

The State of South Carolina
In The Court of Appeals

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SC Court of Appeals

174308

Appeal from Spartanburg County
Hon. J. Derham Cole, Circuit Court Judge
2008-CP-42-0475

Case No. 2012-213499

John Doe, Appellant

v.

City of Duncan Respondent

Petition for Rehearing

Plaintiff John Doe hereby petitions for rehearing of the November 12, 2014 per curiam order affirming the trial court on the apparent conclusion that the trial court failed to rule upon the argument below that the Servicemembers Civil Relief Act applied to the amended complaint.

The Court of Appeals panel has erred in concluding the trial court failed to rule on the application of the Servicemembers Civil Relief Act. The trial court granted the Defendant's motion to dismiss on the grounds submitted by the Defendant. We agree the trial court's "order did not restate the ground on which petitioner opposed the motion," *Spence v. Wingate*, 674 S.E.2d 169, 170 (S.C. 2009). That the trial court's order did not do so is irrelevant. *Spence v. Wingate*, 674 S.E.2d 169, 170 (S.C. 2009).

The trial court order granting the motion, R. App. 2 – 3, necessarily rejected the appellant's opposing argument in concluding that state time limits applied to bar the action. R.

App. 2 – 3. That time limits in state law could not properly be applied in light of the Servicemembers Civil Relief Act was the opposing argument. R. App. 12 ¶ 4, R. App. 43 – 44, the trial court order implicitly rejects that opposing argument. *Spence v. Wingate*, 674 S.E.2d 169, 170 (S.C. 2009); *Walsh v. Woods*, 638 S.E.2d 85, 88 (S.C. 2006) (implicitly denied arguments do not require Rule 59(e) motion).

The Court of Appeals panel's interpretation that a Rule 59(e) motion was required by *I'On, L.L.C. v. Town of Mt. Pleasant*, 526 S.E.2d 716, 724 (S.C. 2000), was itself rejected in *Spence v. Wingate*, 674 S.E.2d at 170 (S.C. 2009). The panel should address the merits of the trial court's

CONCLUSION

The Court of Appeals panel should grant this petition to rehear and address on the merits the trial court's failure to apply the Servicemembers Civil Relief Act.

Respectfully submitted,



Gregg Meyers
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Proof of Service

I hereby affirm that I have served upon counsel for the defendant/respondent a copy of the

Petition for Rehearing

by causing a copy of the document to be placed in the United States mail, first-class postage pre-paid wrapper, properly addressed to:

Charles Turner
Wilson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville SC 29607

William Foster
Nelson Mullins Riley & Scarbrough
PO Box 10084
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Done November 24, 2014.



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JEFF ANDERSON & ASSOCIATES PA
REACHING ACROSS TIME FOR JUSTICE

November 24, 2014

Via Federal Express Overnight Delivery

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Appeal 2012-213499
Doe v. City of Duncan, Case No. 08-CP-42-0475
(Spartanburg County, Hon. J. Derham Cole)

Dear Ms. Kitchings:

Enclosed for filing please find an original and six copies of a Petition for Rehearing for the appeal captioned above.

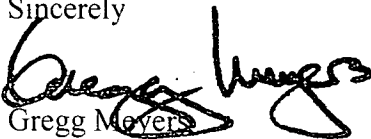
Also enclosed are the following:

1. Proof of service of the Petition on counsel for the respondent, and
2. A filing fee of \$25 for the Petition.

Please file this Petition with the Court.

Thank you very much.

Sincerely


Gregg Meyers

GM/tld
Enclosure

cc: Counsel Respondent

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