IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Hon. Jennifer B. McCoy, Circuit Court Judge

RECEIVED
Apr 20 2026
SC Court of Appeals

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 and Drew P. Finnegan ..... Respondents.

BRIEF OF RESPONDENTS

CLAWSON AND STAUBES, LLC

Daniel P. Ranaldo (SC Bar No. 102562)
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
843-577-2026
dan@cslaw.com

Attorneys for Stephanie Davidson

HAYNSWORTH SINKLER BOYD, P.A.

Sarah P. Spruill (SC Bar No. 68337)
One North Main Street, 2nd Floor
Greenville, South Carolina 29601
(864) 240-3220
sspruill@hsblawfirm.com

Carlisle Brice Allen (SC Bar No. 104605)
Adam Noah Yount (SC Bar No. 76342)
134 Meeting Street, 3rd Floor
Charleston, SC 29401
(843) 722-3366
callen@hsblawfirm.com
ayount@hsblawfirm.com

Attorneys for Drew Finnegan

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court correctly dismiss this action with prejudice based on its finding that this action was not commenced timely where the original and first amended complaints were never served and the second amended complaint was filed without leave of court after the expiration of the applicable statute of limitations?

STATEMENT OF THE CASE AND FACTS

On July 10, 2021, the minor, E.L., allegedly sustained injuries from a dog bite that occurred at Stephanie Davidson's residence while E.L.'s father, Erik Lebkicher, was dog sitting a springer spaniel owned by Drew Finnegan. (R. at 27, ¶¶ 8-9).

E.L. and her parents (collectively, the "Lebkichers") filed a Summons and Complaint on July 10, 2024, the three-year anniversary of the incident and last day within the statute of limitations, asserting claims sounding in negligence and seeking related damages. (R. at 20). It is undisputed that this Summons and Complaint was never served. The Lebkichers filed an "(Amended) Summons" and "(Amended) Complaint" on July 12, 2024, which likewise was not served. (R. at 25).

On October 17, 2024 and long after the expiration of the statute of limitations, the Lebkichers purported to file a "Second Amended Summons" and "Second Amended Complaint" without leave of court or the consent of the parties. (R. at 30). The purported Second Amended Summons and Complaint was served on Finnegan on October 22, 2024 and on Davidson on October 25, 2024.[1]

Davidson and Finnegan moved to dismiss the Second Amended Complaint on November 14, 2024 and November 21, 2024, respectively, contending that the claims were time-barred by the statute of limitations. (R. at 38, 40). Immediately prior to the hearing on February 20, 2025, the Lebkichers filed a Motion to Amend their Complaint. (R. at 50, 91). The circuit court issued

[1] The quotation marks around the titles of these documents reflect the titles used by the Lebkichers at the time of filing. As evident from these titles, there were three purported complaints: a Complaint, an (Amended) Complaint, and a Second Amended Complaint.

a Form 4 Order granting the motions to dismiss and instructing counsel to submit proposed formal orders. (R. at 1).

On April 3, 2025, another circuit court judge heard the Motion to Amend the Complaint. (R. at 103). The circuit court continued the motion due to the pending formal orders on the motion to dismiss. (R. at 4 ,103).

On April 10, 2025, the circuit court issued formal orders granting the motions to dismiss. (R. at 7, 12). The Lebkichers filed a Motion to Reconsider on April 19, 2025 and an Amended Motion to Reconsider on April 21, 2025. (R. at 55, 64). The circuit court denied the motion on May 15, 2025. (R. at 17). This appeal followed.

STANDARD OF REVIEW

In this appeal, there is no factual dispute. The determination of whether the Lebkichers timely commenced this action hinges solely on the construction of the applicable statutes and rules of court. Interpretation of statutes is a question of law which is reviewed de novo. *Garrison v. Target Corp.*, 435 S.C. 566, 576–77, 869 S.E.2d 797, 803 (2022) (internal citations omitted). Similarly, "[i]n interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes." *Id.* at 577, 869 S.E.2d at 869 (internal citations omitted). "Rules of procedure, like statutes, should be given their plain meaning. When the text of a rule is clear and unambiguous, judicial inquiry is complete." *Whitehead v. State*, 310 S.C. 532, 534, 426 S.E.2d 315, 316 (1992).

ARGUMENT

As an initial matter, Respondents concede that the statute of limitations is tolled as to E.L. until her eighteenth birthday by operation of S.C. Code Ann. § 15-3-40(1). (R. at 71, 75). In addition, the insurers for the respective insurance carriers for the Respondents each offered their

policy limits to resolve E.L.'s claim, and those offers were accepted by her father. (R. at 7, 12).[2] All that remains is for that agreement to be approved by the Court. (R. at 71, 75).

The issue in this case is whether E.L.'s parents properly commenced a lawsuit for purposes of Rule 3, SCRCP. As will be shown below, they did not, and the order of the circuit court should be affirmed.

I. The Lebkichers did not timely commence a civil action because the Summons and Complaint were not served, the Amended Summons and Complaint were filed after the statute of limitations expired and not served, and the purported Second Amended Summons and Complaint were filed without leave of court or consent of the parties after the statute of limitations expired.

"Civil actions may only be *commenced* within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute." S.C. Code Ann. § 15-3-20(A) (emphasis added). A civil action is *commenced* upon the *filing* of the summons and complaint, *if*:

> (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or
>
> (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

Rule 3(a), SCRCP (emphasis added); *see* S.C. Code Ann. § 15-3-20(B). Under this framework, the statute of limitations dictates when a civil action may be commenced. Rule 3 governs how a civil action must be commenced.

This interplay is more fully described in *Mims ex rel. Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 345–47, 732 S.E.2d 395, 397–98 (2012). There, the South Carolina Supreme Court explained

[2] This finding has not been appealed and is the law of the case. *See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (holding unappealed ruling is law of the case). Counsel for the Lebkichers has acknowledged the same. (R. at 45, 48) ("understand we have an agreement on policy limits regarding [E.L.'s] claim . . .")).

that the 120-day language was added to "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." *Id.* at 346, 732 S.E.2d 395, 397. As stated in *Mims*:

> 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. at 346, 732 S.E.2d 395, 397-98 (emphasis in original).

In this case, the Summons and Complaint were filed on the last day remaining under the statute of limitations, July 10, 2024. (R. at 20). The Lebkichers filed an Amended Summons and Complaint on July 12, 2024. (R. at 25).

That amendment was permitted of right under Rule 15(a), SCRCP. As set forth there, "[a] party may amend his pleading *once as a matter of course* at any time before or within 30 days after a responsive pleading is served . . .." Rule 15(a), SCRCP (emphasis added). Other than amending its pleading once as a matter of course, "a party may amend his pleading *only* by leave of court or by written consent of the adverse party . . .." *Id.* (emphasis added). Rule 15 draws no distinction between technical or substantive amendments, nor does any South Carolina case law. The plain language of the rule gives a party one free shot at an amendment within the time parameters established by the rule. Subsequent amendments prior to trial require leave of court or written consent of the parties.

Months after filing the Complaint and Amended Complaint and without seeking leave of court or consent of the parties, the Lebkichers purported to file a Second Amended Summons and

Complaint on October 17, 2024. (R. at 30). These were the documents served on the Respondents on October 22 and October 25, 2024.[3]

The circuit court found that on these facts, the Lebkichers failed to commence a civil action because they did not serve a validly filed summons and complaint on the Respondents within the time allowed under Rule 3. (R. at 7, 12). The circuit court further found that even if leave to amend was later granted, that amendment would not cure the failure to timely commence the action. (*Id.*). As a result, the dismissal was entered with prejudice because the statute of limitations had run. (*Id.*).[4]

The South Carolina cases cited by the Lebkichers do not change this analysis. *Valentine v. Davis*, 319 S.C. 169, 172, 460 S.E.2d 218, 219 (Ct. App. 1995) states, "Rule 15(a) only permits an existing plaintiff to add, modify, delete, or change claims against an existing defendant." Here, the Lebkichers modified their claims to assert several new paragraphs in their Amended Complaint. (Compare Complaint (28 paragraphs) and Amended Complaint (32 paragraphs)). There is no question but that the Amended Complaint is an amended complaint for purposes of Rule 15(a). Further, *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 192, 826 S.E.2d 585, 594 (2019) does not hold that unlimited "technical or clarifying" amendments are allowed without leave of court, but rather that circuit courts should refrain from dismissing with prejudice unless "it would be impossible for [plaintiff] to succeed with an amended pleading."

[3] The Lebkichers never served the Summons and Complaint or the Amended Summons and Complaint on the Respondents. The 120-day window for service of a complaint filed within the limitations period closed on November 7, 2024.

[4] This result is consistent with the Fourth Circuit's unpublished opinion in *Krehbiel v. BrightKey, Inc.*, No. 22-1385, 2023 WL 7984747, at *1 (4th Cir. Nov. 17, 2023) (addressing the situation in which a party failed to obtain leave of court prior to filing an amended complaint and finding the district court did not abuse its discretion in dismissing the claim with prejudice).

As set forth in *Mims*,

> Rule 15(a), SCRCP does allow the filing and service of an amended complaint without leave of court, even if the original complaint has not been served, because a party may amend her pleadings once without leave of court before a responsive pleading is served, and no responsive pleading had been served by Defendants prior to Mims's service of the amended complaint. *See* Rule 15(a), SCRCP ("A party may amend his pleading once as a matter of course *at any time before* or within 30 days after *a responsive pleading is served* or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served." (emphasis added)).

Mims at 347, 732 S.E.2d at 398. The issue here is that the Lebkichers purported to amend their complaint twice and did not seek leave of court as required by Rule 15(a). Thus, the Second Amended Complaint was not properly filed and was, therefore, a nullity and insufficient to satisfy the service requirement found in Rule 3(a)(2). For these reasons, the circuit court's orders fully comport with both Rule 3 and *Mims*.

II. The circuit court acted within its discretion in denying leave to amend because the statute of limitations expired and the relation back doctrine is inapplicable.

Although leave to amend "shall be freely given," a trial court may deny a motion to amend "where the proposed amendment would be clearly futile." *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019) (internal citations omitted). A trial court's decision regarding amendments of pleadings is reviewed for abuse of discretion "and will rarely be disturbed on appeal." *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 153, 723 S.E.2d 835, 840 (Ct. App. 2012).

The Court's analysis here should be guided by *Est. of Mims v. S.C. Dep't of Disabilities & Special Needs*, 422 S.C. 388, 395, 811 S.E.2d 807, 811 (Ct. App. 2018). In *Est. of Mims*, the Court found that under Rule 15(c), SCRCP, an amended complaint did not relate back to the original complaint because the original complaint was never served. The Court explained that it found

"nothing in the language of Rule 15(c), SCRCP, that allows relation-back to an unserved pleading," and further that "applying the rule in that way would have the undesirable consequence of permitting litigants to extend the statute of limitations for several of their causes of actions by choosing to wait until the conclusion of their longest statute of limitations to file and serve an amended complaint." *Id.* at 397 n.5, 811 S.E.2d at 812 n.5.

In this case, no amount of amendment can correct the Lebkichers' failure to timely commence this action as discussed above. Here, like *Est. of Mims*, even if leave were granted to file the purported Second Amended Complaint, the Second Amended Complaint would not relate back to either of the previously filed, but unserved pleadings. As a result, any purported amendment would be futile because this action is time barred.[5]

III. Equitable tolling does not apply given the facts of this case.

The Lebkichers made no reference to tolling prior to the circuit court's order dismissing this action. As such, they did not timely raise this issue because Rule 59(e), SCRCP is not a proper mechanism for advancing new arguments. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

Assuming this issue was preserved, there is no basis for tolling the parents' claims. Equitable tolling is reserved for extraordinary circumstances beyond a litigant's control. *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 116, 687 S.E.2d 29, 32 (2009). In this case,

[5] Heading IV in the Lebkichers' brief references nunc pro tunc relief. However, there is no further reference or argument on this point. As such, it has been abandoned. *Shealy v. Doe*, 370 S.C. 194, 205–06, 634 S.E.2d 45, 51 (Ct. App. 2006) ("[W]hen an appellant fails to cite any supporting authority for his position and makes conclusory arguments, the appellant abandons the issue on appeal."). They cannot correct this deficiency in a reply brief. *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) ("Additionally, even though [Appellant] more fully addressed the issue in its reply brief, an argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief.").

the record shows a straightforward failure to commence a civil action within the statute of limitations. E.L.'s claim was settled before the Lebkichers' counsel began representation. (R. at 42, 48). There was no mention of further litigation until October 18, 2024 when the Lebkichers' counsel asked Respondents' counsel to accept service of the purported Second Amended Complaint. (*Id.*). In that email, counsel acknowledged that the minor's claim was settled. (*Id.* ("understand we have an agreement on policy limits regarding [E.L.'s] claim")). Thus, this case is not one for equitable tolling.

CONCLUSION

The circuit court correctly applied Rules 3 and 15, SCRCP to the undisputed procedural history in this case. The Lebkichers did not serve their July 2024 filings; they only served a purported Second Amended Complaint filed without leave of court after expiration of the limitations period. Based on this fact, the circuit court properly determined that no civil action was commenced and that the purported Second Amended Complaint was a nullity. As a result, the circuit court further concluded that granting leave to amend would not remedy the failure to timely commence the action. Therefore, dismissal with prejudice and denial of reconsideration were appropriate. For these reasons, the circuit court's orders should be affirmed in their entirety.

Respectfully submitted,

CLAWSON AND STAUBES, LLC

s/ Daniel P. Ranaldo
Daniel P. Ranaldo (SC Bar No. 102562)
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
843-577-2026
dan@cslaw.com
Attorneys for Stephanie Davidson

HAYNSWORTH SINKLER BOYD, P.A.

s/ Sarah P. Spruill
Sarah P. Spruill (SC Bar No. 68337)
One North Main Street, 2nd Floor
Greenville, South Carolina 29601
(864) 240-3220
sspruill@hsblawfirm.com

Carlisle Brice Allen (SC Bar No. 104605)
Adam Noah Yount (SC Bar No. 76342)
134 Meeting Street, 3rd Floor
Charleston, SC 29401
(843) 722-3366
callen@hsblawfirm.com
ayount@hsblawfirm.com
Attorneys for Drew Finnegan

April 20, 2026