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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Common Pleas Case No.: 2024-CP-08-01894
Appellate Case No.: 2025-001090

Erik Lebkicher, Carissa Lebkicher, and
E. L., a minor child,…………..……………………………………Appellants,

v.

Stephanie Davidson & Drew P.
Finnegan,……….…………………………………………………...Respondents.

APPELLANT'S REPLY TO RESPONDENT'S BRIEF

March 4, 2026

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APPELLANT'S REPLY TO RESPONDENT'S INITIAL BRIEF

Respondents' brief attempts to transform a straightforward Rule 3 issue into a dispute over pleading mechanics. The record shows that Appellants timely filed their complaint within the statute of limitations and served Respondents within Rule 3's 120-day period. Because the action was properly commenced, dismissal with prejudice based on curable procedural issues was error.

ARGUMENT

I. The action was timely commenced under Rule 3 because the Appellants filed their complaint on July 10, 2024, within the statute of limitations, and served Respondents within the Rule's 120-day "safety net".

Rule 3(a), SCRCP establishes when a civil action is commenced. An action is commenced when the summons and complaint are filed within the statute of limitations and service is accomplished within 120 days of filing if service does not occur within the limitations period. Rule 3(a), SCRCP; S.C. Code Ann. § 15-3-20(B). The South Carolina Supreme Court has explained that the statute and rule must be read together and that the 120-day provision operates as a "safety net" for plaintiffs who file near the expiration of the statute of limitations. *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 346–47, 732 S.E.2d 395, 397–98 (2012). As explicitly stated in that opinion,

> "This [Supreme] Court recognized that the legislative intent in amending section 15-3-20(B) in 2002 was to provide a **safety net** for cases where filing of the summons and complaint occurs near the end of the statute of limitations and service is made after the limitations period has run. The statute and the rule, read together, provide that (1) an action is commenced upon filing the summons and complaint, if service is made within the statute of limitations, and (2) if filing but not service is accomplished within the statute of limitations, then service must be made within 120 days of *filing*." *Id*. (Emphasis added.)

Under this framework, a civil action is deemed commenced when a complaint is filed within the limitations period and service is accomplished within 120 days thereafter. *Estate of Mims v. S.C. Dep't of Disabilities & Special Needs*, 422 S.C. 388, 392–93, 811 S.E.2d 807, 809 (Ct. App. 2018); *Pressley v. Blackwell*, 367 S.C. 299, 303–04, 626 S.E.2d 348, 350 (Ct. App. 2005).

Here, those requirements were satisfied. The Appellants filed their Summons and Complaint on July 10, 2024, the final day of the statute of limitations arising from the July 10, 2021 incident. Thereafter, the Respondents were served on October 22 and October 24, 2024, both well within Rule 3's 120-day "safety net". Because the complaint was timely filed and service occurred within 120 days, the action was commenced under the plain language of Rule 3. See *Mims v. Babcock*, 399 S.C. at 346, 732 S.E.2d at 397.

Moreover, Rule 3 contains no requirement that the first-filed complaint be the version that is ultimately served. The rule requires only that, "the summons and complaint" be served within 120 days of filing. Rule 3(a), SCRCP. Respondents' argument depends on adding a limitation that the rule itself does not contain, that the original complaint must be the complaint served. Thus, Rule 3 focuses solely on timely filing and timely service, not on the sequencing of pleadings under Rule 15.

Therefore, because the Appellants filed within the statute of limitations and accomplished service within Rule 3's 120-day "safety net", the action was timely commenced.

II. Even if leave to amend was required for the October 17, 2024 amendment, Rule 15 does not support dismissal or retroactively invalidate an action already commenced under Rule 3.

Respondents attempt to avoid the straightforward application of Rule 3 by arguing that the October 17, 2024 Second Amended Complaint required leave of court and should therefore be treated as a nullity. That argument fails for two independent reasons.

First, the July 12, 2024 filing did not constitute an amendment exhausting Appellants' right to amend under Rule 15(a). The July filing did not add, delete, or modify any parties or causes of action. Instead, it merely clarified the allegations of the original complaint. South Carolina courts have recognized that Rule 15(a) governs amendments that materially alter the parties or claims in a case. *Valentine v. Davis*, 319 S.C. 169, 171, 460 S.E.2d 218, 219 (Ct. App. 1995). Technical or clarifying revisions that do not change the cause of action are not treated as substantive amendments requiring leave of court. See *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 198, 826 S.E.2d 585, 597 (Ct. App. 2019).

Second, even assuming arguendo that leave of court was required, Rule 15 does not authorize dismissal of an otherwise properly commenced action. Rule 15(a), SCRCP expressly provides that leave to amend "shall be freely given when justice so requires." South Carolina courts consistently apply this principle to ensure that cases are decided on their merits rather than on technical pleading disputes. *Skydive Myrtle Beach*, 426 S.C. at 197–98, 826 S.E.2d at 596–97.

Here, Appellants sought to amend while the case was still in its earliest stages. No responsive pleadings had been filed, no discovery had occurred, and no trial schedule had been established. Respondents have not seasonably identified any prejudice that has, or could arise from the amendment. Under these facts, the Rules support that the amendment should be allowed, not that the action should be dismissed with prejudice. At most, if the Second Amended Complaint were procedurally improper, the appropriate remedy would have been to strike that pleading. Striking an amendment does not extinguish an action that was already properly commenced.

Most importantly, the Rule 15 dispute identified by Respondents has no bearing on commencement of the action under Rule 3. It is immaterial because the amendment procedure under Rule 15 does not determine whether an action has already been commenced under Rule 3.

Appellants filed their complaint on July 10, 2024 within the statute of limitations and served Respondents on October 22 and October 24, 2024, well within Rule 3's 120-day service window. Once those events occurred, the action was commenced. A later disagreement over amendment procedure cannot retroactively undo that commencement.

III. *Mims v. Babcock* does not apply because the Appellants served Respondents on October 22 and October 24, 2024, within the 120-day "safety net" of Rule 3.

Respondents rely heavily on *Mims v. Babcock*, but that decision addressed a fundamentally different procedural circumstance. In *Mims*, the plaintiff filed a summons and complaint within the statute of limitations but never served it. Nearly a year later, the plaintiff filed an amended complaint and served it within days. The trial court dismissed the case, reasoning that service had not been accomplished within 120 days of filing the original complaint. The South Carolina Supreme Court reversed.

In reversing, the Court explained that S.C. Code Ann. § 15-3-20 and Rule 3(a), SCRCP must be read together. Under that framework, an action is commenced when the summons and complaint are filed within the statute of limitations if service is accomplished within the limitations period, or if service is accomplished within 120 days after filing when service does not occur within the limitations period. *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 346–47, 732 S.E.2d 395, 397–98 (2012). The Court further recognized that Rule 15(a), SCRCP permits the filing and service of an amended complaint without leave of court before a responsive pleading has been served, even when the original complaint itself was never served. *Id*. at 347, 732 S.E.2d at 398.

Here, *Mims* confirms the Rule 3 framework that governs here. Appellants filed their complaint on July 10, 2024, within the statute of limitations, and served Respondents on October 22 and October 24, 2024, well within Rule 3's 120-day service period. Because the complaint was

timely filed and service was accomplished within the rule's "safety net", the action was commenced.

Respondents' reliance on *Mims* is a misreading of the case. Rather than supporting dismissal, *Mims* confirms that an action is commenced when a summons and complaint are filed within the statute of limitations and service is accomplished within 120 days. Thus, because both requirements were satisfied here, the action was properly commenced.

IV. Even if leave to amend was required for the October 17, 2024 amendment, dismissal with prejudice was an abuse of discretion where the case was still in its earliest stages and any defect was readily curable.

Assuming that the October 17, 2024 Second Amended Complaint required leave of court, dismissal with prejudice was still an extreme and unwarranted remedy. Rule 15(a), SCRCP provides that leave to amend "shall be freely given when justice so requires," reflecting South Carolina's strong preference that cases be resolved on their merits rather than through technical pleading defects. *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 197–98, 826 S.E.2d 585, 596–97 (Ct. App. 2019).

Dismissal with prejudice is a severe sanction reserved for cases involving incurable defects or bad faith. *Armstrong v. Collins*, 366 S.C. 204, 208, 621 S.E.2d 368, 370 (Ct. App. 2005). Neither circumstance is present here.

When the October 17 filing occurred, the case was still in its earliest procedural posture. No responsive pleading had been filed, no discovery had occurred, and no substantive proceedings had taken place. Respondents have identified no prejudice arising from the amendment. Rule 15(a), SCRCP provides that leave to amend "shall be freely given when justice so requires." The

South Carolina Supreme Court has emphasized that amendments should be liberally permitted absent prejudice, bad faith, or futility. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 208, 493 S.E.2d 826, 830 (1997). Consistent with that principle, courts recognize that the absence of prejudice strongly favors allowing amendment. *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 284, 607 S.E.2d 711, 715 (Ct. App. 2005).

Any perceived procedural defect was fully curable through amendment. Instead of permitting amendment or striking the pleading if absolutely necessary, the circuit court dismissed the action with prejudice, thereby extinguishing the claims that had been timely filed within the statute of limitations and served within Rule 3's 120-day safety net. Under these circumstances, dismissal with prejudice constituted an abuse of discretion.

Further, the ruling below improperly extinguished the claims of a minor. Respondents concede that the statute of limitations is tolled as to E.L. under S.C. Code Ann. § 15-3-40. Yet the circuit court dismissed the action with prejudice based solely on alleged procedural defects despite timely filing, timely service, and actual notice to Respondents. South Carolina law has long recognized that statutes protecting minors exist to ensure their claims are not forfeited through procedural technicalities. Allowing dismissal with prejudice under these circumstances would defeat that protection and further underscores why the ruling below constituted an abuse of discretion.

CONCLUSION

Because the action was timely filed, timely served, and any amendment issue was curable, the dismissal with prejudice cannot stand under Rule 3 or Rule 15 and the Circuit Court's order should be reversed.

Respectfully submitted,

March 4, 2026

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CERTIFICATION BY COUNSEL

I, the undersigned counsel, do hereby certify that the Appellant's Final Reply Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

Respectfully submitted this 4th day of March 2026.

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