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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2013-CP-40-05675

RECEIVED

SEP 14 2015

SC Court of Appeals

TRANSCRIPT OF RECORD

Willie J. Riley,)
Plaintiff,)
vs.)
Dennis Wayne Catoe and Does,)
Defendants.)

March 2, 2015
Columbia, South Carolina

B E F O R E:

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

A P P E A R A N C E S:

WILLIE J. RILEY, PRO SE
Appearing for the Plaintiff

LESLIE A. COTTER, JR., ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

1 I N D E X O F W I T N E S S E S

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4 (WHEREUPON, no witnesses were called

5 during these proceedings.)

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10 E X H I B I T S

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13 (WHEREUPON, no exhibits were introduced

14 during these proceedings.)

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1 approach? I do have extra copies.

2 THE COURT: I am about to get to it. I'm down
3 to your motion. You said it was attached.

4 MR. COTTER: Yes, sir.

5 THE COURT: I'm down to your affidavit.

6 MR. COTTER: Yes, sir.

7 In essence, Your Honor, my affidavit, as Your
8 Honor can read and will see, it is based on the
9 fact that we served requests for admission in this
10 case under Rule 36. Those were attached as Exhibit
11 A to our -- to my affidavit.

12 And as of the date of the filing of my
13 affidavit, we, on behalf of the Defendant,
14 Mr. Catoe, did not receive any responses or
15 objections or anything in response to those.

16 And as a result of that, by operation of Rule
17 36A and B, we would request that the matters
18 contained in those requests for admission are and
19 should be deemed all admitted under the rules.

20 So that is an aspect of our motion for summary
21 judgment. But, of course, Your Honor, the basis of
22 our motion for summary judgment is what the
23 legislature has enacted with respect to the statute
24 of limitations for legal malpractice actions, which
25 is a statutory three years, quote, after the person

1 knew or by the exercise of reasonable diligence
2 should have known that he had a cause of action.
3 And that is Section 15-3-530 and 15-3-535.

4 And we're also relying on the seminal case of
5 Epstein versus Brown, found at 610 S.E.2d 816, on
6 Page 18 in particular.

7 Your Honor, as we have set forth in our motion
8 for summary judgment -- which is really a
9 combination of a motion and memorandum all in
10 one -- with respect to the original complaint, by
11 way of history, Your Honor, it was defective as a
12 matter of law because it did not contain the
13 required contemporaneously filed affidavit of an
14 expert. It was missing the expert affidavit. And
15 therefore it was dismissed by the Court's order
16 filed February 18th, 2014.

17 Thereafter, the Plaintiff filed an amended
18 complaint which is the complaint which is before
19 Your Honor right now on which our motion for
20 summary judgment is based.

21 The Plaintiff's amended complaint was not
22 filed until March 4th, 2014. And, Your Honor, on
23 behalf of the Defendants, we submit that it was
24 not -- this action has not been properly commenced
25 as a matter of law within the three year statute of

1 limitation period for a legal malpractice action
2 against my client, Attorney Dennis Catoe.

3 And, Your Honor, we have set forth in our
4 motion the triggering dates when the statute of
5 limitation clocks should begin to run. And of
6 course the discovery rule applies. And under the
7 statutes and under the Epstein v. Brown case, it is
8 undisputed in the record that the Plaintiff,
9 Mr. Riley, knew or should have known that he had a
10 potential legal malpractice claim against the
11 Defendant Catoe when he sought and received the
12 advice of an independent attorney, William E.
13 Booth, III, in early June, 2009. And that is when
14 both Mr. Booth and Mr. Riley recognized and knew
15 that they had a legitimate problem with his title
16 to and ownership of the subject property.

17 And, Your Honor, that is a defined term. It
18 is defined in our answer. And the subject property
19 involved a piece of property located at 2181
20 Whitaker Parkway in Orangeburg. And I have
21 referenced that in the first page of my motion too.

22 Your Honor, it was early June, 2009, when the
23 Plaintiff Riley knew that he had a legitimate
24 problem with his title and ownership to the subject
25 property purchased, for which my client, Mr. Catoe,

1 was the real estate closing attorney.

2 The real estate closing transaction occurred
3 July 29th, 2008. And, Your Honor, as we have
4 attached as Exhibit 1 to our motion for summary
5 judgment on behalf of Mr. Catoe, Exhibit 1 is a
6 letter that Mr. Booth --

7 THE COURT: I have seen a letter of
8 August 4th, but that is Exhibit 3.

9 MR. COTTER: Pardon me?

10 THE COURT: You know I am a speed reader.

11 MR. COTTER: Yes, I know you are, Your Honor.

12 THE COURT: I'm down to Booth's letter of
13 August 3rd, 2009.

14 MR. COTTER: Yes, sir. That is attached as
15 Exhibit 1. It is also attached to my affidavit.
16 That is correct.

17 THE COURT: It is Exhibit 3 in here, is all
18 I'm saying.

19 MR. COTTER: Yes, sir. You have flipped ahead
20 of me. But it is also Exhibit 1, Your Honor.

21 THE COURT: Okay.

22 MR. COTTER: And, Your Honor, I have been in
23 front of you a long time, I know you are a speed
24 reader, but that is the date which the three year
25 statute of limitations under the seminal case of

1 Epstein v. Brown, under the legislative mandate,
2 that is when the three year statute of limitations
3 clock would start. And this action was not
4 commenced within three years after that date.

5 Thank you, Your Honor.

6 MR. RILEY: How are you doing, Your Honor? My
7 name is Willie Riley, and I'm representing myself
8 here in a pro se case.

9 To respond to the statute of limitations, me
10 and Mr. Catoe had an agreement. And he actually
11 told me -- because from 2000 -- around 2010/2011,
12 we left -- we had a continuance at a court date
13 that the judge had to actually leave from court.
14 And the same judge actually left from court
15 actually end up retiring. So we actually had a
16 conversation where he actually, you know, addressed
17 me and gave me the information about the statute of
18 limitations might be running out on the case.

19 He also insured me that even though that my --
20 he said even though that my title insurance only
21 covered \$3,800, so it didn't really matter because
22 he had his own insurance that he would actually
23 submit a claim to, but he said we could not submit
24 the claim to the insurance company until we
25 actually know the total of the title of the actual

1 damages.

2 And he keep giving me this -- he would keep
3 saying this and keep saying this over and over that
4 we can't file for the claim until we actually know
5 what we are filing for. He was saying anything we
6 doing as filing would have been premature.

7 And I also have a letter from him that, you
8 know, he actually, you know, actually said these
9 things in the letter, you know, actually replying
10 to that he was going to submit a claim to his
11 insurance company.

12 And this is my first time ever hearing
13 anything about a statute of limitations as far as
14 him using that as a defense.

15 THE COURT: Well, see, he got a lawyer and you
16 didn't. That is the problem you have got.

17 MR. RILEY: Uh-huh. Well, you're right.

18 THE COURT: Statute of limitations is three
19 years, and it would have started running at least
20 from August 4th of 2009. So he is well without the
21 statute of limitations. But the legislature says
22 in that case he mentioned, says that is tough luck.
23 So --

24 MR. RILEY: But isn't it possible that an
25 attorney could actually, you know, waive his

1 statute of limitations?

2 THE COURT: Could be, but that is not in front
3 of me today. You know, if you had an attorney, he
4 might have done that for you. You can't just stand
5 there and say that, you have got to do some stuff.
6 I can't give you legal advice.

7 MR. RILEY: See, the advice that I have had,
8 you know, that I would like to present is that he
9 actually, in a letter written from him, from his
10 office, showing that, you know, that he was going
11 to actually -- he agreed to actually waive his
12 statute of limitations based on the fact that he
13 had his own insurance company.

14 THE COURT: Show me the letter.

15 (Pause.)

16 THE COURT: Of course they offered to pay you
17 money. Why didn't you take it?

18 MR. RILEY: Who offered to pay me money?

19 THE COURT: Somebody. I thought.

20 (Pause.)

21 THE COURT: They filed an offer of judgment
22 for you for \$8,500 back in December.

23 MR. RILEY: Yes, he did an offer of judgment
24 of \$8,500, but he know the damages amount is way,
25 way over.

1 THE COURT: You paid \$3,000 something for the
2 lot.

3 MR. RILEY: No, I paid \$3,000 something for
4 the lot. And I also did -- and I actually have
5 evidence of that, that he actually submitted to the
6 Appellate Court that I had damages, you know,
7 exceeding \$3,800 worth on renovations to this
8 property. And basically that is the reason why he
9 said the -- if it was just about the \$3,800, I
10 would have just filed with the title insurance
11 company from Day One, but because of the damages --
12 and maybe that is what he addressed to me -- that
13 the damages was not going to exceed -- I mean, the
14 title company was not going to exceed the \$3,800.
15 But he knew my damages was way exceeded \$3,800.

16 And, I mean, from the law, I was understanding
17 that even from an acknowledgment of debt is also a
18 tolling of the statute of limitations, which he
19 knew from Day One that this claim was based on
20 damages.

21 I mean, our whole conversation always been to
22 what we never knew the actually amount of the
23 damages to be able to file. And he keep telling me
24 that it would have been premature to even waste the
25 Court's time filing for damages if we haven't got

1 the concluded price of the actual damages.

2 And at the same time I was giving him a chance
3 to actually really -- I didn't want to go in court
4 and say I was asking for a certain amount of money
5 when I could have recovered a certain amount of
6 money on the back end of it.

7 So basically that is where it came from, you
8 know, is just that -- but he always assured me that
9 we were not going to have a problem with the claim.

10 THE COURT: That is not what this letter says.
11 Mark it as his exhibit.

12 MR. RILEY: I also have e-mails that he
13 actually, you know, admits to the damages that he
14 knew that I was incurring.

15 THE COURT: You are reading it the wrong way.
16 He doesn't admit to that. He says he personally is
17 out of pocket \$4,000 in costs and \$10,000 in legal
18 fees.

19 MR. RILEY: No. No, Your Honor, I'm saying I
20 have e-mails that he actually sent to another
21 attorney that he actually admit that I was
22 incurring damages from Day One.

23 THE COURT: He said if you had settled you
24 wouldn't have incurred any of the appeal costs. I
25 read the letter. I know you don't know; the

1 lawyers know I am a speed reader.

2 MR. RILEY: My thing, I wasn't speaking on the
3 actual appeal costs, you know what I'm saying, on
4 the appeal costs he was saying that I could have
5 settled with another client, which I never heard
6 anything about, you know, as far as what the client
7 said.

8 THE COURT: Well, the statute of limitations
9 has got it. Tough luck. All right.

10 MR. COTTER: Thank you, Your Honor.

11 THE COURT: Prepare an order.

12 MR. COTTER: Yes, sir. Thank you, Your Honor.

13 THE COURT: Put in there he also did about 17
14 requests for admissions, something like that.

15 MR. COTTER: Yes, sir.

16 THE COURT: He never answered those either.

17 MR. RILEY: I mean, I am going to address you
18 in response to that. I actually -- he said he had
19 sent it to him. I sent an e-mail telling him that
20 I didn't receive it, and he said by the e-mail
21 address. And I responded to him telling him that
22 the e-mail address that he actually sent it to is
23 an e-mail address that I no longer had. And I
24 actually sent him the e-mail address, the current
25 one. And I spoke with him on the phone, and it was

1 never --

2 THE COURT: Who are you calling him?

3 MR. RILEY: I'm sorry. I'm sorry, Your Honor.

4 Mr. --

5 THE COURT: Cotter?

6 MR. RILEY: Cotter. And I actually -- I spoke
7 with him on the telephone.

8 MR. COTTER: Your Honor, I didn't get an
9 e-mail from him after the requests for admission
10 were served, and I don't recall any telephone call
11 I had with him.

12 THE COURT: Well, put that in your order, sign
13 an affidavit to that effect. Okay.

14 MR. RILEY: All right, thank you, Your Honor.
15 (Pause.)

16 THE COURT: And, incidentally, I don't know
17 this other lawyer. I know Cotter.

18 MR. RILEY: Huh?

19 THE COURT: I don't know the one you are
20 suing.

21 MR. RILEY: Oh, okay.

22 THE COURT: Okay? Anytime somebody rules
23 against them they say the judge has been meeting
24 with the lawyer. I just don't know him. That's
25 all.

1 MR. RILEY: Huh? No, you know --

2 THE COURT: I know, I am just telling you --

3 MR. RILEY: I mean, I understand your point.

4 THE COURT: I'm just saying if I had known him
5 I would have said I can't hear the case.

6 MR. RILEY: Oh, okay. Okay.

7 MR. COTTER: Your Honor, may I approach and
8 just write down the -- I didn't get a copy of the
9 letter he handed up, so I'm not --

10 THE COURT: The court reporter can't --
11 doesn't have it right now. You can get it from her
12 later. You can go to the clerk's office and make a
13 copy.

14 MR. COTTER: Okay.

15 THE COURT: He might give you a copy too.

16 MR. RILEY: I mean, here is a copy of it. I
17 took the letter to his office. You know, we took
18 all the files over there, so he has a copy of the
19 letter.

20 MR. COTTER: That was long before the requests
21 for admissions were being served. But, anyway.

22 THE COURT: Anyway. She doesn't have any
23 capability of making a copy.

24 MR. COTTER: No, no, I understand that. I was
25 just going to approach just to write the date down.

1 THE COURT: Okay.

2 MR. RILEY: Your Honor, I have got another
3 quick question. So is there any way I can appeal
4 this decision?

5 THE COURT: Sure.

6 MR. RILEY: Do I have to do a request for an
7 appeal or I just need to --

8 THE COURT: I am not giving you any legal
9 advice. That is the problem when you try to
10 represent yourself. There are time limits on it.

11 MR. RILEY: Well, I mean, I would like to --

12 THE COURT: Time you get the thing, you need
13 to do something like in ten days or something.

14 MR. RILEY: All right. I understand.

15 THE COURT: It would be in your best interest
16 if you sold the lot.

17 MR. RILEY: I appreciate it. Thank you.

18 THE COURT: All right.

19 (WHEREUPON, the proceedings were concluded.)
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25 (END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

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SEP 14 2015
SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

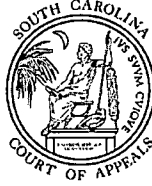
I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 2nd day of March, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 12, 2015

s/ Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter



Shelby left message
2:35 pm August 31, 2015

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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August 28, 2015

Willie J. Riley
84 Wild Indigo Ct.
Columbia SC 29229

Re: Willie Riley v. Dennis Catoe
Appellate Case No. 2015-001627

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SEP 14 2015

SC Court of Appeals

Dear Mr. Riley:

Our records reflect that the time for ordering the transcript has expired. Within ten days of the date of this letter, you must file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten days of the date of this letter.

Very truly yours,

Jenny Abbott Kitchings

CLERK

cc: Leslie A. Cotter, Jr., Esquire