THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
William P. Keesley, Circuit Court Judge

Case No. 2012-CP-32-0342

Kay F. Paschal, ... Respondent/Appellant,

v.

Leon Lott, the Duly Elected Sheriff of
Richland County, South Carolina, ... Appellant/Respondent.

RESPONDENT'S BRIEF OF APPELLANT-RESPONDENT

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STATEMENT OF THE CASE

This appeal involves a malicious prosecution and abuse of process action brought by the Respondent-Appellant Kay F. Paschal against the Appellant-Respondent Leon Lott in his official capacity as Sheriff of Richland County. In her complaint, Paschal asserted causes of action for false arrest, malicious prosecution, abuse of process, negligence and civil conspiracy. Prior to trial, the Defendants Heidi Scott,[1] Elizabeth Wallace and Jeffrey Wallace were dismissed. In addition, the civil conspiracy claim was dismissed.

The causes of action proceeded to trial on July 21, 2014, before Circuit Judge William P. Keesley and a jury. At the close of Paschal's case and again at the close of the evidence, Sheriff Lott moved for a directed verdict on multiple grounds. Judge Keesley granted a directed verdict on the false arrest claim, and Paschal withdrew the negligence claim. (R. 870). The malicious prosecution and abuse of process claims were submitted to the jury, which returned a verdict in favor of Kay Paschal on both claims. The jury also awarded actual damages of $1.61 million. (R. 14).

After the verdict was returned, Sheriff Lott filed a motion for a judgment notwithstanding the verdict (JNOV). In the alternative, Sheriff Lott also moved for a

[1] Lt. Heidi Scott is now known as Heidi Jackson. She has been referred to by both names in the record including the trial transcript. For ease of discussion, she is being referred to as Heidi Scott in the briefs filed by Sheriff Lott in this appeal.

new trial absolute and a new trial nisi remittitur. Judge Keesley denied each of those motions. (R. 1-11). He did, however, reduce the verdict to $300,000 consistent with the monetary caps under the South Carolina Tort Claims Act. (R. 11).

Kay Paschal filed a Rule 59(e) motion which was denied by Judge Keesley by order filed April 30, 2015. (R. 12-13).

Sheriff Lott thereupon filed a timely appeal to this Court. Paschal also filed a cross-appeal.[2]

[2] In her brief, Paschal includes a detailed "statement of facts" which is not pertinent to the purely legal issues raised by Paschal on cross-appeal. Sheriff Lott, therefore, is not responding to that "statement of facts" in this brief but relies on the factual discussion contained in the briefs filed with respect to his appeal.

ARGUMENTS

I. The trial court ruled correctly in applying the monetary caps pursuant to the South Carolina Tort Claims Act and reducing the verdict to $300,000.

The Respondent-Appellant Kay Paschal contends on appeal that Circuit Court Judge William Keesley erred in reducing the verdict to the statutory cap of $300,000 pursuant to Section 15-78-120(a)(1) of the South Carolina Tort Claims Act. Paschal argues that the statutory caps under the Tort Claims Act are applicable only to negligence claims and not to any other types of tort actions against governmental entities. In effect, Paschal claims that the General Assembly did not intend to place any monetary cap on liability for non-negligence claims against governmental entities. Judge Keesley ruled correctly in rejecting Paschal's novel and unsubstantiated argument.

The statutory caps are codified at Section 15-78-120 of the Tort Claims Act, which provides in pertinent part as follows:

> (a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:
>
> (1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

See, S.C. Code Ann. § 15-78-120(a)(1). Paschal bases her argument on the definition

of "occurrence" which is defined in the Tort Claims Act as "an unfolding sequence of events which proximately flow from a single act of negligence." *See*, S.C. Code Ann. § 15-78-30(g). Thus, Paschal equates an "occurrence" with a "single act of negligence," and based thereon, she claims that the monetary caps only apply to negligence claims. She, in fact, insists that the General Assembly never intended the caps to apply to intentional torts, such as the abuse of process and malicious prosecution claims litigated in the present case.

Paschal, however, fails to cite to any legislative history or other authority to demonstrate that the General Assembly's intent was to subject governmental entities to unlimited liability for intentional torts or that the intent was to apply the monetary caps to negligence claims alone. The legislative history, the language in the Tort Claims Act itself, and existing precedent do not support Paschal's position.

"The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible." *Sumter Police Department v. Blue Mazda Truck*, 330 S.C. 371, 498 S.E.2d 894, 896 (Ct. App. 1998). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute." *Id.* "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." *TNS Mills. Inc. v. South Carolina Department of Revenue*, 331 S.C. 611,

620, 503 S.E.2d 471, 476 (1998).

In addition, it is well settled that provisions of the Tort Claims Act "must be liberally construed in favor of limiting the liability of the State." *See*, S.C. Code Ann. § 15-78-20(f) (Supp. 1997). *See also*, *Baker v. Sanders*, 301 S.C. 170, 392 S.E.2d 229 (1990); *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117 (1998). In 1997, the General Assembly even added Section 15-78-200 to the Tort Claims Act, which reiterated that "[t]he provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and *must be liberally construed in favor of limiting the liability of the governmental entity*." *See*, S.C. Code Ann. § 15-78-200. (Emphasis added). The title to the 1997 legislation, in fact, requires any "ambiguity to be resolved as a matter of law in favor of the government." 1997 Act No. 155, Part II, Section 55.

The original legislative intent for the Tort Claims Act from 1986, as set out in Section 15-78-20(a), states that "neither should the government be subject to unlimited nor unqualified liability for its actions." *See*, S.C. Code Ann. § 15-78-20(a). Thus, from the outset, the General Assembly intended for there to be limited liability for *all* tort claims, as opposed to just negligence claims, as Paschal argues. That was reiterated in 1997, when the General Assembly reenacted the monetary caps. At that time, the General Assembly included the following legislative finding: "because of the unique nature, role, funding, and function of government, the General Assembly has never intended that the government or

taxpayers would be subject to *unlimited liability for tort actions* against the government." *See*, 1997 Act No. 155, Part II, Section 55. (Emphasis added). Again, the General Assembly focused on all tort claims and not just negligence claims.

Finally, two additional provisions in the Tort Claims Act also support the lower court's ruling. Section 15-78-120(a) starts by stating "*For any action or claim for damages* brought under the provisions of this chapter, the liability shall not exceed the following limits: ...." *See*, S.C. Code Ann. § 15-78-120(a). (Emphasis added). The key phrase is "any action or claim for damages." This indicates that the monetary caps were intended to apply to any and all tort claims -- not just negligence claims. If the intent were to apply the caps to just negligence claims, as Paschal claims, the General Assembly would not have used the language "any action or claim for damages brought under the provisions of this chapter" in the introductory clause for the caps provision of the Act. Similarly, Section 15-78-140(c) states: "For any claim filed under this chapter, the remedy provided in § 15-78-120 is exclusive." *See*, S.C. Code Ann. § 15-78-140(c). Again, the General Assembly used the term "any claim" and did not limit the exclusive remedy of Section 15-78-120 to "any negligence claim."[3]

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[3] The term "claim" is a defined term and 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

Existing case law addressing Section 15-78-120 and the monetary caps also supports the lower court's decision. In *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564 (1990), the Supreme Court rejected an equal protection challenge to the Tort Claims Act caps. The Supreme Court held as follows:

> [W]e find that the limitation on damages as set forth in the statute bears a reasonable relationship to the legislative objectives as expressed in Section 15-78-20(a) of relieving the government from hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed for an effective and efficient government. The limitations set forth in the statute rest on a reasonable basis and are not arbitrary in that the legislature has balanced the needs for services and demand for reasonable taxes against the fair reimbursement of injured tort victims.
>
> Finally, we find that the damage limitation provisions apply to similar plaintiffs in a similar manner. All tort victims injured by the State have a right to bring an action against it. ... [W]e find that potential plaintiffs are not treated disparately because the same monetary cap applies equally to the entire class of plaintiffs.

391 S.E.2d at 570. Thus, the Supreme Court spoke of "all tort victims" being treated the same by the monetary caps on liability. The Court did not differentiate between victims of negligence vis-a-vis victims of intentional torts or other non-

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his official duty." *See*, S.C. Code Ann. § 15-78-30(b). (Emphasis added). The General Assembly used the term "tort" rather than the term "negligence."

negligence based torts. The Court further addressed the legislative intent to relieve governmental entities from "unlimited and unqualified liability."

These principles were reiterated by the Supreme Court in 2008, when in the case of *Giannini v. South Carolina Department of Transportation*, 378 S.C. 573, 664 S.E.2d 450 (2008), the Court again rejected an equal protection challenge to the monetary caps. In that case, the plaintiffs challenged the constitutionality of the aggregate cap set forth in Section 15-78-120(a)(2). As the Supreme Court explained, the plaintiff claimed that a class consisting of "tort victims injured by the state are not treated the same under the statute because the dollar amount may vary and be limited by the amount of persons injured in an occurrence." 664 S.E.2d at 456. The Court disagreed and found "the limitation accords with the stated legislative purpose of preserving finite government assets and treats similar plaintiffs in a similar manner." *Id.*

In sum, Paschal suggests that the General Assembly intended to treat victims of negligence differently from victims of non-negligence torts. However, that distinction appears nowhere in the Tort Claims Act, the legislative history, the existing case law nor the rules of statutory interpretation that require the Act to be liberally construed in favor of limiting governmental liability. Paschal makes this claim only by interpolating a flawed definition of "occurrence" into the monetary cap provision to suggest that a distinction was intended between negligence claims

and other tort claims.[4] That is not the case. The General Assembly clearly intended for monetary caps to apply to all torts claims that may be brought pursuant to the Tort Claims Act, as is demonstrated in the legislative findings from 1986 and 1997, as well as in the introductory language to Section 15-78-120(a), which makes the caps applicable to "any action or claim for damages brought under the provisions of this chapter." *See*, S.C. Code Ann. § 15-78-120(a). For these reasons, in the event this Court reaches the issues raised on cross-appeal, the Court is requested to affirm the trial court's reduction of the verdict to $300,000.

II. The trial court ruled correctly that the jury's verdict on two causes of action did not entitle Kay Paschal to a $600,000 monetary cap.

As an alternative position, Kay Paschal further argues that, even if the monetary caps apply to this case, Judge Keesley erred in reducing the verdict to $300,000 rather than $600,000 because the jury returned a verdict for Paschal on two causes of action. Paschal cites to Section 15-78-120(a)(2) which provides for an aggregate cap of $600,000 per single occurrence. However, she fails to recognize that Section 15-78-120(a)(1) applies a "per person" cap of $300,000. Because Paschal is one person and has claimed that her loss arises from a single occurrence, then the applicable cap is $300,000.

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[4] In reality, the reference to "single act of negligence" in the definition of "occurrence" should be properly read as "single tortious act."

Paschal does not appear to be arguing that there were two occurrences so as to justify a verdict of $600,000. However, even if that were her argument, that position fails. In *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010), the Supreme Court explained that the plaintiff has the burden of proving multiple occurrences. The Court pointed out that "the jury was never instructed on the definition of occurrence nor was it asked to determine whether there was more than one occurrence, either in the instructions or in its verdict." 694 S.E.2d at 174. The Court thus concluded that the trial judge correctly reduced the verdict to $300,000 so as "to reflect a single occurrence." *Id.*

The same is true in the present case. Here, Paschal never presented proof of multiple occurrences. The jury was never instructed on the definition of occurrence nor asked to determine whether there was more than one occurrence. Moreover, as Judge Keesley explains in his order, Paschal's counsel at trial admitted the causes of action were the same or at least intertwined and that the damages would be the same under either theory of recovery. (R. 4). In fact, in a colloquy regarding the verdict form, Judge Keesley described the damages as "overlapping" and asked for Paschal's counsel to comment, to which the following was stated:

> Mr. Moore: I don't think we've got two different causes of action. The evidence would appear to be the same and the abuse of process they are claiming is a criminal investigation. If they award for malicious prosecution, that – they would be the same thing.

> The Court: All right, so you want me to have one verdict form, and if they find for the Plaintiff on either or both then they fill in the part about damages?
>
> Mr. Moore: I think that would be appropriate.

(R. 913-14).

In sum, Paschal has not demonstrated that the jury's finding in her favor on two causes of action entitles her to a $600,000 verdict. Section 15-78-120(a)(1) provides for a "per person" cap of $300,000 for a loss arising from a single occurrence. Paschal has not demonstrated nor did the jury find that her loss arose from more than one occurrence. Her counsel, in fact, conceded that the causes of action were the same and gave rise to the same damages. Judge Keesley, therefore, ruled correctly in reducing the verdict to $300,000.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant-Respondent Leon Lott respectfully requests that this Court reverse the jury's verdict and the order of Judge William P. Keesley filed December 11, 2014, and remand for entry of judgment in Sheriff Lott's favor. In the alternative, Sheriff Lott requests that the Court remand for a new trial absolute. However, should the Court reach the cross-claim brought by the Respondent-Appellant, the Court is asked to affirm the reduction of the verdict to $300,000.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant-Respondent Leon Lott certifies that the Final Respondent's Brief of Appellant-Respondent complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

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The undersigned counsel for the Appellant-Respondent Leon Lott certifies that the Respondent's Brief of Appellant-Respondent complies with the Supreme Court's Revised Order of April 15, 2014, regarding personal identifiers and sensitive information.

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