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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Circuit Court Judge Jessica Ann Salvini

Case No. 2025-01433

Elise Cromwell,

Appellant,

v.

Medical University Hospital Authority and
Medical University of South Carolina,

Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the Circuit Court correctly denied Appellant's Motion to Restore where the underlying claims are barred by the statute of limitations at the time restoration is requested.
- II. Whether Rule 40(j), SCRCP, permits restoration of a stricken action where no unexpired portion of the statute of limitations remains.
- III. Whether the Circuit Court properly exercised its discretion in denying restoration based upon the expiration of the statute of limitations and the absence of any tolling benefit.

STATEMENT OF THE CASE

This appeal arises from the Circuit Court's Orders dated April 1, 2025, May 8, 2025, and June 18, 2025, denying Appellant's Motion to Reinstate Case Pursuant to 40(j) and subsequent Motion for Reconsideration to Restore Case, and declining to return this action to the active trial docket pursuant to Rule 40(j), SCRPC. (Formal Order Denying Motion to Restore Case (filed May 08, 2025); Initial Order Regarding Motion to Reconsider (filed May 21, 2025); Final Order Denying Appellant's Motion to Reconsider (filed June 18, 2025).)

Appellant initiated this action on May 21, 2018, in the Charleston County Court of Common Pleas, asserting claims for breach of contract and breach of contract accompanied by a fraudulent act arising from alleged conduct occurring no later than June 2016. (Appellant's Summons and Complaint (filed May 21, 2018).) Appellant contends the action was timely commenced under S.C. Code Ann. § 15-3-530 (2005). (Appellant's Summons and Complaint (filed May 21, 2018).) The pleadings reflect that the latest possible expiration of the applicable statute of limitations was no later than May 20, 2021. (Appellant's Summons and Complaint (filed May 21, 2018).)

The case proceeded through motion practice and scheduling orders before the parties consented to strike the matter from the trial docket pursuant to Rule 40(j), SCRPC, on March 22, 2022. (Respondents' Consent Order to Strike Case Pursuant to Rule 40(j), SCRPC (filed March 09, 2022); Order Granting Consent Order to Strike Case Pursuant to Rule 40(j) (filed on March 10, 2022).) At that time, the statute of limitations had already expired as to all Appellant's claims in the Complaint.

Almost two years later, on March 20, 2024, Appellant moved to restore the case to the active docket. (Appellant's Motion to Reinstate Case Pursuant to 40(j) (filed March 20, 2024).)

Respondents opposed Appellant's motion, asserting that the statute of limitations expired before the Rule 40(j), SCRC, strike and that, because no unexpired limitations period remained, Rule 40(j), SCRC, could not operate to toll or revive Appellant's claims. (Respondents' Memorandum in Opposition to Appellant's Motion to Restore (filed September 17, 2024).)

Following a hearing, the Circuit Court denied the Motion to Reinstate Case Pursuant to 40(j) concluding the statute of limitations barred Appellant's claims and that no tolling or extension under Rule 40(j) applied. (Formal Order Denying Motion to Restore Case (filed May 8, 2025).) The Court further rejected Appellant's reliance on Rule 6(b), SCRC, and found no other basis to restore the action. (Formal Order Denying Motion to Restore Case (filed May 8, 2025).) Appellant thereafter filed a Motion for Reconsideration to Restore Case, which the Circuit Court also denied. (Appellant's Motion for Reconsideration to Restore Case (filed May 16, 2025); Respondents' Response in Opposition to Plaintiff's Motion for Reconsideration to Restore Case (filed May 29, 2025); Appellant's Reply to Respondents' Motion in Opposition to Restore Case (filed March 28, 2025); Initial Order Regarding Motion to Reconsider (filed May 21, 2025); Final Order Denying Appellant's Motion to Reconsider (filed June 18, 2025).)

Appellant now appeals, asserting that Rule 40(j), SCRC, does not impose a one-year deadline for restoration and that the Circuit Court erred in considering the statute of limitations and declining to restore the action.

STANDARD OF REVIEW

A motion to restore pursuant to Rule 40(j), SCRC, is committed to the sound discretion of the Circuit Court and cannot be disturbed on appeal absent an abuse of discretion. *Goodwin v. Landquest Dev., LLC*, 414 S.C. 623, 627, 779 S.E.2d 826, 828 (Ct. App. 2015).

An abuse of discretion arises where the court's ruling constitutes an error of law or is without evidentiary support. *Id.* To the extent the court's ruling turns on questions of law, including the interpretation of Rule 40(j), SCRPC, or the application of the statute of limitations, those issues are subject to de novo review. *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

SUMMARY OF THE ARGUMENT

The Circuit Court properly denied Appellant's Motion to Reinstate Case Pursuant to 40(j) (the "Motion") because the underlying claims are time-barred as a matter of law. At the time the action was stricken pursuant to Rule 40(j), SCRPC, the statute of limitations had already expired, leaving no remaining period available for tolling or preservation. Because Rule 40(j), SCRPC, operates only to extend the existing limitations period and does not revive claims that have already expired, the Motion could not resurrect Appellant's causes of action.

Appellant's attempt to construe Rule 40(j), SCRPC, as permitting indefinite restoration of claims that are otherwise extinguished by the statute of limitations is inconsistent with well-settled precedent. The Circuit Court correctly recognized that Rule 6(b), SCRPC, does not operate to enlarge or circumvent the framework of Rule 40(j), SCRPC. Accordingly, the denial of the Motion and restoration was both warranted and squarely within the Circuit Court's discretionary authority.

ARGUMENT

I. The Circuit Court Properly Denied Appellant's Motion Reinstate Case Pursuant to 40(j)

Restoration of a case stricken pursuant to Rule 40(j), SCRPC, is neither automatic nor ministerial. Rather, Rule 40(j), SCRPC, contemplates a motion, notice, and a hearing, at which the circuit court exercises its discretion to determine whether restoration is appropriate under the circumstances. By its plain language, Rule 40(j), SCRPC, permits restoration subject to defined

limitations, including a narrow tolling provision applicable only where a motion to restore is filed within one year and only as to any unexpired portion of the statute of limitations remaining at the time the case is stricken.

The Supreme Court of South Carolina has made clear that this tolling benefit is not indefinite. In *Maxwell v. Genez*, 356 S.C. 617, 621-622, 591 S.E.2d 26, 28 (2003), the Court held that a party seeking restoration more than one year after a Rule 40(j), SCRCP, strike cannot avail itself of the tolling provision contained in Rule 40(j), SCRCP. The Court further recognized that, after the one-year period has elapsed, opposing parties may challenge restoration on statute of limitations grounds. *Id.* at 622 n.2, 591 S.E.2d at 28, n.2.

Accordingly, a circuit court considering a motion to restore under Rule 40(j), SCRCP, may consider whether the underlying claims remain viable or are barred by the statute of limitations. The approach is consistent with the fundamental purpose of limitation periods, which is to prevent the adjudication of stale claims and to promote finality. See *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 526, 787 S.E.2d 485, 490 (2016).

The dispositive inquiry in this case is therefore whether any viable claim existed at the time Appellant sought restoration. The record establishes that Appellant's claims accrued no later than 2016 and were subject to a three-year statute of limitations under S.C. Code Ann. § 15-3-530 (2005), or a two-year period as to claims against a governmental entity under S.C. Code Ann. § 15-78-110 (2005). Under either framework, the limitations period expired no later than May 20, 2021 – three years after Appellant filed her Complaint. When the parties subsequently agreed to strike the case on March 22, 2022, no unexpired portion of the statute of limitations remained. As a result, there was no remaining period capable of tolling or preservation under Rule 40(j), SCRCP.

Appellant did not move to restore the case until almost two years after the Rule 40(j), SCRCP, strike. By that time, Appellant's claims had long since expired. Because Rule 40(j), SCRCP, does not operate to revive claims that are already time-barred, restoration could not resuscitate the claims. Under these circumstances, the Circuit Court properly exercised its discretion in denying restoration.

II. Rule 40(j), SCRCP, Does Not Permit Revival of Expired Claims

Rule 40(j), SCRCP, provides a limited procedural mechanism allowing parties, by agreement, to strike a case from the docket and later seek restoration. By its plain language, the tolling provision is expressly conditional and narrow in scope. When restoration occurs within one year, the statute of limitations is suspended during the period the action remains stricken, and any unexpired portion resumes upon restoration. The Rule thus operates only upon an existing, unexpired limitations period. It neither creates a new filing period nor enlarges the time otherwise permitted by law.

In *Goodwin*, the Court of Appeals explained that the effect of Rule 40(j), SCRCP, "is not to set a new deadline, but to extend the statute of limitations deadline" only when its tolling provision applies. *Goodwin* at 630, 779 S.E.2d at 830. Accordingly, a Rule 40(j), SCRCP, strike does not reset or restart the statute of limitations; it merely suspends the running of any remaining time under defined circumstances. Likewise, *Maxwell* confirms that a party cannot take advantage of the one-year tolling period provided by Rule 40(j), SCRCP, if the party moves to restore the case to the docket more than one year after the claim was struck pursuant to Rule 40(j). *Maxwell* at 621, 591 S.E.2d at 28.

The Court of Appeals further recognized in *Personal Care, Inc. v. Theos*, 426 S.C. 78, 87, 825 S.E.2d 281, 286 (Ct. App. 2019) that a motion to restore is "in essence the equivalent to filing

a new lawsuit” for purposes of evaluating timeliness. That principle is dispositive here. If restoration functions as the procedural equivalent of initiating a new action, then the claims must be viable under the statute of limitations at the time restoration is sought. Rule 40(j), SCRCPP, cannot be used to revive claims that would otherwise be barred if newly filed. When the one-year period has elapsed, a defendant is no longer constrained from asserting a statute of limitations defense and may raise the issue at the restoration hearing itself. *Id.*

Because the statute of limitations expired no later than May 2021, no unexpired limitations period remained when the case was stricken in March 2022. Rule 40(j), SCRCPP, operates only to preserve and toll existing time; it does not revive claims for which the limitations period has already run. Accordingly, its tolling provision was inapplicable as a matter of law, and there was no remaining period to suspend or extend.

Appellant’s failure to seek restoration within one year further eliminated any potential procedural protection under Rule 40(j), SCRCPP. At that point, Respondents were entitled to assert the statute of limitations as a complete bar, and the Circuit Court properly considered that defense in determining whether restoration was warranted.

III. Appellant’s Remaining Arguments Fail as a Matter of Law

Appellant’s remaining contentions, including those grounded in initial timeliness, the asserted absence of a restoration deadline, Rule 6(b), SCRCPP, and equitable considerations, do not alter the controlling analysis. The fact that Appellant’s Complaint was timely filed in 2018 is not dispositive. The relevant inquiry is whether a viable claim existed at the time restoration was sought, not at the time of commencement. A claim that was once timely does not remain insulated from the statute of limitations indefinitely, and Appellant’s claims were no longer viable when restoration was pursued.

The Circuit Court did not impose a mandatory one-year deadline for restoration. Instead, it correctly recognized that, after one year, the tolling protection afforded by Rule 40(j), SCRC, ceases and the statute of limitations applies without restriction. (Formal Order Denying Motion to Restore Case (filed May 08, 2025).) See *Maxwell* at 621-22, 591 S.E.2d at 28.

Appellant's reliance on Rule 6(b), SCRC, is likewise misplaced. Rule 6(b), SCRC, authorizes the enlargement of procedural deadlines; it does not permit the revival of claims extinguished by the statute of limitations. Appellant's equitable arguments are similarly unavailing. Settlement discussions, personal hardship, and external disruptions do not restore claims that have lapsed as a matter of law. Statutes of limitation reflect a legislative judgment that, after a prescribed period, claims must give way to finality. *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175-76, 609 S.E.2d 548, 552 (Ct. App. 2005).

Finally, Appellant's contention that a strike under Rule 40(j), SCRC, does not constitute a dismissal is immaterial. Even assuming the action remained procedurally pending, the statute of limitations independently extinguished the underlying claims. The Circuit Court's ruling did not turn on terminology, but on the dispositive absence of any viable cause of action at the time restoration was sought.

CONCLUSION

The Circuit Court correctly determined that Appellant's claims are barred by the statute of limitations and that Rule 40(j), SCRC, does not operate to revive claims that have already expired. Because no unexpired limitations period remained at the time the action was stricken, and because Appellant did not seek restoration within one year, the Motion was properly denied.

Accordingly, Respondents respectfully request that this Court affirm the Circuit Court's Orders denying Appellant's Motion and Motion for Reconsideration to Restore Case.

Respectfully submitted,

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