

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2011-CP-24-442

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SC Court of Appeals

Reginald Gilliam,

Appellant,

v.

Judy Burns and Index Journal
Newspaper,

Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT ERR IN GRANTING RESPONDENTS' MOTION TO DISMISS?

STATEMENT OF THE CASE

On April, 20, 2011, Appellant Reginald Gilliam filed this action for defamation concerning an article published in Respondent Index Journal Newspaper. Respondents filed a Motion to Dismiss this action pursuant to Rule 12(b)(6) (1976 & Supp. 2010), SCRCP, on the ground that the action was not filed within the statute of limitations. Respondents also filed an Answer denying the allegations in the Complaint.

On June 15, 2011, a hearing was held on Respondents' Motion to Dismiss in the trial court. The trial court granted Respondents' Motion to Dismiss. Appellant subsequently served a Notice of Appeal on Respondents.

ARGUMENT

THE TRIAL COURT DID NOT ERR IN GRANTING RESPONDENTS' MOTION TO DISMISS THIS ACTION ON THE GROUND THAT THE ACTION IS BARRED BY THE STATUTE OF LIMITATIONS.

The trial court did not err in dismissing this action pursuant to Rule 12(b)(6), SCRCP, on the ground that the action is barred by the statute of limitations, and therefore, the trial court's order should be affirmed. An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The decision to grant a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth in the complaint. Clearwater Trust v. Bunting, 367 S.C. 340, 343,

626 S.E.2d 334, 335 (2006).

The statute of limitations for commencing an action for libel or slander is two years. S.C. Code Ann. § 15-3-550 (2005). Traditionally, a cause of action accrues at the moment when a plaintiff has a legal right to sue on it. Brown v. Finger, 240 S.C. 102, 111, 124 S.E.2d 781, 785 (1962). In some matters, the traditional rule has been modified by the discovery rule. Under the discovery rule, the statute of limitations does not begin to run until the plaintiff knew or should have known of the alleged wrongful acts. See, e.g., Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996) (finding discovery rule applicable to trespass action). South Carolina has not, however, adopted the discovery rule for libel and slander cases. Jones v. City of Folly Beach, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997) (holding “South Carolina has not adopted the discovery rule in libel and slander cases”).

Respondents filed their Motion to Dismiss on the ground that an action for defamation must be commenced within two years from the moment the cause of action accrues. In his Complaint, Appellant alleges that Respondents are liable for defamation because of statements contained in an article published in Respondent Index Journal Newspaper on March 18, 1997. (Complaint, First Sentence). If a cause of action arose out of the article, the statute of limitations began to accrue on the date article was published, or on March 18, 1997. Appellant filed this action on April 20, 2011, over fourteen years after the article of which he complains was published, and more than two years after which the cause of action, if any, accrued. See S.C. Code Ann. § 15-3-550; Complaint. Further, Appellant concedes in his Brief that the applicable statute of limitations is two years but argues that the discovery rule should apply. As held by the

Court in Jones, the discovery rule has not been adopted for libel and slander cases in South Carolina, and thus, Appellant's action is barred by the applicable statute of limitations.

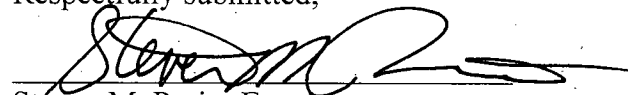
In his Brief and at the hearing on this matter in front of the trial court, Appellant alleges that Respondents are also liable for statements made in an additional article published in Respondent Index Journal Newspaper on March 19, 1997. The decision to grant a 12(b)(6) motion to dismiss must be based solely on the allegations set forth in the Complaint, and thus, any exhibits attached to Appellant's Brief or to the Record on Appeal cannot be considered. Clearwater Trust, 367 S.C. at 343, 626 S.E.2d at 335. Appellant does not specifically reference the March 19, 1997 article in his Complaint and Appellant's action must fail because Appellant sets forth no claim in his Complaint regarding the March 19, 1997 article. Even viewing the allegations in the light most favorable to the Appellant and assuming arguendo that the Complaint could be construed to include allegations concerning the March 19, 1997 article, Appellant failed to file his action within two years from the date the potential action accrued and his claim is forever barred. See S.C. Code Ann. § 15-3-550; Jones, 326 S.C. at 369, 483 S.E.2d at 775.

CONCLUSION

For the reasons stated, this Court should affirm the trial court's order granting Respondents' motion to dismiss the action on the ground that the action is barred by the statute of limitations.

March 21, 2012

Respectfully submitted,



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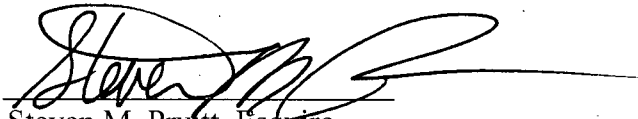
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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

March 21, 2012



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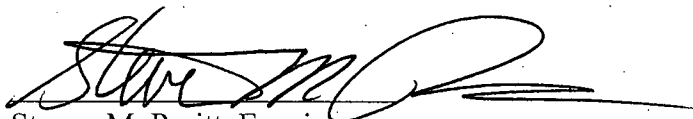
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PROOF OF SERVICE

I certify that I have served the Final Brief of Respondents and Certificate of Counsel on Reginald Gilliam by depositing a copy of it in the United States Mail, postage prepaid, on March 21, 2012, addressed to as follows: Reginald Manvell Gilliam, #240636, McCormick Correctional Institution F2B-146, 386 Redemption Way, McCormick South Carolina, 29899.

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