APPENDIX

Appellate Case No. 2018-001391

Record on Appeal

Supplemental Record on Appeal Respondent's Designation of Matter

Petition for Rehearing

Decision on Petition for Rehearing

Decision of Court of Appeals on which certiorari is sought

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Mark D. Ostendorff, Appellant,

v.

School District of Pickens County, Respondent.

Appellate Case No. 2015-001361

Appeal From Pickens County
Lee S. Alford, Circuit Court Judge

Unpublished Opinion No. 2018-UP-193
Submitted April 1, 2018 – Filed May 9, 2018

AFFIRMED

Mark Ostendorff, of Central, pro se.

Thomas Kennedy Barlow, of Columbia, for Respondent.

PER CURIAM: Mark Ostendorff, pro se, appeals a circuit court order granting summary judgment to the School District of Pickens County (the District). On appeal, Ostendorff argues (1) his cause of action was not time-barred because he filed a verified complaint within three years; (2) his complaint alleged sufficient facts for his breach of contract claim; (3) his breach of contract claim was not time-barred; and (4) the circuit court erred in granting summary judgment becau

the District refused to provide discovery. We affirm[1] pursuant to Rule 220(b), SCACR, and the following authorities:

As to issue 1: *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009) ("An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit court] under Rule 56(c), SCRCP."); Rule 56(c), SCRCP ("[Summary] judgment . . . shall be rendered forthwith 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 a judgment as a matter of law."); *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009) ("In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party."); S.C. Code Ann. § 15-78-110 (2005) ("[A]ny action brought pursuant to [the South Carolina Tort Claims Act (the Act)] 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 [verified] 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."); S.C. Code Ann. § 15-78-80(a) (2005 & Supp. 2017) ("A verified claim for damages under this chapter, setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained may be filed: (1) in cases against the State, with the State Fiscal Accountability Authority, or with the agency employing an employee whose alleged act or omission gave rise to the claim; (2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim; (3) where the identification of the proper defendant is in doubt, with the Attorney General."); S.C. Code Ann. § 15-78-80(d) (2005 & Supp. 2017) ("If filed, the [verified] claim must be received within one year after the loss was or should have been discovered."); *Pollard v. Cty. of Florence*, 314 S.C. 397, 400, 444 S.E.2d 534, 536 (Ct. App. 1994) ("To satisfy the verification requirement, the claim must be under oath[.]"); *id.* at 401, 444 S.E.2d at 53 ("A document that is not verified does not qualify as a 'claim' under [the Act]."); *Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 618, 698 S.E.2d 879, 883 (Ct. App. 2010) ("The courts of South Carolina apply the 'discovery rule' to determine when a cause of action accrues under [the Act]."); *Gillman v. City of Beaufort*, 368 S.C. 24, 27, 627 S.E.2d 746,

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

748 (Ct. App. 2006) ("Under the discovery rule, the statutory limitations period begins to run from the date when the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence."); *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001) ("The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question.").

As to issues 2 and 3: S.C. Code Ann. § 15-3-530(1) (2005) (providing a three-year statute of limitations for actions upon contracts); *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011) ("In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment."); *id.* ("An at-will employee may be terminated at any time for any reason or for no reason, with or without cause."); S.C. Code Ann. § 32-3-10(5) (2007) ("No action shall be brought . . . [t]o charge any person upon any agreement that is not to be performed within the space of one year from the making thereof[, u]nless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized."); *Davis v. Greenwood Sch. Dist. 50*, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005) ("[T]he [s]tatute of [f]rauds requires that a contract that cannot be performed within one year be in writing and signed by the parties.").

As to issue 4: *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [circuit court].").

AFFIRMED.

HUFF, GEATHERS, and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

Lee S. Alford, Circuit Court Judge

Case No. 2014-CP-39-00259

Appellate Case No. 2015-001361

Mark Ostendorff.....Appellant,

v.

School District of Pickens .....Respondent.

MOTION FOR REHEARING

Mark Ostendorff
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pro se, Appellant

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Attorney for Respondent

Appellant Ostendorff requests this Court for a Rehearing on its decision to Affirm the lower Court's Decision for Summary Judgment to dismiss . Ostendorff's request is based upon his issues raised for this case number and the earlier associated case :

Statute of Limitations- Ostendorff filed what a reasonable person would do in a timely manner. Ostendorff researched on short notice his rights and obligations for wrongful discharge once fired from employment. The initial letters , via the USPS were acknowledged as being received. Board member and defendant Saitta left Ostendorff a voice mail after receiving Ostendorff's initial letter how to use the District's procedure to request reinstatement.

Ostendorff cited Small v. Springs Industries in his initial letter. When defendant Ben Trotter called and talked to Ostendorff, he asked what Small v. Springs Industries meant. I replied it was apparently the precedence that the Courts use in wrongful discharge cases.

Any reasonable person would conclude that Ostendorff did make due diligence in his research and time limits regarding wrongful discharge.

No person knows everything.

Even Albert Einstein never considered Black Holes. After the fact, everyone now understands the existence and their simple behavior.

Case being dismissed with prejudice- The trial court dismissed under basis that statute of limitations of two had passed. That would be tort. Ostendorff still was entitled to sue within three years under contract which had not have passed. Ostendorff timely moved to amend the complaint that specifically gave notice of complaint that now that addressed contract.

Stonewalling of evidence- Ostendorff was ordered by the Court to provide discovery even after the earlier part of this case was under appeal. Ostendorff requested discovery from the defendants yet they have refused to provide any whatsoever. Discovery would show that all defendants were knowledgeable and received Ostendorff's request to be reinstated or receive financial compensation for the balance of payroll and retirement benefits. And that request was made timely within 15 days after Ostendorff's firing.

Henry Hunt, District Superintendent, had a meeting with Ostendorff after his initial letter as part of reinstatement request. In that discussion, Hunt took continuous notes. Ostendorff made his notice that he was out the balance of 5 years employment at $70,000 /yr and $500 /mth from retirement. Ostendorff saw Hunt make notes after telling him his losses and needed to be made whole again. Hunt's notes have not been provided to Ostendorff under discovery.

Defendants all were of notice of Ostendorff's losses within 15 days of his wrongful discharge- Ostendorff sent letters to all defendants within 15 days requesting reinstatement or to be made whole again for the balance of 5 years employment at $70,000/ yr and participation in the SC Retirement System which would provide him $500/ mth.

Obligation as a public servant to speak up when the public's money is being misappropriated- Both the SC and US Constitution give a person the right of free speech. This was asserted by Ostendorff in the earlier part of this case.

Ostendorff's claim meets the threshold of a verified claim. Thus, 3 years is allowed to bring action. The Court made no effort to determine any facts to the claim nor did it ever address this in its findings of fact nor conclusions of law. Ostendorff asserted his claim as a verified claim.

Any reasonable person would conclude Ostendorff's claim exceeded any requirement for notice.

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 time limitations was intended to prevent fraud. All defendants were of knowledge within 15 days. At least 3 defendants conspired to remove Ostendorff from the District. No fraud could be committed by Ostendorff as all defendants knew of Ostendorff's financial status regarding employment wages and SC Retirement System contributions and benefits from the balance of 5 years owed to him.

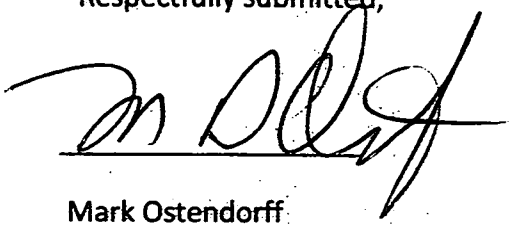
Ostendorff's case was dismissed by the moving party while providing not one shred of evidence that supports the Court's decision. The moving party never asserted that Ostendorff's claim was not verified in order for the 2 year application of limitation to apply.

In the earlier case, the trial court Judge dismissed improperly named defendants without any findings of fact or conclusions of law. However, conflicting that decision with a later similar case in Oconee County.

Ostendorff asks this Court to Rehear its decision to Affirm and to order discovery from defendants as requested by Ostendorff. Also, Ostendorff asks this Court to remand to the lower Court for arbitration as required.

May 22, 2018

Respectfully submitted,



Mark Ostendorff

The South Carolina Court of Appeals

Mark D. Ostendorff, Appellant,

v.

School District of Pickens County, Respondent.

Appellate Case No. 2015-001361

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.

J.

Stephen P. McDonald J.

Columbia, South Carolina

cc: Mark Ostendorff
Thomas Kennedy Barlow, Esquire
The Honorable Lee S. Alford

FILED
June 22, 2018