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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Eugene H. Griffith, Jr.
Circuit Court Judge

Case No. 2020-CP-02-02238
Appellate Case No. 2024-000592

Cassiopia Rhoads……Respondent-Appellant,

v.

Aiken County Sheriff's Office……..…….Appellant-Respondent.

AMICUS CURIAE BRIEF OF THE SOUTH CAROLINA ASSOCIATION OF JUSTICE

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STATEMENT REGARDING ORAL ARGUMENT

If the Court grants SCAJ's Motion for Leave to File an *Amicus Curiae* Brief and the parties' respective requests for oral argument, SCAJ respectfully requests the opportunity to participate in oral argument pursuant to South Carolina Rules of Appellate Procedure 216-218 regarding the issues presented herein.

STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae is the South Carolina Association of Justice ("SCAJ"), a well-known, South Carolina-based group of attorneys who advocate for justice and fairness under the law. SCAJ works to protect the rights of individuals, to seek justice through fair and open courtrooms, and to resist unjust laws on behalf of South Carolina citizens and the legal profession. Given the magnitude and overarching effects that the Circuit Court's ruling, if affirmed, will have on the legal system, SCAJ finds it necessary to submit this *amicus* brief. SCAJ files this brief to address the legal and policy implications of the Circuit Court's interpretation of S.C. Code Ann. § 15-78-70(d), which threatens to curtail citizens' rights in cases involving both governmental and non-governmental actors.

Amicus supports Cassiopia Rhoads's Initial Brief filed on March 24, 2025, and respectfully urges this Court to reverse the Circuit Court's Order vacating the jury's verdict by finding Respondent-Appellant Rhoads's prior settlement with Southern Health Partners constituted a qualifying settlement under S.C. Code Ann. § 15-78-70(d) and therefore served to bar her claims against the Aiken County Sheriff's Department.

STATEMENT OF ISSUES ON APPEAL

Amicus adopts and incorporates Respondent-Appellant Rhoads's Statement of Issues on Appeal as if fully set forth herein. (Rhoads's Br., p. 1).

[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus* and their counsel made a monetary contribution to the preparation or submission of this brief.

STATEMENT OF THE CASE

Amicus adopts and incorporates Respondent-Appellant Rhoads's Statement of the Case as if fully set forth herein. (Rhoads's Br., pp. 1-10).

SUMMARY OF ARGUMENT

The Circuit Court's ruling that a settlement with a private, non-governmental entity completely bars any remaining claim against a governmental entity under the South Carolina Tort Claims Act ("TCA") misconstrues the plain language of S.C. Code Ann. § 15-78-70(d). The statute is clear that it applies only when a settlement or judgment arises under the Tort Claims Act and relates to the same "occurrence." Here, the Southern Health Partners ("SHP") defendants are private contractors not covered by the TCA and the events giving rise to each defendant's liability involved multiple, distinct acts by different actors. Further, set-offs are the established method of reducing a co-defendant's liability and the Circuit Court's ruling contravenes established precedent.

Adding to this point, public policy considerations further underscore the dangerous precedent and unjust legal implications that would result from affirming this ruling. Not only would an affirmance discourage settlements and greatly reduce a plaintiff's right to a speedy recovery, but it would also decrease judicial efficiency.

For these reasons, SCAJ respectfully requests that the Court reverse the Circuit Court's Order granting JNOV to the Aiken County Sheriff's Office ("ACSO") and reinstate the jury's verdict.

ARGUMENT

The Circuit Court's Order granting ACSO's Motion to Alter or Amend Order and JNOV Motion erroneously found that § 15-78-70(d) of the TCA bars any and all claims against a

governmental entity if a settlement with *any* other defendant is reached first, even if the settling defendant is outside the TCA's jurisdiction and is not a governmental entity. This interpretation broadens the statute beyond its text and contradicts established precedent.

Section 15-78-70(d) states: "A settlement or judgment in an action or a settlement of a claim **under this chapter** constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the **same occurrence**." S.C. Code Ann. § 15-78-70(d) (emphasis added).

A. The Circuit Court's ruling regarding the government's apportionment of fault is contrary to the well-established precedent of set-offs to reduce a co-defendant's liability.

All defendants, including those subject to the TCA, enjoy the benefit of this State's set-off rules. Thus, the Circuit Court erred in concluding that a complete bar to Rhoads's claims under Section 15-78-70(d) was necessary to protect ACSO's "critical right to apportionment." It ruled:

> The right to apportioned fault under Section 15-78-100(c) is lost, however, if a joint tortfeasor is able to settle out of the litigation. That is the reason that Section 15-78-70(d) was enacted with and must be read *in pari materia* with Section 15-78-100(c). Contrary to the Plaintiff's argument, the General Assembly did not deny a plaintiff's or claimant's right to settle with less than all alleged joint tortfeasors, **but if the plaintiff or claimant does settle with a joint tortfeasor, that then bars any further recovery from a governmental entity because the governmental entity has lost the critical right to apportionment**.

(Order Granting JNOV, p. 6) (emphasis added).

Contrary to this ruling, it is a well-established principle that a co-defendant does not lose its right to apportionment merely because a plaintiff settles first with another co-defendant. South Carolina precedent clearly states that where a plaintiff settles with a co-defendant prior to trial, the remaining defendant can reduce its liability by the amount of the settlement. *See, e.g., Chester v. S.C. Dep't of Public Safety*, 388 S.C. 343, 346, 698 S.E.2d 559, 560 (2010); *Riley v. Ford Motor Co.*, 414 S.C. 185, 195, 777 S.E.2d 824, 830 (2015); *Wooten ex rel. Wooten v. S.C. Dep't of*

Transp., 326 S.C. 516, 521, 485 S.E.2d 119, 121 (Ct. App. 1997), *aff'd as modified*, 333 S.C. 464, 511 S.E.2d 355 (1999) (referencing pre-trial settlement with joint tortfeasors). A set-off is the ability for a court to reduce a judgment by the amount of a settlement in the same cause of action. *Riley*, 414 S.C. at 196, 777 S.E.2d at 830; *see also Green v. McGee*, 446 S.C. 343, 349, 919 S.E.2d 903, 906 (2025). It is also the right of the non-settling defendant. *See Palmetto Pointe v. Island Pointe*, 915 SE2d 501 (S.C. 2025) ("A non-settling defendant's right to setoff arises by operation of law when the settlement funds are paid to compensate the same plaintiff on a claim for the same injury. Under this circumstance, the trial court has no discretion in applying a setoff.").

This Court's holding in *Smalls v. S.C. Dep't of Education* is instructive. In *Smalls*, the plaintiffs initially sued a truck driver and his employer for wrongful death after the driver struck and killed their 8-year-old daughter as she was crossing the road to catch her school bus. 339 S.C. 208, 214, 528 S.E.2d 682, 685 (Ct. App. 2000). During litigation, the plaintiffs amended their complaint to add the South Carolina Department of Education as a defendant, claiming the bus driver's directions for pick up location had negligently contributed to the accident. *Id.* Prior to trial, the plaintiffs settled with the truck driver and his employer and proceeded to trial against the Department of Education as the remaining defendant. *Id.* The jury returned a verdict for the plaintiffs, and the Department of Education appealed. On review, this Court held the trial court had correctly determined that, under Section 15-78-100(c), plaintiffs' earlier settlement did not require a special interrogatory allocating fault between the settling defendants and the remaining defendant. *Id.* at 221, 528 S.E.2d at 689. Instead, it ruled the Department of Education was entitled to a set-off for the amount the truck driver and his employer paid to settle. *Id.* Citing the TCA, this Court held:

> Equity dictates Department be given a credit for the amount paid by the settling parties and thus, a double recovery is avoided. The settlement amount represents,

> in effect, the portion of total damages attributable to [truck driver]. **A set-off under the facts of this case is not only equitable but it comports with the legislative intent of limiting the liability of governmental entities**. *See generally* S.C. Code Ann. § 15–78–20 (Supp. 1999).

Id. at 221, 528 S.E.2d at 689 (emphasis added).

Following the reasoning in *Smalls*, the trial court in Greenville County recently reached the same conclusion. In *Hickman v. South Carolina Dep't of Parks, Recreation, and Tourism*, the South Carolina Department of Parks, Recreation, and Tourism ("SCDPRT") moved for summary judgment after the plaintiffs reached a settlement with private entities (independent contractors) in the case. (*See generally* Plf's Resp. in Opp. to Def's Mot. for Summ. J., C/A 2022-CP-23-06560, (May 22, 2025). SCDPRT argued that Section 15–78–70(d) barred any claims against it at trial because plaintiffs chose to settle with its nongovernmental co-defendants. The plaintiffs argued Section 15–78–70(d) did not apply to independent contractors and that any verdict against SCDPRT would be set-off by the settlement amount paid by these independent contractors. (*Id.* at pp. 3-4). Circuit Court Judge R. Kirk Griffin agreed and denied SCDPRT's motion for summary judgment. *Hickman v. S.C. Dep't Parks, Recreation & Tourism*, Op. No. 2022-CP-23-06560 (S.C. Cir. Ct. Greenville Cnty. filed June 17, 2025). The case later settled prior to trial.

The holdings in *Smalls* and *Hickman* are just two examples of the courts' routine use of set-offs when a settlement is reached with joint tortfeasors and the case proceeds to trial. *See also Welch v. Epstein*, 342 S.C. 279, 312–13, 536 S.E.2d 408, 425 (Ct. App. 2000) (finding a non-settling defendant is entitled to credit for the amount paid by another defendant who settles for the same cause of action). In the case at hand, the equitable outcome for settling with SHP would be a reduction of the judgment against ACSO by the amount of the settlement with the SHP Defendants. The Circuit Court's statement that "the right to apportioned fault under Section 15-78-100(c) is lost, however, if a joint tortfeasor is able to settle out of the litigation" is in error.

(Order Granting JNOV, p. 6). A complete bar against recovering from ACSO, or any governmental joint tortfeasor, is not equitable, and this result is contrary to the established rule that set-offs are the proper judicial remedy in a situation such as this. *See, e.g.*, *Wooten v. S.C. Dep't of Transp.*, 326 S.C. 516, 529, 485 S.E.2d 119, 126 (Ct. App. 1997), *aff'd as modified*, 333 S.C. 464, 511 S.E.2d 355 (1999) ("The trial judge correctly determined [the plaintiff] was entitled to the entire verdict, less amounts paid by the two [settling] co-defendants."). Here, the proper remedy for ACSO is a set-off, not a complete bar against **any** recovery from a governmental entity that is a joint tortfeasor. The Circuit Court's reasoning is thus in error.

B. The Circuit Court erroneously held that Section 15-78-70(d) applies to claims and actions against private, non-governmental entities that are not subject to the TCA.

The remainder of the Circuit Court's ruling rests on the erroneous notion that Plaintiff sued SHP, a private non-governmental entity, in the ***same lawsuit*** as ACSO, a governmental entity, and because Plaintiff settled with SHP, Section 15-78-70(d) bars any and all remaining claims against ACSO. It reasoned:

> The Court finds the bar of Section 15-78-70(d) applies to this case. There is no dispute that the Plaintiff brought suit simultaneously against all Defendants, including the Defendant Sheriff's Office as well as the SHP Defendants, which were named as parties in the original Complaint. **The suit was brought pursuant to the Tort Claims Act in that the Plaintiff asserted negligence/gross negligence cause of action against all Defendants**, and as discussed above, the Tort Claims Act is the exclusive means by which the Defendant Sheriff's Office, as a governmental entity, may be sued in tort. **The Plaintiff also cited the Tort Claims Act in her Complaint**. *See* Complaint, ¶¶ 4-5. All of the Defendants, including the SHP Defendants, also cited Tort Claims Act defenses in their Answers, with the Plaintiff never moving to strike those defenses. *See*, SHP Answer, ¶ 83, Sheriff's Office Answer, ¶¶ 51-52, 57. **Thus, it is indisputable that the Plaintiff brought this action under the Tort Claims Act**.

(Order Granting JNOV, pp. 3-4) (emphasis added).

The Circuit Court concluded that because Plaintiff sued SHP for negligence—a claim outside the scope of the TCA—and sued ACSO for negligence—a claim falling within the scope

of the TCA and subject to caps—the entire "action" was barred under the TCA, Section 15–78–70(d). While Plaintiff argued her claims against SHP were not brought—and, in fact, could not be brought—under the TCA, the Circuit Court rejected this argument, erroneously holding that because Plaintiff sued SHP and ACSO in the same ***action***, the entire action was governed by Section 15–78–70(d). (*See id.* at fn.1).

Regardless of whether the settlement of an "action" or settlement of "claim" is at issue, either one must fall "under this chapter." Critically, Plaintiff did not bring her entire action under the TCA. It is undisputed that the TCA's breadth is limited to governmental entities. As the Supreme Court in *Wade* noted, "to invoke the provisions of § 15–78–70(d), there must be a settlement or judgment in an action **under the Act** or a settlement of a claim **under the Act**." 348 S.C. 224, 230, 559 S.E.2d 586, 588–89 (emphasis added). Because it is impossible to sue a private, non-governmental entity in an action or a claim "under the [Tort Claims] Act," the provisions of Section 15–78–70(d) cannot apply.

Here, SHP was an independent contractor doing business with ACSO, a state entity. SHP was undoubtedly a private, non-governmental entity which was not—and could not be—subject to a remedy under the TCA given its plain and ordinary language.[2] *See Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007) ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning."). Even if Plaintiff sued both SHP and ACSO in the same lawsuit, the negligence

[2] Section 15-78-70(a) reads: "This chapter constitutes the **exclusive remedy** for any tort committed by an **employee of a governmental entity**." (emphasis added). Section 15-78-30(d) defines "governmental entity" as "the State and its political subdivisions." Section 15-78-30(c) defines "employee" as "any officer, employee, or agent of the State or its political subdivisions . . . but the term **does not include an independent contractor doing business with the State or a political subdivision of the State**. . ." (emphasis added).

action against SHP could not be subject to **any** of the provisions set forth in the TCA as it is not a governmental entity as defined by the statute.

While the Circuit Court argues the mere mention of the TCA in Plaintiff's Complaint somehow broadens the Act's jurisdiction to cover private entities, such a ruling goes against the plain language of the Act, the purpose of which is to provide for rights and remedies against governmental entities but not private parties. *See* S.C. Code Ann. § 15-78-20(b) ("The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents…."). In the case at hand, Plaintiff sued SHP, ACSO, and individuals for negligence. The only references to the TCA in Plaintiff's Complaint appear in two sentences when naming ACSO and one of its officers as defendants:

> 4. Defendant Michael E. Hunt (hereinafter sometimes referred to as "Defendant Hunt" or "Hunt") is the duly elected sheriff of Aiken County and as such, **in his official and representative capacity is a governmental agency and/or political subdivision of the State of South Carolina as defined in S.C. Code 15-78-10 et seq** and has facilities located in the county of Aiken, South Carolina.
>
> 5. Defendant Aiken County, operating as the Aiken County Detention Center, **is a governmental agency and/or political subdivision of the State of South Carolina as defined in S.C. Code 15-78-10 et seq** and has facilities located in the county of Aiken, South Carolina. . . .

(Compl. ¶¶ 4-5) (emphasis added).

Using the above language, the Circuit Court mangles the allegations set forth in the remaining 142 paragraphs and 29 pages of Plaintiff's Complaint, finding every defendant—governmental and nongovernmental—falls within the TCA's exclusive jurisdiction, mislabeling Plaintiff's whole Complaint a "TCA action." (*See* Order Granting JNOV, pp. 3-4, "The suit was brought pursuant to the Tort Claims Act in that the Plaintiff asserted a negligence/gross negligence cause of action against all Defendants, . . .").

The Circuit Court's interpretation defies logic. Plaintiff's claims against SHP were not brought under the TCA. The TCA is not implicated in any way with Plaintiff's claims against the SHP. SHP—as a private, independent contractor—would not have the right to benefit from any defenses the TCA grants to governmental entities including, for example, the statutory cap on damages, the two-year statute of limitations applicable to "an action for damages under this chapter," and the prohibition on awards of punitive damages "under this chapter." S.C. Code Ann. §§ 15-78-100(a), -120(a), & -120(b). Yet, under the Circuit Court's reasoning, ACSO—as a governmental entity—would obtain the benefit of escaping any and all liability the moment a settlement with SHP was reached.[3] It is clear that any settlement Plaintiff reached with SHP is not a settlement "under this chapter" because the claims against it were not brought within the TCA.

Further, the Circuit Court's interpretation of "action" is inconsistent with any reasonable application of the term in other types of litigation. If suing a defendant for negligence under the TCA and suing a co-defendant for negligence under common law deems the entire "action" subject to the TCA, then consider the following example: if a plaintiff brings a lawsuit against both a governmental and non-governmental entity and asserts a claim under the State's Freedom of Information Act ("FOIA") for failure to produce requested records, would the non-governmental entity be compelled to produce records merely because both parties were named in the same "action" under the Act? Such a conclusion, while perhaps advantageous to the plaintiff, would plainly fail to state a claim as a matter of law. Similarly, if Plaintiff had brought a claim against SHP under the TCA in the "action," this claim would be dismissed because it falls outside the

[3] Presumably, given the Circuit Court's conclusion that a claim against a non-governmental defendant is a TCA action when joined in a lawsuit against a governmental co-defendant, a private defendant would enjoy the same ability to avoid liability if a plaintiff were to settle with any party prior to trial, including the governmental entity or another non-governmental co-defendant.

TCA's jurisdiction. *See* S.C. Code Ann. § 15-78-30(c) (defining "employee" as "any officer, employee, or agent of the State or its political subdivisions . . . but the term **does not include an independent contractor doing business with the State or a political subdivision of the State**") (emphasis added).

Lastly, Section 15-78-70(d) was enacted to prevent duplicative recovery against a governmental entity, not to insulate the government from liability whenever a plaintiff resolves claims against a non-governmental party. This Court's recent holding in *Whetstone v. Office of Governor* (S.C. App. 2026), affirming *Wade v. Berkeley County*, held the statutory bar applies only when there has been a settlement or judgment in an action brought under the TCA itself. A settlement outside the TCA framework—whether with a governmental employee sued individually before any TCA claim is asserted, as in *Wade* and *Whetstone*, or with a private, non-governmental defendant—does not extinguish a plaintiff's right to pursue a subsequent TCA claim against the governmental entity. When the government and its employee are both parties to a TCA action, a settlement with one operates as a settlement with both, thereby preventing double recovery. But where, as here, no TCA claim had been asserted against the government at the time of settlement, section 15-78-70(d) has no application.

The United States Supreme Court has reached the same conclusion under the Federal Tort Claims Act, holding that its judgment bar applies only to actions involving government employees or the government itself, not to settlements with private parties. *Brownback v. King*, 592 U.S. 209, 212, 141 S. Ct. 740, 746, 209 L. Ed. 2d 33 (2021). By extending the TCA's judgment bar to a settlement with a private, non-governmental entity, the Circuit Court created a rule untethered to the statutory text, legislative purpose, or controlling precedent of this State.

C. Upholding the Circuit Court's interpretation of Section 15-78-70(d) contravenes established principles of public policy and the interests of justice.

Public policy of this State encourages settlements, yet the Circuit Court's ruling has the opposite effect. Indeed, if this Court were to adopt the reading of Section 15-78-70(d) urged by ACSO—that a settlement with a non-governmental entity bars recovery against the government when the two are co-defendants **in the same lawsuit**—it would discourage settlements and result in procedural maneuvering that decreases judicial efficiency. *See, e.g.*, *Marek v. Chesny*, 473 U.S. 1, 10 (1985) ("Moreover, Rule 68's policy of encouraging settlements . . . expresses a clear policy of favoring settlement of all lawsuits.").

For example, this ruling would result in increased litigation over the same factual event. Rather than bringing a lawsuit against both parties, a plaintiff would need to file separate lawsuits, ultimately decreasing judicial efficiency and clogging up the courts with needless litigation.[4] Such procedural gamesmanship on the part of attorneys does not advance the judicial rights of the litigants and is contrary to the right to a "just, speedy, and inexpensive determination of every action." SCRCP 1, FRCP 1. If plaintiffs are forced to bring separate lawsuits, the civil procedure rules on joinder, which promote resolving related claims together, would become virtually superfluous. As the South Carolina Supreme Court explained in *Chester v. S.C. Dep't of Pub. Safety*:

[4] After doing so, a strategic defendant could then move for permissive joinder under Rule 20 of the South Carolina Rules of Civil Procedure. If granted, such joinder would again impede settlement, as it is not in the original scenario of a single action involving a governmental and non-governmental defendant. This creates the absurd result of permissive joinder potentially implicating the substantive application of 15-78-70 et seq. of the TCA. *See, e.g., State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022) ("The Court must reject a statutory interpretation if it leads to an absurd result that could not possibly have been intended by the legislature or that defeats plain legislative intent."); *Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 378, 735 S.E.2d 453, 455 (2012) ("This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless.").

> We are not persuaded that the General Assembly, in enacting § 15–78–100(c), giving a TCA defendant the right to a proportionate verdict "when an alleged tortfeasor is named a party defendant," intended to abrogate the tort plaintiff's right to choose her defendant, **nor to effectively force the plaintiff to choose between settling with some parties and thereby forego her right to sue a TCA defendant, or going to trial against all co-tortfeasors**.

388 S.C. 343, 346, 698 S.E.2d 559, 560 (2010) (emphasis added).

As the Court reasoned in *Chester*, Rhoads should not be forced to choose between settling with SHP and losing her claims against ACSO or bringing all defendants to trial. The Circuit Court's order does not serve the interests of judicial efficiency or public policy, and it must be overturned.

CONCLUSION

For the foregoing reasons, the Court should reverse the Circuit Court's ruling and find in favor of Plaintiff Rhoads.

Respectfully submitted,

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