THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

Civil Action No. 13-CP-40-2306

Basil W. Akbar, #065498, Appellant,

v.

South Carolina Department of Corrections,
Bill Byars, Martha Roof, Debrah Long,
Lisia Johnson, Ann and John Doe, Respondents.

INITIAL BRIEF OF RESPONDENTS

Basil W. Akbar, #065498
Lee Correctional Institution
990 Wisacky Hwy., Flo. 2213-S
Bishopville, SC 29010

Daniel R. Settana, Jr.
Brandon P. Jones
McKay, Cauthen, Settana
& Stubley, P.A.
1303 Blanding Street
Post Office Box 7217
Columbia, SC 29202-7217
Attorneys for Respondents

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STATEMENT OF THE CASE

Appellant, proceeding *pro se*, filed his Summons and Complaint in the Richland County Court of Common Pleas on or about January 16, 2013. He named as Defendants, the SCDC, Bill Byars, Martha Roof, Debrah Long, Lisia Johnson, and Ann and John Doe.

On February 27, 2013, Defendants filed a Motion to Dismiss, as well as a Motion to Strike Appellant's claims for punitive damages under S.C. CODE ANN. § 15-78-120(b). On March 13, 2013, Defendants filed their Answer.

After Defendants filed their Answer, Appellant filed a number of motions, including a Motion for Leave to File Supplemental Complaint (March 28, 2013); Motion in Limine to Establish Facts (April 12, 2013); Motion for Appointment of Counsel (July 3, 2013); and Motion to Compel (July 3, 2013).[1]

On July 22, 2013, Defendants filed a Motion for Summary Judgment, with supporting affidavits and documents. Also on July 22, 2013, and after providing responses to all of Appellant's discovery requests, Respondents filed a Motion for Protective Order and to Stay Discovery. Defendants filed additional affidavits in support of their Motion for Summary Judgment on July 23, 2013. Defendants also filed a Memorandum in Support of their Motion to Dismiss and Motion for Summary Judgment on July 31, 2013.

A hearing on the above-referenced Motions was held before the Honorable G. Thomas Cooper, Jr. on August 7, 2013. By Order of the Honorable G. Thomas Cooper, Jr., signed and filed September 26, 2013, (1) Respondents' Motion to Dismiss and Motion for Summary Judgment were granted; (2) all of Appellant's requests for damages were dismissed and striken

[1] Appellant served his First Set of Interrogatories and Requests for Production of Documents upon Respondents on or about February 14, 2013. Appellant also served Requests for Admission and his Second Set of Interrogatories and Requests for Production of Documents upon Respondents on or about March 11, 2013. Respondents timely served responses to Appellant's Requests for Admission on April 4, 2013. Respondents also served responses to Appellant's First and Second Set of Interrogatories and Requests for Production of Documents on July 22, 2013.

from his Complaint; (3) all other pending Motions were denied as moot; and (4) the action was dismissed with prejudice.[2]

Appellant filed his Motion to Alter/Amend the Judgment under Rule 59(e), SCRCP, on or about October 15, 2013. By Order of the Honorable G. Thomas Cooper, Jr., signed December 9, 2013 and filed December 10, 2013, Appellant's Motion to Alter/Amend the Judgment was denied.

Appellant filed his first Notice of Appeal on or about October 21, 2013 while his Rule 59(e) Motion was pending. On November 20, 2013, Respondents filed their Motion to Dismiss Appellant's Notice of Appeal. On or about December 23, 2013, Appellant filed his Second Notice of Appeal. By Order of this Court filed January 2, 2014, Appellant's first Notice of Appeal was dismissed without prejudice. On February 11, 2014, this Court filed an Order reinstating Appellant's second (or amended) Notice of Appeal.

[2] The Order of the Honorable G. Thomas Cooper, Jr. also found that "Plaintiff's Complaint fails to state a cause of action against all Defendants upon which relief can be granted and fails to state facts sufficient to constitute a cause of action."

STATEMENT OF FACTS

Appellant Basil W. Akbar, #310671 ("Appellant"), is presently confined to the Lee Correctional Institution of the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Clerk of Court for Richland County. Appellant was convicted of murder in September 1971. Appellant received a life sentence, but was eligible for parole. Appellant was released on parole around April 1981. Appellant was arrested for a number of drug offenses, and his parole was revoked in 1985. At that time, Appellant was returned to the custody of the SCDC, where he has been held since that time, and is currently serving the remainder of his life sentence.

In his Complaint, which Appellant contended was brought pursuant to the provisions of the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10, *et. seq.*, Appellant alleged that he was employed in an SCDC Work Release Program from July 1979 through April 1981[3], and that, during that time weekly deductions were taken for "Mandatory Long Term Escrow Savings Account" and for room and board. Appellant contended that, at the time of his release on parole in 1981, the balance of his escrow account was not released.

While Appellant was returned to the custody of the SCDC in 1985, Appellant apparently did not inquire regarding the funds he alleges he did not receive until October 2008. Appellant filed three separate grievances regarding these alleged funds in 2009 and 2010, but each were unprocessed as untimely. Appellant appealed the decision from one of these grievances to the South Carolina Administrative Law Court, but his appeal was dismissed by Order dated April 28, 2011 based on Appellant's failure to exhaust his administrative remedies. There is no indication that the Appellant appealed that decision.

[3] Appellant's records actually indicate Appellant was employed in an SCDC work program from around March 1980 until around April 1981 (*See* Exhibit A and Affidavit of Noel Hebert).

Respondents moved to dismiss on a number of grounds, including (1) Appellant failed to state a cause of action; (2) Appellant improperly named as Defendants individual employees of a governmental entity; (3) and that Appellant's claims were barred by the applicable statute of limitations.

Additionally, Respondents moved for summary judgment on a number of grounds, including (1) Appellant failed to state a cause of action, failed to state a claim upon which relief could be granted, and failed to state facts sufficient to constitute a cause of action; (2) Appellant failed to exhaust his available administrative and state court remedies; (3) Appellant improperly named as Defendants individual employees of a governmental entity; (4) and that Appellant's claims were barred by the applicable statute of limitations.

SUMMARY JUDGMENT STANDARD

In reviewing a lower court's granting of summary judgment, an appellate court applies the same standard that the trial court applies under Rule 56(c) of the South Carolina Rules of Civil Procedure. *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791 (2008); *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 616 S.E. 2d 722 (Ct. App. 2005). Under Rule 56(c), SCRCP, summary judgment is appropriate 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), SCRCP; *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002); *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 544 S.E.2d 38 (Ct. App. 2001); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999); *Young v. South Carolina Dep't of Corr.*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999); *see also Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998) (stating trial court should grant motion for summary judgment when pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and moving party is entitled to judgment as matter of law).

In determining whether or not to grant summary judgment, "the court must look beyond the pleadings and determine whether there is a genuine need for trial." *HIT Products v. Anchor Financial*, 111 F. Supp. 2d 723, 726 (D.S.C. 1999), *aff'd* 215 F.3d 1318 (4th Cir. 2000) (applying Rule 56 of Federal Rules of Civil Procedure, which is same Rule 56 of South Carolina Rules of Civil Procedure). A complete failure of proof concerning an essential element of the Appellant's case necessarily renders all other facts immaterial. *Id.* Moreover, the production of

"a mere scintilla of evidence" in support of an essential element will not forestall summary judgment. *Id.*

Furthermore, under Rule 56(e), SCRCP, once a party has made a motion for summary judgment, and properly supported that motion as required under Rule 56, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." If the adverse party fails to respond in such a way, "summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP.

An appellate court reviews the granting of summary judgment under the same standard applied by the trial court. *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001).

RULE 12(b)(6) DISMISSAL STANDARD

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the Appellant has failed "to state facts sufficient to constitute a cause of action" in the pleadings filed with the court. *See* Rule 12(b)(6), SCRCP. The Motion to Dismiss will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the Appellant to relief on any theory of the case. *See Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987). Upon review, the appellate court applies the same standard of review that was implemented by the trial court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001).

ARGUMENT

I. The Circuit Court properly ruled that Respondents were entitled to Summary Judgment because Appellant's claims are barred by the statute of limitations.

The Circuit Court properly found that the Appellant's claim that a portion of the wages he earned from 1979 until 1981 was barred by the applicable two-year statute of limitations under the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10, *et seq.*

Under the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10 *et seq.*, a claimant must commence an action for damages within two (2) years after the date the loss was or should have been discovered. S.C. CODE ANN. § 15-78-110. According to the statute, "loss" is defined as "bodily injury, disease, death, or damage to tangible property, **including lost wages and economic loss** to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm." S.C. CODE ANN. § 15-78-30(f) (emphasis added).

Under the discovery rule, "the statute of limitations does not run from the date of the negligent act, but from the date when the *injury* resulting from the wrongful conduct either is discovered or *may be* discovered by the exercise of reasonable diligence." *McClain v. Jarrard, M.D.*, 354 S.C. 218, 220, 580 S.E. 2d 763, 764 (Ct. App. 2003) (citing *Wilson v. Shannon*, 299 S.C. 512, 513, 386 S.E.2d 257, 258 (Ct. App. 1989)). The date on which discovery should be made is an objective, not subjective question. *Kreutner v. David*, 320 S.C. 283, 465 S.E.2d 88 (1995). In other words,

> whether the particular Appellant actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case 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.

Young, 333 S.C. at 719, 511 S.E.2d at 416. The fact that the injured party does not comprehend the full extent of his injuries is immaterial. *Dean v. Ruscon Corp.,* 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996). "The statute of limitations is not tolled during the period of time in which a Appellant is merely unaware of the extent of an actionable injury." *Young*, 333 S.C. at 720, 511 S.E.2d at 416.

In applying this reasonable diligence analysis under the discovery rule, the Court has stated, "an injured party must act with some promptness where facts and circumstances of the injury would put a person of common knowledge and experience on notice that some right of his had been invaded or that some claim against another party might exist." *McClain*, 354 S.C. 218, 580 S.E.2d 763. 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 is developed. *Johnston v. Bowen*, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993).

In the present case, the Circuit Court properly found that Appellant did not file the present lawsuit until January 16, 2013, more than 30 years after any cause of action he may have arising out of his allegations accrued. Appellant contends that a portion of the wages he earned from 1979 through 1981 was withheld by the SCDC in an escrow account. He further contends that the funds contained in this account should have been disbursed to him upon his release on parole in 1981, but that they were not. Furthermore, while Appellant contends that he was only informed "for the first time 'February 9, 2009'" that he did not have a "Work Center" funds account, it appears that Appellant did not account for why he waited 27 years after he was released on parole, and 23 years after he was placed back into the custody of the SCDC, to inquire into these alleged funds. *See also* Plaintiff's Notice of Motion and Rule 59(e) Motion at 2, ¶ 3 ("February 9, 2009, the Plaintiff was informed for first time that he did not have a standing

Work Release Long Term Escrow Savings account, and did promptly/timely exhaust all available remedies, see Records.") (emphasis in original). Additionally, by Appellant's own admission, he clearly knew or should have known about any issue with these alleged funds by October 22, 2008, when Appellant contends that he "initiated correspondence with SCDCs Financial Business Office, and second request December 1, 2008, to no reply." App. Br. at 6. At the very least, therefore, Appellant did not file the present action until more than four (4) years after he inquired about the alleged issues, and almost four years until he was informed that he did not have a "Work Center" funds account. *See Dean*, 321 S.C. at 364, 468 S.E.2d at 647 (finding fact that injured party does not comprehend full extent of his injuries is immaterial); *Johnston*, 313 S.C. at 64, 437 S.E.2d at 47 (statute of limitations begins to run from point when person of common knowledge and experience is on notice that some right of theirs has been invaded or that some claim against another party might exist and not when full-blown theory of recovery is developed).

Appellant argues that on or about May 18, 2011, a "Notice of Verified claim . . . for damages, was file with Budget and Control Board, pursuant to S.C. Code § 15-78-80(d), within one year after loss discovered . . .." App. Br. at 8. S.C. CODE ANN. § 15-78-80 provides, in pertinent part,

> The verified claim may be received by the Budget and Control Board or the appropriate agency or political subdivision. If filed, the claim **must be received within one year after the loss was or should have been discovered**.

S.C. CODE ANN. § 15-78-80(d) (emphasis added). Appellant clearly did not file this alleged verified claim within one year after the alleged loss was or should have been discovered. As previously noted, Appellant contends that a portion of the wages he earned from 1979 through 1981 was withheld by the SCDC in an escrow account and were not disbursed to him upon his

release on parole in 1981. He also contends that he initiated correspondence with the SCDC concerning this issue on December 1, 2008, but that he was first informed on February 9, 2009 that he did not have this alleged escrow account. Aside from the fact that there is a discrepancy in Appellant's own account of when he discovered the issues giving rise to this action, it is quite clear that Appellant did not file an alleged verified claim within one year of discovering the loss alleged in this action. In fact, at the latest, Appellant did not file the alleged verified claim until more than two (2) years after discovering the alleged loss in question.[4]

Therefore, the Circuit Court properly ruled that Respondents were entitled to Summary Judgment because Appellant's allegations against Respondents were barred by the two-year statute of limitations.

II. The Circuit Court properly ruled that Respondents were entitled to Summary Judgment because Appellant's allegations against Respondents failed to state a claim upon which relief could be granted.

The Circuit Court also properly held that Respondents were entitled to summary judgment because there was no legal basis for Appellant's claim that a portion of his wages from 1979 through 1981 was not properly disbursed to him.

Appellant's legal basis for his belief that a portion of his wages from 1979 through 1981 was withheld and maintained in an escrow account to be distributed to him on his release appears to have been S.C. CODE ANN. § 24-3-40. Section 24-3-40 dictates the disposition of wages of prisoners allowed to work at paid employment. Specifically, § 24-3-40(A) sets forth that the wages are to be paid directly to the Director of the SCDC, who shall make certain deductions

[4] Appellant also argues that because he filed a verified claim pursuant to S.C. CODE ANN. § 15-78-80, the three-year statute of limitations is available to him pursuant to S.C. CODE ANN. § 15-78-110. However, because Appellant clearly did not follow the procedure outlines in S.C. CODE ANN. § 15-78-80, he is not entitled to the three-year statute of limitations in S.C. CODE ANN. § 15-78-110. *See Flateau v. Harrelson*, 355 S.C. 197, 208, 584 S.E.2d 413, 418 (Ct. App. 2003) ("In order to trigger the three-year statute of limitations under § 15-78-110, a party must follow the procedure outlined in § 15-78-80.").

from the prisoner's gross wages, including restitution, victim assistance programs, child support, etc. Section 24-3-40(5) provides that "[t]en percent must be held in an interest bearing escrow account for the benefit of the prisoner." Section 24-3-40(B), sets forth how the funds maintained in a prisoner's escrow is to be returned to the prisoner.

The Circuit Court properly found that Appellant provided no evidence that the above provision, or any similar law, was in effect at the time Appellant allegedly earned his wages in 1979 through 1981. Additionally, the Circuit Court properly found that the version of S.C. CODE ANN. § 24-3-40 enacted in 1994 did not include any provision regarding withholding any amount of a prisoner's wages for an escrow account. The 1994 version provided that:

> Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24–3–20 to 24–3–50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections. The Director of the Department of Corrections shall withhold five percent of the gross wages and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the 'Victims of Crime Act of 1984, Public Law 98–473, Title II, Chapter XIV, Section 1404'. The director may withhold from the wages costs incident to the prisoner's confinement as the Department of Corrections considers appropriate and reasonable. These withholdings must be deposited to the maintenance account of the Department of Corrections. The balance of the wages, in the discretion of the director and in proportions determined by the director, may be disbursed to the prisoner, the prisoner's dependents, and the victim of the crime or deposited to the credit of the prisoner. No prisoner who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public Law 90–351 is eligible for unemployment compensation upon termination from the program. [5]

Therefore, the Circuit Court properly found that there was not any statutory requirement for SCDC to make such withholding as Appellant alleged.

[5] The version of S.C. CODE ANN. § 24-3-40 enacted in 1996 also did not include any requirement that any portion of a prisoner's wages be withheld in an escrow account. It appears that the first version of S.C. CODE ANN. § 24-3-40 to include a requirement that a portion of a prisoner's wages be withheld in an escrow account was in the version enacted in 1999.

The Circuit Court also properly found that Appellant failed to establish that Respondents, or any other employees of the SCDC, withheld or misappropriated any of Appellant's wages. As Respondents argued, if Appellant had any funds remaining from his work program as alleged, it would have been contained within a work center account with the SCDC. *See* Aff. of Noel Hebert. Appellant's SCDC records reflected that he does not have any funds in a work center account with the SCDC, and in fact, had not had a work center account with the SCDC since at least 1994. *See id.* Therefore, the Circuit Court properly held that Respondents were entitled to summary judgment as Appellant failed to establish that Respondents withheld or misappropriated any of his alleged wages.

III. The Circuit Court properly dismissed the individual Respondents from this action.

The Circuit Court properly found that the individual Respondents should be dismissed from this action pursuant to S.C. CODE ANN. §§ 15-78-70 and 200.

Under S.C. Code Ann §§ 15-78-70 and 15-78-200, when bringing an action against a governmental entity or against an employee acting on behalf of a governmental entity, only the agency or political subdivision shall be named as a Defendant. *See* S.C. Code Ann. § 15-78-70(c). If an employee is individually named in a suit, the governmental entity shall be substituted for that employee. Therefore, all individually named defendants must be dismissed from the suit and the agency substituted in their place for all actions taken by defendants "while acting within the scope of the employee's official duty." *Faile v. South Carolina Dept. of Juvenile Justice*, 566 S.E.2d 536 (2002).

The Circuit Court ruled that under S.C. CODE ANN. §§ 15-78-70 and 200, all individually named Respondents (Bill Byars, Martha Roof, Debrah Long, Lisia Johnson, and Ann and John Doe) were to be dismissed from this action and the agency (SCDC) substituted in their place for

all actions taken by defendants "while acting within the scope of the employee's official duty." *See* Order of Judge Cooper. The Circuit Court found that the present action was brought by Appellant pursuant to the South Carolina Tort Claims Act and that the individually named Respondents were acting as agents and employees of the SCDC at all times relevant herein, and that therefore, the proper entity to defend this matter was the SCDC pursuant to S.C. CODE ANN. § 15-78-70(c).

Appellant argues that under S.C. CODE ANN. § 24-1-220, he is required to bring suit in the name of the SCDC Director, "and when multiple defendants are alleged in an Joint tortfeasor is named as party in addition to the Government Entity . . . the trier of the facts must return a special verdict specifying the proportion of monetary liability of each defendant whom liability is determined . . .." Appellant's argument, however, is misguided. S.C. CODE ANN. § 24-1-220 states,

> All actions or suits at law accruing to [SCDC] shall be brought in the name of the director, who shall also appear for and defend actions or suits at law in which it is to the interest of the department to appear as a party defendant. No suit or action at law shall be brought for or defended on behalf of the department except by authority of the director.

"[T]he purpose of S.C. CODE ANN. § 24-1-220 is to designate a representative to represent the South Carolina Department of Corrections (SCDC) in litigation in which SCDC is a plaintiff or defendant." *Pierre v. Ozmint*, C/A No. 3:09-226-CMC-JRM, 2010 WL 679946, at *2 (D.S.C. Feb. 24, 2010). Furthermore, as previously noted, S.C. Code Ann. § 15-78-70(c) **requires** that if an employee is individually named in a suit, the governmental entity **shall** be substituted for that employee.

Therefore, the Circuit Court properly ordered that the individual Respondents in this action should be dismissed.

IV. The Circuit Court properly denied Appellant's Motion to Compel as moot.

The issue of whether the Circuit Court erred in denying Appellant's Motion to Compel as moot is not preserved for appellate review. When an appellant does not object to the trial court's consideration of a motion for summary judgment or does not request a continuance pending further discovery, the issue of whether the trial court erred in denying a motion to compel will not be preserved. *Mixson, Inc. v. American Loyalty Ins. Co.*, 349 S.C. 394, 401, 562 S.E.2d 659, 663 (Ct. App. 2002); *see Degenhart v. Knights of Columbus*, 309 S.C. 114, 420 S.E.2d 495 (1992) (stating whether court erred in granting summary judgment while appellants had motion to compel outstanding was not preserved when appellants failed to move for continuance and did not request motion for summary judgment be held in abeyance until after ruling on discovery motion); *Pryor v. Northwest Apartments, Ltd.*, 321 S.C. 524, 469 S.E.2d 630 (Ct. App. 1996) (holding whether judge erred in granting summary judgment because discovery requests were outstanding was not preserved when appellant did not ask for continuance to complete discovery).

In this action, Appellant moved to compel responses to his First and Second set of Interrogatories and Requests for Production of Documents to Respondents. Subsequent to the filing of this Motion to Compel, and prior to the hearing on this Motion, Respondents provided responses to Appellant's discovery requests. *See supra* note 1 and accompanying test. Appellant did not file an Amended Motion to Compel. Furthermore, there is no indication that Appellant ever moved the Circuit Court for a continuance of the hearing on Respondents' Motion to Dismiss and Motion for Summary Judgment or that he requested that these Motions be held in abeyance until after a ruling on his Motion to Compel. The Circuit Court, after granting Respondents' Motion to Dismiss and Motion for Summary Judgment, denied Appellant's Motion

to Compel as moot. *See* Order of Judge Cooper. Consequently, this issue is not preserved for appellate review. *See Mixson*, 349 S.C. at 401, 562 S.E.2d at 663.

Assuming, *arguendo*, that this issue was preserved for review, it is clear that the Circuit Court properly denied Appellant's Motion to Compel as moot. *See Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989) (stating that "trial court judge's ruling on discovery matters will not be reversed on appeal absent a clear abuse of discretion."). As previously noted, prior to the hearing on Appellant's Motion to Compel, Respondents provided responses to Appellant's Requests for Admission and First and Second Interrogatories and Requests for Production of Documents, thus rendering moot Appellant's Motion. Appellant also did not file an Amended Motion to Compel prior to the hearing. Therefore, the Circuit Court did not abuse its discretion in denying Appellant's Motion to Compel.

Additionally, the Circuit Court properly denied Appellant's Motion to Compel as moot because Appellant's claims clearly are barred by the applicable statute of limitations, and any discovery sought by Appellant could not have led to any different result in the Circuit Court's decision to grant Respondents' Motion to Dismiss and Motion for Summary Judgment. *See supra* pp. 12-14. Therefore, the Circuit Court did not abuse its discretion in denying Appellant's Motion to Compel and there is no need for this Court to address this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding appellate court need not address remaining issue when disposition of prior issue is dispositive); *see also Carney v. Assurance Co.*, 177 Fed. App'x 282 (4th Cir. 2006) (finding no abuse of discretion in district court's denial of motion to compel discovery as moot where discovery sought could not have led to any different result).

V. The Circuit Court did not rule on the issue of whether Appellant properly exhausted his administrative remedies, and therefore, the issue is not preserved for appellate review.

Appellant argues that the Circuit Court abused its discretion in failing to rule that he properly exhausted his administrative remedies. App. Br. at 15-16, 19-20. It appears this is Appellant's attempt to confuse the issues properly before this Court. The issue of exhaustion of administrative remedies is irrelevant to this action. Furthermore, this issue is not properly before this Court, as the Circuit Court did not rule upon it. "It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to **and ruled upon** by the trial court to be preserved." *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006) (emphasis added). This requirement is "designed to give the trial court a fair opportunity to rule on the issues, and thus provide [an appellate court] with a platform for meaningful appellate review." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 628 S.E. 2d 902 (Ct. App. 2006). Even if the Appellant had raised the additional issues he has presented to this Court to the trial court, there was never a ruling on those issues. *See* Order of Judge Cooper.[6] Therefore, the issue is not preserved for appellate review.

Even assuming the Circuit Court had ruled that Appellant properly exhausted his available administrative remedies, such a ruling clearly would not change the ultimate disposition in this action – that Appellant's claims clearly are barred by the applicable statute of

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[6] The Circuit Court did not rule upon this issue, only stating,

> While Plaintiff was returned to the custody of the SCDC in 1985, Plaintiff apparently did not inquire regarding the funds he alleges he did not receive until October 2008. Plaintiff filed three separate grievances regarding these alleged funds in 2009 and 2010, but each was unprocessed as untimely. Plaintiff appealed the decision from one of these grievances to the South Carolina Administrative Law Court, but his appeal was dismissed by Order dated April 28, 2011 based on Plaintiff's failure to exhaust his administrative remedies. There is no indication that the Plaintiff appealed that decision.

See Order of Judge Cooper at 2-3.

limitations. Whether or not Appellant properly exhausted his administrative remedies, therefore, is irrelevant to this action.

CONCLUSION

For the reasons set forth above, the Circuit Court's granting of summary judgment to the Respondents should be affirmed. Respondents further request that the Court of Appeals affirm the Judgment of the Circuit Court upon any ground(s) appearing in the Record on Appeal, as provided by Rule 220(c) of the South Carolina Appellate Court Rules.

Respectfully submitted,

Daniel R. Settana, Jr.
Brandon P. Jones
McKay, Cauthen, Settana & Stubley, P.A.
1303 Blanding Street
Post Office Box 7217
Columbia, South Carolina 29202-7217
Attorneys for Respondents

Columbia, South Carolina
April 4, 2014