THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2015-UP-065 (Filed February 4, 2015)

Glenda Couram.....Petitioner,

v.

Lula N. Davis, Shirley Rivers, Constance "Connie" Rhett, Marcia Adams, Dottie Blankenship, Tosha Autry, Steven W. Lake and SC Department of Motor Vehicles in their official and individual capacities.....Respondents.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 22, 2015.

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July 22, 2015

QUESTIONS PRESENTED

1. Did the Petitioner substantially comply with the verified claim requirement such that to bar the Petitioner's claim would be unjust and contrary to public policy?

2. Have the courts erroneously inserted a requirement that a claim be "verified" into S.C. Code Ann. §15-78-110, and thereby it was error for the Petitioner's claims to be barred by a two year statute of limitations when the statute contains no reference to "verified" and, in fact, only includes the word "claim" which is a defined term under the South Carolina Tort Claims Act ("SCTCA")?

3. Did the trial court err when it held that Petitioner's causes of action for gross negligence, outrage, and conspiracy were claims within the SCTCA when the pleadings clearly allege intentional and wrongful conduct on the part of the individual respondents that fell outside the scope of their official duties and therefore were not subject to the SCTCA?

4. Did the trial court err when it dismissed the complaint with prejudice and refused to allow the amendment of the pleading when the Respondents had notice of the claims asserted since at least 2008 and the South Carolina Rules of Civil Procedure clearly state that leave to amend shall be freely given?

STATEMENT OF THE CASE

Petitioner has been employed in varying capacities by the South Carolina Department of Motor Vehicles ("DMV") since October 2004, when she was hired as a temporary employee. In June 2006, she became employed in a full-time position at DMV.

On November 13, 2008, Petitioner filed a Charge of Discrimination with the EEOC, alleging harassment, demotion, age discrimination, and various other particulars. R. p. 164. In the Charge, Petitioner declared "under penalty of perjury that the above is true and correct." It is undisputed that the Charge was not notarized. On November 18, 2008, the EEOC forwarded the Notice of the Charge of Discrimination to the DMV. R. pp. 166 - 167. Shortly thereafter, DMV records reflect that Petitioner was transferred to a new position at DMV. On October 14, 2009, the EEOC issued a Right to Sue letter to Petitioner, and closed its file. R. p. 168.

On January 4, 2010, Petitioner, proceeding *pro se,* filed a lawsuit in Federal court, alleging claims against the Respondents, both the SCDMV and the employees in their individual capacities ("Complaint #1"), for age discrimination, equal pay, hostile work environment, retaliation, outrage, gross negligence, and civil conspiracy. Complaint #1 styled the conspiracy cause of action as a "pendent state claim" and further alleged that the individuals "acted with malice" and "outside of the course and scope of their duties". R. pp. 33 -51. On March 10, 2011, the Honorable Matthew J. Perry issued an order granting summary judgment in favor of the Respondents on the claims for age discrimination and denying Respondents' motion for summary judgment on the state law claims for outrage and civil conspiracy. The District Court declined to exercise supplemental jurisdiction

over the state law claims for outrage and conspiracy, and dismissed the remaining claims of Complaint #1 without prejudice. R. pp. 1 – 10.

On October 25, 2011, Petitioner, again proceeding *pro se*, filed a complaint in state court ("Complaint #2") alleging claims against the DMV and the individually named respondents in their individual capacities. Petitioner alleged claims under Title VII; violation of the SC Human Affairs Commission laws; violation of free speech; sections 1981 and 1983 claims; violation of the South Carolina Tort Claims Act ("SCTCA"); outrage; conspiracy; and gross negligence. The outrage, conspiracy and gross negligence claims were specifically asserted against the individual Respondents in their individual capacities and alleged malicious and willful conduct on the part of the individual Respondents. R. pp. 52 – 73.

The Respondents removed the case to Federal court and filed an answer on November 29, 2011. Thereafter, the Petitioner, again proceeding *pro se,* filed an amended complaint ("Complaint #3") on August 7, 2012 styled as *Amended Complaint in Compliance with Order*, R. pp. 90 – 99, and the Respondents filed a motion to dismiss Complaint #3 pursuant to Rule 12(b)(6), FRCP on August 9, 2012, arguing that Complaint #3 did not meet the pleading standard articulated in Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009). R. pp. 179 – 189. Complaint #3 alleges claims for gross negligence; outrage; defamation; civil conspiracy; and violation of SCTCA. The gross negligence; outrage; defamation; and conspiracy claims were asserted against the individual respondents in their individual capacities. Complaint #3 specifically alleges special damages.

On August 21, 2012, the Honorable Margaret B. Seymour remanded the case to State court, finding that Complaint #3 did not contain any federal causes of action and declining to exercise supplemental jurisdiction. R. p. 20. On September 11, 2012, the Petitioner filed a Motion to Amend the complaint in District Court (which was thereafter transferred to State Court), attaching a proposed fourth amended complaint. R. pp. 102 – 121.

On November 5, 2012, the Motion to Dismiss Complaint #3 was heard by the Honorable L. Casey Manning, along with Petitioner's Motion to Amend the Complaint. Judge Manning thereafter dismissed each of the claims in Complaint #3 with prejudice, finding that the Petitioner's claims were barred by the SCTCA's two year statute of limitations contained in S.C. Code Ann. §15-78-110. Judge Manning ruled that Petitioner had failed to file a "verified" claim which could have extended the statute of limitations for SCTCA claims from two to three years. Judge Manning further found that any amendment – as contained in the proposed Fourth Amended Complaint - would be futile because the claims were barred by the same statute of limitations. R. pp. 22 - 31.

On appeal, the Court of Appeals held that the latest possible date of discovery of injury was December 8, 2008, when Petitioner was officially transferred to a position in data entry. Finding that the two year statute of limitations under the SCTCA was applicable because Petitioner did not file a "verified" claim with the EEOC, the Court of Appeals held that the lower court properly denied Petitioner's Motion to Amend the Complaint because any amendment would be futile as her claims were time-barred. The Court of Appeals further found that the dismissal of Complaint #3 was proper because Petitioner had failed to state any claim upon which relief could be granted.

Argument

I. Requesting Leave to Argue Against Precedent, the Petitioner Urges the Court to Adopt the Substantial Compliance Doctrine and Rule That Petitioner's Claims Were Not Time Barred.

On or about November 18, 2008, Respondents were put on notice of the claims of Petitioner as it related to her treatment in the workplace and allegations as to mistreatment, discrimination, harassment, age-related claims, and retaliatory conduct when the EEOC provided a copy of the Charge of Discrimination and Notice of Charge to Respondent SCDMV. R. pp. 166 – 167.

On January 4, 2010, Petitioner filed Complaint #1 in District Court. R. pp. 33 – 51. Upon the entry of Judge Perry's order, Petitioner filed Complaint #2 on October 25, 2011, in the Richland County Court of Common Pleas. R. pp. 52 – 73. After the Respondents removed the case to United States District Court, and upon Judge Seymour's order, the Petitioner thereafter filed Complaint #3, which was remanded to State court. R. pp. 90 – 100. In short, assuming for purposes of argument that the Petitioner's latest date of discovery, as stated by the Court of Appeals in their unpublished opinion, was December 8, 2008, Petitioner filed an EEOC claim under penalty of perjury before that day; filed Complaint #1 (Federal court) approximately 13 months after the date of discovery; and filed Complaint #2 (State court) less than three years after the date of discovery.

The Respondents moved to dismiss Complaint #3 pursuant to Rule 12(b)(6), FRCP. In response, the Petitioner moved to amend the complaint. Judge Manning specifically found that the causes of action contained in Complaint #3, and the proposed amended

pleading, were barred by a two-year statute of limitations and entered an order of dismissal with prejudice pursuant to Rule 12(b)(6), SCRCP.

Under Rule 12(b)(6), SCRCP, a motion to dismiss should be granted when the pleadings, construed in the light most favorable to the non-moving party, fail to allege sufficient facts to state a cause of action. Haskell Co. v. Morgan, 274 S.C. 261, 262 S.E.2d 737 (1980). A motion under Rule 12(b)(6) admits the well-pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law. See Deberry v. McCain, 275 S.C. 569, 274 S.E.2d 293 (1981).[1]

"Dismissal of a complaint does not bar a subsequent action **brought before expiration of the statute of limitations** if the dismissal is based merely on the **insufficiency of the complaint**." Spence v. Spence, 368 S.C. 106, 628 S.E.2d 869, 881 (2006) (citing Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986)) (emphasis added). "When a complaint is dismissed under Rule 12(b)(6) for failure to state facts sufficient to constitute a cause of action, **the dismissal generally is without prejudice**. The plaintiff in most cases should be given an opportunity to file and serve an amended complaint." Id. (internal citations omitted) (emphasis added) (noting that "rules of civil procedure should be liberally construed to do substantial justice" and that under Rule 15(a), the plaintiff "generally is allowed to amend a complaint to correct deficiencies which resulted in dismissal under provisions of Rule 12(b)").

The burden is on the party opposing the motion to amend to show how it is prejudiced. Stanley v. Kirkpatrick, 357 S.C. 169, 592 S.E.2d 296 (2004). "The prejudice Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of

[1] The Petitioner, proceeding *pro se* throughout this case until now, would note that "a complaint, especially a *pro se* complaint, should not be dismissed summarily unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978) (citing Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594 (1972)).

opportunity to refute it." Id. (citing Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999). In Stanley, the plaintiff filed a §1983 complaint in February 1997. The defendant filed its motion for summary judgment in July 1998. The plaintiff thereafter moved to amend the complaint to add tort claims. The defendant alleged that the cost and expense of re-taking depositions was prejudicial and therefore the amendment should be denied. The trial court denied the motion. This Court disagreed, noting that "given the facts of the case, i.e. the events giving rise to the claims, are not different from the facts that gave rise to the §1983 claim, depositions would not have to be retaken", and therefore the defendant's "argument of prejudice is without merit."

In Vines v. Self Memorial Hospital, 314 S.C. 305, 443 S.E.2d 909 (1994), this Court affirmed the granting of summary judgment to the hospital on the grounds that the claim filed by the plaintiff was barred by the two year statute of limitations set forth in section 15-7-110 because the claim forms she submitted to the hospital were not notarized and, further, were not a part of the record.

The plaintiff alleged substantial compliance with the verified claim requirement and asserted that she was entitled to the three year statute of limitations under a joint reading of Sections 15-78-80 and 15-78-110. This Court, while acknowledging that the hospital had actual notice of the plaintiff's claim, held that strict compliance was required.

In dissent, Justices Toal and Finney disagreed, noting that the express purpose of the "verified claim" requirement contained in the SCTCA was for the governmental entity to obtain early notification of pending claims and obtain information about such claims in order to evaluate and investigate the claim. Noting that the majority (as well as the hospital) "impliedly admits . . . that [the plaintiff] substantially complied with the Act", the

dissent notes that the majority's decision "announces a hypertechnical rule which I believe is neither supported by the statute nor by the prior decisions of this Court." Vines, 443 S.E.2d 909, 912 (1993). The dissent further noted that "in order to reach the result of the majority, three statutes must be read together, our long standing decision in *Braudie* must be overruled and cases under the general law must be ignored." Id. at 912 (citing Mende v. Conway Hospital, 304 S.C. 313, 404 S.E.2d 33 (1991) (citing to Braudie v. Richland County, 219 S.C. 130, 64 S.E.2d 248 (1951)). Both Justices Toal and Finney had previously outlined their interpretation of the legislative purpose of section 15-78-110 in their earlier dissent in Rink v. Richland Memorial Hosp., 310 S.C. 193, 422 S.E.2d 747 (1992), writing that **"[t]he legislative goal in providing a longer, three year statute of limitations for those who have first filed a claim with the governmental entity was clearly to encourage claimants to attempt informal resolution of their claim.**" (emphasis added).

The Petitioner hereby respectfully requests that the Court revisit the Vines and Rink decisions and adopt the substantial compliance argument contained in the dissents and articulated in the Braudie decision. "*[S]tare decisis* is not an inexorable command: [t]here is no virtue in sinning against light or persisting in palpable error, for nothing is settled until it is settled right.....There should be no blind adherence to a precedent which, if it is wrong, should be corrected at the first practical moment." McLeod v. Starnes, 396 S.C. 647, 723 S.E.2d 198, 204 (2012) (granting permission to the appellant to argue against precedent) (internal citations omitted).

The record reflects that that the Defendants were on notice of Petitioner's claims and the *gravamen* of Petitioner's complaints since at least November 2008. Three separate

complaints were filed and served upon the Respondents, who were ably represented by counsel throughout. Respondents were afford the notice of the claim that the SCTCA anticipates. To allow the Respondents to avoid the litigation of Petitioner's claims on the merits, simply because the EEOC claim was not notarized, is inequitable and should not be allowed. Substantial compliance with the statutory requirements – reserved for situations such as these and those articulated in Vines and Rink – is better public policy and more fully reflects the spirt and intent of the SCTCA.

A. There is no Verification Requirement Found in Section 15-78-110

Section 15-78-110 reads as follows:

> "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; provided, that if the claimant first filed **a claim** pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered." (emphasis added).

Section 15-78-30(b), which is the "definitions" section of the SCTCA, states that "**claim means any written demand** against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision **while acting within the scope of his official duty**." (emphasis added). Again, there is no mention of "verification" or "verified" in this definition. The only requirement under SCTCA for the filing of a verified claim comes in Section 15-78-80, which provides that an injured party *may* file a verified claim. The code section therefore provides a means for the parties to participate in the resolution of the claim, **outside of litigation**, by giving the government agency the opportunity to either "allow" or "disallow" the claim. In short, Section 15-78-80 merely outlines a system for

alternative dispute resolution within the SCTCA and Petitioner submits, again requesting leave to argue against precedent, that it should not be read as a part of Section 15-78-110.

As Justice Toal, in her dissent, noted in Vines, "the Tort Claims Act . . . requires the reading of three different sections to reach the conclusion that a verified claim is required in order to receive the longer statutory period to file a lawsuit. I assume that the legislature was aware of both *Braudie* and *Cochran* when it wrote the Tort Claims Act. **If the legislature had intended for the absence of verification to be a complete bar to the longer statutory period to file a lawsuit, as in *Cochran*, they could written the statute to so provide ..... In order to reach the result of the majority, three statutes must be read together, our longstanding decision in *Braudie* must be overruled and cases under the general law must be ignored.**" Vines, 443 S.E.2d at 912 (emphasis added). Petitioner submits that if the legislature had wished to ensure that the "claim" referenced in both sections 15-78-110 and 15-78-30(b) was verified, it could have easily inserted the word "verified" into both the statute of limitations and the definitions sections of the Tort Claims Act. Instead, the both sections are silent and over the years the courts have essentially "read" this requirement into the statute.

"Statutory interpretation is a question of law. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." South Carolina Coastal Conservation League v. South Carolina

Dept. of Health and Envtl. Control, 702 S.E.2d 246, 390 S.C. 418 (S.C., 2010) 459 (2007) (internal citations omitted).

In the instant case, the statute of limitations contained in the Tort Claims Act includes a defined term – "claim". Accordingly, there is no ambiguity as the legislature specifically defined "claim" in clear and unambiguous terms. The Petitioner's EEOC Charge was served upon the Respondents in November 2008; the last possible date of discovery of the injuries as determined by the Court of Appeals was December 8, 2008; and Petitioner filed her Federal lawsuit in January 2010 and her State court lawsuit in October 2011. Accordingly, her claims were asserted within the Statute of Limitations and the Petitioner respectfully requests that the Court reverse the opinion of the Court of Appeals and remand the case to the lower court.

B. Claims Which Allege Willful and Malicious Conduct Outside the Scope of Official Duties Are Not Subject to the SCTCA

Petitioner submits that the claims against the individual Respondents which allege intentional and malicious conduct outside the scope of their official duties – i.e. outrage/intentional infliction of emotional distress, conspiracy, and gross negligence – are not subject to the two year statute of limitations under the South Carolina Tort Claims Act because they do not allege conduct within the scope of official duties and, in fact, specifically allege intentional and malicious conduct outside the scope of official duties. "Immunity under the [SCTCA] is an affirmative defense that must be proved by the defendant at trial." Frazier v. Badger, 361 S.C. 94, 603 S.E.2d 587 (2004) (finding no error in the refusal to charge the jury on the defense of governmental immunity where the plaintiff employee had asserted a claim for outrage against the assistant principal at the school where plaintiff worked). It was therefore clear error for the lower court to hold, at

the Rule 12 stage, that "the two year statute of limitations applies to the individual Defendants as well, **regardless of whether they acted within the scope of their official duty**." R. p. 28, fn 2.

The lower court relied upon Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003) in ruling that dismissal of Complaint #3, and the denial of the motion to amend, was proper. Petitioner submits that Flateau is not persuasive because Flateau concerned a complaint - dismissed under Rule 12(b)(6) - that the Court determined contained no allegations of torts committed by state employees acting outside the scope of their official duties; rather the Court found that the causes of action alleged only conduct within the scope of their official duties. See Flateau, 355 S.C. at 206.

In the instant case, there has been no such finding and, further, Complaint #3 contains numerous allegations as to intentional and malicious conduct outside the scope of the individual Respondents' duties and further alleges special damages arising from the conspiracy cause of action. See generally R. pp. 90-99 at ¶¶ 24, 27, 31, 32, 41-45, 47-49, and VI.(h). Petitioner relies upon the case of Moore by Moore v. Berkeley County Sch. Dist., 486 S.E.2d 9, 326 S.C. 584 (Ct. App. 1997) and the Order of United States District Judge Henry Floyd in the case of Smith v. City of Greenwood, 2010 WL 2382479 (Civ. Action No. 8:09-cv-2061-HFF-BHH) (June 14, 2010) in further support of its position that it was error for the lower court to dismiss Complaint #3 and deny the motion to amend.[2]

In Moore, the plaintiff, a minor child, brought claims against the school district and his teacher arising out of the teacher's improper sexual conduct toward the student while at a

[2] Petitioner acknowledges that Judge Floyd's order is not binding authority and, further, has no precedential value. However, given that the order addresses a very similar situation, Petitioner respectfully requests that this Court consider the order as additional support for her position.

private residence. The lower court granted summary judgment in favor of the school district on the intentional tort claims of gross negligence; outrage; false imprisonment; assault and battery; and invasion of privacy. The Court of Appeals held that the trial court correctly concluded that the school district was not liable for the intentional actions of its employee inasmuch as "her actions were committed outside the scope of her employment and/or constituted a crime of moral turpitude" under S.C. Code Ann. §15-78-60 (listing the exceptions to the waiver of immunity for which the governmental entity is not liable).

Similarly, here there are numerous allegations of intentional conduct by the individual defendants in their individual capacities and outside any rational interpretation of the scope of their duties: "the defendants acted with intent and gross neglect"; "malice and actual fraud to be assessed against all of the defendants"; "the defendants . . . . took an active part in the further of the conspiracy created and formed among themselves a conspiracy to defraud, cheat, and otherwise harm Plaintiffs *(sic)*". See. R. pp. 90 – 99.

In Smith v. City of Greenwood, Civil Action No. 8:09-cv-2061-HFF-BHH, the plaintiff filed a civil conspiracy claim against certain government employees. The claim was filed outside the two year statute of limitations period articulated in the SCTCA, but within three years. The defendants, relying upon Flateau, moved for summary judgment, alleging the claim was barred by the two year statute of limitations.

District Judge Henry F. Floyd, in analyzing Flateau, noted that the Court in Flateau specifically held that the SCTCA "is intended to cover those actions committed by an employee within the scope of the employee's official duty." Flateau, 584 S.E.2d at 416. Judge Floyd held, therefore, that if the complaint alleges actions for which the government

employee would be individually liable, the claim is not brought pursuant to the SCTCA and, consequently, is not subject to the two-year limitations period."

The government defendants in Smith v. City of Greenwood noted that the Court of Appeals in Flateau had stated, in closing, as follows: "We rule the two-year statute of limitations applies even if the Board members acted outside the scope of their official duties or if their actions constituted fraud, actual malice, intent to cause harm, or a crime involving moral turpitude."

Judge Floyd, responding to the defendants' arguments, first noted that the Court of Appeals in Flateau "never needed to reach the limitations issue as to acts occurring outside the scope of employment because it concluded that the Defendants' action were within the scope of their official duties and were thus immune from liability under the SCTCA" and therefore the discussion was mere *dicta.*[3] Furthermore, Judge Floyd noted that, under Flateau, "whether the alleged actions fall within or outside the scope of an employee's official duties is a threshold issue in determining if the SCTCA applies." Id.; See also Flateau, 355 S.C. at 204 ("the Act is intended to cover those actions committed by an employee within the scope of the employee's official duty."). Judge Floyd reasoned that if it adopted the defendants' interpretation of Flateau, "so that any intentional tort committed by a governmental employee would be subject to a two years limitations period merely by virtue of the identity of his employer, **it would contravene the express purpose**

[3] Petitioner notes that Flateau has never been cited by the South Carolina Supreme Court for this exact proposition; however, out of an abundance of caution, Petitioner again petitions to argue against precedent under the Rules. See also Stoneburner v. Thompson, 3:12-cv-3551-JFA (D.S.C. May 20, 2014 at p. 9) (order granting summary judgment on the grounds that the two year statute of limitations under the SCTCA was applicable because the court found that all the Defendants acted in the scope of their official duty, **"and that none of the defendants' conduct constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude so as to arguably take Defendants outside of the SCTCA's two year statute of limitations").**

of the SCTCA. Because the SCTCA seeks to limit the liability of governmental entitities, rather than for governmental employees who act outside the scope of their employment, the statutory scheme would not be offended by subjecting Defendants to a longer limitations period." Id. (emphasis added).

Similarly, here Complaint #3 and the proposed amended pleading, viewed in the light most favorable to the Petitioner, sufficiently states claims against the individual Respondents, acting in their individual capacities and outside the scope of their official duties.[4] See R. pp. 90-99, pp. 102-124.

"A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. In deciding whether the trial court properly granted the motion to dismiss, [the appellate court] must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief . . . Upon review of a dismissal of an action pursuant to Rule 12(b)(6), the appellate court applies the same standard of review implemented by the trial court." Flateau, 584 S.E.2d at ____(internal citations omitted). Here, Petitioner submits that there is simply no way to look at the pleadings and find absolutely no valid claim for relief on any theory. Accordingly, it was error to dismiss Complaint #3 and deny the motion to amend.

An Outrage Claim Against the Respondents in Their Individual Capacities is Proper

While Petitioner concedes that Worker's Compensation is the exclusive remedy for the outrage claim as it relates to the SCDMV defendant, Petitioner would submit that the dismissal of the claims for outrage against the individual respondents (her co-workers) was

[4] Petitioner concedes that the claim for defamation is time barred regardless of the outcome of this appeal.

clear error under the holding of Dickert v. Met. Life. Ins. Co., 311 S.C. 218, 428 S.E.2d 700 (1992). In Dickert, the Court specifically held that it is against public policy to extend an employer's immunity under the Worker's Compensation Act "to the co-employee who commits an intentional tortious act upon another employee. The Worker's Compensation Act may not be used as a shield for a co-employee's intentional injurious conduct."

In Frazier v. Badger, the Court held there was no error in allowing the plaintiff employee's claim for outrage to proceed against her direct supervisor (and co-employee) and refused to charge the jury on the law of tort immunity for government employees. Accordingly, simply because the worker's compensation act would be the exclusive remedy for an outrage claim against the SCDMV, it is not the exclusive remedy as against the individual employees. See Dickert, supra. Otherwise, it would follow that no claims for outrage could ever proceed which arose out of the workplace environment.

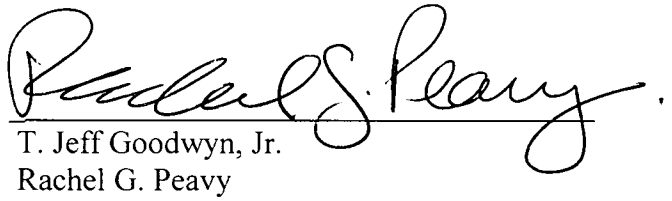
It Was Clear Error For the Lower Court to Dismiss the Conspiracy Claim

In its order, the lower court held that the Petitioner's claim for civil conspiracy was barred by the statute of limitations and, further, that the claim failed as a matter of law under Lawson v. S.C. Dept. of Corrections, 340 S.C. 346, 532 S.E.2d 259 (2000). R. pp. 9 – 10. However, Lawson is not persuasive. In Lawson, the Supreme Court held that summary judgment was proper based upon an allegation that two supervisors discussing whether to terminate an at-will employee could not, as a matter of law, support a cause of action for conspiracy. Furthermore, the Supreme Court noted that no special damages were alleged. In the instant case, the lower court was considering the case at the Rule 12 stage and, further, conduct beyond mere discussion of an at-will employee is alleged, along with special damages. Accordingly, the dismissal of the conspiracy cause of action was

error because the complaint stated sufficient facts to support a cause of action for conspiracy. R. pp. 90 - 121.

CONCLUSION

Arguing against precedent, the Petitioner respectfully requests that this Court adopt the reasoning contained in the dissenting opinions in Vines v. Self Memorial Hospital and Rink v. Richland County and find the Statute of Limitations does not bar Petitioner's claims; find that the claims alleged were sufficient to support a cause of action and therefore dismissal of Complaint #3 with prejudice was not proper; and further find that the motion to amend could not be futile as result.



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Dated: 7/22/15

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PROOF OF SERVICE

I certify that I have served the **Petition for a Writ of Certiorari** and **Appendix**, by depositing a copy of same in the United States Mail, postage prepaid, on **July 22, 2015**, addressed to counsel for Respondents, Eugene H. Matthews, Esquire, Richardson Plowden, PA, P.O. Drawer 7788, Columbia, South Carolina 29202 and by delivering a copy of the **Petition for a Writ of Certiorari**, Via Hand Delivery to South Carolina Court of Appeals, 1220 Senate Street, Columbia, South Carolina 29201.

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July 22ND, 2015