

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Opinion No.: 2015-UP-333 (S.C. Ct. App. filed July 1, 2015)

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DEC 17 2015

S.C. SUPREME COURT

Jennifer D. Bowzard, Petitioner,

-v-

Sheriff Wayne Dewitt and
Berkeley County Sheriff's Office, Respondent.

**REPLY TO RESPONDENT'S RETURN TO
PETITION FOR WRIT OF CERTIORARI**

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The Petitioner, Jennifer Bowzard (“Bowzard”), submits this Reply Brief in response to Respondents’ Return to the Petition for Writ of Certioari.

I. THE SIMPLE NEGLIGENCE EXCEPTIONS CONTAINED IN S.C. CODE ANN. § 15-78-60 ARE AN INSUFFICIENT BASIS FOR SUMMARY JUDGMENT WHEN THE COMPLAINT ONLY ALLEGES GROSS NEGLIGENCE

Respondents attempt to argue that, in moving for summary judgment, they are entitled to assert particular subsections of S.C. Code Ann. § 15-78-60, instead of the statute as a whole. Liberty Mut. Ins. Co. v. S.C Second Injury Fund, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005) (“Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction.”). In doing so, Respondents attempt to avoid the intent of the Tort Claims Act by only asserting exceptions of § 15-78-60 that do not contain a gross negligence exception. (Resp. Return p. 4) (“Here, it is the Defendants’ burden to assert the affirmative defenses that they choose to assert.”). None of the subsections Respondents asserted as a basis for summary judgment contained a gross negligence exception. In essence, Respondents argue they were entitled to summary judgment based on simple negligence. However, the sole issue in this case, as alleged in the Complaint, is whether Respondents were grossly negligent as the Complaint did not allege simple negligence. (Compl. ¶¶ 15-16). Therefore, to be entitled to summary judgment, Respondents would have to prove no gross negligence, and the simple negligence subsections of § 15-78-60 are insufficient to be a basis for summary judgment. In addition to Respondents’ failure to assert applicable subsections (namely S.C. Code Ann. § 15-78-60(25)), all applicable subsections should have been read with a gross negligence exception since gross negligence was the sole issue.

II. S.C. CODE ANN. § 15-78-60(21) SHOULD BE READ WITH A GROSS NEGLIGENCE EXCEPTION SINCE GROSS NEGLIGENCE WAS THE SOLE ISSUE BEFORE THE COURT

The Petition for Writ of Certiorari adequately sets forth Bowzard's position on subsection (21) and Bowzard incorporates those arguments here.

III. THE COURT OF APPEALS DID NOT AFFIRM BASED ON FIVE OTHER SUBSECTIONS OF S.C. CODE ANN. § 15-78-60

Respondents incorrectly argue that Bowzard failed to address or appeal the alleged ruling that Respondents are entitled to immunity under S.C. Code Ann. §§ 15-78-60 (3), (4), (5), (6), and (20). In affirming the trial court's grant of summary judgment, the Court of Appeals made four rulings. Not one of these four rulings is based on §§ 15-78-60 (3), (4), (5), (6), and (20). The only portion of the Opinion that even mentions these subsections is the introductory paragraph which provides: "Bowzard appeals from an order of the trial court granting summary judgment in favor of Respondents, finding Respondents were immune from liability under South Carolina Code sections 15-78-60(3), (4), (5), (6), (20), and (21) (2005) of the South Carolina Tort Claims Act. We affirm." While the introductory paragraph says the trial court is affirmed, the Court of Appeals' Opinion does not state that it is affirmed based on §§ 15-78-60 (3), (4), (5), (6), and (20). To support the argument that the Court of Appeals did not affirm based on §§ 15-78-60 (3), (4), (5), (6), and (20), the Opinion specifically affirms based on §§ 15-78-60(21) while not addressing (3), (4), (5), (6), or (20). Furthermore, based on the per curiam style of the Opinion where the facts are not addressed and little analysis is included, it is difficult for counsel for Bowzard to interpret the separate bases for summary judgment outside of the four specifically addressed by the Court of Appeals. Even if the Court of Appeals affirmed based on §§ 15-78-60 (3), (4), (5), (6), and (20),

the Brief and Petition for Writ does raise and address each subsection. Eleven pages of Bowzard's brief is devoted to §§ 15-78-60 (3), (4), (5), (6), (20) and (21). (Bowzard Br. pp. 18-28). The Petition for Writ also incorporates all arguments made in opposition to the additional subsections serving as a basis for summary judgment. (Petition for Writ. p. 13, n. 2). To argue that Bowzard's Petition failed to address or appeal an arguable ruling of the Court of Appeals is incorrect.

IV. THE ISSUE OF PROXIMATE CAUSE REGARDING THE TELEPHONE CALLS WAS PROPERLY PRESERVED

Even after pointing out in the Petition that Bowzard appealed the issue involving the telephone calls through an issue on appeal and in her brief, Respondents adopt the Court of Appeals incorrect holding that "Petitioner failed to appeal the trial court's ruling that Bowzard only alleged damages after the escape." (Return to Petition p. 8). The claim regarding Sanders' phone calls and letters to Ms. Bowzard as a proximate cause of her injuries was expressly raised in Petitioner's Brief. (Appellant's Br. pp. 28-29). The argument titled, "Sanders Calls and Letters to Bowzard While Incarcerated *Proximately Caused* Her Damages," sets forth the facts and causal chain leading to Ms. Bowzard's injuries. (emphasis added). Additionally, Bowzard's challenge of proximate cause is also stated as her second issue on appeal.¹ (Appellant's Br. p. 1). Despite citing the Court of Appeals' incorrect holding, Respondents offer no other argument that Bowzard failed to challenge an alternate ground for summary judgment. The remaining portion of the

¹ "DID THE TRIAL COURT ERR IN HOLDING SANDERS' CALLS, LETTERS, AND THREATS FROM THE BERKELEY COUNTY JAIL IN VIOLATION OF A COURT ORDER COULD NOT BE A *PROXIMATE CAUSE* OF BOWZARD'S DAMAGES?" (Appellant's Br. p. 1) (emphasis added).

Petition adequately sets forth the factual allegations that Bowzard suffered mental anguish prior to Sanders leaving the jail.

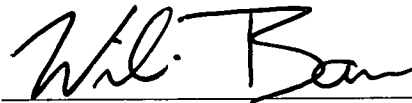
CONCLUSION

For these reasons, Bowzard's petition should be granted.

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December 14, 2015
Hampton, South Carolina

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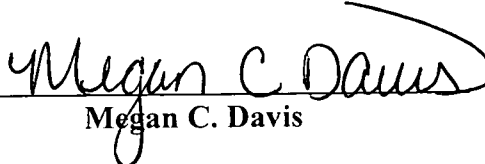
Sheriff Wayne Dewitt and
Berkeley County Sheriff's Office, Respondents.

CERTIFICATE OF SERVICE

This is to certify that I, *Megan C. Davis*, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Appellant/Petitioner, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within the *Reply to Respondent's Return to Petition for Writ of Certiorari* to:

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December 14th, 2015
Hampton, South Carolina