

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas
Robin B. Stilwell, Circuit Judge

RECEIVED

APR 30 2014

SC Court of Appeals

Appellate Case No. 2014-000732

Patrick L. Booker,

Appellant,

—VS—

South Carolina Department of Justice Justice ; South Carolina
Juvenile Parole Board ; South Carolina Department of Social
Services ; State of South Carolina ; Randall L. Chambers,

Respondent.

MOTION TO TRANSFER CASE

NOW COMES the Appellant Patrick Booker, pro se, who hereby
move the Supreme Court of South Carolina to certify this case for
review before it is determined by the Court of Appeals pursuant
to Rule 204, SCACR.

The basis for this Motion is that this issue/case involves an issue of significant public interest and/or a legal principle of major importance as set forth hereinbelow.

ARGUMENT

I. S.C. Code Ann. § 14-1-235 Violates South Carolina Constitution And Deprives Judges of Power To Do All Things Reasonably Necessary To Ensure Just Results Are Reached To Fullest Extent Possible for South Carolinians Who Prosecute Civil Litigation.

This case involves, inter alia, a challenge to the constitutionality of Section 14-1-235. The circuit court concluded the statute is constitutional on its face.

In 2003 the South Carolina Legislature enacted S.C. Code Ann. Section 14-1-235 which provide:

A judge, court, or court official shall not appoint an attorney to represent a party in a civil action unless the authority to make the appointment is provided specifically by statute.

Id., § 14-1-235.

This statute operates to deprive any and all judicial officials of the State of South Carolina of their judicial power to effectively

administer justice in civil proceedings conducted within the State of South Carolina which, in effect, operates ultimately to deprive members of the public who undertake civil litigation in the State of South Carolina the opportunity to have a "court of justice" do all things reasonably necessary to ensure that just results are reached to the fullest extent possible including, but not limited to, the inherent power to appoint attorneys to serve without compensation where it reasonably appears necessary for court to do justice.

Insofar as the common law of this State is that South Carolina courts have the "inherent power" to appoint lawyers to serve without compensation where it appears reasonably necessary for court to do justice (not just where representation is constitutionally or statutorily mandated), see Ex Parte Dibble, 310 S.E.2d 440 (S.C. App. 1983), then it is clear that § 14-1-235 is unconstitutional as this statute attempts to exercise ultimate authority over the "inherent power" of South Carolina courts to appoint lawyers to provide free representation whenever it reasonably appears necessary for court to do justice (not just where representation is legally mandated). See, State vs. Langford, 735 S.E.2d 471, 400 S.C. 421 (S.C. 2012) ("A statute which attempts to exercise ultimate authority over the inherent power of the court is unconstitutional because it violates the separation of powers doctrine."); see also, State ex rel. McLeod vs. Hite, 251 S.E.2d 746 (S.C. 1979) ("The phrase 'inherent powers' is used to refer to powers included within the scope of a court's jurisdiction which a court possesses irrespective of specific grant by Constitution or legislation. Such powers can neither be taken away nor abridged by the legislature.").

Indeed, the operation or enforcement of § 14-1-235 when construed broadly attempts to deny even the Judges of the Supreme Court of their "constitutional" powers to issue original orders or writs for the appointment of an attorney in a civil action which may come before the Supreme Court pursuant to its original jurisdiction. See, State vs. Whitener, 225 S.C. 244, 81 S.E.2d 784 (S.C. 1954) ("The legislature has no power to take away powers specifically granted to this Court by the Constitution. [] This Court has the power to issue ... writs and orders referred to in the Constitution. Those fundamental remedies and safeguards upon which each individual in our society has the right to rely must be preserved by the courts. Otherwise, these procedural rights embodied in our Constitution to insure the individual against oppression will become nullities."). For that reason, the Supreme Court of South Carolina should inquire into the constitutionality of the statute on its own motion by certifying this case for review pursuant to Rule 204, SCACR. See, State vs. Keenan, 278 S.C. 361, 296 S.E.2d 676 (S.C. 1982) ("While it is fundamental that this Court will not ordinarily inquire into the constitutionality of statute on its own motion, a recognized exception to this rule is that such matter may be considered sua sponte where statute encroaches upon jurisdiction of Court.").

Accordingly, the public of South Carolina has a significant interest in having the Supreme Court of South Carolina address the constitutionality of S.C. Code Ann., Section 14-1-235.

II. S.C. Code Ann., Section 15-3-40
Does Not Operate Unless Plaintiff
Is Under Disability At Time When
Cause of Action Accrue.

This case involve, inter alia, a tort action against the State of South Carolina and multiple State agencies brought pursuant to the South Carolina Tort Claims Act. See § 15-78-10 et seq.

During the course of the pre-trial proceedings the statute of limitations issue arose which, in effect, implicated the tolling provisions contained in S.C. Code Ann. § 15-3-40 which provide for the tolling of a limitations period for persons who are insane or who below age 18 at the time the cause of action accrue. § 15-3-40.

The trial court concluded that, even if it accept as true that Appellant's discovery of material facts occurred on June 6, 2011 (i.e., a time during which Appellant was not insane or an infant), the statute (§ 15-3-40) would limit me to a one(1) year statute of repose from June 6, 2011, meaning the Appellant had only from June 6, 2011 until June 6, 2012 during which to file his action.

However the clear and plain language of § 15-3-40 demonstrates the tolling provision does not come into play or ~~in~~ operation unless (and only unless) a plaintiff is insane or is an infant at the time of (discovery) accrual of the cause of action.

This is a legal principle of major importance because, so long as the trial judge apply § 15-3-40 to plaintiffs who were not under the prerequisite disability at the time their cause(s) of

action accrue (date of discovery), the trial court will continue to erroneously restrict a certain category of plaintiffs to a one (1) year statute of repose limitations period in which to commence their action, in clear derogation of their actual two (2) year limitations period under S.C. Code Ann § 15-78-110.

Accordingly, the Supreme Court of South Carolina should certify this case for review to address this legal principle of major importance.

III . The State of South Carolina Is Subject to Suit, Liability, and Damages Under the S.C. Tort Claims Act.

As indicated above, this case a tort action brought against, inter alia, the State of South Carolina alleging that the State is liable unto Appellant pursuant to S.C. Code Ann. § 15-78-60(25) where it subjected Appellant to loss as a result of the grossly negligent exercise of its responsibility and duty towards Appellant which proximately caused his loss.

The trial court concluded that the State of South Carolina is entitled to sovereign immunity from civil suit in tort. According to the trial court, the State of South Carolina is an entity separate and distinct from its agencies and political subdivisions, and that the proper defendant (under tort claims act) is "only the agency or political subdivision for which the employee was acting." See, S.C. Code Ann. § 15-78-70(c).

Contrary to the trial court's legal conclusion, the language of the S.C. Tort Claims Act clearly and plainly indicates that, in addition to its agencies, **political** subdivision, and governmental entities, the "State" in and of itself is subject to civil liability. For example:

- 1). The language of § 15-78-20 (A) indicates that the State of South Carolina is subject to civil liability;
- 2). The language of § 15-78-40 indicates that the State of South Carolina is subject to civil liability;
- 3). The language of § 15-78-50 (A) indicates that the State of South Carolina is subject to civil liability;
- 4). The language of § 15-78-80 (A)(1) indicates that the State of South Carolina is subject to civil liability;

Indeed South Carolina Constitution Article XVII, § 2 permits the authority for the General Assembly to subject the State of South Carolina.

Although § 15-78-70(c) provides that the proper defendant (to a tort action under the SCTCA) is "the agency... for which the employee was acting [1]", section 15-78-30(e) defines the term "State" as

" The State of South Carolina and any of its
... agencies "

Id. Therefore, contrary to the trial court's legal conclusion, the

State of South Carolina and all of its agencies ARE NOT separate and distinct from its agencies but instead the State of South Carolina and its agencies are one and the same. §15-78-30(e). Inasmuch as the State of South Carolina and its agencies are one and the same, the State of South Carolina is indeed a proper defendant under § 15-78-70(c).

This is a legal principle of major importance because, despite the General Assembly's direction of the manner in which claims against the State may be established, the trial court is denying plaintiffs the right to make claims against the State of South Carolina. Thus, the Supreme Court should certify this case for review.

IV. S.C. Code Ann. Section 63-19-20
Does Not Provide That Person
Must Be Under Age Seventeen
At Time of Offense To Be Tried
In Family Court In All Cases.

The trial court made the following legal conclusion: "South Carolina law provides that, for purposes of the juvenile justice system, a person must be under the age of seventeen years at the time of committing the alleged offense; if the person is seventeen years or older at the time of committing the alleged offense, he must be tried in adult (General Sessions) court. S.C. Code Ann. § 63-19-20, formerly S.C. Code Ann. § 20-7-6605."

Although § 63-19-20 defines the term "child" as a person less

than seventeen (17) years of age, that definition is qualified by the introductory language of the statute which reads "unless otherwise defined or the specific context indicates otherwise." § 63-19-20.

The "specific context" of § 63-3-510(B) indicates that the term "child" as used therein must mean a person who is within twenty-one years of age who the Family Court acquired exclusive original jurisdiction of while the person was less than 17-years of age.

Therefore, so long as the person is within the continuing jurisdiction of the Family Court, he/she must be must tried in the Family Court for an offense committed while 17 years old or older unless the Family Court terminate or waive its continuing jurisdiction over the person.

Indeed this issue is a legal principle of major importance and the public has a significant interest in its resolution, and therefore the Supreme Court should certify this case for review. See State vs. Patrick Lee Booker, Appellate Case No., 2013-0001470.

CONCLUSION

WHEREFORE, based upon the foregoing reasons and legal authority, Appellant hereby move the Supreme Court to certify this case for review.

→ (SEE REVERSE SIDE) ←

April 27, 2014
Turbeville, South Carolina.

Patrick Booker
Mr. Patrick L. Booker
Turbeville, C.I.
P.O. Box 252
Turbeville, S.C. 29162

Re: Patrick L. Booker vs. SCDJJ et al.
Appellate Case No. 2014-000732

Certificate of Service

I, Patrick L. Booker, do hereby certify that I have served the Motion to Transfer Case upon the parties listed below by depositing a copy of the motion in the U.S. Mail, postage prepaid, addressed to their counsel of record:

Janet B. Holmes, Esq.
Attorney for S.C. DJJ
and S.C. JPB
P.O. Box 7217
Columbia, S.C. 29202

Russel W. Harter, Esq.
Attorney for S.C. DSS
P.O. Box 10224
Greenville, S.C. 29603

Kristin M. Simmons, Esq.
Attorney for State of S.C.
P.O. Box 11549
Columbia, S.C. 29211

4/28/14
(Date)

Patrick Booker
(signature)

To: Clerk's Office
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29201

From: Mr. Patrick L. Booker, #297590
Turbeville Correctional Institution
P.O. Box 252
Turbeville, S.C. 29163

Date: April 28, 2014

Re: Patrick Booker vs. SCDJJ
Appellate Case No. 2014-000732

Dear Clerk:

Enclosed for filing, please find the original and one (1) copy of the Motion to Transfer Case regarding the above-referenced case.

Please return to me the "clocked-copy" in the S.A.S.E enclosed for your convenience.

Thank You,
Patrick Booker

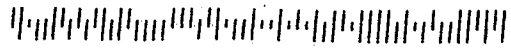
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cc: My File

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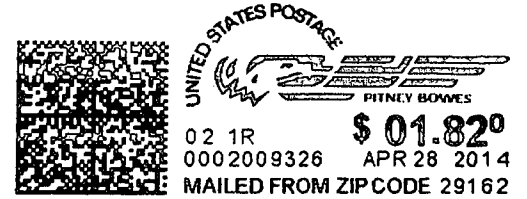


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Turbeville, C. I. (SA-235)

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