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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Opinion No. 6115 (S.C. Ct. App. filed July 9, 2025)
Appellate Case No. 2025-002144

Paul David Hess, APRN-BC, ... Respondent-Petitioner

v.

Morphis Pediatric Group of Lancaster, P.A.; Elizabeth J. Morphis, M.D.; Gregory M. Alexander, CPA; and Moore Beauston and Woodham, LLP, ... Defendants

Of whom Morphis Pediatric Group of Lancaster, P.A. and Elizabeth J. Morphis, M.D. are . . . . . Petitioners-Respondents

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AMICUS CURIAE BRIEF
OF THE SOUTH CAROLINA ASSOCIATION FOR JUSTICE

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QUESTION PRESENTED

Are the questions of whether Respondent-Petitioner knew or should have known he had a claim more than three years before filing his action, thus barring the action under the three-year statute of limitations of Section 41-10-80(C) of the South Carolina Code (2021), and whether the statute of limitations should be tolled for fraudulent concealment, questions to be resolved by a jury?

INTEREST OF THE AMICUS

SCAJ is a professional association of South Carolina plaintiffs' attorneys that was founded on November 1, 1957, by a small group of trial lawyers. The Association has grown to over 1,200 members and is one of the oldest professional organizations in the State.

The mission statement of SCAJ provides as follows:

> Our mission is to serve our members and those they are sworn to protect. We are advocates for those who are harmed by the actions of others no matter how powerful, wealthy or well-connected. We work to uphold and defend the constitutions of our state and nation. We fight tirelessly to protect the rights of the individual; to seek justice through open and fair courtrooms; to resist unjust laws; to support policies that hold wrongdoers accountable; to strengthen the justice system through education and action; and to uphold the highest standards of ethical conduct and integrity in the legal profession.

(https://www.scaj.com/?pg=mission). SCAJ and its attorney members have steadfastly fought to preserve the right to a jury trial in civil cases in South Carolina and to protect the important and sacred role that juries serve in resolving factual disputes as a vital part of the trial process.

SCAJ's interest in this case is to ensure that the long-standing precedent in South Carolina circuit courts of allowing juries to make factual findings with respect to the discovery rule and other aspects of the applicable statute of limitations is continued. SCAJ believes that its brief as amicus

curiae is desirable to reinforce the idea that juries are uniquely positioned to make factual findings based on the totality of the trial record, where the jurors have observed the witnesses testifying live and can judge each witness's credibility, demeanor, and potential biases, and can assess the weight of the witness testimony and exhibits introduced into evidence during the trial.

STATEMENT OF THE CASE

This appeal is from a verdict in favor of Respondent-Petitioner on all causes of action against Petitioners-Respondents following a week-long in the Lancaster County Court of Common Pleas. The circuit court submitted to the jury the statute of limitations defense Petitioners-Respondents raised, and the jury awarded damages to Respondent-Petitioner back to 2010, the first year of the contract at issue.[1] Following the trial, Respondent-Petitioner elected his remedies under the South Carolina Payment of Wages Act, and the circuit court judge awarded treble damages and attorney's fees under that statute.

The parties timely served notices of appeal and cross-appeal from the circuit judge's final judgment in favor of Respondent-Petitioner. The court of appeals affirmed the circuit court's final judgment, other than vacating the award of pre-judgment interest to Respondent-Petitioner and increasing the amount of the attorney's fees awarded to Respondent-Petitioner on his cross appeal.

After the court of appeals denied each party's petition for rehearing and suggestion for

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[1] The Record on Appeal does not contain the circuit judge's jury instructions, nor does it appear that Petitioners-Respondents have challenged in their appeal any objections they might have made to the circuit court's jury instructions involving any issues relating to the statute of limitations. In addition, the verdict forms used in this case, apparently without objection by Petitioners-Respondents, did not specifically ask when Respondent-Petitioner's causes of action accrued, other than breaking out the damages claims from 2010 to 2014 and for 2015 separately. (Verdict Form, Interrogatories Nos. 1-4) (R. 42-43).

rehearing en banc, this Court granted Petitioners-Respondents' Petition for Writ of Certiorari, in part, on only two issues. The Amicus provides the Court with its views only as to the second question on which the Court granted the writ of certiorari, which involves the jury's role of resolving disputed questions of fact involving statute of limitations issues.

FACTS

The Facts are set forth thoroughly in Respondent-Petitioner's brief. The Record on Appeal contains numerous factual disputes about when Respondent-Petitioner knew or reasonably should have known that he had a cause of action against Petitioners-Respondents for improper payment of his bonus, as well as whether Petitioners-Respondents or their accountant provided false or misleading information to Respondent-Petitioner to conceal the fact that his bonuses had not been paid properly according to the terms of the employment contract.

STANDARD OF REVIEW

Petitioners-Respondents wrongly argue that the standard of review in this case is de novo. (Pets.' Br., at 6). A de novo standard is only appropriate in cases where there is no dispute of material fact and the trial court should have made a ruling in favor of the non-moving party as a matter of law. The correct standard of review is the limited standard enunciated by this Court in Erickson v. Jones St. Publishers, LLC:

> In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding by the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings.

Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 464, 629 S.E.2d 653, 663-664 (2006). A jury's underlying, factual determinations rendered as part of their verdict in a case "are conclusive on appeal when supported by competent evidence." Id. A circuit court can grant a defendant's motion for JNOV "only if no reasonable jury could have reached the challenged verdict.'" RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012) (quoting Gastineau v. Murphy, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998)). As this Court recognized in Erickson, the Court's review of the record on appeal at this stage of the case is very limited:

> The appellate court must determine whether a verdict for a party opposing the motion [for directed verdict or for JNOV] would be reasonably possible under the facts as liberally construed in his favor. If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury.

Id. at 463, 629 S.E.2d at 663 (internal citation omitted). This limited standard of appellate reivew recognizes the respect this Court requires for a jury's resolution of factual issues.

ARGUMENT

This Court Should Respect and Preserve the Jury's Important Role in Resolving Disputed Facts about (1) When the Plaintiff Knew or Reasonably Should Have Known He Had a Cause of Action for Purposes of the Discovery Rule and (2) Whether the Statute of Limitations Should Have Been Tolled Based on Fraudulent Concealment

This Court first fully recognized the discovery rule in Mills v. Killian, 273 S.C. 66, 254 S.E.2d 556 (1979), when the Court applied the rule to a legal malpractice case, stating, "the accrual upon discovery rule represents the more equitable and rational view." Id. at 70, 254 S.E.2d at 558. The Mills court relied heavily on the analysis of United States District Judge Hemphill from the case of Gattis v. Chavez, 413 F. Supp. 33 (D.S.C.1976), who applied the discovery rule to a medical

malpractice case. The Mills court described the discovery rule as "[t]he modern trend in professional negligence or malpractice cases," noting that over twenty states had adopted the discovery rule by that time. Mills, 273 S.C. at 70, 254 S.E.2d at 558.

The South Carolina General Assembly codified the discovery rule effective June 10, 1977 (1977 S.C. Act No. 182, § 5), by enacting S.C. Code Ann. § 15-3-535, which currently provides, "Except as to actions initiated under Section 15-3-545, all actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535 (2005).[2] Section 15-3-535 expressly limits itself only to causes of action contained in Code Section 15-3-530(5), which applies to "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Code Section 15-3-545 [actions for medical malpractice]." S.C. Code Ann. § 15-3-530(5). Nevertheless, this Court has since extended the discovery rule to causes of action for breach of contract. Santee Portland Cement Co. v. Daniel Int'l Corp., 299 S.C. 269, 384 S.E.2d 693 (1989), rev'd on other grounds by Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995). The Santee Court stated, "In recent years, the trend has been towards recognition and expansion of the discovery rule." 299 S.C. at 273, 384 S.E.2d at 695.

After the legislature reduced South Carolina's general statute of limitations from six years to three years in 1988, South Carolina's appellate courts further expanded the discovery rule to avoid the harsh consequences of the statute of limitations, such as in repressed memory cases,

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[2] The legislature amended Section 15-3-535 in 1988 by changing the general injury statute of limitations from six years to three years. 1988 S.C. Act No. 432, § 2.

Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000), and in cases involving latent occupational disease from exposure to toxic substances, Grillo v. Speedrite Prods., Inc., 340 S.C. 498, 532 S.E.2d 1 (Ct. App. 2000). In Moriarty, the Court recognized that:

> [T]he discovery rule exists to avoid the harsh and unjust result of closing the courtroom doors to a plaintiff whose "blameless ignorance" resulted in a failure to pursue a cause of action within the limitations period. The limitations period is intended to run against those who are neglectful of their rights and who fail to exercise reasonable diligence in enforcing their rights. However, it is not the policy of the law to unjustly deprive an injured person of a remedy.

Moriarty, 341 S.C. at 333, 534 S.E.2d at 678-79 (internal citations omitted).[3]

Although the discovery rule has been around for approximately fifty years in South Carolina, the principles that the defendant bears the burden of proof on the statute of limitations defense and that juries must decide disputed issues of fact relating to the statute of limitations have been the law in South Carolina since the late 1800's. In Brown v. Finger, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962), this Court recognized that "[t]he burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide." Id. at 113, 124 S.E.2d at 786 (citing Moore v. Smith, 29 S.C. 254, 7 S.E. 485 (1888), Latimer v. Trowbridge, 52 S.C. 193, 29 S.E. 634 (1898), and Worth v. Norton, 60 S.C. 293, 38 S.E. 605 (1901)).

Numerous South Carolina appellate cases have recognized that application of the discovery rule is generally a question of fact for the jury to decide. As this Court stated in Walbeck v. I'On Co., 439 S.C. 568, 889 S.E.2d 537 (2023), "Ordinarily, the question of when a statute of limitations began to run is one left to the jury." Id. at 581, 889 S.E.2d at 543; see also Arant v. Kressler, 327

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[3] Petitioners-Respondents appear not to challenge the rulings by the trial court and the court of appeals that the discovery rule applies to claims under the South Carolina Payment of Wages Act.

S.C. 225, 229, 489 S.E.2d 206, 208 (1997) ("The date on which discovery should have been made is an objective, not subjective, question. When there is conflicting testimony regarding the time of discovery, it becomes an issue for the jury to decide."); Dean v. Ruscon Corp., 321 S.C. 360, 366, 468 S.E.2d 645, 648 (1996) ("When the trial court rules on a directed verdict motion [based on the statute of limitations], it must view the evidence as well as all favorable inferences in the light most favorable to the non-moving party, and if more than one reasonable inference can be drawn from the testimony, the case should be submitted to the jury."); Garner v. Houck, 312 S.C. 481, 485, 435 S.E.2d 847, 849 (1993) ("If there is conflicting evidence as to whether a claimant knew or should have known he or she had a cause of action, the question is one for the jury."); Dunbar v. Carlson, 341 S.C. 261, 269, 533 S.E.2d 913, 917 (Ct. App. 2000) ("[G]enerally, statute of limitations issues are for the jury, rather than the court, to resolve."); Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998) ("The jury must resolve conflicting evidence as to whether a claimant knew or should have known he had a cause of action.").

The Record in this case demonstrates a classic factual dispute. One side presents the Court with facts it claims demonstrates enough knowledge to alert a reasonable person of the existence of a claim at an early time, while the other side outlines facts that demonstrate otherwise, or that put forth a case of fraudulent concealment. Cf. Walbeck v. I'On Co. (noting "the myriad of evidence adduced at during this lengthy trial presented quintessential jury issues.... The trial court properly submitted ... the issue of the statute of limitations to the jury, and we find its verdict was supported by the evidence.").

Petitioners-Respondents' argument that Respondent-Petitioner's claims for unpaid bonuses from 2010 to 2014 are barred by the three-year statute of limitations, as a matter of law, would

severely undermine the settled right to a jury trial on these issues in South Carolina. The right to a jury trial in a civil case is enshrined in both the United States Constitution and the South Carolina Constitution. U.S. Const., 7th Amend. ("In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.")[4]; S.C. Const. art. I, § 14 ("The right of trial by jury shall be preserved inviolate."). In addition, Rule 38(a) of the South Carolina Rules of Civil Procedure provides, in relevant part, "The right of trial by jury declared by the Constitution or as given by statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only . . . must be tried by a jury, unless a jury trial be waived." Rule 38(a), SCRCP. SCAJ's interest in submitting this Amicus Curiae Brief is to emphasize that the Court ensure the jury's role in deciding disputed questions of fact regarding the statute of limitations is not diminished.

For instance, the record in this case contains evidence that the only way for Respondent-Petitioner to know or have reason to know that his bonus was substantially underpaid would have been for Respondent-Petitioner to know what the net profits of the Lancaster practice were each year that the 2010 Employment Agreement was in place. There is also evidence that Petitioners-Respondents (and their accountant) consciously and deliberately refused to provide Respondent-Petitioner any information about the profits of the Lancaster practice until the summer of 2018, when Petitioner Morphis decided to put the Lancaster practice up for sale, and Respondent-Petitioner and

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[4] Although the Seventh Amendment to the United States Constitution has never been incorporated to the States through the Fourteenth Amendment, Pelfrey v. Bank of Greer, 270 S.C. 691, 244 S.E.2d 315 (1978), its principles land with equal force as the State constitutional mandate preserving the right of a jury trial "inviolate." S.C. Const. article 1, § 14.

his prospective business partner decided to make an offer to purchase the Lancaster practice. (R. 546, ll. 7-21). There is evidence that prior to that time, Respondent-Petitioner only had access to the gross revenues of the Lancaster practice through the electronic medical records system, but did not have substantial (much less complete) information about the expenses of the practice. (R. 530, ll. 2-12). Because the basic formula for net profits was revenues minus expenses, a jury could have (and did) determined that it would have been impossible for Respondent-Petitioner to be able to calculate net profits and, therefore his annual bonus of 50% of the net profits of the Lancaster practice, without complete access to the total expenses of the practice each year. This example illustrates the importance of respecting the sanctity of the jury's resolution of this factual dispute.

The court of appeals did not create a new duty in South Carolina for employers to share all of their financial information with their employees, as Petitioners-Respondents contend. Rather, the court of appeals merely observed that the jury determined that by deliberately preventing Respondent-Petitioner from accessing the necessary financial information about the Lancaster practice, Petitioners-Respondents made it impossible for Respondent-Petitioner to discover that he had claims against them for breach of contract and for violation for the South Carolina Payment of Wages Act. In other words, the jury found that Petitioners-Respondents themselves made it literally impossible for Respondent-Petitioner to know that his bonuses were not properly paid despite his efforts at reasonable diligence.

The Court must also consider the jury's role in applying the fraudulent concealment doctrine. In Strong v. University of South Carolina School of Medicine, this Court quoted favorably the following description of the fraudulent concealment doctrine as defense to the statute of limitations:

"[T]he practically universal rule is that deliberate acts of deception by a defendant

> calculated to conceal from a potential plaintiff that he has a cause of action, thereby induing him to postpone institution of suit will be held to toll the statute."

316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994) (quoting 1 David W. Louisell & Harold Williams, Medical Malpractice, ¶ 13.03, p. 13-67 (1993)). Strong's language is not limited to cases involving the physician-patient relationship. In Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014), this Court cited Strong in stating broadly, "Deliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action toll the statute of limitations." Id. at 140, 754 S.E.2d at 500-01.

The Bishop of Charleston case involved a claim against the Catholic Diocese of Charleston for negligent supervision of a priest who had sexually assaulted minor children. The Court applied the fraudulent concealment doctrine where "respondents engaged in a systematic practice of secrecy and concealment of their knowledge of sexual abuse by employees, including the employee who appellants allege committed the abuse at issue." Id. at 140, 754 S.E.2d at 501.[5]

There is evidence in the record that fully supports the jury's determination of fraudulent concealment here. Immediately after the May 28, 2015 meeting, the accountant sent Petitioner Morphis a secret spreadsheet that was not provided to Respondent-Petitioner. In the cover email,

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[5] Fraudulent concealment is very different from the equitable tolling doctrines recognized in cases such as Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 687 S.E.2d 29 (2009), where the plaintiff was unable to effectuate service in a timely manner because the defendant failed to properly list its registered agent for service with the Secretary of State, or in Hopkins v. Floyd's Wholesale, 299 S.C. 127, 382 S.E.2d 907 (1989), where the defendant induced a plaintiff to delay in filing a workers' compensation claim by assuring the plaintiff that his claim would be taken care of without the necessity of a claim. The Hooper Court's statement that "equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use," 386 S.C. at 117, 687 S.E.2d at 33, has no application to this case, where Respondent-Petitioner raised fraudulent concealment, not equitable tolling, as an additional argument against the statute of limitations defense.

the accountant stated, "Attached is the spreadsheet you requested. I thought it might be helpful for you to see what kind of profit you are receiving from the practice in Lancaster. This is for your benefit only, I won't share it with David [Hess]." (Pl.'s Ex. 3) (R. 843). The spreadsheet included three additional lines of information that were omitted from the spreadsheet the accountant subsequently sent to both Petitioner Morphis and Respondent-Petitioner a few minutes later: "Net Income, Doctor Bonuses, and Net Income Before Doctor Bonuses." (Compare Pl.'s Ex. 4) (R. 846). Respondent testified that he had never seen the spreadsheet in Exhibit 3 prior to the spreadsheet being disclosed in discovery. (R. 536, ll. 11-17.). He also testified that if he had seen the spreadsheet with the additional three lines of information, he would have known "probably within about five seconds" that he had not been receiving 50% of the profits of the Lancaster practice as his bonus. (R. 538, ll. 14-22).

There is also evidence that later that same day, May 28, 2015, at 6:30 p.m., Petitioner Morphis sent an email to Respondent-Petitioner stating, in part, "I have looked at the numbers and think a 5% bonus of gross [receipts] is fair." (R. 929). There is evidence that at the time she wrote that email, Petitioner Morphis knew that she had taken substantially more than 50% of the Lancaster practice's profits as her own "bonuses" and, therefore, the accountant's spreadsheet illustrating that the bonuses from 2010 to 2014 had approximated 5% of gross revenues would have been substantially misleading to Respondent-Petitioner. Respondent-Petitioner signed the 2015 contract on or about December 20, 2015, which yielded a bonus payment of $70,000 based on 5% of the gross revenues from 2015. Unbeknownst to Respondent-Petitioner at the time, the Lancaster practice had over $500,000 in net profits in 2015. (R. 543, ll. 11-19); (Pl.'s Ex. 19) (R. 923). This evidence supports the jury's finding of fraud against Petitioners-Respondents, under the clear-and-convincing-

evidence standard, and the jury's award of $475,000 in punitive damages. (Verdict Form, Interrogatory No. 6) (R. 44); (Verdict Form on Punitive Damages) (R. 49). This same evidence also supports the jury's finding of fraudulent concealment to counter the statute of limitations defense.

CONCLUSION

The issues regarding the statute of limitations defense in this case were in dispute, and those issues were resolved by the jury. The arguments Petitioners-Respondents make invite this Court to ignore settled precedent protecting the sanctity of the jury's resolution of factual disputes. E.g. Stoneledge at Lake Keowee Owners' Ass'n v. IMK Development Co., LLC, 435 S.C. 176, 177, 866 S.E.2d 577, 578 (2021) (Court implicitly acknowledged that although defendants in that case may have had a colorable argument as to the running of the statute of limitations, this Court nonetheless affirmed the jury's verdict; Court added "[a]pplication of both the basic three-year limitations period and the discovery rule in any given case can present factual issues for a jury to resolve"), cited by Walbeck, 439 S.C. at 584, 889 S.E.2d at 545.

Amicus Curiae respectfully requests that this Court account for and preserve the jury's important role in resolving factual issues regarding the discovery rule as well as whether a party engages in fraudulent concealment so as to support tolling the limitations period.

Respectfully submitted,

April 20, 2026

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