

THE STATE OF SOUTH CAROLINA
(In the Court of Appeals)

APPEAL FROM SUMTER COUNTY
Common Pleas

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2026-000212

Claude Helton,Appellant,

V.

Sumter County Sheriff's Department,Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court failed to apply the proper Standard of Review when ruling on a Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rule s Civil Procedure.

II. Did the trial court fail to properly apply the Discovery Rule to this case.

The trial court erred when it failed to consider the application of the Discovery Rule and the Statue of Limitations to be jury questions.

STATEMENT OF THE CASE

The Appellant was involved in a motor vehicle accident on June 30, 2021. The Respondent's employee Earl Fulwood, Jr., while acting in the course and scope of his duties as a Deputy of the Sumter County Sheriff's Department, failed to yield the right of way, which resulted in the Appellant's vehicle colliding with the vehicle driven by Respondent's employee. The Appellant filed his initial Complaint, on July 11, 2023. In the initial Complaint, the Appellant named Earl Fulwood, Jr. And Anthony Dennis, Sheriff as defendants. Appellant then filed an Amended Complaint on August 17, 2023.

STATEMENT OF FACTS

At the time of the collision there was no determination as to who was responsible for the collision, the matter being investigated by the South Carolina Highway Patrol, who on June 30, 2021, did not determine

who contributed to the collision. (R.p. 49; FR-10 June 30, 2021)

The Appellant in an effort to determine the facts of the collision, thought to secure the result of the SCHP's investigation, requested an accident report on August 04, 2021, from the South Carolina Department of Motor Vehicles. The report did not indicate which party may have contributed to the collision. This report was dated July 09, 2021. (R.p. 50 July 09, 2021, accident report)

The Appellant requested a second accident report from the SCDMV's on January 13, 2022. This report was dated October 29, 2021, it was this accident report indicated that the Respondent's employee had contributed to the collision while the Appellant had not. (R.p. 52; Complaint and Amended Complaint)

STANDARD OF REVIEW

The Court of Appeals corrects errors of law and finds facts in accordance with its own view of the preponderance of the evidence. The Court of Appeals is not, however, required to ignore the fact that the trial judge, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimonies. Smith v Smith, 294 S.C. 194, 363 S.E.2d 404 (S.C. Ct. App. 1987).

ARGUMENTS

I. The trial court failed to apply the proper Standard of Review when ruling on the Respondent's Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rule s Civil Procedure.

A Rule 12(b)(6) motion to dismiss for failure to state a cause of action must be resolved by the trial judge based solely on the allegations established in the complaint. Berry v. McLeod, 328S.C. 435, 492 S.E. 2d 794; Woodell v. Marion Sch. Dist. One, 307 S.C. 297, 414 S.E. 2d 794 (Ct. App. 1992). The motion cannot be granted if the facts set forth in the complaint and the inferences reasonably drawn therefrom would entitle the plaintiff to any relief on any theory of the case. Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697(1987)

Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, Rule 56(c) SCRPC. "Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ." Byerly v. Connor, 307 S.C. 441, 445 S.E.2d 796 (1992). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving

party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 443 S.E.2d 392 (1994).

The Appellant submits that the complaint in this matter relies upon the South Carolina Tort Claims Act, S.C. Code Ann. Sec. 15-78-20, which raise a question as to whether the Respondent's actions would fall within the enumerated lists of limited liability and whether any of the statute's list of conduct that falls within the immunity clause. Which raises a question of fact for the jury. Also, the question of discovering whether the Appellant had a claim based upon the statute would justify the Appellant's depending upon the SCHP's determination of who contributed to the collision.

II. Did the trial court fail to properly apply the Discovery Rule to this case.

The trial court erred when it failed to consider the application of the Discovery Rule and the Statute of Limitations to be jury questions.

The Respondent in this matter is the Sumter County Sheriff's Department, and due to the statute's construction, the issue of immunity is a factor in determining if a claim exists. The Appellant has to determine what the Respondent's employee was actually doing at the time the incident, that is, was his immunity granted by the statute valid or invalid. The question is

one that should be presented to a jury as a question of fact. Wedgewood Condominium Association v. Centex Homes, 443 S.C.399, 940 S.E. 2d 544 (Ct. App. 2025).

The South Carolina Torts Claim Act, S.C. Code Ann. Sec. 15-78-40, allows individuals to sue the state, its political subdivisions, and employees for damages. The Act S.C. Code Ann Sec. 15-78-60, does however give specific exceptions, some forty (40), to the waiver of immunity, and as to this Respondent, whether he fell within the exceptions depends upon what he was doing and the circumstances around his actions.

In Dean v. Ruscon Corp. 468 S.E. 2d 645, the South Carolina Supreme Court states that "According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the *injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.* (Emphasis added) Johnston v. Bowen, 313 S.C. 61, 437 S.E. 2d 45 (1993)"

Whether the Appellant suffered a loss, or has a *cause of action*, depends upon the objective determination of what this Respondent, a law enforcement officer, was doing and where his actions within the scope of the

statute's exceptions to the South Carolina Tort Claims Act's waiver of immunity. The Appellant could not determine or discover a cause of action or loss until more information was available to him and through the investigating agency.

The distinction between this matter and the Tanyel v. Osborne, 312 S.C. 473, 441 S.E. 2d 329 (Ct. App. 1994), case is that Tanyel involved a school bus auto accident. The actions of the school bus driver and or the nature of his specific employment would not give rise to a question of immunity. While whether the deputy was acting in accordance with anyone of the following sections 15-78-60:

Section (3) execution, enforcement, or implantation of the orders of any court or execution, enforcement, or lawful implementation of any process;

Section (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.

The distinction between this matter and the Wiggins v. Edwards, 314 S.C. 126, 442 S.E. 2d 169, 170 (1994), case is that the Defendant in Wiggins, was again not law

enforcement and thus did not have a possible exemption from liability, that the Sumter County Sheriff's Department may have at the time this incident.

The Plaintiff asserts that while there was an auto collision on June 30, 2021, the code, [S.C. Code Ann. Section 15-3-535 (Supp. 1992)] indicates that the commencement of an action should be brought ... "after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action", it does not reference injury. The Plaintiff's reasonable delay was in determining, not a wrongdoer; but if, as to this particular wrongdoer, did a cause of action arise from its conduct on that day. It took the Highway Patrol four months to reach its findings, that the Defendant contributed to the collision.

In Wiggins, the Court stated "The exercise of reasonable diligence means simply that an injured party must act with some promptness where the fact and circumstance 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*. The statute of limitations begins to run from this point and not when advice of counsel is sought

or a full-blown theory of recovery developed." Wiggins v. Edwards, 314 S.C. 126, 442 S.E. 2d 169, 170 (1994).

The Plaintiff's ability to determine a claim against this particular Defendant was based upon whether the immunity is found to be invalid. This raises a question for the finder of fact.

Conclusion

The Appellant commenced this action on July 11, 2023, and filed Amended pleading on August 17, 2023, both filing were before October 29, 2023, which was two years from the earliest time when the Appellant should have discovered the loss and or the existence of a claim. The Appellant exercised reasonable diligence and acted with promptness in carrying out his duty to investigate by seeking to gain access to the officer's report. Thus, according to the Reasonable Discovery Rule, the Statute of Limitations begins to run January 12, 2022, when the Appellant secured a copy of the Officer's report but no earlier than October 29, 2021. Using either date, the Appellant commenced his action within two (2) years from when he knew of or should have known that a cause of action or claim against the Respondent existed.

Therefore, the Appellant requests that this Court issues its Order overturning the Trial Court's ruling.

Respectfully Submitted;

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