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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2025-002579
Case No. 2022-CP-40-3484

Suzanne Young, ... Appellant,

v.

Richland County Sheriff Leon Lott in his Official Capacity
as Sheriff of Richland County, ... Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This is an appeal from an action brought pursuant to the South Carolina Tort Claims Act. The Appellant Suzanne Young filed her Complaint on July 8, 2022, alleging a negligence claim arising out of a motor vehicle accident occurring on April 30, 2021. The Appellant sued Aiden Sean Evans, who was a Richland County Deputy Sheriff, and Richland County.[1] In lieu of filing an Answer, the Defendants Evans and Richland County filed a motion to dismiss on December 14, 2022, stating that Evans and the County were each "not a proper party-defendant in this case." (Motion to Dismiss). Despite receiving that motion and being advised of the Defendants' position that the named party-defendants were not proper parties, the Appellant took no action to amend the Complaint to name the Respondent Richland County Sheriff Leon Lott as the correct party-defendant. The Appellant had thirty days pursuant to Rule 15(a), SCRCP, to amend her Complaint as a matter of right. Moreover, even after those thirty days passed, the Appellant made no effort to amend the Complaint to name Sheriff Lott before the two-year statute of limitations expired on April 30, 2023.

The original Defendants' motion to dismiss was scheduled for a hearing on June 27, 2023. Prior to that hearing, the parties entered into a Consent Order, which was filed July 18, 2023, allowing the Appellant to amend her Complaint to name Sheriff Lott as the sole-party-defendant. The Consent Order reserved the right of Sheriff Lott, once named, to file a motion to dismiss.

Based on that Consent Order, the Appellant filed her Amended Complaint on July 19, 2023. In lieu of filing an Answer, Sheriff Lott filed a motion to dismiss asserting a statute of

[1] Deputy Evans was personally served with the Complaint at his home address rather than at the Richland County Sheriff's Office. (Affidavit of Service). There is no evidence nor contention that the Sheriff's Office was served with the Complaint.

limitations defense under the Tort Claims Act. Subsequently, that motion was heard by Circuit Court Judge Jocelyn Newman on April 15, 2024. The parties both filed memoranda of law prior to the hearing. The Appellant made two arguments in opposition to the statute of limitations. First, the Appellant argued that a three-year statute of limitations was applicable based upon the verified claim provisions of the Tort Claims Act. Second, the Appellant argued that she was entitled to the benefit of the relation back doctrine pursuant to Rule 15(c), SCRCP. As the sole exhibits or evidence, the Appellant presented the affidavits of service and some pre-suit correspondence between the Appellant's counsel and Richland County. The Appellant presented no affidavits, testimony, or exhibits to support her relation back argument.

On May 9, 2024, the trial court issued a formal order granting Sheriff Lott's motion to dismiss. The court found that the Amended Complaint was filed beyond the applicable two-year statute of limitations and that "Plaintiff cannot satisfy the required elements of Rule 15(c), S.C. Rules of Civ. P., for the Amended Complaint to relate back to the originally filed Complaint." (Order, p. 1). As for the applicable statute of limitations, the trial court found that the Appellant did not demonstrate that she complied with the verified claim procedures, and as a result, a two - year statute of limitations was applicable to this case. That ruling is not challenged on appeal. Additionally, the trial court found that the Appellant had not presented any evidence to support her reliance on Rule 15(c). The trial court observed that there was no evidence that Sheriff Lott was aware of the original Complaint prior to the expiration of the statute of limitations on April 30, 2023. Specifically, the trial court explained:

> In this case Plaintiff presented no evidence establishing that Sheriff Lott had any knowledge of a pending action prior to the filing of the Amended Complaint. Plaintiff's counsel argue that knowledge existed as a result of the fact that Deputy Evans' accident occurred while he was in the course and scope of his employment. However, this only, taken in a light most favorable to Plaintiff,

> could lead to an inference that Sheriff Lott knew of his deputy's involvement in accident. Knowledge of an accident does not lead to a showing of knowledge of a lawsuit. Plaintiff, therefore, has failed to show Sheriff Lott knew or should have known of the action.

(Order, pp. 6-7).

The Appellant subsequently filed a timely motion for reconsideration on May 17, 2025. Judge Newman thereafter issued a Form Order on December 3, 2025, denying that motion.

The Appellant thereupon filed a timely Notice of Appeal to this Court.

STANDARD OF REVIEW

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate courts are "free to decide matters of law with no particular deference to the fact finder." *Id*.

ARGUMENTS

I. The trial court correctly ruled that the Appellant's tort claim against the Respondent Lott is barred by the two-year statute of limitations under the Tort Claims Act.

The Appellant appeals from the order issued by the trial court dismissing this action against Sheriff Leon Lott based on the expiration of the two-year statute of limitations pursuant to Section 15-78-110 of the Tort Claims Act. *See*, S.C. Code Ann. § 15-78-110.[2] Because the Appellant filed her Amended Complaint naming the Sheriff on July 19, 2023, her negligence claim must have accrued on or after July 19, 2021, in order for that claim to be timely commenced. The motor vehicle accident, however, occurred on April 30, 2021, which was more than two years prior to the filing of the Amended Complaint. As a result, the trial court correctly ruled that the claim against Sheriff Lott is barred by the two-year statute of limitations.

On appeal, the Appellant makes several arguments to contest the trial court's decision. The Appellant does not, however, contest that Sheriff Lott was sued more than two years after the motor vehicle accident. Instead, the Appellant argues that the filing date of the Amended Complaint against Sheriff Lott should "relate back" to the filing date of the original Complaint which was brought against Aiden Sean Evans and Richland County. The Appellant further argues that Deputy Evans, who is not a party to this appeal, was required to seek the substitution of his employer pursuant to Section 15-78-70(c) when he initially moved to be dismissed. Finally, the Appellant claims that the statute of limitations should have been subject to equitable tolling or equitable estoppel. Each of those arguments lack merit for the reasons discussed below.

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[2] In the trial court, the Appellant attempted to argue that a three-year statute of limitations applied, but she had since abandoned that argument.

A. Relation Back Doctrine

The Appellant contends that the relation back doctrine set forth in Rule 15(c), SCRCP, requires the filing of the Amended Complaint naming Sheriff Lott to relate back to the filing date of the original Complaint, which was filed within the two-year statute of limitations. The trial court, however, rejected that argument and found that "Plaintiff cannot satisfy the required elements of Rule 15(c), S.C. Rules of Civ. P., for the Amended Complaint to relate back to the originally filed Complaint." (Order, p. 1).

Rule 15(c), SCRCP, provides the basis for an amendment relating back to the original action, as it states that "an amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him." Rule 15(c), SCRCP.

In *Jackson v. Doe*, 342 S.C. 552, 537 S.E.2d 567 (Ct. App. 2000), this Court discussed the four-prong test that a plaintiff is required to satisfy to trigger the relation back provision of Rule 15(c). Relying on the United States Supreme Court's decision in *Schiavone v. Fortune*, 477 U.S. 21 (1986), and the South Carolina Supreme Court's decision in *Hughes v. Water World Water Slide, Inc*., 314 S.C. 211, 442 S.E.2d 584 (1994), this Court explained the four-prong test as requiring:

> (1) the basic claim must have arisen out of the conduct set forth in the original pleading; (2) the party to be brought in must have

> received such notice that it will not be prejudiced in maintaining its defense; (3) that party must or should have known that, but for a mistake concerning identity, the action would have been brought against it; and (4) the second and third requirements must have been fulfilled within the prescribed limitations period.

Jackson, 537 S.E.2d at 570.

As the trial court determined, the Appellant presented no evidence that Sheriff Lott was aware of the original Complaint prior to the expiration of the statute of limitations on April 30, 2023. Specifically, the trial court explained:

> In this case Plaintiff presented no evidence establishing that Sheriff Lott had any knowledge of a pending action prior to the filing of the Amended Complaint. Plaintiff's counsel argue that knowledge existed as a result of the fact that Deputy Evans' accident occurred while he was in the course and scope of his employment. However, this only, taken in a light most favorable to Plaintiff, could lead to an inference that Sheriff Lott knew of his deputy's involvement in accident. Knowledge of an accident does not lead to a showing of knowledge of a lawsuit. Plaintiff, therefore, has failed to show Sheriff Lott knew or should have known of the action.

(Order, pp. 6-7).

On appeal, the Appellant makes the same argument as correctly rejected by the trial court without citing any record evidence that the trial court overlooked or misapprehended. Critically, the Appellant points to *no evidence* that Sheriff Lott was aware of the lawsuit prior to April 30, 2023, when the statute of limitations expired. Instead, she relies on the argument of counsel, and of course, the assertions or arguments of counsel are not evidence. *See*, *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E.2d 473, 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered"); *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127, 129 (Ct. App. 1991) ("Arguments of counsel are ... not evidence"); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986). Moreover, the

argument of counsel here is based purely on supposition and conjecture, and not evidence. The Appellant contends that it was reasonable to "infer" that Sheriff Lott was aware of a lawsuit against one of his deputies. But, to reiterate, there is no evidence from which such an "inference" may be reasonably drawn. Indeed, there is no evidence that Sheriff Lott is advised of all lawsuits. Likewise, contrary to the Appellant's suggestion, there is no evidence that Sheriff Lott had any involvement in retaining defense counsel to represent Deputy Evans. In sum, the Appellant's argument is based on supposition, conjecture, and speculation, but not evidence. Accordingly, the trial court was correct in concluding that the Appellant did not present any evidence to establish that she was entitled to rely on the relation back doctrine under Rule 15(c) to withstand Sheriff Lott's statute of limitations defense.

B. Substitution under Section 15-78-70(c)

The Appellant next argues that the motion to dismiss filed by the original Defendants, namely Deputy Evans and Richland County, cited Section 15-78-70(c), which provides in part: "In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant." S.C. Code Ann. § 15-78-70(c). The Appellant contends that the original Defendants "failed to pursue the statutorily mandated substitution." *See*, Appellant's Brief, p. 8.

The Appellant's reliance on Section 15-78-70(c) is misplaced for both procedural and substantive reasons. In the trial court, the Appellant raised Section 15-78-70(c) for the first time in her Rule 59(e) motion to alter or amend order. Of course, a new issue or defense cannot be raised in a Rule 59(e) motion. *See*, *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563, 762 S.E.2d 693, 695 (2014) ("a party cannot use a Rule 59(e) motion to

advance an issue the party could have raised to the circuit court prior to judgment, but did not"). As a result, this issue is not preserved for appellate review.

However, even if this Court reaches the merits, it is well-settled that a defendant has no duty under Section 15-78-70(c) to move for or otherwise seek the substitution of the governmental entity that employees the tortfeasor. This very issue was addressed in *Flateau v. Harrison*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). In that case, this Court cited to Section 15-78-70(c), and based thereon, explained that "[w]hen a plaintiff claims an employee of a state agency acted negligently in the performance of his job, the South Carolina Tort Claims Act requires a plaintiff to sue the agency for which an employee works, rather than suing the employee directly." 584 S.E.2d at 418, *citing Faile v. South Carolina Dept. of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536, 539, n.1 (2002). Ultimately, this Court in *Flateau* held that the language of Section 15-78-70(c) "places no burden on the employee to substitute as a party defendant the state agency for which he or she is employed." *Id*. *See also*, *Gardner v. Dial*, 2017 WL 3499289, *6 (D.S.C. 2017) (citing *Flateau*). Thus, the Appellant's argument in the case at bar that Deputy Evans (or his counsel) had a "duty" to substitute Sheriff Lott as the correct party-defendant is simply incorrect under the holding in *Flateau*.

In contrast, the "duty" to sue the correct party-defendant and to do so before the statute of limitations expires falls on a plaintiff. In this case, the record demonstrates that the Appellant was aware or should have been aware that the wrong parties were sued prior to the expiration of the two-year statute of limitations, but the Appellant took no action to amend and sue the correct party-defendant until after the statute of limitations had expired. The original Defendants, namely Deputy Evans and Richland County, did not hide the defense from the Appellant. In lieu of filing an Answer, the original Defendants filed an immediate motion to dismiss on December

14, 2022, stating that Evans and the County were each "not a proper party-defendant in this case." (Motion to Dismiss). The Appellant thus had more than four months until April 30, 2023, to take corrective action, but inexplicably did not do so. In fact, the Appellant did not even need consent of the Defendants or leave of court to amend to name Sheriff Lott. Pursuant to Rule 15(a), SCRCP, the Appellant even had the ability to amend as a matter of right for thirty days after the motion to dismiss was filed.

Finally, it is also noteworthy that the party whom the Appellant claims to have failed to move for the substitution of Sheriff Lott – that being Deputy Evans – is not even a party to this appeal.

Thus, even though the Appellant's reliance on Section 15-78-70(c) is not preserved for appellate review, the argument is meritless. It is the Appellant, and not Deputy Evans (or certainly Sheriff Lott), who had the legal responsibility to sue the correct party-defendant and to do so before the expiration of the statute of limitations. There is no legal basis for the Appellant's attempt to shift that legal responsibility away from herself.

C. Equitable Tolling and Equitable Estoppel

In an effort to salvage her claim, the Appellant now asserts the doctrines of equitable tolling and equitable estoppel for the first time on appeal,[3] but the issues are not preserved for appellate review. In *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), the Supreme Court explained that "[i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." 602 S.E.2d at

[3] The doctrines of equitable tolling and equitable estoppel are not mentioned in the Appellant's Statement of Issues on Appeal, but they are raised in the Argument section of the brief.

779-780. "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004), *citing I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "It is well settled that an appellate court cannot address an issue unless it was raised to, *and ruled upon by,* the trial court." *Id.* (Emphasis in original). Those arguments were not raised to nor addressed by the trial court, and the Appellant failed to file a Rule 59(e) motion requesting the trial court to address and specifically rule on that issue.[4] As a result, the issue of equitable tolling has not been preserved for appellate review.

Nonetheless, even if the issues were to be deemed preserved, the Appellant has not demonstrated her entitlement to equitable tolling or equitable estoppel.[5] Under South Carolina

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[4] In her Rule 59(e) motion, the Appellant did state that "Sheriff Lott should be estopped to invoke the statute of limitations, under the unique circumstances of this case." (Rule 59(e) Motion, p. 4). There was no explicit reference to equitable tolling or equitable estoppel nor any citation to any pertinent case law nor any analysis of the issues. Typically, an issue is deemed abandoned "if it is argued in a short, conclusory statement without supporting authority." *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285, n.3 (Ct. App. 1993). *See also*, *Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001) (same).

[5] The Appellant treats equitable tolling and equitable estoppel as the same, which they are not. Thus, the Appellant in her brief does not discuss the elements of equitable estoppel separate and apart from her discussion of equitable tolling. Nonetheless, to the extent the Court addresses equitable estoppel, the issue was not raised in nor ruled on by the trial court, and as a result, the issue is not preserved. Moreover, as to the merits, this Court has explained the doctrine as follows:

> A defendant may be estopped from claiming the statute of limitations as a defense if delay in bringing the action was induced by the defendant's conduct. The defendant's conduct may consist of an express representation or conduct suggesting a lawsuit is not necessary. Estoppel may apply against a government agency and the party asserting estoppel against the government must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) justifiable reliance upon the government's conduct; and (3) a prejudicial change in position.

law, "[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." *Hooper v. Ebenezer Senior Services & Rehabilitation Center*, 386 S.C. 108, 687 S.E.2d 29, 116 (2009). As the Supreme Court has explained, "equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." *Id*. *See also*, *American Legion Post 15 v. Horry County*, 381 S.C. 576, 674 S.E.2d 181 (Ct. App. 2009).

In the case at bar, the Appellant has not demonstrated that she was prevented from filing suit within the applicable two-year statute of limitations by some extraordinary event beyond her control. In fact, as discussed above, the Appellant was aware or should have been aware that Sheriff Lott rather than Deputy Evans or Richland County was the proper party-defendant long prior to the expiration of the statute of limitations on April 30, 2023. That is not a position that was hidden from the Appellant; indeed, it was stated with supporting statutory authority in the motion to dismiss filed by the original Defendants on December 14, 2022. (Motion to Dismiss). Moreover, neither the original Defendants nor Sheriff Lott impeded the Appellant's right to amend prior to the expiration of the statute of limitations. To that point, the Appellant did not

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> Citizens are presumed to know the law and are charged with exercising reasonable care to protect their interests. Estoppel will not lie against a governmental entity when a government employee gives erroneous information in contradiction of statute. Simply stated, equity follows the law.

American Legion Post 15 v. Horry County, 381 S.C. 576, 674 S.E.2d 181, 185 (Ct. App. 2009). (Citations omitted). The Appellant has made no allegation, nor presented any evidence, of any erroneous information provided nor any action taken by Sheriff Lott (or for that matter the original Defendants) to induce the Appellant into delaying to sue the correct party-defendant. The motion to dismiss filed December 14, 2022, cited to Section 15-78-70(c) and specifically advised the Appellant that Evans and the County were each "not a proper party-defendant in this case." (Motion to Dismiss). The Appellant then had thirty days to amend as a matter of right and inexplicably chose not to do so. Likewise, there is no evidence presented that, after those initial thirty days where the amendment was allowed as a matter of right, the Appellant was prevented somehow from moving to amend her Complaint to name Sheriff Lott.

even need the consent of the original Defendants or leave of court to amend to name Sheriff Lott; Rule 15(a) allows for an amendment as a matter of right. Thus, as a matter of law, equitable tolling and equitable estoppel are inapplicable in this scenario.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Richland County Sheriff Leon Lott respectfully requests that the Court affirm the Orders issued by Circuit Court Judge Jocelyn Newman dismissing this action based on the expiration of the two-year statute of limitations under the Tort Claims Act.

Respectfully submitted,

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