

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS
THE HONORABLE BENJAMIN H. CULBERTSON
CIRCUIT COURT JUDGE

RECEIVED

NOV 15 2017

APPELLATE CASE NO. 2017-001381
CIVIL ACTION NO. 2017-CP-26-0489

SC Court of Appeals

Richard B. Lamb,

APPELLANT,

versus

State of South Carolina DMV,
Office of General Counsel,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

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OFFICE OF GENERAL COUNSEL**

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COUNTERSTATEMENT OF ISSUES ON APPEAL

- I. The Plaintiff's claims against the SCDMV are barred by the immunity provided under the licensing powers and functions exception of the South Carolina Tort Claims Act.

- II. The Trial Court correctly granted summary judgment to the SCDMV because the Plaintiff's claims are barred by the two-year statute of limitations set forth under the South Carolina Tort Claims Act.

COUNTERSTATEMENT OF THE CASE

On January 26, 2017, Appellant Richard B. Lamb filed a Complaint in the Court of Common Pleas for Horry County against Respondent State of South Carolina DMV, Office of General Counsel (“SCDMV”) arising out of Lamb’s suspension of his driver’s license eight years earlier in 2008 for failure to provide proof of insurance. [R.pp. ___; Complaint.] The SCDMV filed its Answer on February 27, 2017, denying the material allegations of the Complaint and asserting as affirmative defenses the expiration of the applicable statute of limitations and the immunities provided under the South Carolina Tort Claims Act. [R.pp. ___; Answer.]

On March 27, 2017, the SCDMV filed a Motion for Summary Judgment on the claims asserted in Lamb’s Complaint, as well as a memorandum in support of the motion. [R.pp. ___; ___; Mtn.; Memo.] The SCDMV argued that Lamb’s claims were barred under Section 15-78-60(12) of the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-60(12), which provides that a governmental entity is not liable for a loss resulting from “licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner.” Noting that Lamb had not alleged in his Complaint that the suspension was done in a grossly negligent manner, the SCDMV argued it was immune from liability under the provisions of § 15-78-60(12). [R.pp. ___; Memo., pp. 2-3.]

The SCDMV further argued it was entitled to summary judgment because Lamb's claims were barred by the two-year statute of limitation set forth in Section 15-78-110 of the Tort Claims Act, S.C. CODE ANN. § 15-78-110. [R.p. ____; Memo., p. 3.]

A hearing on the SCDMV's Motion for Summary Judgment was held before the Honorable Benjamin H. Culbertson on May 17, 2017. [R.pp. ____; Hearing Tr.] At the conclusion of the hearing, the Trial Court orally granted summary judgment to the SCDMV. [R.pp. ____; Id. at pp. 10, l. 25 – 11, l. 1.] The Trial Court filed its written Order Granting the Motion for Summary Judgment on May 23, 2017, ruling that the SCDMV was immune from liability under § 15-78-60(12) and that Lamb's claims were barred by the two-year statute of limitations set forth in § 15-78-110. [R.pp. ____; Order.]

Lamb filed and served his Notice of Appeal on or about June 19, 2017.

COUNTERSTATEMENT OF THE FACTS

In 2008, Lamb was the record owner of a 2003 Dodge vehicle, tag number 2897DB. [R.p. ___; Wannamaker Aff., ¶ 4.] The SCDMV received notification from Progressive Direct Insurance that the vehicle might be uninsured. [R.p. ___; Id.]

South Carolina law provides that a motor vehicle registered in South Carolina is required to maintain proof of insurance at all times in conformity with the law. S.C. CODE ANN. § 56-10-225. Further, if the SCDMV database indicates a vehicle is uninsured or the SCDMV receives notification that the vehicle may be uninsured, the SCDMV is required to notify the owner of the vehicle that he has twenty (20) working days to provide proof of complying with the coverage laws of the State or provide proof of exemption. S.C. CODE ANN. § 56-10-650. If a driver fails to comply, his driving privileges and vehicle license plate tag will be suspended. Id. Unless otherwise permitted by law, the SCDMV may not suspend a person's driver's license for more than one year, and to restore a driver's license, a person may submit an application for reinstatement of his driver's license and pay the applicable fee as provided by law. S.C. CODE ANN. § 56-1-380.

On November 25, 2008, the SCDMV sent a letter to Lamb, the owner of record of the vehicle, stating that the vehicle may be uninsured [R.pp ___; ___; Wannamaker Aff., ¶ 5; November 25, 2008 Notice.] The notice informed Lamb that he was required to respond to the notice by either providing proof of insurance for the vehicle, providing proof that the vehicle had been sold or traded, or by surrendering the vehicle tag and registration card to the nearest SCDMV branch office. [R.pp. ___; ___; Wannamaker Aff., ¶ 5; November 25, 2008 Notice.]

In accordance with § 56-10-650, the notice further advised Lamb that failure to comply with the notice before the listed suspension date would result in the suspension of his vehicle and/or driver's license. [R.p. ___; November 25, 2008 Notice.] Due to a computer glitch, however, the notice misstated that Lamb had to respond before the suspension date of December 17, 2008, which was less than the twenty (20) working days as provided under the statute. [R.pp. ___; ___; Wannamaker Aff., ¶ 6; November 25, 2008 Notice.] Allowing for twenty (20) working days from November 25, 2008, Lamb had until December 30, 2008 to respond to the notice. [R.p. ___; Wannamaker Aff., ¶ 7.] Lamb did not respond by December 30, 2008 and did not turn in his vehicle license plate tag into the SCDMV until January 14, 2009. [R.p. ___; Id.]

As of January 14, 2009, Lamb was eligible to apply to have his driver's license reinstated upon submitting an application and paying a fee. [R.p. ___; Id. at ¶ 8.] Therefore, the SCDMV was not in violation of § 56-1-380 because it did not suspend Lamb's license for more than one year and Lamb had always been eligible to apply to reinstate his driver's license since January 14, 2009.

Lamb did not submit an application and fee to reinstate his driver's license at any time prior to filing his Complaint and had not submitted any application at the time the Trial Court granted summary judgment to the SCDMV on May 23, 2017. [R.p. ___; Id. at ¶ 9.] Instead of applying for reinstatement of his driver's license, Lamb filed this lawsuit approximately eight years after turning in his vehicle license plate tag to the SCDMV, alleging that the SCDMV violated S.C. CODE ANN. § 16-17-735 and S.C. CODE ANN. § 15-75-60. [R.pp. ___; Complaint.]

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c) of the South Carolina Rules of Civil Procedure. Ellis v. Davidson, 358 S.C. 509, 517, 595 S.E.2d 817, 821 (Ct. App. 2004). Rule 56(c) provides a motion for summary judgment shall be granted if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” See Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181 (2013). “In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment.” Id.; Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013).

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citations omitted). The party seeking summary judgment under Rule 56(c) has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis, 358 S.C. at 518, 595 S.E.2d at 822. “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. . . . Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” Id. at 518-19, 595 S.E.2d at 822. “[W]hen

plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Id. at 518, 595 S.E.2d at 822.

ARGUMENT

I. The Plaintiff’s claims against the SCDMV are barred by the immunity provided under the licensing powers and functions exception of the South Carolina Tort Claims Act.

The South Carolina Tort Claims Act governs all tort claims in South Carolina against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See Murphy v. Richland Mem’l Hosp., 317 S.C. 560, 562, 455 S.E.2d 688, 689 (1995); Wells v. City of Lynchburg, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998); S.C. CODE ANN. § 15-78-20(b) (“The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b).”); S.C. CODE ANN. § 15-78-70(a) (“[The Tort Claims Act] constitutes the exclusive remedy for any tort committed by an employee of a governmental entity.”). “The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” S.C. CODE ANN. § 15-78-20(f).

In this case, Lamb’s claims against the SCDMV invoke the provisions and immunities of the South Carolina Tort Claims Act. The SCDMV is a governmental entity as defined in the Tort Claims Act. See S.C. CODE ANN. § 15-78-30(d) (“Governmental entity” means “the State and its political subdivisions.”); § 15-78-30(e) (“State” includes any agency of the State); § 56-1-5(A) (establishing the SCDMV as an

agency of the State).

While the Tort Claims Act provides that the State, its agencies, political subdivisions, and other governmental entities are “liable for their own torts in the same manner and to the same extent as a private individual under like circumstances,” the Act also provides certain limitations and exceptions to liability. S.C. CODE ANN. §§15-78-40, -60. In particular, one such exception provides:

The governmental entity is not liable for loss resulting from:

...

licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner.

S.C. CODE ANN. § 15-78-60(12).

Lamb’s claims against the SCDMV arising out of his license suspension fall under this exception; therefore, the SCDMV is not liable for any alleged loss. The exception to liability provided under Subsection (12) of § 15-78-60 of the Tort Claims Act applies to the SCDMV because it is the state agency authorized to issue driver’s licenses and to register and license vehicles in South Carolina. S.C. CODE ANN. §§ 56-1-5; 56-1-20; 56-1-140; 56-3-190. Pursuant to S.C. CODE ANN. § 56-10-650, the SCDMV is further authorized to suspend a motor vehicle’s owner’s driving privileges and the vehicle license plates if the owner does not provide proof of insurance coverage or proof of exemption from the financial security requirements. Accordingly, the SCDMV’s actions with respect to Lamb’s claims were well within the licensing function and powers

of the agency.

Although the exception to liability under Subsection (12) of § 15-78-60 provides that immunity will not apply when the “power or function is exercised in a grossly negligent manner,” Lamb made no allegations in his Complaint that his license suspension was done in a grossly negligent manner. [R.pp. ___; Complaint.]

In addition, the facts established below unequivocally show that the SCDMV was not grossly negligent with respect to Lamb’s license suspension. “Gross negligence is the intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do.” Worsley Cos. v. Town of Mt. Pleasant, 339 S.C. 51, 57, 528 S.E.2d 657, 661 (2000).

In response to Lamb’s allegations, the SCDMV submitted the Affidavit of William C. Wannamaker, the Financial Responsibility Manager for the SCDMV. [R.p. ___; Wannamaker Aff., ¶ 2.] He averred that the November 25, 2008 notice sent to Lamb, advising Lamb that his vehicle may be uninsured and informing Lamb of the requirement that he respond, misstated a response date of December 17, 2008, which was less than the twenty (20) working days provided under S.C. CODE ANN. § 56-10-650(A), due to a computer glitch. [R.pp. ___; ___; Id. at ¶¶ 5-6; November 25, 2008 Notice.] Wannamaker further averred that allowing for twenty (20) working days from November 25, 2008, Lamb had until December 30, 2008 to respond to the notice but that Lamb did not respond and turn in his vehicle license plate tag to the SCDMV until January 14, 2009. [R.p. ___; Wannamaker Aff., ¶ 7.]

Lamb was eligible on January 14, 2009 to apply to have his driver’s license instated upon submitting an application and paying a fee. [R.p. ___; Id. at ¶ 8.]

Therefore, Lamb's driver's license was never suspended for more than a year in violation of S.C. CODE ANN. § 56-1-380 as Lamb contends in his Appellant's Brief. Lamb never submitted an application and fee to reinstate his driver's license prior to the institution of his suit. [R.p. ___; Id. at ¶ 9.]

The facts established before the Trial Court show that the SCDMV did not intentionally and consciously fail to do something that it was ought to do. The November 25, 2008 notice to Lamb contained an incorrect response date only due to a computer glitch which calculated the response date based upon twenty (20) days instead of twenty (20) working days. This was a simple mistake, and Lamb has not come forward with any evidence that the SCDMV intentionally failed to include the accurate response date on the notice. See Ellis v. Davidson, 358 S.C. 509, 518-19, 595 S.E.2d 817, 822 (Ct. App. 2004) ("Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings [but] [r]ather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.").

Moreover, Lamb never responded to the notice by the correct December 30, 2008 deadline to respond and did not turn in his vehicle tag until January 14, 2009. His driver's license would have been suspended anyway and in any event, he was free to restore his driver's license by submitting the required application and fee on January 14, 2009.

Lamb failed to establish below that the SCDMV exercised its powers and functions in a grossly negligent manner. Accordingly, the immunity provided under §

15-78-60(12) of the Tort Claims Act applies to bar Lamb's claims against the SCDMV, and the Trial Court correctly granted summary judgment to the SCDMV.

II. The Trial Court correctly granted summary judgment to the SCDMV because the Plaintiff's claims are barred by the two-year statute of limitations set forth under the South Carolina Tort Claims Act.

As shown above in Section I hereof, the South Carolina Tort Claims Act governs all tort claims against governmental entities, is applicable to Lamb's claims against the SCDMV, and provides the exclusive remedy for Lamb's claims against the SCDMV. The Tort Claims Act contains a two-year statute of limitations for actions brought against the State, an agency, a political subdivision, or governmental entity. S.C. CODE ANN. § 15-78-110; Vines v. Self Mem'l Hosp., 314 S.C. 305, 306, 443 S.E.2d 909, 910 (1994); Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 185-86, 534 S.E.2d 1, 5-6 (Ct. App. 2000). Section 15-78-110 provides:

Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within **two years** after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

Section 15-78-110 (emphasis added).

Here, as evidenced by the Affidavit of William C. Wannamaker, Lamb surrendered his vehicle license plate tag on January 14, 2009 and did not bring any action against the SCDMV until approximately eight years later on January 26, 2017. If Lamb suffered any loss, which the SCDMV denies, Lamb was required to have brought an action within two years from the date of that loss. Lamb knew or should have known he had a claim against the SCDMV on January 14, 2009 when he surrendered his tag. By

not commencing this action until eight years later, Lamb clearly exceeded the time allowed under Section 15-78-110. Therefore, Lamb's claims against the SCDMV are barred by the statute of limitations.

In his appeal, Lamb contends that he did not realize the full extent of his claims against the SCDMV until June 2015. Lamb's development of a full-blown legal theory against the SCDMV, however, did not delay the running of the two-year statute of limitations on his claims against the SCDMV.

The courts of South Carolina apply the "discovery rule" to determine when a cause of action accrues under the Tort Claims Act. Logan v. Cherokee Landscaping and Grading Co., 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010); Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). According to the discovery rule, "the statute of limitations begins to run from the date the injury resulting from the wrongful conduct either is discovered or may have been discovered by the exercise of reasonable diligence." Logan, 389 S.C. at 618, 698 S.E.2d at 883; see also Knox v. Greenville Hosp. Sys., 362 S.C. 566, 570, 608 S.E.2d 459, 462 (Ct. App. 2005) ("[T]he statute of limitations begins to run when a cause of action reasonably ought to have been discovered."). "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Id.

In other words:

[W]hether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide 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.

Hackworth v. Greenville Cnty., 371 S.C. 99, 103, 637 S.E.2d 320, 322 (Ct. App. 2006) (quoting Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999)); see also Knox, 362 S.E.2d at 570, 608 S.E.2d at 462 (“The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury 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.”) (internal citation omitted).

The fact that an injured party does not comprehend the full extent of his injuries his immaterial. Knox, 362 S.C. at 570-71; 608 S.E.2d at 462. In addition, the statute of limitations begins to run where the facts and circumstances of an injury 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 and **not** when advice of counsel is sought or a **full-blown theory of recovery developed**. Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994) (internal citation omitted).

The purpose of a statute of limitations is “to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.” Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting McKinney v. CSX Transp., Inc., 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). “Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation.” Moates, 322 S.C. at 176, 470 S.E.2d at 404.

The facts and circumstances involved here put Lamb on notice by January 14, 2009 when he turned in his vehicle tag to the SCDMV that he might have had a claim against the SCDMV. He was required to have acted with reasonable diligence at that

point to determine whether he had any claim against the SCDMV arising out of his license suspension. See Logan, 389 S.C. at 621, 698 S.E.2d at 884-85. His development of a full-blown theory of recovery in June 2015 did not begin the running of the two-year statute of limitations. Rather, Lamb “slept on his rights” and brought a stale claim against the SCDMV eight years after Lamb turned in his vehicle tag. The statute of limitations is designed to protect defendants from litigating such aged claims, and likewise, the SCDMV is protected by the Tort Claims Act’s two-year statute of limitations from having to defend itself from a claim which arose eight years before the plaintiff filed a claim in court.

Finally, Lamb asserts that his claim under S.C. CODE ANN. § 16-17-735 for a “sham legal process” has no statute of limitations. Whether this code section even applies to the SCDMV or whether this code section has or does not have a statute of limitations is irrelevant to the legal question at hand. Lamb’s suit against the SCDMV is governed by the Tort Claims Act which provides the exclusive remedy and contains a two-year statute of limitations. No other statute of limitations applies no matter how Lamb characterizes his claim against the SCDMV. See Doe v. City of Duncan, 417 S.C. 277, 789 S.E.2d 602 (Ct. App. 2016) (South Carolina Tort Claims Act was exclusive remedy for claim against city for negligent supervision, based on military service member's allegation that he was sexually abused while participating in activity sponsored by city's fire department, and thus, suit was governed by two-year limitations period for claims brought under Act, and not six-year limitations period governing claims for acts of sexual abuse or incest).

The Trial Court correctly determined that Lamb's claims against the SCDMV were barred by the two-year statute of limitations set forth in the Section 15-78-110 of the Tort Claims Act. This Court should therefore affirm the Trial Court's grant of summary judgment to the SCDMV.

CONCLUSION

For the reasons set forth herein, Respondent SCDMV respectfully requests this Court to affirm the Trial Court's grant of summary judgment.

Respectfully submitted,



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November 13, 2017.

CERTIFICATE OF SERVICE

I, the undersigned, attorney for Respondent, State of South Carolina DMV, Office of General Counsel, do hereby certify that I have this date served the foregoing Initial Respondent's Brief, dated November 13, 2017, by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to counsel of record as indicated below:

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November 13, 2017

The Honorable Jenny Abbott Kitchings
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NOV 15 2017
SC Court of Appeals

Re: *Richard B. Lamb v. State of South Carolina DMV, Office of General Counsel*
Appellate Case No. 2017-001381
RPR File No.: 181-891

Dear Ms. Kitchings:

Enclosed for filing are the original Initial Brief of Respondent State of South Carolina DMV, Office of General Counsel and the Respondent's Designation of Matter to be Included in the Record on Appeal in the above referenced matter, along with our original Certificates of Service.

By copy of this letter, we are this day serving a copy of our Initial Brief and Designations on Appellant *pro se*.

Should you have any questions regarding this matter, please do not hesitate to call.

Sincerely,

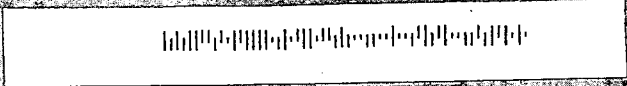


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The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
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