

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY

JUL 07 2017

Court of Common Pleas

SC Court of Appeals

Tanya A. Gee, Circuit Court Judge

Appellate Case No. 2016-000066

Terry Campbell, pro se,

Appellant,

v.

The State of South Carolina, The South Carolina Department of Corrections,
Director Bryan Stirling, Warden Bernard McKie, Officers Lt. McLaughlin
and Aubrey Pounds,

Respondents.

FINAL BRIEF

Terry Campbell

Catawba Pre-Release

1030 Milling Road

Rock Hill, S.C. 29730

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STATUTES

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STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT ERR IN FAILING TO RELATE BACK TO ORIGINAL PLEADING?

STATEMENT OF THE CASE

On February 6, 2015, the Plaintiff filed this action alleging negligence against The State of South Carolina by mailing his summons, complaint and motion to proceed in forma pauperis to the Clerk of Court of The Supreme Court of South Carolina which dismissed this action on April 8, 2015. On May 5, 2015, the Plaintiff refiled this action in The Supreme Court of South Carolina and on May 20, 2015, it was again dismissed.

On May 28, 2015, the Plaintiff his Notice of Intent to File Suit in the Richland County Court and on June 8, 2015, he filed his Summons, Complaint and motion to proceed in forma pauperis. The Defendant's filed a motion to dismiss on July 28, 2015, and on November 5, 2015, motion hearings were held and on November 13, 2015, a judgement was filed which granted the Defendant's motion to dismiss and on Nov. 16, 2015, an Order was filed dismissing the claims. On November 16, 2015, the Plaintiff mailed his motion to Alter or Amend judgment which showed that he had initially commenced this action on February 6, 2015, in The Supreme Court of South Carolina, arguing that this amended Complaint relates back to the original pleading.

On November 25, 2015, his motion to Alter or Amend was denied in a judgment ending the case, and the Plaintiff filed his Notice of Appeal pursuant to Rule 203, SCAER, which was dismissed by the Clerk of Court for failing to timely serve the notice of appeal. The Plaintiff filed a motion to re-instate which

was granted after the Defendant confirmed that the notice of appeal was matter-of-factly served on time.

ARGUMENT

THE DISTRICT COURT ERRED IN DENYING THE PLAINTIFF'S MOTION TO ALTER OR AMEND AFTER ADVISING HIM TO FILE IT WHEN IT CLEARLY SHOWED THAT HIS SUIT WAS COMMENCED WITHIN THE STATUTE OF LIMITATIONS AND THEREFORE SUMMARY JUDGMENT WAS IMPROPER.

Summary Judgment is to be granted only if the record before the court shows "that there is no genuine issue as to any material facts and that the moving party is entitled to a judgment as a matter of law." Rule 56(c) SCRPC. The Plaintiff argued in court that he did initially file his Complaint in The Supreme Court of South Carolina in February [2015], which was within the statute of limitations although he neglected to bring the Orders to prove this (Transcript pg 7, line 3) therefore the Defendant's motion to dismiss was granted for failure to file within the statute of limitations.

On Nov 13, 2015, The District Court filed a judgment granting the Defendant's motion to dismiss and on Nov 16, 2015, an order was filed which dismissed the Plaintiff's Complaint for failing to file the Complaint within the two-year statute of limitations as defined in S.C. Code Ann. § 15-78-110. On Nov 14, 2015, the Plaintiff sent his motion to alter or amend judgment pursuant to Rule 59(e) SCRPC, as advised by the Court (Transcript, pg. 8, line 16). In this motion the Plaintiff argued that he did in fact file his Complaint on Feb.

6, 2015, which was within the two-year statute of limitations, in The South Carolina Supreme Court accompanied by two orders showing the case being dismissed, those orders dated April 8, 2015, (Exhibit A of Plaintiff's motion to alter or amend, pgs. 8, 9, 10, 11), and May 20, 2015, (Exhibit B of Plaintiff's motion to alter or amend, pgs. 12, 13, 14), and pursuant to Rule 15(c), SCRPC, his Complaint filed in Richland County on June 8, 2015, would relate back to those filed on Feb. 6, 2015 and May 5, 2015.

On Nov. 25, 2015 [incorrectly stamped 2004 NOV 25], a judgment was filed which denied the Plaintiff's motion to alter or amend and ended the case and in doing so The District Court failed to relate back to the date of the original pleading which was Feb. 6, 2015, as defined in Rule 15(c) SCRPC, whenever the claim or defense asserted in the amended pleading arose out of the same conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. "The test to be used in determining whether or not an amendment should relate back under Rule 15(c), to the date of the original pleading to avoid the statute of limitations, is found in the language of the rule; specifically whether the claim or defense asserted in the amended pleading arose out of the same conduct, transaction or occurrence set forth in the original pleading Hiers v Mullens, 310 S.C. 63, 425 S.E. 2d 57 (Ct. App. 1992).

CONCLUSION

For the foregoing reasons, the grant of summary judgment should be reversed and the case should be remanded back to the District Court for trial.

July 1, 2017

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