

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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JUL 26 2018

APPEAL FROM PICKENS COUNTY

S.C. SUPREME COURT

In The Court of Common Pleas

Alford S. Lee, Circuit Court Judge

Case No. 2014-CP-39-0259

Appellate Case No. 2015-001361

Mark Ostendorff.....Appellant,

v.

School District of Pickens County.....Respondent.

PETITION FOR A WRIT OF CERTIORARI

Mark Ostendorff
135 Cedar Creek Circle
Central, SC 29630
(864)640-6640
Appellant, pro se

Thomas Kennedy Barlow
Childs & Halligan Law Firm
PO Box 11367
Columbia, SC 29211-1367
Attorney for Respondent

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CERTIFICATE OF COUNSEL

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Pro se certifies the Petition was made and finally ruled on by the Court of Appeals
on June 22, 2018.



Mark Ostendorff

QUESTIONS PRESENTED

1. Did the Court err in granting Summary Judgment for Respondent with prejudice ?
2. Did the Court err in granting Summary Judgment for Respondent when Respondent "stonewalled" in its refusal to provide discovery?
3. Is a verified claim one of fact or law?
4. Did the Court err in not finding any facts or conclusions of law regarding the issue of a verified claim?
5. Was Ostendorff's constitutional rights and obligations as a public servant violated in free speech?
6. Whether a person made due diligence in his understanding on applicable statute of time limitations is one of law or fact?

STATEMENT OF CASE

Appellant Ostendorff filed a complaint for damages under wrongful discharge under tort. Ostendorff lost his job with Defendant school District of Pickens County. Employment by itself also falls under contract.

Ostendorff demanded a jury trial.

Defendant moved for summary judgment and was granted by Circuit Court judge.

Ostendorff had numerous discussions and mail correspondence with the School District immediately after termination about his wrongful discharge and also his guaranteed employment for at least five years.

Ostendorff was terminated for discussing probable misappropriation of public funding with a friend of a school board member.

ARGUMENTS

1. BECAUSE APPELLANT OSTENDORFF MET THE CRITERIA FOR A VERIFIED CLAIM, THE TIME TO BRING ACTION IS THREE YEARS. OSTENDORFF MADE A VERIFIED CLAIM SHORTLY AFTER HIS WRONFUL DISCHARGE. UNDER SECTITION 15-78-110, OSTENDORFF IS ALLOWED THREE YEARS TO BRING ACTION.

Henry Hunt, District Superintendent, met with Ostendorff shortly after Ostendorff's termination after his initial letter request for reinstatement to his previous position. In that discussion, Ostendorff asserted his guarantee of minimum of five years, all of which in the SC Retirement System. Hunt took extensive notes in a journal. None of these notes were provided by defendant as requested by Ostendorff.

All previously listed defendants were of notice of Ostendorff's loss of \$70,00/year salary and also loss of participation in the SC Retirement System.

The Court made no effort to establish any fact that Ostendorff did not meet the criteria of a verified claim. The opposing party never even brought the issue up though Ostendorff asserted this in his email with Judge Lee. The moving party never provided any argument why the 2 year rule was applicable.

The SC Legislature said in the Act's history that the Court is not to " read past the face of the act". The Act history also states that the statute of limitations was intended to prevent fraud. All defendants were knowlege of Ostendorff's claim of damages within 15 days of Ostendorff's termination. No fraud could be committed by Ostendorff as all defendants knew of Ostendorff's financial losses regarding employment wages and SC Retirement system contributions and those benefits after 5 years to him.

Board member Alex Saitta left a voicemail with Ostendorff instructing him what procedure to follow when requesting reinstatement.

Rule 52(a) states " Effect. In all actions tried upon the facts without a jury..., the court shall find the facts specially and state separately its conclusion of law thereon,..."

2. BECAUSE OSTENDORFF MADE DUE DILIGENCE IN HIS UNDERSTANDING THE STATUTE OF LIMITATIONS THEN THE 3 YEARS APPLIES TO BRING ACTION IN TORT AND CONTRACT.

In Ostendorff's research of wrongful discharge, all sources cited *Small v. Springs v. Industries* as precedence.

Any reasonable person would conclude that Ostendorff made due diligence. Ostendorff only learned of the Tort Act when the opposing attorney was using it dismissing the defendants.

No one knows everything.

Even Albert Einstein never considered Black Holes. Now, everyone understands their existence.

Both SC and Federal case precedence address there is allowance to determining applicable time limitations when due diligence has been shown.

3. BECAUSE THE DEFENDANT NEVER PROVIDED DISCOVERY, SUMMARY JUDGMENT SHOULD NOT BE GRANTED. Summary judgment must not be granted until the opposing party has a full and fair opportunity to complete discovery. *Baird v. Charleston County*, 333 S.C. 519, SE 2d 69 (1999). Summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues.

In *Tolk v. Weinstein*, 265 S. C. 546, 220 S.E. 2d 239 (1975), generally an appellate court may reverse the judgment of a lower court when there is some error in law or factual conclusions are without evidentiary support.

4. BECAUSE OSTENDORFF STILL HAD 3 YEARS TO, IF ONLY FILE AMENDED COMPLAINT, WHICH HE DID, THE SUIT SHOULD NOT OF BEEN DISMISSED WITH PREDJUDICE.

The decision to grant motion with prejudice is in conflict with the S.C. Constitution Article I, Section 3, ensuring due process.

S.C.Code of Laws, Section 15-78-609(d)" a settlement or judgment in an action...under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence."

5. BECAUSE OSTENDORFF WAS A PUBLIC SERVENT, HE HAD THE RIGHT AND OBLIGATION TO SPEAK UP WHEN THER WAS PROBABLE MISAPPROPRIATION OF PUBLIC FUNDING.

Ostendorff's termination was in violation of the U. S. Constitution, 14th Amendment, ensuring free speech.

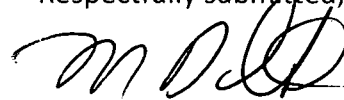
Ostendorff's termination was in violation of the S C Constitution, Article I, Section 2, ensuring free speech.

CONCLUSION

For the reasons stated, this Court should reverse the Order of the Circuit Court and order the Respondents to provide discovery as requested by Appellant.

July 20, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Ostendorff', written in a cursive style.

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Mark Ostendorff.....Appellant,

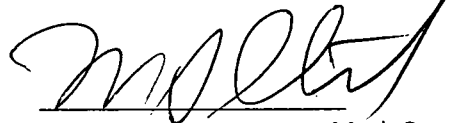
v.

School District of Pickens County.....Respondent.

CERTIFICATE OF MAILING

I, Mark Ostendorff do hereby certify that I placed a copy of PETITION FOR WRIT OF CERTIORARI in the US Postal Service addressed to Respondent's attorney: Thomas K. Barlow, PO Box 11367, Columbia, SC 29211.

July 23, 2018



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