

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Ward Benjamin McClain, Jr., individually,)
And as the Personal Representative Of and)
On behalf of the Estate of Ward Benjamin)
McClain, III, and Sonja Gay McClain)
Plaintiff,)
vs.)
Greenville, S.C., City Police Department,)
The City of Greenville, S.C., Officer Justin)
Janicke, Officer Jeffrey Smith, Officer Noel)
Tuck, Officer C.J. Clingan, and Sergeant)
Michelle Lentz,)
Defendants.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2024-CP-23-00375

RECEIVED

Feb 12 2026

SC Court of Appeals

**ORDER GRANTING PARTIAL
SUMMARY JUDGMENT
(STATUTE OF LIMITATIONS)**

This matter is before the Court on a Motion for Summary Judgment filed on behalf of Defendants Justin Janicke, Jeffrey Smith, Noel Tuck, C.J. Clingan, and Michelle Lentz. The matter was heard by the Court on March 7, 2024. Appearing on behalf of Defendants were V. Clark Price and William A. Coates of Cassidy Coates Price, P.A. Appearing on behalf of Plaintiffs was Ward Benjamin McClain, Jr.

Defendants assert that this action, which was filed with the Clerk of Court on January 19, 2024, was filed against these Defendants outside the statutory limits for commencing the action. Defendants specifically rely on South Carolina Code Sections 15-3-530(6) and 15-3-530(5). Section 15-3-530 (6) provides that an action for wrongful death must be commenced within three years of the death of the person on the account of whose death the action is brought. South Carolina Code Section 15-3-530 (5) provides that an action for assault, battery, or any injury to the person

or rights of another, not arising of contract and not enumerated by law, must be commenced within three years. South Carolina Code Section 15-3-535 provides that all such actions must be commenced within three years after the Plaintiffs knew, or by the exercise of reasonable diligence, should have known, that they had a cause of action.

According to the record before the Court, the case arises out of the death of Plaintiffs' decedent Ward Benjamin McClain III on May 9, 2020. Plaintiffs allege that McClain's death was due to wrongful acts of Defendants, which Defendants deny. The Court finds that the applicable statutes of limitation began to run on May 9, 2020, with the exception of any cause of action belonging to decedent McClain as opposed to his estate. As to the those, which include the second, third, fourth, and fifth causes of action, South Carolina Code Section 62-3-109 extends by eight months the limitations period. For the reasons set forth below, the Court finds that this action was not filed or commenced within the applicable limitations periods and that the Defendants are entitled to summary judgment.

The dates which determine the outcome of Defendants' motion are as follows:

May 9, 2020—Death of Plaintiffs' Decedent.

May 9, 2023—Limitations period expires for the first, sixth, seventh, and eighth causes of action.

January 9, 2024—Limitations period expires for the second, third, fourth, and fifth causes of action.

January 19, 2024—This action filed/commenced.

The statute of limitations on a negligence claim accrues at the time of the negligence, or when facts and circumstances would put persons of common knowledge on notice that they might have a claim against another party. The date on which the discovery should have been made is an objective, not a subjective question. Kreutner v. David, 320 S.C. 283, 465 S.E. 2d 88 (1995); Doe v. Bishop of North Charleston, 407 S.C. 128, 754 S.E. 2d 494 (2014). The important date under the discovery rule is the date that the plaintiff discovers the injury, not the date of the discovery of the identity of an alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know he had some claim against someone else, the statute of limitations begins to run for all claims based on that injury. Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E. 2d 169 (1994). The exercise of reasonable diligence, for the purpose of determining whether a cause of action is barred by the statute of limitations under the discovery rule, means that the injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. McAlhany v. Carter, 415 S.C. 54, 781 S.E.2d 105 (Ct. App. 2015). The Plaintiffs knew or reasonably should have known of sufficient injury to trigger the limitations periods on May 9, 2020.

The Court finds that the applicable statutes of limitation for the first, sixth, seventh, and eighth causes of action began to run on the date of Plaintiffs' Decedent McClain's death, which was May 9, 2020, and expired on May 9, 2023. For the remaining causes of action, because they are claims that may have belonged in whole or in part to Plaintiff's Decedent, S.C. Code §62-3-109 extended the statutes of limitations for an additional eight months. The limitations period for those causes of action therefore expired on January 9, 2024.

Plaintiffs oppose Defendants' motion on several grounds. Plaintiffs assert that engaging in discovery, including depositions of the Defendants, might reveal when the Defendants "knew about the existence and facts of the Federal Action", or might determine that one or more of the Defendants have been incorrectly named. The Court finds such information is irrelevant to whether the statutes of limitation have run.

Plaintiffs argue that the statute of limitations defense is an affirmative defense, and that the current record does not establish as a matter of law that the statutes of limitation apply. Plaintiffs contend that "Defendants have failed to aver that any or some of them resided out of this State or remained continuously absent therefrom for the space of one, (1), year or more. (sic)" The Court finds that the Defendants are not obligated to allege and prove that they may have been out of the State to such a degree as to toll the statutes of limitation. The Court finds no evidence in the record presented by either Plaintiffs or Defendants that shows that any of the Defendants were residing out of this State or that they were continuously absent from this State for one year or more prior to the commencement of this action.

Plaintiffs assert that the tort of conspiracy is a continuing tort and that some of the damages alleged by Plaintiffs therefore may be pursued notwithstanding the statutes of limitation. Plaintiffs cite no authority for this proposition. The law appears to be *contra* to Plaintiffs' position. In Poly-Med, Inc. v. Novus Scientific Pte. Ltd., 437 S.C. 343, 878 S.E.2d 896 (2022), our Supreme Court indicated that the "continuing claims" or "continuing breach" theories have not been adopted in South Carolina.

Plaintiffs argue that their submissions in opposition to the motion have created issues of fact for a jury to decide. That argument is not relevant to the issue of whether Plaintiffs' action was timely commenced.

Plaintiffs make a general argument that Defendants' submissions to the Court are inadmissible hearsay. The Court is satisfied that the Defendants' submissions were properly before the Court.

Finally, at the hearing, Plaintiffs' attorney argued that 28 U.S.C. §1367 (d) operated to toll the statutes of limitation. On May 9, 2022, Plaintiffs, with the exception of Sonja Gay McClain, who has been added as a plaintiff in this action, had filed suit in the United States District Court against the City of Greenville and others based on the death of Plaintiffs' decedent.¹ The Defendants now moving for summary judgment in this action were not named as defendants in the federal action. The federal action contained both federal claims and state law claims. The federal court exercised its supplemental jurisdiction over those state law claims.

Later, the Plaintiffs. moved to abandon the federal claims with prejudice. On December 20, 2023, the Honorable Timothy M. Cain entered a text order in which he dismissed the federal claims and "dismissed without prejudice to the right of Plaintiff to refile such state law claims in state court pursuant to 28 U.S.C §1367." During the hearing on March 7, Plaintiffs asserted that §1367(d) contains a tolling provision for supplemental state law claims that are included in a federal civil action but are later dismissed. However, the tolling provision does not apply to the Defendant officers because they were not named as parties in the state law claims over which the federal court exercised supplemental jurisdiction. As to these Defendants, the current action is a new claim for which the tolling provision of §1367 (d) does not apply.

Based on the foregoing, it is, therefore, ORDERED, ADJUDGED AND DECREED that Defendants' motion for summary judgment is granted.

¹ Ward Benjamin McClain, Jr., as the Personal Representative of and on behalf of the Estate of Ward Benjamin McClain v. Greenville, S.C., City Police Department, The City of Greenville, S.C., and Unknown Agents, Employees and Servants of the Defendants. 6:22-cv-01465-TMC-JDA

AND IT IS SO ORDERED.

G.D. Morgan, Jr., Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

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Greenville Common Pleas

Case Caption: Ward Benjamin McClain Jr , plaintiff, et al vs. City Police Department
Greenville SC , defendant, et al
Case Number: 2024CP2300375
Type: Order/Other

So Ordered

G.D. Morgan Jr.