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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY COURT OF COMMON PLEAS
The Honorable Carmen Mullen, Circuit Court Judge

Appellate Case No. 2014-001862

THEOPHILIUS HAMILTON, ...Appellant,

v.

BEAUFORT COUNTY SHERIFF'S OFFICE, ...Respondent.

FINAL BRIEF OF APPELLANT

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Statement of the Issues on Appeal

1. WHETHER PLAINTIFF'S CAUSE OF ACTION FOR NEGLIGENT SUPERVISION AND RETENTION IS BARRED BY THE STATUTE OF LIMITATIONS AND DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT ?

Statement of the Case

On July 29, 2014 Circuit Judge Carmen Mullen granted Defendant's motion for summary judgment regarding the negligent supervision and retention claim by Plaintiff. The Judge ruled that the Statute of Limitations had run on August 1, 2011 which was one year after the Plaintiff had turned age 18. The amended lawsuit which included that claim was not filed until October 31, 2011 by the previous attorney Greg Galvin. This Appeal follows with a Notice of Appeal filed by Plaintiff's attorney Eric J. Erickson on August 29, 2014, within thirty (30) days of Judge Mullen's written decision on August 4, 2014.

Statement of the Facts

On October 30, 2008 Jeffery Wooten, his wife, Brian Lanese and his wife were enjoying a BBQ at the Lenese residence located at 8 Sugaree Drive, Bluffton, South Carolina.(R.p. 10,line 4) All of a sudden, three (3) individuals attacked both Wooten and Lanese in their yard, severely injuring Lanese. (R.p. 10. Line 8) On November 25, 2008 Theophilus Hamilton (Plaintiff) was arrested at his high school through information gained by Beaufort County Sheriff's Deputy Louis Novak by the interrogation of Kuwan Fields, among others. (R. p. 22, line 6) The Plaintiff was indicted by the Beaufort Grand Jury on December 18, 2008 on charges of assault and battery with intent to kill, conspiracy and burglary. (R. p. 28, line 12).

Plaintiff was a minor at the time of indictment, with his 18th birthday not until August 1, 2010. (R. p. 123, line 4) Plaintiff stood trial in the Beaufort County Family Court on August 3rd and 4th 2010. Judge Armstrong made a written decision of Not Guilty of all three (3) charges on August 10th, 2010.

The civil case was filed on October 31, 2011 by the previous attorney Greg Galvin who alleged in his complaint that the Defendants Maliciously prosecuted the Plaintiff and that the Defendants negligently supervised and retained Officer Novak. (R. pp 8-32)

Defendant's attorney Mary Lohr filed a motion for summary judgment on the two (2) claims and on July 29, 2014 Circuit Judge Carman Mullen denied the summary judgment on the malicious prosecution, which eventually went to trial, but granted the summary judgment on the negligent supervision and retention based upon the Statute of Limitations running one (1) year after the Plaintiff's 18th birthday on August 1, 2010, which fell on August 1, 2011.(R. p. 2-3)

Standard of Review

Summary Judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56 (c) SCRCP. To determine whether any triable issues of fact exist, the court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. Law v. S.C. Dept. of Corrections, 368 S.C. 424, 629 S.E.2d 642 (2006). "When plain, palpable and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App 2004). However, summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of law." Bennett v. Investors Title Ins. Co., 370 S.C. 578, 635 S.E.2d 649, (Ct . App. 2006). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C.1, 605 S.E.2nd 744 (Ct. App. 2004).

Argument

Defendant argues in it's motion for summary judgment that since Plaintiff was indicted on December 18, 2008 on the three (3) charges that he was aware of Deputy Novak's involvement and was on notice that he may have a claim against the Sheriff's office for negligent supervision and retention and that Novak's file was available. (R. p. 109, line 13) The Defendant also argues that an exception tolled the statute of limitations because the Plaintiff was a minor at the time of the indictments, as Plaintiff did not turn eighteen (18) until August 1, 2010. (R. p. 109, line 23) According to the exception, Plaintiff than had another year (until August 1, 2011) to file his

Summons and Complaint; it was not filed until October 31, 2011 by attorney Greg Galvin, beyond the one (1) year. (R. p. 110, line 1)

However, Plaintiff argues that the statute of limitations should have been tolled even longer. " The statute of limitations on a negligence claim accrues at the time of the negligence or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party." Kreutner v. David, 320 S.C. 283, 465 S.E.2nd 88, (1995). (R. p. 119, line 11))"Deliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action toll the statute of limitations." Strong v. University of South Carolina School of Medicine, 316 S.C. 189, 447 S.E. 2nd 850, (1994). (R. p. 119, line 15) "Historically, a cause of action accrued at the time of the negligence. But South Carolina has altered this rule adopting the 'discovery rule.' Under the discovery rule, an action accrues when the injury is discovered or 'reasonably ought to have been discovered. The reasonably ought to have discovered requirement is the 'reasonable diligence' requirement, which means simply that an injured party must act with some promptness where the facts and circumstances of the injury would put a person of common knowledge on notice that some right has been invaded or that some claim against another party might exist." Strong, supra. (R. p. 119, line 18)

It is Plaintiff's position that the Defendant concealed their knowledge of Deputy Novak's Criminal Domestic Violence (CDV) incident by not turning over these documents to Plaintiff pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 215 (1963). Thus, by not

disclosing and turning over these documents at the time it handed over the police file was evidence of willful concealment by Defendant. In South Carolina, a 'Brady violation' is asserted by the fact that the evidence was (1) favorable to the accused, (2) in the possession of or known by the prosecution, (3) suppressed by the State, and (4) material to the accused's guilt or innocence or was impeaching. Riddle v. Ozmint, 369 S.C. 39, 631 S.E.2nd 70, (2006). None of Deputy Novak's employment records of the CDV were turned over prior to the trial on August 3-4 2010. The only reason the CDV was discovered was by coincidence when the prior attorney Greg Galvin requested records in another case. Thus, Plaintiff could not have known about this incident to file the amended cause of action of negligent supervision/retention until he received this CDV evidence on or about March 27th, 2011. Exhibit C-Sheriff Tanner deposition p 16, 17,18,21,26,27,34 35, 36] Also, [Theophilus Hamilton affidavit]. The CDV incident was never prosecuted and was hidden from public knowledge. Nothing in the family court transcript contained any information about Deputy Novak's discipline problems. [P Exhibit C-Transcript of Record]. [R. p. 120, lines 3-17)

Indeed it is "the employer's knowledge of an employee's dangerousness which is an element of the tort of negligent supervision. Doe by Doe v. Greenville Hospital Systems, 323 S.C. 33, 448 S.E.2nd 564 (Ct. App 1994). (R. p. 120, line 18)

Conclusion

Defendant failed to comply with the Brady Rule in turning over the CDV documents in a timely manner by concealing them which would of aided the Plaintiff in filing the negligent

supervision and retention claim sooner. Otherwise, there would have been no other reason to file that claim against Deputy Novak any earlier than when Plaintiff's attorney found out about the CDV in March of 2011 and the 2 years should of started to run then. Therefore, Judge Mullen's granting of Defendant's summary judgment motion should have been denied and this cause of action be allowed to go to trial.

Respectfully submitted,

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Dated: June 16, 2015

I certify that the Appellant's **Final Brief** complies with Rule 211(b) of the South Carolina Appellate Court Rules.

_____

Eric J. Erickson, Esquire

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PROOF OF SERVICE

I certify that I have served the **FINAL BRIEF OF APPELLANT** on Respondent, by depositing a copy of the same in the United States Mail, postage prepaid, on June 16 2015 addressed to his counsel of record as follows:

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