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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 FINAL BRIEF

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April 3, 2026

STATEMENT OF ISSUES ON APPEAL

I. Whether the circuit court erred in dismissing Appellants' action with prejudice on the ground that the action was not timely commenced under Rule 3, SCRCP, where the Summons and Complaint were filed within the statute of limitations and service was ultimately effected within the Rule 3 period.

II. Whether the circuit court abused its discretion in denying leave to amend under Rule 15, SCRCP, where Appellants sought amendment prior to trial and where dismissal with prejudice was not required as a matter of law.

III. Whether the circuit court erred in concluding that amendment would be futile and that the relation-back doctrine under Rule 15(c), SCRCP was categorically unavailable, under the facts and procedural posture of this case.

IV. Whether the circuit court erred in rejecting Appellants' tolling and equitable relief arguments, including relief necessary to prevent a forfeiture of claims under circumstances inconsistent with the purposes of the Rules of Civil Procedure.

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STATEMENT OF FACTS

On July 10, 2021, Plaintiff Elliana Lebkicher, a minor child under the age of 14, accompanied her father, Plaintiff Erik Lebkicher, to Defendant Stephanie Davidson's home at 125 Evelyn Joy Drive, Summerville, South Carolina. Defendants Drew Finnegan and Stephanie Davidson asked Mr. Lebkicher to feed the dog while they were out of town. At the time of the visit, E. L. was attacked by Defendant Finnegan's Pitbull in the course of dog-sitting the dog in Defendant Davidson's home. (R. at 20). The owner of the dog, Defendant Drew Finnegan, and Defendant Stephanie Davidson, the owner of the home, knew or should have known that this dangerous animal was being kept on the property. (R. at 22). Once inside the home, E.L. bent down to pet the dog, and the dog bit the face of E.L.

Plaintiff E.L. sustained severe injuries that caused her enormous pain, suffering, and scarring that forced her to undergo medical and psychological treatment. *Id*. The Plaintiff minor child has suffered and will continue to suffer damage in that she sustained physical injuries, facial lacerations, medical and pharmaceutical expenses; endured grievous pain and suffering, scarring, and has experienced severe emotional distress, anxiety, as well as mental anguish, including future medical care, future pain and suffering, and future psychological damages from the negligence of the Defendants. *Id*.

Plaintiffs Erik and Carissa have a child-parent relationship with the victim of the dog bite. Plaintiffs were present and in close proximity to the accident at the time of the attack. The emotional distress experienced by the Plaintiffs has significantly impacted Plaintiffs' daily lives, including but not limited to persistent anxiety from watching their daughter suffer at the time of the attack and thereafter their daughter's fear of dogs, and post-traumatic stress symptoms.

Appellants paid thousands of dollars in medical expenses for their daughter's treatment and will continue to pay for scar revisions. (R. at 21).

STATEMENT OF CASE

The Plaintiffs filed a summons and complaint on July 10, 2024. The original July 10, 2024, complaint was revised on July 12, 2024, pursuant to Rule 15(c), without the necessity of Rule 15(a). (R. at 25). On October 17, 2024, Plaintiffs' counsel filed a second revised complaint which was entitled Second Amended Complaint ("SAC"). This amendment was authorized by Rule 15 as it was the first substantive amendment to include future damages and remove Brett Davidson as a party. (R. at 30). The SAC was properly served on both Defendants on October 22, 2024, and October 25, 2024. (R. at 36). On November 14, 2024, and November 21, 2024, Defendant Stephanie Davidson and Defendant Drew Finnegan respectively filed individual Motions to Dismiss Plaintiff's SAC for improper service, alleging that the statute of limitations expired on July 10, 2024. (R. at 38). On February 20, 2025, at 1:14p.m., Plaintiffs filed, out of an abundance of caution, a motion to allow the SAC. (R. at 42) Thereafter, at 1:30p.m. that same day, a hearing on the motion to dismiss was held by the Honorable Judge Jennifer B. McCoy. (R. at 91). Judge McCoy heard arguments regarding the motion to dismiss of Defendants' and took note of the pending motion to allow the SAC filing and *nunc pro tunc* relief regranted to allow service of the SAC. (R. at 96). The matter was taken under the advisement. (R. at 101).

On March 25, 2025, the Honorable Judge Jennifer B. McCoy granted Defendants' Motion to Dismiss Plaintiffs SAC via Form 4 with a formal order to follow. (R. at 1). Plaintiff's counsel filed a memorandum to support the Motion to Amend their SAC on April 3, 2025. (R. at 52). On April 3, 2025, a hearing was held by the Honorable Judge Dale E. Van Slambrook regarding Plaintiff's motion to amend their complaint previously filed on February 20, 2025. (R. at 103).

Judge Van Slambrook continued the Motion to Amend as Judge McCoy had failed to rule on the Motion to Dismiss of Respondents at that time. (R. at 4). On April 10, 2025, Orders of Dismissal with Prejudice were entered by the Honorable Judge Jennifer B. McCoy, which dismissed the Plaintiff's claims against Stephanie Davidson and Drew Finnegan. (R. at 7). On April 19, 2025, Plaintiffs filed a Motion to Reconsider both April 10, 2025, Orders, followed by an amended motion to reconsider filed on April 21, 2025. (R. at 55). Defendant Davidson filed a Reply in Opposition to Plaintiff's motion on April 24, 2025. (R. at 75). On May 15, 2025, Judge McCoy denied via Form 4 Appellant's Motion to Reconsider. (R. at 17) Appellant filed their notice of appeal on May 29, 2025. (R. at 88).

STANDARD OF REVIEW

Interpretation of the South Carolina Rules of Civil Procedure and questions of law are reviewed de novo. *State v. Sweat*, 386 S.C. 339, 344, 688 S.E.2d 569, 572 (2010); *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). The question whether a civil action was "commenced" under SCRCP Rule 3(a) is a question of law reviewed de novo.

A Rule 12(b) dismissal is reviewed de novo to determine whether the complaint states a claim and whether the court correctly applied the law. *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009); *Doe v. Marion*, 373 S.C. 390, 397, 645 S.E.2d 245, 248 (2007). Rulings on motions to amend are reviewed for abuse of discretion. *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 197, 826 S.E.2d 585, 596 (Ct. App. 2019); *Pool v. Pool*, 329 S.C. 324, 494 S.E.2d 820 (Ct. App. 1998). An abuse of discretion occurs when the ruling is based on an error of law or is without evidentiary support.

Dismissal with prejudice is reviewed for abuse of discretion and is reversed if based on an incorrect legal standard. *Armstrong v. Collins*, 366 S.C. 204, 214–17, 621 S.E.2d 368, 374–75

(Ct. App. 2005).

A trial court's denial of a Rule 59(e) motion to alter or amend judgment is also reviewed for abuse of discretion. *Eisemann v. The Link*, 362 S.C. 567, 574, 608 S.E.2d 384, 387 (Ct. App. 2005); *Pelican Bldg. Ctrs. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN HOLDING THAT THE ACTION WAS NOT COMMENCED UNDER SCRCP RULE 3(a).

Rule 3(a), SCRCP, provides that an action is commenced upon filing of the summons and complaint are served within one hundred twenty (120) days. If a summons and complaint are filed within the statute of limitations, Rule 3(a)(2) allows a plaintiff one hundred twenty (120) days to effectuate service. If service is not effectuated, the action is treated as if it never commenced. *See* SC Code Ann. §15-3-20(b) If service is effectuated within one hundred twenty (120) days, commencement has occurred. *See Mims v. Babcock Ctr.*, 399 S.C. 341 (2012). A properly filed amended complaint supersedes the original complaint and becomes the operative complaint. *See Young v. City of Mount Rainier*, 238 F.3d 567, 572 (4th Cir. 2001).

Here, the record demonstrates that the original complaint was filed on July 10, 2024 – exactly 3 years from the July 10, 2021, dog bite incident. Service was then timely completed within the 120-day window: Defendant Davidson was served on October 22, 2024, and Defendant Finnegan was served on October 24, 2024. Both dates of service occurred one hundred four (104) days and one hundred six (106) days, respectively after filing. Jurisdiction thus attached, and the action was properly commenced.

In this case, the Circuit Court's ruling disregarded South Carolina Rules of Civil Procedure Rule 3(a)(2). Rule 3(a)(2), SCRCP, governs commencement and service, not Rule 15,

SCRCP. The Rule's plain language does not require that the original complaint be the one served – only that a summons and complaint be served within 120 days of the initial filing. The South Carolina Supreme Court has consistently interpreted Rule 3 to focus on timely service after filing, not on which version of the complaint is served. *See Mims*, S.E.2d at 348, 351. Here, as the operative complaint was served within the safety net, the action commenced.

II. THE CIRCUIT COURT FAILED TO APPLY MIMS V. BABCOCK CENTER, INC.

The South Carolina Supreme Court has consistently stated that failure to seek leave to amend does not void an action so long as the Defendants received notice of the action with the 120 days of filing the lawsuit. In *Mims*, the Supreme Court reversed dismissal of an "unauthorized" amended complaint and held that failure to seek leave does not render an action void where defendants received notice within 120 days. *Mims*, 732 S.E.2d at 395. Rule 15(c) allowed the amended complaint to relate back to the original filing date of the lawsuit.

Here, Plaintiffs served both defendants within 120 days and provided actual notice via email prior to service to both Defendants' counsel. Like in *Mims*, the defendants here had timely notice, suffered no prejudice, and were aware of the nature of the claims. The trial court's failure to apply *Mims* constitutes a manifest error of law requiring reversal.

III. THE COURT MISAPPLIED RULE 15(A) IN FINDING THE SECOND AMENDED COMPLAINT VOID.

Rule 15(a) permits one amendment as a matter of course before a responsive pleading is served. However, Rule 15 is not triggered where a complaint does not add, modify, or delete claims against a party. *Young v. City of Mount Rainier*, 238 F.3d 567, 572 (4th Cir. 2001). Furthermore, clarification of the pleadings does not trigger Rule 15 where the action has not commenced. SC Code §15-3-20(b). In *Valentine*, the S.C. Court of Appeals stated that Rule

15(A) governs "any amendment that adds, deletes, or modifies a party or a claim after a response pleading has been served." *Valentine v. Davis*, 319 S.C. 169 (1995). In other words, Rule 15 is not triggered is this case because neither a party, nor a claim, were added, deleted or modified. The parties and claims were all unchanged and as a result Rule 15 was not implicated. Further the Court of Appeals in *Skydive Myrtle Beach, Inc., v. Horry Cty.*, 426 S.C. 175, 198, 826 S.E.2d 585, 597 (Ct. App. 2019) clarified that a technical or clarifying amendment that does not change the cause of action may be permitted without leave of court.

Here, the first amended complaint, on July 12, 2024, clarified allegations, but did not add, modify, delete, or change any claims against any defendant. Therefore, Rule 15 was not triggered and was available for later use on the SAC. The SAC utilized Rule 15 as it deleted a party. It was served within 120 days of the original filing and Rule 15(c) related back. Therefore, the SAC was proper.

IV. THE CIRCUIT COURT ERRED IN DENYING APPELLANTS LEAVE TO AMEND AND REQUEST NUNC PRO TUNC.

Rule 15(a), SCRCP, provides that "leave shall be freely given when justice so requires and does not prejudice any other party." "This rule strongly favors amendments and the court is encouraged to freely grant leave to amend. *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005) (citing *Jarell v. Seaboard Sys. R.R., Inc.*, 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987)). "Rule 15(a) is substantially the same as the Federal Rule," Rule 15(a), SCRCP notes, and the Supreme Court of the United States has referred to the Rule's "freely given" provision as a "mandate" that "is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed. 2d 222, 226 (1962).

No prejudice, delay, or bad faith existed here. The record shows Plaintiffs acted diligently and sought amendment promptly, before discovery began or trial was set. The proposed

amendments merely clarified facts, correct minor defects, and removed one party – none of which altered the nature of the action. Prejudice requires more than inconvenience; it must be a showing that the amendment would unfairly disadvantage the opposing party. Clearly Rule 15(c) relates the amendment to the original July 10, 2024, filing.

Accordingly, even if leave had been technically required, the Circuit Court's refusal to allow amendment – particularly in a case involving a six-year-old child – was an abuse of discretion warranting reversal.

a. DISMISSAL WITH PREJUDICE WAS A DRASTIC AND UNWARRANTED SANCTION.

Dismissal with prejudice is reserved for cases of bad faith or incurable defects. *Armstrong* S.E.2d at 368, 374-75. Any technical noncompliance with Rule 15 was curable through the pending motion to amend. Plaintiffs filed that motion on February 20, 2025, and it remained pending when the case was dismissed.

The Circuit Court's decision to dismiss with prejudice deprived a six-year-old child of her constitutional right to adjudication on the merits and contradicted South Carolina's long-standing preference for resolving cases substantively rather than procedurally. *Skydive Myrtle Beach, Inc.,* S.E.2d at 585, 597.

V. THE TRIAL COURT ERRED IN FAILING TO RECOGNIZE EQUITABLE TOLLING.

The minor plaintiff's claim was tolled by operation of law. Under S.C. Code Ann. § 15-3-40(3), the statute of limitations is tolled for minors until one year after reaching the age of majority. Here, E.L. was six (6) years old at the time of the incident; she was eight (8) years old at the time of filing. E.L had until her 19th birthday, or 2023 to file suit. The Circuit Court's ruling effectively extinguished a six-year-old's claim on a procedural technicality, contrary to

both statutory protections and equity.

As in *Mims*, equitable tolling prevents dismissal of claims filed within the limitations period when procedural defects can be cured without prejudice. Dismissing a child's facial injury claim under these circumstances is inconsistent with South Carolina's equitable jurisprudence and its duty to protect incapacitated persons.

VI. THE CIRCUIT COURT ERRED AS DEFENDANTS WERE ON SUFFICIENT NOTICE WITHIN RULE 3(A)(2) OF COMMENCEMENT AND NOT PREJUDICED BY TIMELY SERVICE OF THE SECOND AMENDED COMPLAINT OF THE LAWSUIT BY APPELLANT.

The touchstone of commencement of a lawsuit requires personal jurisdiction and notice to the defendants. *Roche v. Young Bros., Inc., of Florence*, 318 S.C. 207, 245 S.E.2d 897 (1995). In explaining *Roche*, this court stated, "We have never required exacting compliance with the rules to effect service of process." The court noted that it rather inquires whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings. *Id*.

Appellants complied with commencement and service, although inside the safety net, to perfect this action. Here, both defense attorneys had actual notice of the lawsuit before formal service. On October 18, 2024, Plaintiff's counsel emailed the amended complaint to both defense counsel, informing them that the suit had been filed and asking if they would accept service. Both counsels received notice within the 120-day service period via the process server; however, that notice was declined by both counsels. (R. at 48). Therefore, as both Defendants counsel were on notice of the amended suit and service was accomplished with the safety net period, there can be no prejudice. Thus, the timely service of the second amended complaint comported with due process and should have been allowed by the trial court.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court:

1. Reverse the April 10 and May 15, 2025, Orders of Dismissal;
2. Vacate the judgment with prejudice; and
3. Remand with instructions to reinstate the action and accept the Second Amended Complaint *nunc pro tunc* as filed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certified that this brief complies with Rule 211(b), SCACR.

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