

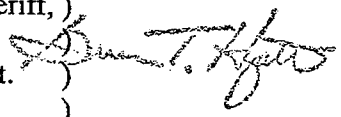
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STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)
Christopher Lampley,)
Plaintiff,)
versus)
Major Hulon, Dillon County Sheriff,)
Defendant.)

FILED
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IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
2015 NOV 18 AM 10:30
Case No: 2014-CP-17-348

CLERK OF COURT
DILLON COUNTY

A CERTIFIED TRUE COPY
ORDER GRANTING PARTIAL
SUMMARY JUDGMENT



CLERK OF COURT
DILLON COUNTY

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SC Court of Appeals

This matter was before the Court at a regular term of common pleas non-jury on October 6, 2015 pursuant to the Defendant's Motion to Dismiss and to Strike, and Motion to Dismiss or, in the Alternative, for Summary Judgment.

FACTS

The facts relevant to the Defendant's pending motions are not in dispute:

1. Both the Plaintiff and the Defendant's Deputy were responding to a house fire with entrapment, and both were on duty and acting within the course and scope of their employment.
2. In the process of responding to the fire, there was a collision between the two vehicles on Highway 301 just outside Dillon, South Carolina.
3. The Plaintiff claimed injuries as a result of the accident, pursued that claim by filing for workers' compensation benefits through Dillon County, and has received workers' compensation benefits as a result of that claim.
4. On August 8, 2014, the Plaintiff filed suit against Dillon County for property damage only.
5. The Defendant County filed a Motion to Dismiss and to Strike¹ on the basis that Dillon

¹ The Defendant County moved to strike all reference to punitive damages in the Complaint pursuant to § 15-78-120 of the South

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County was not the proper defendant, and that the proper party defendant was the Dillon County Sheriff.

6. On September 18, 2014, the Plaintiff filed an Amended Summons and Amended Complaint:

- a. Naming the Sheriff as the Defendant; and
- b. Adding a claim for bodily injury to the prior claim for property damage.

7. The Defendant Sheriff then filed a Motion to Dismiss, or, in the Alternative, for Summary Judgment that is now before the Court.

Upon review of the Court's file, hearing the argument of counsel for both parties, and reviewing the relevant statutory and case law, the Court makes the findings and conclusions as set forth herein. "If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the [c]ourt, the motion shall be treated as one for summary judgment. . . ." *Hooper v. Ebenezer Senior Services & Rehabilitation Center*, 377 S.C. 217, 225, 659 S.E.2d 213, 217 (Ct. App. 2008). To the extent any matter(s) outside of the pleadings form the basis for any findings or conclusions herein, the Court has considered such as a motion for summary judgment and the Defendant has, in the alternative, moved for summary judgment.

STATUTE OF LIMITATIONS

The Defendant asserts that the two year statute of limitations contained in the South Carolina Tort Claims Act bars the Plaintiff's action in its entirety, or, in the alternative, bars the Plaintiff's claim for bodily injuries which was included only in the Amended Complaint. Section 15-78-110 of the Tort Claims Act provides as follows, "Any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the

Carolina Tort Claims Act. The Plaintiff's Amended Complaint omitted any request for punitive damages rendering the Defendant's Motion to Strike moot.

loss was or should have been discovered. . . .”

Under the general two year statute of limitations, the Plaintiff in this case had until August 12, 2014 to file and serve his Complaint. The Plaintiff's initial Summons and Complaint named Dillon County as the Defendant and, at oral argument, Plaintiff's counsel indicated this was based on the fact that the State Trooper's Accident Report listed Dillon County as the owner of the vehicle driven by the Sheriff's Deputy. Plaintiff's counsel further argued that, shortly after the filing of Defendant Dillon County's Motion to Dismiss alleging that the proper party defendant was the Dillon County Sheriff, Plaintiff filed an Amended Summons and Amended Complaint properly naming the Sheriff and including a previously unasserted claim for bodily injuries.

Rule 15(c), *SCRCP* states:

Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

Section 23-13-10 of the South Carolina Code, as amended, clearly states that, “The sheriff in all cases be answerable for neglect of duty or misconduct in office of any deputy.” Regardless of the owner of the vehicle listed on the Accident Report, the Plaintiff knew, or should have known, that the proper party defendant was the Dillon County Sheriff at the time of

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filing his initial Complaint. Rule 15(a), *SCRCP*, however, does permit the Plaintiff to amend his pleadings “as a matter of course” as the amended pleadings were filed within thirty days after the Defendant’s Answer. Further, the Court finds that, as set forth above in Rule 15(c), the amendment changing the party defendant from the County to the Sheriff relates back to the date of the original pleading which was filed prior to the running of the two year statute of limitations. *See Jackson v. Doe*, 342 S.C. 552, 558, 537 S.E.2d 567, 570 (Ct. App 2000). Additionally, the Plaintiff’s claim for bodily injuries arose out of the exact same conduct previously set forth in the original Complaint. Therefore, under Rule 15(c), the amendment relates back to the date of the original pleading that was filed within the statute of limitations. *See Thomas v. Grayson*, 318 S.C. 82, 456 S.E.2d 377 (1995) (purpose of Rule 15(c) is to salvage causes of action otherwise barred by statute of limitations).

Therefore, the Defendant’s Motion to Dismiss/for Summary Judgment on the basis of the statute of limitations is denied.

TORT CLAIMS ACT IMMUNITY

The Defendant also moved for dismissal on the basis of Section 15-78-60(14) of the South Carolina Tort Claims Act which states: “The governmental entity is not liable for a loss resulting from . . . any claim covered by the South Carolina Workers’ Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer. . . .” There is no dispute as to coverage of the Plaintiff’s claim by the Workers’ Compensation Act. The question is whether or not the Plaintiff’s bodily injury claim in the present case is “a claim by or on behalf of an employee to recover damages from any person *other than the employer.*” (Emphasis added).

Plaintiff asserts that he is an employee of the County and that the Defendant’s Deputy is

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an employee of the Sheriff; therefore, neither the exclusivity provision of the Workers' Compensation Act nor the immunity provided by § 15-78-60(14) applies. Defendant claims that, as to the collection of workers' compensation benefits, County and Sheriff are, for all intents and purposes, the same "employer" as contemplated by § 15-78-60(14).

This appears to be a matter of first impression. In *Buff v. SCDOT*, 332 S.C. 472, 505 S.C.2d 360 (Ct. App. 1998), the Court of Appeals held that a private employee may receive workers' compensation benefits from his private employer and maintain an action in tort against a third-party governmental tortfeasor, but the Court is unaware of any reported decision involving a workers' compensation claim and third-party tort action against a government employer as in the case at bar.

Whether the exclusivity provision of the Act applies, barring an employee-plaintiff's tort claim against a defendant-employer, is a jurisdictional question; therefore, it is a question of law. See *Sabb v. S.C. State University*, 350 S.C. 416, 422-23, 567 S.E.2d 231, 234 (2002) (noting whether the Act's exclusivity provision applies invokes a question of the circuit court's original jurisdiction); *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 320, 331, 523 S.E.2d 766, 769, 775 (1999) (noting the determination of statutory employment and the consequent application of the exclusivity provision is a question of law); *Glass v. Dow Chemical Company*, 325 S.C. 198, 201-02, 482 S.E.2d 49, 50-51 (1997) (reviewing the appellant's argument that the Act provided the exclusive remedy for the respondent as a question of law because it was jurisdictional in nature). In such cases, "this [c]ourt has the power and duty to review the entire record and decide the jurisdictional facts in accord with the preponderance of the evidence." *Harrell*, 337 S.C. at 320, 523 S.E.2d at 769. "In determining jurisdictional questions, doubts of jurisdiction will be resolved in favor of inclusion of employees within workers' compensation coverage

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rather than exclusion.’ ” *Hill v. Eagle Motor Lines*, 373 S.C. 422, 429, 645 S.E.2d 424, 427 (2007) (quoting *Wilson v. Georgetown County*, 316 S.C. 92, 94, 447 S.E.2d 841, 842 (1994)).

In the present case, the County and Sheriff are so closely related for purposes of workers’ compensation claims and benefits so as to constitute the same “employer” as that term is used in § 15-78-60(14). First, to interpret § 15-78-60(14) as narrowly as argued by the Plaintiff would render it meaningless as the exclusivity provision of the Workers’ Compensation Act already prohibits an employee from recovering workers’ compensation benefits and maintaining an action in tort against his employer. The Court must presume the legislature intended to accomplish something with an enacted statute and did not intend for a section or provision to be purposeless or futile. *Duvall v. S.C. Budget and Control Board*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008); *Ellison v. Frigidaire Home Products*, 371 S.C. 159, 164, 638 S.E.2d 664, 666 (2006); *Duke Power Company v. Laurens Elec. Co-op., Inc.*, 344 S.C. 101, 106, 543 S.E.2d 560, 563 (Ct. App. 2000); see *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (“In seeking the intention of the legislature, we must presume that it intended by its actions to accomplish something and not to do a futile thing.”) To construe § 15-78-60(14) of the Tort Claims Act as interpreted by the Plaintiff would accomplish nothing more than what the exclusivity provision of the Workers’ Compensation Act already accomplishes.

Section 4-9-30 of the S.C. Code, as amended, enumerates the powers of county governing bodies and subsection (5)(a) includes the power:

to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations *for functions and operations of the county*, including, but not limited to, appropriations for . . . public safety, *including police . . . protection*; and to provide for the regulation and enforcement of the above.

(Emphasis added).

Dillon County levies ad valorem property taxes and makes appropriations for the function and operation of the Dillon County Sheriff's Department, including the provision of the required workers' compensation coverage, the same workers' compensation coverage through Dillon County under which the Plaintiff made a claim and collected benefits. To permit the Plaintiff to now pursue a claim for the same bodily injuries against the Sheriff would defeat the clear intention of the immunity provided by § 15-78-60(14) which prevents a double recovery from the same governmental entity, in workers' compensation benefits and then in tort.

Based on the foregoing, the Defendant is granted partial summary as to the Plaintiff's claim for bodily injuries as pled in the Amended Complaint.

IT IS THEREFORE ORDERED:

- A. That the Plaintiff's claim for bodily injuries is dismissed with prejudice for the reasons set forth herein.
- B. That the Plaintiff's remaining claim for property damage remains pending and shall proceed accordingly.

IT IS SO ORDERED.



HONORABLE PAUL M. BURCH
CIRCUIT JUDGE
FOURTH JUDICIAL CIRCUIT

November 9th, 2015
Pageland, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)
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Christopher Lampley,)
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Plaintiff,)
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versus)
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Major Hulon, Dillon County Sheriff,)
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Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
Case No. 2014-CP-17-348

CERTIFICATE OF MAILING

I, the undersigned, an employee of HARRIS, McLEOD & RUFFNER, Attorneys for the Defendant in the above captioned matter, do hereby certify that I have mailed the following documents:

- 1) True Copy of Order Granting Partial Summary Judgment;
- 2) Certificate of Mailing;

by personally depositing in a United States Postal Services mail box in Cheraw, South Carolina, on November 24, 2015, copies of the same, postage prepaid, addressed to the attorney as indicated below:

WILLIAM P. HATFIELD, ATTORNEY AT LAW
HATFIELD TEMPLE, LLP
P.O. BOX 1770
FLORENCE, SC 29503-1770

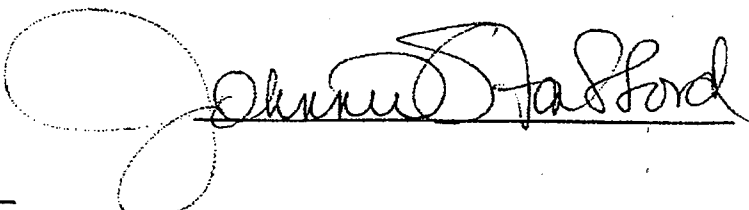
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SWORN to before me this 24th
day of November, 2015.

Wickson M. Mill (L.S.)
Notary Public for South Carolina
My Commission Expires: 10-11-24