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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Maite Murphy, Circuit Court Judge

Lower Court Case Number 2025-CP-18-00640

Deborah Bowles, Appellant,

v.

City of North Charleston, IMC Charleston, LLC, and Wescott Plantation, Defendants,

of which City of North Charleston is the Respondent.

Appellate Case No. 2026-000775

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in granting North Charleston's motion to dismiss based on insufficiency of process, insufficient service of process, and the statute of limitations?

STATEMENT OF THE CASE

This is an appeal from an order dismissing Appellant Deborah Bowles' premises-liability action against Respondent City of North Charleston on the grounds of insufficiency of process, insufficiency of service of process, and the statute of limitations. (R. pp. 1-6).

On March 20, 2025, Bowles filed a summons and complaint in the Court of Common Pleas for Dorchester County, naming as defendants the City of Summerville, Dorchester County Public Works, Dorchester County, and Wescott Plantation. (R. pp. 7-13). On June 5, 2025, Bowles filed a consent motion for leave to amend the complaint to add the City of North Charleston Public Works and IMC Charleston, LLC as defendants. (R. pp. 23-26). The circuit court granted the motion by consent order filed June 11, 2025. (R. pp. 27-28). Bowles, Dorchester County, and Dorchester County Public Works thereafter stipulated to the dismissal of Dorchester County and Dorchester County Public Works, with prejudice, on June 16, 2025. (R. pp. 29-30).

On August 13, 2025, the City of North Charleston moved to dismiss, asserting insufficiency of process, insufficiency of service of process, and the statute of limitations. (R. pp. 32-33). The Honorable Maite Murphy heard the motion on November 17, 2025. (R. p. 65, ll. 1-3). James F. Hartman, III appeared on behalf of Bowles, and Lisa A. Reynolds appeared on behalf of the City of North Charleston. (R. p. 65, ll. 6-9). The circuit court granted the motion and dismissed all of Bowles' claims against the City of North Charleston. (R. p. 5).

STANDARD OF REVIEW

"The trial court's findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard." *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 294-95, 721 S.E.2d 430, 432 (2012) (citing *Clark v. Key*, 304 S.C. 497, 500, 405 S.E.2d 599, 601 (1991)). "In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (citing *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)).

"The facts are construed in the light most favorable to the nonmoving party, and all well-pled allegations are considered true." *Delaney v. First Fin. of Charleston, Inc.*, 426 S.C. 607, 611, 829 S.E.2d 249, 250 (2019) (citing *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005)). "However, questions of law are decided de novo." Delaney, 426 S.C. at 611, 829 S.E.2d at 250-51 (citing *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)).

STATEMENT OF FACTS

On March 27, 2023, Deborah Bowles was walking in her Wescott Plantation neighborhood when she tripped and fell on the sidewalk at the intersection of Law Boulevard and Ayscough Road. (R. p. 9, ¶ 6). Bowles owns property in the neighborhood and used its sidewalks as an express invitee with permission to do so. (R. p. 9, ¶ 5). The sidewalk was uneven and unlevel which was an artificial unsafe condition that caused her to fall. (R. p. 9, ¶ 8). As she fell, Bowles braced herself with both hands and upper extremities, suffering injuries to both rotator cuffs, a laceration to her face, a broken bone in her nose, and a sprain to her right knee. (R. p. 9, ¶ 9).

Bowles retained counsel approximately ten days before the two-year statute of limitations was set to expire. (R. p. 46, ¶ 4; R. p. 71, ll. 8-11). To preserve her claim, counsel promptly prepared

and filed a summons and complaint on March 20, 2025—within the limitations period—naming the entities then believed responsible for maintaining the sidewalk: the City of Summerville, Dorchester County Public Works, Dorchester County, and Wescott Plantation. (R. pp. 7-13; R. p. 71, ll. 11-13).

Although Bowles resides in Dorchester County, and it initially appeared that Dorchester County Public Works maintained the sidewalk, discovery revealed that the City of North Charleston was in fact the entity responsible for maintaining the common sidewalks of the Wescott Plantation neighborhood. (R. p. 71, ll. 14-19; R. p. 46, ¶ 4; R. p. 50). As counsel for Bowles explained, the true identity of the responsible governmental entity was "just a peculiarity of the facts." (R. p. 71, ll. 18-19).

Promptly upon learning of the City of North Charleston's responsibility, Bowles obtained the consent of every party and, on June 5, 2025, moved for leave to amend the complaint to add the responsible entity. (R. p. 23; R. p. 66, ll. 14-20). Lisa Reynolds represented Dorchester County and Dorchester County Public Works. She was also retained to represent the City of North Charleston. Ms. Reynolds consented to the amendment. (R. pp. 23-24; R. p. 66, ll. 2-3; R. p. 67, ll. 2-4). The circuit court granted the consent motion on June 11, 2025. (R. pp. 27-28; R. p. 73, ll. 7-10).

Bowles then served the City of North Charleston with the amended summons and complaint through a process server on July 17, 2025. (R. p. 31; R. p. 72, ll. 7-9). The City of North Charleston is a governmental entity as defined by the South Carolina Tort Claims Act, and, because Bowles did not file a verified claim, a two-year limitations period governed her claims against the City. (R. p. 3; R. p. 67, ll. 1-6).

The City of North Charleston moved to dismiss on two grounds. First, the City argued that service was insufficient because the amended summons and complaint served upon it on July 17, 2025 had not been filed, and that Rule 5(d), SCRCP, requires a summons and complaint to be filed before service, while Rule 4(d)(6), SCRCP, governs service of process upon a governmental subdivision. (R. pp. 35-36). Second, the City argued that Bowles' claims were barred by the two-year statute of limitations, which expired on March 27, 2025, because no summons and complaint naming the City had been filed within that period. (R. pp. 36-37). The City further argued that the June 11, 2025 order granted leave to add the City of North Charleston Public Works, not the City of North Charleston. (R. p. 37).

Bowles opposed the motion. She argued that the filing of her summons and complaint on March 20, 2025 commenced the action and tolled the statute of limitations, provided that service was made within a reasonable time thereafter, and that whether service is made within a reasonable time is a factual question that may be satisfied even by a delay of several months where the plaintiff acts in good faith and with due diligence. (R. pp. 46-47).

Bowles further argued that, under Rule 15(c), SCRCP, her amendment adding the City related back to the original March 20, 2025 pleading because it arose out of the same conduct, transaction, or occurrence. (R. p. 47). Relying on *Hughes v. Water World Water Slide*, 314 S.C. 211, 442 S.E.2d 584 (1994), Bowles argued that a party added after the limitations period need only have received informal notice of the suit and that the City received such notice through Lisa Reynolds, who served as counsel for both the released defendants and the City and who had consented to the amendment adding the City. (R. p. 48). Bowles argued that the City knew or should have known that, but for a mistake concerning the identity of the proper party, the action

would have been brought against it, and that the City suffered no prejudice in maintaining its defense on the merits. (R. pp. 48-49).

At the hearing on the motion to dismiss, the City argued that no South Carolina authority holds that merely filing a summons and complaint tolls the statute of limitations. (R. p. 67, l. 23 - p. 69, l. 2). The City argued that Bowles neither filed nor served a summons and complaint naming the City within the limitations period, and that Bowles had produced no evidence that the City knew or should have known within that period that it was the proper party. (R. p. 69, ll. 3-17; R. p. 74, ll. 6-13). Bowles responded that the system is predicated on notice, that under *Hughes* informal notice of the suit is sufficient, and that service upon the City on July 17, 2025 provided such notice within 120 days of the order granting leave to amend. (R. p. 70, ll. 22-24; R. p. 71, l. 25 - p. 72, l. 15; R. p. 73, ll. 4-18).

The circuit court granted the motion to dismiss. The court held that the July 17, 2025 service was ineffective because the amended summons and complaint served upon the City had not been filed, as required by Rules 5(d) and 4(d)(6), SCRCP. The court further held that the action was not commenced against the City within the two-year statute of limitations, which the court found expired on March 27, 2025, because Bowles did not file the amended summons and complaint naming the City until November 13, 2025. (R. pp. 2-3).

Addressing Rule 15(c), the circuit court found that Bowles produced no evidence that the City received notice of the institution of the action, or that the City knew or should have known that it was the proper party, on or before March 27, 2025. The court noted that the unfiled pleading was not served upon the City until July 17, 2025 which was nearly four months after the limitations period had expired. The court also observed that it had granted Bowles leave to add the City of

North Charleston Public Works, not the City of North Charleston, and concluded that all of Bowles's claims against the City were therefore time-barred. (R. pp. 4-5).

ARGUMENT

The circuit court erred in granting North Charleston's motion to dismiss based on insufficiency of process, insufficient service of process, and the statute of limitations.

The circuit court's dismissal rests on two errors. First, the court treated the amended summons and complaint as though it were an original pleading that had to be filed before it could be served; but Rule 5 of the South Carolina Rules of Civil Procedure imposes no such requirement on an amended pleading, and Bowles' service on the City of North Charleston was therefore proper. Second, the court held that Bowles' claims were time-barred without giving effect to Rule 15(c) of the South Carolina Rules of Civil Procedure even though the amendment did nothing more than substitute the City of North Charleston for Dorchester County and Dorchester County Public Works. Importantly, these parties were represented by the same attorney who consented to the substitution. Accordingly, the amendment relates back to the timely original complaint. Because Bowles commenced this action within the statute of limitations, and the amendment relates back to original summons and complaint, the circuit court's order dismissing the action should be reversed.

Process and Service of Process

Section 15-3-20 of the South Carolina Code provides that a civil action is "commenced when the Summons and Complaint are filed with the Clerk of Court if actual service is accomplished within one hundred and twenty (120) days after filing." *See also* Rule 3(a), SCRCP ("A civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the statute of limitations in any manner

prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing").

Rule 5(d) of the South Carolina Rules of Civil Procedure provides that "[t]he summons and complaint shall be filed before service." The Rule further requires that proof of service be filed within ten days after service. *Id*. If a plaintiff fails to serve the summons and complaint "the action may be dismissed by the court on the court's own initiative or upon application of any party." *Id*. This filing before service rule does not apply to amended summons and complaints. *See* Rule 5(a), SCRCP ("pleadings subsequent to the original summons and complaint, which includes . . . amended complaints . . . shall be served upon each of the parties of record"); Rule 5(b), SCRCP ("Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court"); Rule 5(d), SCRCP ("All papers required to be served upon a party . . . shall be filed with the court within five (5) days after service thereof").

Statute of Limitations

The statute of limitations applicable to this case is two years because it is against a governmental entity. *See* S.C. Code § 15-78-110; *Pollard v. Cty. of Florence*, 314 S.C. 397, 399, 444 S.E.2d 534, 535 (Ct. App. 1994). Rule 15(c) of the South Carolina Rules of Civil Procedure provides that an amended summons and complaint which changes the defendant "relates back" to the original summons and complaint if "within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him."

Rule 15(c) requires that:

> (1) the basic claim must have arisen out of the conduct set forth in the original pleading; (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense; (3) that party must or should have known that, but for a mistake concerning identity, the action would have been brought against it; and (4) the second and third requirements must have been fulfilled within the prescribed limitations period.

Hughes v. Water World Water Slide, 314 S.C. 211, 213-14, 442 S.E.2d 584, 586 (1994) (quoting *Schiavone v. Fortune*, 477 U.S. 21, 29 (1986)). "The purpose of Rule 15(c) is to salvage causes of action otherwise barred by the statute of limitations." *Thomas v. Grayson*, 318 S.C. 82, 88, 456 S.E.2d 377, 380 (1995). "The test to be used in determining whether or not an amendment should be allowed to relate back under Rule 15(c) to the date of the original pleading to avoid the statute of limitations . . . is . . . whether the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading." *Id*; *see also Stanley v. Kirkpatrick*, 357 S.C. 169, 175, 592 S.E.2d 296, 299 (2004) (reversing circuit court's refusal to allow plaintiff to file amended complaint based on its view that the statute of limitations had run where the factual circumstances of the claims were fully laid out in the original complaint which related back under Rule 15(c), SCRCP and was filed within the statute of limitations).

A. Service of the amended summons and complaint was proper.

Bowles commenced this action on March 20, 2025, when she filed her original summons and complaint with the Clerk of Court seven days before the two-year statute of limitations expired on March 27, 2025. (R. pp. 7-13; R. p. 71, ll. 8-13). Under Section 15-3-20 and Rule 3(a), that timely filing commenced the action, and the named defendants were served. The original pleading satisfied every requirement for commencing suit within the limitations period.

The court's ruling that service on the City was ineffective conflated two distinct rules. The requirement that a summons and complaint be filed before it is served governs the original summons and complaint that commences an action. It does not govern amended pleadings. An amended complaint is a "pleading[] subsequent to the original summons and complaint," which Rule 5(a), SCRCP, directs "shall be served upon each of the parties of record," and which Rule 5(b), SCRCP, directs be served upon a represented party's attorney. Rule 5(d), SCRCP, then requires only that such papers "be filed with the court" within a set number of days "after service." This makes clear that an amended pleading may be filed after it is served. Nothing in Rule 5 required Bowles to file the amended summons and complaint before serving it on the City.

Perhaps more importantly, the City acknowledges that it was served with the unfiled amended complaint and was fully aware of the lawsuit against it. (R. pp. 34-35). The City retained the same lawyer who was representing Dorchester and Dorchester was dismissed with prejudice very shortly after the City was added as a defendant. (R. p. 66, ll. 2-24). Bowles served the City of North Charleston with the amended summons and complaint on July 17, 2025. (R. p. 31; R. p. 72, ll. 7-9).

As this Court acknowledged in *McCall v. IKON*, "[o]ur rules governing service of process do not turn on parsing strict technicalities or debating murky legal abstractions." 363 S.C. 646, 651, 611 S.E.2d 315, 317 (Ct. App. 2005). And as our Supreme Court noted in *Roche v. Young Bros.*, the purpose of Rule 4 is to "confer[] personal jurisdiction on the court and assure[] the defendant of reasonable notice of the action." 318 S.C. 207, 209-10, 456 S.E.2d 897, 899 (1995). Our courts have "never required exacting compliance with the rules to effect service of process." Because Rule 5 permitted that amended pleading to be served before it was filed, the service was

not insufficient and the process was not defective. The circuit court erred in dismissing the action for insufficiency of process and insufficiency of service of process and this Court should reverse.

B. Bowles' claims are not barred by the statute of limitations because the amendment substituting the City of North Charleston relates back to the original complaint.

Even if the timing of filing were material, Rule 15(c) of the South Carolina Rules of Civil Procedure preserves Bowles' claims. An amendment changing the party against whom a claim is asserted relates back to the original pleading when the claim arose out of the same conduct, transaction, or occurrence, and the party to be added received such notice that it will not be prejudiced in maintaining its defense and knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against it. *See* Rule 15(c), SCRCP; *Hughes v. Water World Water Slide*, 314 S.C. 211, 213-14, 442 S.E.2d 584, 586 (1994).

The first requirement is not in dispute: the amended complaint asserts the same trip-and-fall, on the same sidewalk, under the same case number, as the original complaint—a point the City conceded below. (R. p. 69, ll. 7-9). The remaining requirements are satisfied because the amendment did not inject a stranger into the litigation; it in effect substituted the City of North Charleston for Dorchester County and Dorchester County Public Works. In fact, the amended summons and complaint is identical to the original except it replaces Defendant Dorchester County with Defendant North Charleston. (R. pp. 7-13; R. pp. 38-44). The amended complaint is of course also titled "amended" and contains the civil case number to which it relates so the City knew what case number to file responsive pleadings under.

Lisa Reynolds represented Dorchester County and Dorchester County Public Works, consented to Bowles' motion to amend, and was retained to represent the City of North Charleston. (R. pp. 23-24; R. p. 66, l. 2 – p. 67, l. 4). The same attorney thus represented both the departing

and the arriving party, and she agreed to the amendment as part of an arrangement under which Dorchester County and Dorchester County Public Works were dismissed. (R. p. 66, ll. 10-20; R. pp. 29-30). A defendant whose own counsel negotiated and consented to its substitution into a pending case cannot plausibly claim that it lacked notice of the action or that it is prejudiced in defending on the merits; every defense available to Dorchester remains available to the City. Additionally, Dorchester was dismissed from the case with prejudice leaving no claims against it. Every claim originally against Dorchester was now being pursued against North Charleston.

The substitution likewise establishes that the City knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against it. Bowles sued the entities she reasonably believed responsible for the sidewalk and learned only through discovery that the City of North Charleston maintained the common sidewalks of the Wescott Plantation neighborhood, a circumstance counsel aptly described as "just a peculiarity of the facts." (R. p. 71, ll. 14-19; R. p. 46, ¶ 4; R. p. 50). That is precisely the mistake Rule 15(c) exists to cure. *See Gause v. Smithers*, 384 S.C. 130, 133, 681 S.E.2d 607, 608-09 (Ct. App. 2009) (finding Rule 15(c) inapplicable only because the old defendant remained part of the case after the new defendant was added and the plaintiff continued to pursue claims against both the old and new defendants); *Jackson v. John Doe*, 342 S.C. 552, 558-59, 537 S.E.2d 567, 570 (Ct. App. 2000) (noting that had the plaintiff "substituted [the new defendant] for [the old defendant] or simply corrected the name of the defendant, then the amendment should have been analyzed in light of the requirements of Rule 15(c) as set forth in *Hughes* for a determination of whether the amended complaint properly related back to [the plaintiff's] original action").

The court's observation that leave was granted to add the "City of North Charleston Public Works" rather than the "City of North Charleston" does not change the analysis. The misnomer of

a single, known municipal entity is the paradigmatic identity mistake Rule 15(c) addresses, and the City cannot have been misled about who was intended. *See Hughes v. Water World Water Slide*, 314 S.C. 211, 215, 442 S.E.2d 584, 586 (1994) (holding that amended complaint related back to original complaint even though the corporate name was incorrect because the pleadings were served on the president of the corporation).

Bowles filed a timely complaint, diligently identified the governmental entity responsible for the sidewalk, and substituted it into the case with the consent of its own counsel. The dismissal terminated a meritorious claim on a procedural basis that neither Rule 5 nor Rule 15(c) supports. This Court should reverse the order granting the City of North Charleston's motion to dismiss and remand for further proceedings on the merits.

CONCLUSION

By reason of the foregoing arguments, this Court should reverse the circuit court's order granting North Charleston's motion to dismiss and remand for further proceedings.

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This 26th day of October 2026.