion.

Additionally, the trial court failed to recognize that the City's voluntary undertaking of

crowd control, supervision, and public safety measures gave rise to common-law duties that are not categorically barred by SCTCA immunities or the public duty rule. Finally, the court dismissed the Complaint with prejudice without affording Appellants an opportunity to amend, contrary to the principles articulated in *Skydive Myrtle Beach, Inc. v. Horry County* and the liberal amendment policy embodied in Rule 15(a), SCRCP.

When the well-pleaded allegations of the Complaint are viewed in the light most favorable to Appellants, as required at the Rule 12(b)(6) stage, dismissal was improper. Accordingly, the circuit court's order should be reversed, and this matter should be remanded for further proceedings on the merits.

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