

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Oct 08 2026
SC Court of Appeals

Appeal from Union County
Court of Common Pleas
Honorable Daniel D. Hall

South Carolina Department of Social Services, South Carolina Department of Children's Advocacy, Tammy Gaye Causey Dalsing, and Edward Anthony Dalsing, Respondents,

v.

H.A., by and through her guardians, Jane and John Smith, and Jane and John Smith, individually,

Appellants,

Appellate Case No. 2023-001049

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellants respectfully petition this Court for rehearing of the opinion filed August 19, 2026, *H.A. v. South Carolina Department of Social Services*, Op. No. 2026-UP-421, and state with particularity below the points they respectfully submit were overlooked or misapprehended.

INTRODUCTION

The opinion holds that “the Act's applicable statute of limitations bars relief to *any* of Relatives' remaining gross negligence claims.” (Op. at 5) (emphasis added). Because the opinion defines “Relatives” to include both the adult Appellants and the minor child, that holding sweeps in claims brought on behalf of H.A. herself.

The circuit court held no such thing. Its limitations ruling was expressly and repeatedly confined to the *adult* Appellants' individual claims. And it could not have extended further, because H.A. was **eight months old** when the events giving rise to this action began — a fact the circuit court recited in the first paragraph of its findings. S.C. Code Ann. § 15-3-40, which § 15-78-110 incorporates by its opening words, tolls the limitations period for a claimant who was a minor when her cause of action accrued.

The opinion quotes that exception and then applies the two-year period to a child who will not reach the age of majority until December 2030. Appellants respectfully submit this point was overlooked.

ARGUMENT

I. THE CIRCUIT COURT'S LIMITATIONS HOLDING WAS EXPRESSLY LIMITED TO THE ADULT APPELLANTS' INDIVIDUAL CLAIMS.

The section of the circuit court's order addressing the statute of limitations is captioned: “Both SCDSS and SCDCA Are Entitled to Summary Judgment Concerning the Claims Asserted by the Armstrongs *Individually*.” (SCDSS Order at 13) (emphasis added). Within that section, the court found:

This Court finds that the individual claims of the Armstrongs accrued prior to March 11, 2018. . . . Accordingly, this Court finds that the statute of limitations bars all of their individual claims in this case.

(SCDSS Order at 14–15) (emphasis added). The section closes: “Accordingly, this Court finds that both SCDSS and SCDCA are entitled to summary judgment as to all claims asserted by the Armstrongs *individually*.” (SCDSS Order at 15) (emphasis added).

The Dalsings' order draws the same line, and draws it in its heading. The limitations section of that order is captioned: “*ADULT PLAINTIFFS' CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS*.” (Dalsing Order at 26) (emphasis added). Its text repeats the limitation twice more: “The claims made by *the adult Plaintiffs* in this case are barred by the three-year statute of limitations set forth in S.C. Code Ann. § 15-3-530,” and “any claims made by *the adult Plaintiffs* regarding their own alleged injuries and damages for actions occurring before March 11, 2017 are time-barred.” (Dalsing Order at 26) (emphasis added). The same order holds elsewhere that “summary judgment is proper for all causes of action brought on behalf of *the adult Plaintiffs*.” (Dalsing Order at 22) (emphasis added).

Neither order applied the statute of limitations to H.A.'s claims. Those claims were disposed of, if at all, on other grounds. The opinion's statement that limitations bars “any of

Relatives' remaining gross negligence claims” therefore affirms on a rationale the circuit court did not adopt as to H.A.

II. SECTION 15-3-40 TOLLS H.A.'S CLAIMS, AND § 15-78-110 INCORPORATES IT BY ITS OPENING WORDS.

A. The limitations statute is expressly subject to § 15-3-40.

The opinion quotes § 15-78-110 in full, including its opening clause: “*Except as provided for in Section 15-3-40*, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered” (Op. at 5). The General Assembly placed that exception first. It is not surplusage. The two-year period operates *subject to* § 15-3-40, not independently of it.

B. H.A. was eight months old, and infancy is carved out of the tolling cap.

The circuit court's own findings establish the operative fact: “On August 27, 2013, H.A., who was then *eight months old*, was taken into emergency protective custody by law enforcement.” (SCDSS Order at 1) (emphasis added).

Section 15-3-40 provides that where a person entitled to bring an action is, at the time the cause of action accrued, “within the age of eighteen years,” then “the time of the disability is not a part of the time limited for the commencement of the action.” The statute caps the extension at five years “*except infancy*,” and requires suit within one year after the disability ceases. Infancy is thus expressly excluded from the five-year ceiling.

A child eight months old in August 2013 was born in or about December 2012. H.A. is therefore approximately thirteen years of age today and remains a minor. Her limitations period has not begun to run and will not expire until one year after she reaches majority. This action was filed March 11, 2020. Her claims were timely when filed and are timely now.

The same is true of the claims against the Dalsings. That order applied the three-year period of § 15-3-530 (Dalsing Order at 26), which appears in the same article of the Code as § 15-3-40 and is equally subject to its tolling provision.

III. THE POINT IS PROPERLY BEFORE THE COURT, BECAUSE THE LIMITATIONS RULING AS TO H.A. APPEARS FOR THE FIRST TIME IN THE OPINION.

Appellants anticipate the argument that § 15-3-40 was not cited below. Two answers.

First, the *issue* was squarely raised and argued. Issue II of Appellants' brief states: "The trial court erred in making a finding that the statute of limitations was exceeded . . . and the Appellants were within time frames for filing their action." The timeliness of this action was before the Court. Section 15-3-40 is additional authority in support of an issue properly preserved, not a new issue. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (an issue must be raised to and ruled upon below).

Second, and more fundamentally, the ruling Appellants now address did not exist until the opinion issued. Neither order held H.A.'s claims time-barred; both confined the holding to the adults. Appellants had no occasion to brief minority tolling for a child whose claims no court had barred. The extension of the limitations bar to "any of Relatives' remaining gross negligence claims" originates in this Court's opinion, and rehearing is the first opportunity Appellants have had to respond to it. That is the office Rule 221(a) serves: it exists for points "overlooked or misapprehended by the court"; points that, by definition, surface when the opinion issues.

IV. THE ERROR IS MATERIAL AND REQUIRES RELIEF.

The limitations holding is the stated basis on which this Court affirmed as to the "remaining gross negligence claims." If, as the circuit court's orders reflect, that holding never applied to H.A., and if § 15-3-40 forecloses its application to her, then the opinion's rationale cannot support affirmance of the judgment against her.

Appellants respectfully submit that the claims brought on behalf of H.A. must be assessed on the grounds the circuit court actually gave as to those claims, and that this Court's opinion should address them on their own terms rather than through a limitations bar that reaches only the adult Appellants.

Nor does discretionary immunity independently sustain the judgment as to H.A. Section 63-7-400, on which the opinion relies, confers immunity only where the employee "acted in good

faith and *was not reckless, wilful, wanton, or grossly negligent.*” (Op. at 4) (quoting the statute). Immunity so conditioned cannot dispose of a gross negligence claim as a matter of law, because whether it attaches turns on the very fact the claim puts in issue. And the burden of establishing it rests on the governmental entity. Appellants preserved this point below and on appeal. (Appellants’ Br. at 14) (citing *Clark v. S.C. Dep’t of Pub. Safety*, 362 S.C. 377, 608 S.E.2d 573 (2005)).

V. THE OPINION MISIDENTIFIES THE TRIBUNAL BELOW.

The caption identifies the Honorable Daniel Dewitt Hall as “Family Court Judge,” and the disposition states that “the order of the family court is AFFIRMED.” (Op. at 1, 5). This action was filed and decided in the Union County Court of Common Pleas, and the body of the opinion correctly refers throughout to “the circuit court.” Appellants respectfully request correction so that the remittitur issues to the correct tribunal.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court grant rehearing, withdraw the opinion filed August 19, 2026,¹ and issue a substituted opinion addressing the claims brought on behalf of H.A. under the grounds the circuit court actually applied to them.

Respectfully submitted,

_____*s/Melinda Butler*_____
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Union, South Carolina
October 8, 2026

¹ Extension granted to file this Petition until October 9, 2026.

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PROOF OF SERVICE

I, Melinda Butler, hereby certify that I have served a copy of the **PETITION FOR REHEARING** on
the below stated parties at the stated email AND/OR postal address as indicated below, by attaching a
copy of same, on October 08, 2026, addressed as follows:

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October 8, 2026

Jane and John Smith, et al, v SCDSS, Dalsings et al

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 2 attachments (365 KB)

proof of service.pdf; Petition for Rehearing.pdf;

Please see attached being filed with the Court of Appeals.

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