THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2016-000335

Tiffany M. Martin, ...Appellant,

v.

Glenda Simmons, ...Respondent.

FINAL BRIEF OF RESPONDENT

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October 24, 2016

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STATEMENT OF ISSUES ON APPEAL

I) WHETHER APPELLANT'S ACTION AGAINST RESPONDENT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

STATEMENT OF THE CASE

This appeal arises out of an automobile accident occurring on August 24, 2012 in Horry County, South Carolina (R. p. 6, line 4). On October 28, 2015, Appellant filed a Complaint in the Horry County Court of Common Pleas asserting a negligence cause of action against Respondent arising out of the August 24, 2012 accident. Respondent moved to dismiss Appellant's Complaint on the basis that Appellant's action was not commenced within the applicable three-year statute of limitations. By a Form 4 Order dated January 19, 2016, Judge Culbertson granted Respondent's Motion to Dismiss, finding that Appellant's lawsuit "is barred by statute of limitations." (Form 4 Order). Appellant filed her Notice of Appeal challenging the trial court's Order on February 1, 2016.

STATEMENT OF THE FACTS

On August 24, 2012, Appellant Tiffany M. Martin was operating a motor vehicle Southbound on U.S. 701 in Horry County, South Carolina. (R. p. 6, line 3). In her Complaint, Appellant alleges that her vehicle was rear-ended by a vehicle being operated by Respondent Glenda Simmons. (R. p. 6, line 4). As a result of the automobile accident, Appellant alleges that she sustained injuries to her back, which were diagnosed by her doctor on January 17, 2013. (R. p. 6, line 7; Appellant's Brief, pg. 2).

STANDARD OF REVIEW

In reviewing a motion to dismiss, the Court applies the same standard of review as the trial court. Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012). Where, as here, there is no evidence that the trial court considered matters beyond the pleadings themselves in granting Respondent's Motion to Dismiss,

the Court is limited to considering the allegations set forth in the Complaint. See O'Laughlin v. Windham, 330 S.C. 379, 382, 498 S.E.2d 689, 690-91 (Ct. App. 1998) (recognizing that a ruling on a motion to dismiss must be based solely upon allegations set forth on the face of a complaint where there is no evidence that the trial court considered matters beyond the pleadings in granting the motion to dismiss). Thus, "[t]he question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief." Logan v. Cherokee Landscaping & Grading Co., 389 S.C. 611, 617, 698 S.E.2d 879, 882 (Ct. App. 2010).

ARGUMENT

I) THE TRIAL COURT'S DISMISSAL OF APPELLANT'S ACTION SHOULD BE AFFIRMED BECAUSE APPELLANT FAILED TO COMMENCE THE ACTION AGAINST RESPONDENT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS.

The trial court's dismissal of Appellant's Complaint should be affirmed because the action was not commenced within the applicable three-year statute of limitations, which began to accrue on August 24, 2012—the date of the automobile accident.

"Statutes of limitations are not simply technicalities." Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 632, 682 S.E.2d 1, 4 (Ct. App. 2009). On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Id. Section 15-3-530 of the South Carolina Code sets forth a three-year statute of limitations for the commencement of negligence actions. See S.C. Code Ann. § 15-3-530(5). Appellant does not dispute that the three-year time period provided in S.C. Code Ann. § 15-3-530 governs the commencement of her negligence action. However, Appellant contends that the statute of limitations did not begin to run until January of 2013, when Appellant

received a diagnosis regarding a back injury and became "aware of the underlying cause of the discomfort she was suffering from." (R. p. 6, line 7, Appellant's Initial Brief pg. 2-3).

"In a negligence action, the statute of limitations accrues at the time of the negligence or when the facts and circumstances would put a person of common knowledge on *notice* that there might be a claim against another party." True v. Monteith, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997). "Under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." Id. Thus, the statute of limitations begins to run when a plaintiff should know that she might have a potential claim against another person, not when the plaintiff develops a full-blown theory of recovery. Tanyel v. Osborne, 312 S.C. 473, 475, 441 S.E.2d 329, 330 (Ct. App. 1994).

The test for whether the injured party knew or should have known about the cause of action is objective rather than subjective. Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172, 183-84, 708 S.E.2d 787, 793 (Ct. App. 2011). A court must consider "whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." Id.

Under this objective standard, Appellant knew or should have known that a potential cause of action existed against Respondent on August 24, 2012, the date of the accident. A person with common knowledge and experience would have been put on notice that a potential claim may exist against Respondent—who Appellant alleges rear-

ended her vehicle—on the date of the accident itself. In Tanyel, a case cited by Judge Culbertson in his Form 4 Order dismissing Appellant's action, the South Carolina Court of Appeals determined that the statute of limitations on a motorist's claim based on the alleged negligence of a school bus driver began to run on the date of the accident itself, as opposed to when the motorist later discovered evidence to support a claim against the bus driver. Tanyel, 312 S.C. at 476, 441 S.E.2d at 331. In so holding, the court noted that the motorist "witnessed the physical involvement of the bus in the accident" and "[t]his fact, standing alone, gave [the motorist] notice that he might have a potential claim against the bus driver." Id. The court found that this notice triggered the statute of limitations from the date of the accident, rather than the discovery of evidence supporting the potential claim against the bus driver. Id. See also Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994) (recognizing that the plaintiff "should have been aware of a potential claim on the date of the [automobile] accident" despite the plaintiff's argument that the statute should not run until she could investigate her case, discover a cause of action, and discover who or what caused her injury).

Similarly to Tanyel and Wiggins, Appellant was put on notice of a potential claim against Respondent on August 24, 2012, as Appellant witnessed and experienced the collision with Respondent's vehicle on that date. Appellant's argument that the statute of limitations did not begin to run until January of 2013 when she became "aware of the injury resulting from [the] accident" after receiving a diagnosis from her doctor does not change the fact that Appellant was on notice of a potential claim against Respondent prior to this alleged diagnosis. Appellant's contentions regarding her medical treatment and diagnosis following the accident go to the development of her theory of recovery, not to

her initial notice of a potential claim. See Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998) ("[T]he statute [of limitations] is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'").

Further, the position advanced by Appellant evidences an attempt to convert the discovery rule from an objective to a subjective application. Appellant essentially argues that the statute of limitations began to run in January of 2013 when she received a medical diagnosis and became "aware of the underlying cause of the discomfort she was suffering from." (Appellant's Initial Brief pg. 2-3). However, the objective nature of the inquiry has been clearly established by South Carolina courts. See Martin v. Companion Healthcare Corp., 357 S.C. 570, 575, 593 S.E.2d 624, 627 (Ct. App. 2004 ("According to the discovery rule, the three-year statute of limitations found in section 15–3–350 begins to run when the underlying cause of action reasonably ought to have been discovered."). Appellant's position is untenable, as it would require courts to inquire into the medical treatment and/or awareness of each claimant in order to assess the accrual of the statute. However, the relevant inquiry for the purposes of the discovery rule is that of *notice* of a potential claim. Objectively, Appellant knew or should have known on the date of the accident—August 24, 2012—that a cause of action potentially existed against Respondent. Thus, under the applicable three-year statute of limitations, Appellant had until August 24, 2015 to commence a negligence action against Respondent.

Appellant's Complaint was filed on October 28, 2015, over two-months after the expiration of the statute of limitations. Title 15 of the South Carolina Code provides in relevant part that "[c]ivil actions may only be commenced within the periods prescribed

in this title after the cause of action has accrued." S.C. Code Ann. § 15–3–20. Appellant's action was not commenced within the applicable limitations period prescribed within Title 15. For this reason, Appellant's action is barred by the statute of limitations

II) APPELLANT IS NOT ENTITLED TO EQUITABLE TOLLING OF THE STATUTE OF LIMTATIONS.

As a threshold matter, as discussed above with respect to the standard of review, the requested relief sought by Respondent in the trial court was dismissal of the action. There is no indication in the record that Judge Culbertson considered any information outside of the pleadings in granting Respondent's Motion to Dismiss and dismissing the action as barred by the applicable statute of limitations. (Form 4 Order). As such, in adjudicating the instant appeal, the Court must consider whether the allegations set forth on the face of Appellant's Complaint state a valid claim for relief. See O'Laughlin, 330 S.C. at 382, 498 S.E.2d at 690 ("The grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law."). In that regard, the arguments presented by Appellant in Section II and Section III of her Initial Brief regarding equitable tolling and prejudice are not properly before the Court, as they present information and evidence beyond the scope of the pleadings themselves. Thus, the Court should disregard these arguments. See id. at 382, 498 S.E.2d at 691 (limiting the court's review on appeal to the portions of the appellant's argument pertinent to issues relating to dismissal and not beyond the scope of the pleadings).

However, even if the Court deems it appropriate to consider the arguments and information presented by Appellant that are beyond the scope of the pleadings, the application of equitable tolling is not merited in this case. In order to serve the ends of

justice where technical forfeitures would unjustifiably prevent a trial on the merits, South Carolina courts have recognized that the doctrine of equitable tolling may be applied to toll the running of the statute of limitations. Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). Equitable tolling stems from the judiciary's inherent power to formulate rules of procedure where justice so requires, and South Carolina courts have invoked the equitable tolling doctrine to suspend or extend the statutory period in order to ensure fundamental practicality and fairness. Id. However, "equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." Id. at 117, 687 S.E.2d at 33.

The party claiming that the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. Id. Appellant's basis for requesting that the statute be equitably tolled is that Appellant suffered "extensive injuries" and incurred medical costs related to these injuries. (Appellant's Brief, pg. 3). However, the fact that Appellant was allegedly injured and incurred medical costs as a result of her injuries does not present any unique or extraordinary circumstance sufficient to justify the implication of equitable tolling. See Am. Legion Post 15 v. Horry Cty., 381 S.C. 576, 583, 674 S.E.2d 181, 184 (Ct. App. 2009) (refusing to equitably toll the statute where no extraordinary circumstances or active misleading by the opposing party were present); Pelzer v. State, 378 S.C. 516, 521, 662 S.E.2d 618, 621 (Ct. App. 2008) ("[E]quitable tolling applies principally if the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his or her rights."). Indeed, Appellant's alleged injuries and medical treatment go to the basic elements of a negligence claim under South Carolina law. The record is devoid of any

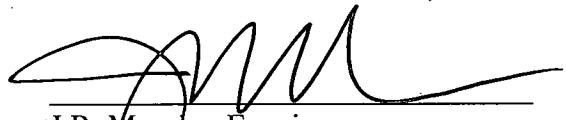
evidence providing an extraordinary circumstance or misleading by Respondent warranting the imposition of the doctrine of equitable tolling. Thus, Appellant has failed to sustain her burden of proof as to the doctrine of equitable tolling. As such, this Court should decline to equitably toll the statute of limitations.[1]

CONCLUSION

The three-year statute of limitations applicable to Appellant's negligence action began to run on August 24, 2012, the date of the accident. Appellant did not file her action against Respondent until October 28, 2015, over two months after the expiration of the statute of limitations. There is no evidence in the record of any extraordinary circumstances to justify the imposition of equitable tolling. Thus, based on the arguments presented above, Respondent respectfully requests that this Court affirm the trial court's dismissal of Appellant's action as barred by the statute of limitations.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



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October 24, 2016

[1] To the extent Appellant argues that Respondent will not suffer any prejudice based on the fact that Respondent is protected by a Covenant Not to Execute, Respondents contend that this information is outside of the scope of the pleadings and not properly before this Court. See O'Laughlin, 330 S.C. at 382, 498 S.E.2d at 690. However, to the extent the Court considers this information, Bristol West Insurance Company, as the insurer alleged to have provided underinsured motorist coverage to the Respondent, properly appeared in the action pursuant to South Carolina Code Section 38-77-150.

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CERTIFICATE

I, J.R. Murphy, Esquire, attorney for Respondent, certify that the Respondent's Final Brief complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

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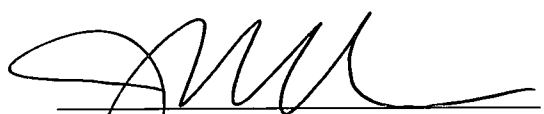
PROOF OF SERVICE

I certify that I have served the Respondent's Final Brief and Designation of Matter on Ralph J. Wilson, Attorney for Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on October 31, 2016, addressed to P.O. Box 2461, Conway, SC 29528.

MURPHY & GRANTLAND, P.A.



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