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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2024-000592
Case No. 2020-CP-02-2238

Cassiopia Rhoads, ... Respondent-Appellant,

v.

Aiken County Sheriff's Office, ... Appellant-Respondent.

APPELLANT-RESPONDENT'S BRIEF IN OPPOSITION TO AMICUS CURIAE BRIEF OF SOUTH CAROLINA ASSOCIATION OF JUSTICE

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ARGUMENTS

The South Carolina Association of Justice, with its amicus curiae brief, adds nothing to the analysis of Section 15-78-70(d) of the South Carolina Tort Claims Act and whether the trial court properly granted a JNOV to the Appellant-Respondent Aiken County Sheriff's Office (ACSO). Instead, the amicus curiae brief is riddled with errors, confuses basic legal concepts, relies on non-precedential Circuit Court decisions rather than critical South Carolina Supreme Court precedent, and misstates the holdings of case law including that of the United States Supreme Court.

For starters, the amicus conflates the very distinct concepts of apportionment and set-off, treating them as one and the same. In doing so, the amicus incorrectly insists that the ACSO did not "lose its right to apportionment" when Southern Health Partners (SHP) settled with the Respondent-Appellant Cassiopia Rhoads because ACSO was nonetheless entitled to a set-off of the settlement amount. Without question, our jurisprudence recognizes that apportionment and set-off are two distinct concepts, and there is no legal basis for holding that an apportioned verdict and a set-off verdict have financial equivalence.

This very case is illustrative of that. Here, if the case had been tried to the jury with both ACSO and SHP as named defendants on the verdict form with the apportionment as required by Section 15-78-100(c), the fault attributed to ACSO would have most likely been minimal as compared to SHP given the allegations of significant medical malpractice by SHP. However, with the conservative settlement reached between Rhoads and SHP (which was less than the medical specials alone), *ACSO did not even receive the benefit of a set-off*. While the settlement amount is confidential, the Court may inquire as to that amount, but it remains clear that the amount of the Tort Claims Act cap ($300,000) and the set-off amount together come nowhere

close to the jury's verdict of $950,000. To further illustrate this point, if the jury had been allowed to apportion fault, and in doing so attributed ninety percent fault to SHP and ten percent fault to ACSO, then ACSO's judgment would have been $95,000, which is substantially less than the amount of the $300,000 judgment that was entered after the cap was applied. However, with the settlement with SHP, Rhoads caused ACSO to lose its right to apportionment and ultimately the ACSO received no benefit of a set-off either. That is precisely the scenario that resulted in the General Assembly's enactment of Section 15-78-70(d) – to prevent a governmental entity and its taxpayers from being compelled to pay for the fault of others.

As mentioned, the amicus cites no case law for its proposition that ACSO did not "lose" its right to apportionment. The only appellate decision cited is *Smalls v. South Carolina Department of Education*, 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000), which says the opposite. In *Smalls*, this Court ruled that the government defendant's right to apportionment was lost when other tortfeasors settled before trial. However, in contrast to the case at bar, the defendant in *Smalls* did not argue that Section 15-78-70(d) barred the action following that settlement, or certainly, based on the opinion, this Court never addressed that issue. Therefore, *Smalls* is inapposite.

Moreover, the amicus cites with favor to a Circuit Court opinion. However, it is well settled that the decisions of a circuit court judge are not controlling precedent in any instance. *See*, *Ford v. Beaufort County Assessor,* 398 S.C. 508, 730 S.E.2d 335, 339, n.1 (Ct. App. 2012) ("[t]rial or inferior court decisions are not precedents binding other courts, including appellate courts or other judges of the same trial court"). Thus, the amicus' reliance on a circuit court decision is misplaced and should be rejected.

It is, nonetheless, ironic that the amicus barely makes any mention of the Supreme Court's decision in *Wade v. Berkeley County*, 348 S.C. 224, 559 S.E.2d 586 (2002), which remains to date the only case that interprets and applies Section 15-78-70(d). The amicus insists that Section 15-78-70(d) may not be applied to claims or actions against a private, non-governmental defendant when named as a co-defendant in an action brought under the Tort Claims Act against a governmental entity. The amicus' position is flawed in two key respects.

First, the precise language of Section 15-78-70(d) is as follows:

> A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.

S.C. Code Ann. § 15-78-70(d). There is no requirement that the settlement or judgment must be with another governmental party. There is no language to that effect in the statute, and if that were the intent of the General Assembly, such language could have been included. What is required is that the settlement must occur within the context of an action brought pursuant to the Tort Claims Act. In *Wade*, *supra*, the Supreme Court examined this very question and concluded that "the General Assembly intended 'under this chapter' to modify both a 'settlement or judgment in an action' and a 'settlement of a claim.'" 559 S.E.2d at 588. The "chapter" as referenced is the Tort Claims Act. Thus, if there is a settlement in a Tort Claims Act case, Section 15-78-70(d) applies. Indeed, the Supreme Court in *Wade* explained that "to invoke the provisions of § 15-78-70(d), there must be a settlement or judgment in an action under the Act or a settlement of a claim under the Act." 559 S.E.2d at 588-589. Therefore, if there is a settlement in an action brought under the Tort Claims Act, Section 15-78-70(d) may be invoked as a bar to any further proceedings or recovery against a governmental entity arising out of the same occurrence.

From a procedural standpoint, the present case differs from *Wade*.[1] Here, Rhoads brought suit against both SHP and ACSO in the same action which was brought under the Tort Claims Act. Undoubtedly, the settlement reached with SHP was "[a] settlement … in an action … under this chapter," and accordingly, it "constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence." S.C. Code Ann. § 15-78-70(d). Nonetheless, to the extent there is any question as to the meaning or application of that language despite the decision in *Wade*, it is critical to acknowledge -- which the amicus does not -- that the Tort Claims Act includes its own rules of statutory construction, including Section 15-78-20(f), which states: "The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, *must* be liberally construed *in favor of limiting the liability of the State*." S.C. Code Ann. § 15-78-20(f). (Emphasis added). Thus, the limitation on liability as set forth in Sections 15-78-70(d) must be liberally construed in favor of limiting the liability of the State and its political subdivisions as mandated by Section 15-78-20(f) and the supporting case law. *See, Faile v. South Carolina Department of Juvenile Justice,* 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"); *Baker v. Sanders,* 301 S.C. 170, 391 S.E.2d 229 (1990) (same).

Notably, in its attempt to make its argument work, the amicus changes the language of Section 15-78-70(d), which should be quite telling that its analysis is flawed. For instance, the amicus speaks of a "settlement *of* an action" as opposed to the actual language of Section 15-78-70(d) which addresses a "settlement *in* an action." The amicus then insists that the "entire

[1] The present case also differs procedurally from the recent decision in *Whetstone v. Office of Governor*, Op. No. 6133 (S.C. Ct. App. 2026) (certiorari granted June 17, 2026), which, like *Wade*, involved an initial lawsuit against an employee in his individual capacity followed by a separate lawsuit against the governmental entity.

action" must be brought under the Tort Claims Act; yet, the term "entire action" appears nowhere in the statute. The amicus also incorrectly contends that no provision of the Tort Claims Act applies to a non-governmental defendant sued with a governmental defendant under the Act. If SHP and ACSO had been tried as co-defendants, Section 15-78-100(c) most certainly was applicable to the case and would require apportionment of fault for all defendants, governmental and non-governmental. The amicus then offers a hypothetical about a Freedom of Information Act (FOIA) claim brought against a governmental entity and a non-governmental entity. The hypothetical is non-sensical for several reasons, including that a FOIA claim is not a tort claim governed by the Tort Claims Act and a non-governmental defendant is not subject to the dictates of FOIA since it is not a "public body."

Next, the amicus cites to this Court's recent decision in *Whetstone v. Office of Governor*, Op. No. 6133 (S.C. Ct. App. 2026) (certiorari granted June 17, 2026), and argues that "[w]hen the government and its employee are both parties to a TCA action, a settlement with one operates as a settlement with both." *See*, Amicus Brief, p. 10. The amicus appears to be proposing a construction of Section 15-78-70(d) that renders the statute to be completely meaningless and ineffective. It is well settled that in construing the meaning of a statutory enactment, "[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston,* 352 S.C. 208, 574 S.E.2d 196, 198 (2002). However, Section 15-78-70(d) would accomplish *absolutely nothing* with the amicus' proposed construction. Here is why. Sections 15-78-70(a) and (c) already provide absolute sovereign immunity for employees acting within the scope of their official duties. In other words, governmental employees are not subject to suit in their own names by operation of the other subsections of Section 15-78-70. The amicus' proposed construction of Section 15-78-

70(d) limits its application to cases where an employee is named as a co-defendant; *yet, an employee is never subject to suit in his/her own name under the Tort Claims Act*. Thus, there cannot be a Tort Claims Act action against an employee in his/her own name. That simply will not ever occur.[2]

Further, the amicus references the decision of the United States Supreme Court in *Brownback v. King*, 592 U.S. 209 (2021), and suggests that the Supreme Court "held" that the "judgment bar" provision in the Federal Tort Claims Act "applies only to actions involving government employees or the government itself, not to settlements with private parties." *See*, Amicus Brief, p. 10. The amicus misrepresents the "holding" of *Brownback*. There is no holding, let alone any discussion, by the Supreme Court related to settlements with private parties. To the contrary, the "judgment bar" set forth in 28 U.S.C. § 2676 is expressly applicable to an "employee of the government" and requires there to be a "judgment" under the FTCA as opposed to a settlement so as to bar a later *Bivens* constitutional action against a federal employee. In short, the *Brownback* decision is not remotely helpful in addressing the meaning or application of Section 15-78-70(d).

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[2] This point is best illustrated by *Wade*, *supra*, where the at-fault driver was an employee of Berkeley County although at the time of the accident he was driving his personal vehicle. The plaintiff in *Wade* initially sued only the driver individually and reached a settlement. However, the driver *was not sued as an employee*, and for that reason, the Supreme Court concluded that the settled action was not brought under the Tort Claims Act. Specifically, the Supreme Court explained: "At the time of the settlement, Wade had only initiated an action against Pierce in his individual capacity, not against County as Pierce's employer. Accordingly, at the time Wade and Pierce executed the settlement document, there were no actions 'under this chapter.'" 559 S.E.2d at 589. Yet, if the driver had been sued as an employee, that claim would have been brought under the Tort Claims Act, and Sections 15-78-70(a) and (c) would have prevented the employee from being sued in his name. Instead, only the governmental entity would have been subject to suit. In short, *Wade* confirms that there can never be a suit *under the Tort Claims Act* against an employee in his/her own name. That will never occur.

Finally, the amicus argues that Section 15-78-70(d) is at odds with the "strong public policy favoring the settlement of disputes." *Chester v. South Carolina Department of Public Safety*, 388 S.C. 343, 698 S.E.2d 559, 560 (2010). That is incorrect for several reasons. First of all, the General Assembly establishes the public policy, and it is the General Assembly that enacted Section 15-78-70(d). Moreover, as enunciated in the Tort Claims Act, the public policy favors "relieving the government from hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed for an effective and efficient government." *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564, 570 (1990). Section 15-78-70(d) preserves the governmental entity's critical right of apportionment so that a governmental entity is not expending taxpayer money to compensate a plaintiff for the fault of other tortfeasors, governmental or non-governmental. Section 15-78-70(d) was enacted for a reason, and it cannot be judicially ignored or rendered meaningless. Yet, that is precisely what the amicus is proposing.

Moreover, as the trial court correctly observed, with its enactment of Section 15-78-70(d), "the General Assembly did not deny a plaintiff's or claimant's right to settle with less than all alleged joint tortfeasors, but if the plaintiff or claimant does settle with a joint tortfeasor, that then bars any further recovery from a governmental entity because the governmental entity has lost the critical right to apportionment." (R. 24). Thus, the public policy, as set by the General Assembly, favors the trial court's interpretation and application of Section 15-78-70(d), and for all of the reasons addressed herein and in the previous briefing, the trial court's rulings should be affirmed.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant-Respondent Aiken County Sheriff's Office respectfully renews its request that the Court affirm the Order Granting Defendant's Motion to Alter or Amend Order and JNOV Motion as issued by Circuit Court Judge Eugene C. Griffith, Jr. based on the Section 15-78-70(d) defense under the Tort Claims Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for Aiken County Sheriff's Office, does hereby certify that service of the **Appellant-Respondent's Brief in Opposition to Amicus Curiae Brief of South Carolina Association of Justice** in the above-captioned matter was made upon all counsel of record by email only this the 21st day of July 2026, as follows:

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July 21, 2026

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RE: Cassiopia Rhoads v. Aiken County Sheriff's Office
Appellate Case Number: 2024-000592
Civil Action Number: 2020-CP-02-2238
Claim Number: 2020G00077
Our File Number: 333.20304

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as Amended April 24, 2024), please find enclosed for filing the **Appellant-Respondent's Brief in Opposition to Amicus Curiae Brief of South Carolina Association of Justice** with regard to the above-referenced matter. By copy of this letter, I am serving a copy on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

If you have any questions, please advise. Thank you for your assistance.

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/
Enclosures

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