THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Paul M. Burch, Circuit Court Judge

Appellate Case No. 2018-000405
Case No. 2014-CP-17-0348

Christopher Lampley, ... Appellant,

v.

Major Hulon, Dillon County Sheriff, ... Respondent.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

STATEMENT OF THE CASE

This is an appeal from the grant of partial summary judgment in favor of the Respondent Major Hulon, who is the Dillon County Sheriff ("hereafter referred to as "Sheriff").

The Appellant Christopher Lampley is a fireman employed by Dillon County. Dillon County Deputy Sheriff Randolph Tyler were responding to an emergency fire call when their vehicles collided. Lampley filed an Amended Complaint against the Sheriff alleging a negligence cause of action for the motor vehicle accident in which he sought bodily injury and property damage.

The Sheriff filed a motion to dismiss, or in the alternative, a motion for summary judgment based, in part, on Section 15-78-60(14) of the South Carolina Tort Claims Act, which provides sovereign immunity 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." S.C. Code Ann. § 15-78-60(14).

That motion was heard by Circuit Court Judge Paul M. Burch on October 6, 2015. By Order filed November 19, 2015, Judge Burch granted partial summary judgment and dismissed the Appellant's claim for bodily injuries. He allowed the Appellant's remaining claim for property damage to proceed to trial.

On February 13, 2018, the case was tried, and the jury ultimately found that the Appellant and the Sheriff were equally at fault.

The Appellant thereafter filed a timely appeal to this Court challenging only the partial summary judgment granted on his bodily injury claim.

STANDARD OF REVIEW

"A grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 662 S.E.2d 40, 41 (2008). "Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo." *Id.* "When the circuit court grants summary judgment on a question of law, we review the ruling de novo." *Stoneledge at Lake Keowee Owners' Association, Inc. v. Builders Firstsource - Southeast Group*, 413 S.C. 630, 776 S.E.2d 434, 437 (Ct. App. 2015).

ARGUMENTS

The Appellant contends that the trial court erred in granting partial summary judgment on his bodily injury claim based on the Sheriff's sovereign immunity defense pursuant to Section 15-78-60(14) of the South Carolina Tort Claims Act. The trial court ruled that "the County and Sheriff are so closely related for purposes of workers' compensation claim and benefits so as to constitute the same 'employer' as that term is used in § 15-78-60(14)." (Order, p. 6). The trial court explained that "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." (Order, p. 6). The trial court further recognized that Dillon County provides for the workers' compensation coverage for the Sheriff's employees and County employees, and as a result, it is appropriate to treat the Sheriff and County as the same "employer." Otherwise, as the trial court noted, "[t]o 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." (Order, p. 7). The Sheriff submits that the trial court's

statutory construction and application of Section 15-78-60(14) is correct and should be affirmed.

Section 15-78-60(14) provides as follows: "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." S.C. Code Ann. § 15-78-60(14). The Appellant contends that Section 15-78-60(14) does not bar his negligence action for bodily injuries against the Sheriff because he was employed by Dillon County and the Dillon County Sheriff is a "person other than the employer." However, the proper interpretation of Section 15-78-60(14), as the trial court found, requires the bar of sovereign immunity to extend to a claim to recover damages against the Sheriff.

In asserting error by the trial court, the Appellant strongly relies on the Supreme Court's decision in *Trousdell v. Cannon*, 351 S.C. 636, 572 S.E.2d 264 (2002), which involved an automobile accident during a police pursuit where a highway patrolman was struck by a deputy sheriff. The highway patrolman brought suit against the Charleston County Sheriff. The trial court granted summary judgment to the Sheriff based on the application of the "Fireman's Rule" and the public duty rule. The summary judgment was not based on the application

of Section 15-78-60(14). Nonetheless, after rejecting both the "Fireman's Rule" and the public duty rule, the Supreme Court wrote as follows:

> Although the trial judge did not address whether Respondent was immune from suit under the Tort Claims Act in his order, we note that it would not bar Appellant's suit. The Tort Claims Act abrogated South Carolina's sovereign immunity, making this state's governmental entities liable for their torts "in the same manner and to the same extent as ... private individual[s] ..., subject to the limitations upon liability and damages, contained herein." S.C. Code Ann. § 15-78-40. Section 15-78-60 contains specific exceptions to the waiver of immunity, and the circumstances presented in this case are not included. Appellant's action against Respondent does not fall within any of the listed exemptions. Therefore, Respondent is not immune from suit.

572 S.E.2d at 267.

In reliance on this language, the Appellant in the present case claims that "the Supreme Court held that nothing in § 15-78-60 barred a state highway patrolman from collecting workers' compensation from the State and then suing a sheriff." *See* Appellant's Opening Brief, pp. 10-11. There is no such "holding" in *Trousdell*. To the contrary, the Supreme Court did not directly address or analyze Section 15-78-60(14). Moreover, the language from *Trousdell* is pure dicta.[1] The

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[1] *See, Drummond v. Beasley*, 331 S.C. 559, 503 S.E.2d 455 (1998) (characterizing as dicta certain language in a case concerning a subject not within the question before the court); *Hampton v. Richland County*, 296 S.C. 72, 370 S.E.2d 714, 714 (1988) (concluding discussion of a legal principle in an opinion was dicta where it was "clearly unnecessary to a resolution of the issue before the court"); *Dennis v. South Carolina National Bank*, 299 S.C. 34, 382 S.E.2d 237, 240 (Ct. App. 1988) (construing language in a case as dicta because it was "an expression or

trial court in that case never relied on or discussed Tort Claims Act immunities, and no litigant raised Section 15-78-60(14). Instead, the Supreme Court merely "noted" that the Tort Claims Act did not bar the claim. Thus, *Trousdell* is not precedent upon which this Court may rely.[2]

In actuality, the interpretation and application of Section 15-78-60(14) by the trial court in the case at bar are fully supported by two key rules of statutory construction. First, Section 15-78-60(14) must be construed in favor of limiting the liability of the State as mandated by Section 15-78-20(f) and the supporting case law. *See e.g.*, *Baker v. Sanders*, 301 S.C. 170, 391 S.E.2d 229 (1990); *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117 (1998). Second, and perhaps more importantly, courts have consistently recognized the presumption that "the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *TNS Mills, Inc. v. South Carolina Department of Revenue*, 331 S.C. 611, 503 S.E.2d 471, 476 (1998). *See also*, *Home Health Services, Inc. v. South Carolina Department of Revenue*, 333

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statement by the court on a matter not necessarily involved in the case nor necessary to a decision thereof").

[2] The case of *Buff v. South Carolina Department of Transportation*, 332 S.C. 472, 505 S.E.2d 360 (Ct. App. 1998), does not help the Appellant either. That decision was reversed and is no longer valid precedent. *Buff v. South Carolina Department of Transportation*, 342 S.C. 416, 537 S.E.2d 279 (2000). But even so, *Buff* simply holds that Section 15-78-60(14) does not bar a suit by a *private* -- as opposed to a governmental -- employee that receives workers' compensation benefits.

S.C. 691, 511 S.E.2d 404 (Ct. App. 1999). In *Duke Power Co. v. Laurens Electric Cooperative, Inc.*, 344 S.C. 101, 543 S.E.2d 560 (Ct. App. 2000), this Court rejected a statutory construction which "robbed" the statute "of any meaning and render [ed] it superfluous." 543 S.E.2d at 563.

It is well settled that the provisions of the Workers' Compensation Act, specifically Sections 42-1-540 through 42-1-560, already bar any tort liability of an employer for claims by an employee covered under the Act. Thus, assuming the Appellant's construction of Section 15-78-60(14) is correct, the statute would provide *no additional immunity* -- it would be an unnecessary, meaningless and superfluous statute. In other words, even if Section 15-78-60(14) had never been enacted, a governmental employer would have continued to enjoy immunity from liability under Section 42-1-540 for claims by its own employees covered under the Workers' Compensation Act.[3]

As stated, the General Assembly is presumed to have intended to accomplish some purpose with the enactment of Section 15-78-60(14). In light of the purpose

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[3] In order to fashion some other justification or meaning for Section 15-78-60(14), the Appellant writes: "Under this statutory scheme, placing S.C. Code Ann. § 15-78-60(14) within the Tort Claims Act was not an oversight. Duplication was necessary to give governmental employers the same protection that private employers enjoy under S.C. Code Ann. § 42-1-540." *See*, Appellant's Opening Brief, p. 9. Thus, the Appellant does at least concede that Section 15-78-60(14) represents a "duplication" with Section 42-1-540. But any suggestion that Section 42-1-540 applied only to "private employers" and did not already bar tort liability for claims by a governmental employee covered under the Workers' Compensation Act is plainly incorrect.

of Section 15-78-60 in its entirety, the General Assembly obviously intended to provide governmental entities some additional immunity that it did not already enjoy under the law. The interpretation proffered by the Sheriff and adopted by the trial court provides meaning and purpose to that statute. By enacting Section 15-78-60(14), the General Assembly intended to provide immunity for all work-related claims by a governmental employee as could be asserted against the State and its political subdivisions.[4] Such public policy set by the General Assembly is exceedingly rational given the statutory mandate that the State, its political subdivisions and all employees thereof must be covered by the Workers' Compensation Act. *See*, S.C. Code Ann. § 42-1-320.[5] Because the government, i.e., the taxpayers, already provide and fund workers' compensation as a remedy to a governmental employee injured on the job, there is a recognition that the government should not be compelled to compensate that employee with both workers' compensation benefits and a recovery of compensatory damages in tort. This construction would satisfy both of the rules of statutory construction -- it will limit the liability of the State and provide meaning and a purpose to Section 15-78-

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[4] The term "governmental entity" is defined under the Tort Claims Act as "the State and its political subdivisions." *See*, S.C. Code Ann. § 15-78-30(d). Thus, the term "governmental entity" is inclusive of both the State of South Carolina and the political subdivisions of the State, and accordingly includes counties and sheriffs.

[5] "The State, its municipal corporations and political subdivisions thereof, and the employees of the State or its municipal corporations and political subdivisions are subject to this title." S.C. Code Ann. § 42-1-320.

60(14).

This is especially true under the facts of this case where, as the trial court ruled, Dillon County and the Dillon County Sheriff should be deemed, for purposes of workers' compensation, the same employer. The trial court correctly determined, without dispute, that the workers' compensation coverage by which the Appellant was compensated is the very same coverage through which Dillon County covers the employees of the Sheriff's Department. While the Sheriff and his deputies are not technically employees of the County for certain employment-related purposes,[6] they do receive their compensation, employee benefits, equipment, and insurance from the County as required by statute and longstanding practice. *See*, S.C. Code Ann. § 4-1-80 (requiring the governing body of each county to furnish county officers including the sheriff with office space and "other incidentals necessary to the proper transaction of the legitimate business of such offices").[7] As a result, the employer for purposes of workers' compensation, both

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[6] *See e.g., Heath v. County of Aiken*, 295 S.C. 416, 368 S.E.2d 904 (1988) (holding that deputy sheriffs are not county employees and thus are not covered by county personnel policies).

[7] In his opening brief, the Appellant points to Section 23-19-10 as describing a number of fees that a sheriff may collect and surmises that such fees may be used by the Sheriff to purchase insurance. However, Subsection (f) of the statute provides that "[a]ll monies collected under this section must be deposited into the treasury of that county employing the sheriff collecting those monies." S.C. Code Ann. § 23-19-10(f). Thus, the Sheriff cannot independently utilize those funds to purchase insurance but instead must deposit such revenue in the County's general fund.

for the Appellant and for any of the Sheriff's deputies, is the County. Likewise, the tort liability coverage that would indemnify the County and the Sheriff is the same policy issued to and purchased by the County. Therefore, as the trial court ruled, a proper interpretation and application of Section 15-78-60(14) prevent a double recovery.

In fact, more than preventing a double recovery, the trial court's interpretation and application of Section 15-78-60(14) prevent an action that, in essence, violates the circuity of action doctrine. Under that rule, "courts will not allow parties to engage in circuitous action when the foreseeable and end result is to put the parties back in the same position in which they began." *Wal-Mart Stores, Inc. v. RLI Insurance Co.*, 292 F.3d 583, 594 (8th Cir. 2002). If the Appellant is permitted to pursue a bodily injury tort claim against the Sheriff after receiving workers' compensation benefits from the County for the very same accident, that would be a circuitous action. The Appellant would be allowed to recover damages against the tort liability insurer for the County, but the County would have a workers' compensation lien pursuant to Section 42-1-560 that would have to be first satisfied with the tort recovery. In fact, Section 42-1-560(g) requires that "the entire balance shall in the first instance be paid to the carrier by the third party" to satisfy the lien and potential future workers' compensation benefits. S.C. Code Ann. § 42-1-560(g). In short, the Appellant will most likely

receive no greater recovery than his workers' compensation recovery due to the carrier's lien and the Tort Claims Act caps on monetary liability, but pursuant to Section 42-1-560(b), the workers' compensation carrier for the County would have to pay the Appellant's counsel attorney's fees to recover the amount of the lien from the County's own insurance.[8] To boil it down, the County would be expending unnecessary attorney's fees and judicial resources to collect a lien against itself. This is precisely the type of circuitous action that should be prohibited as a matter of law and sound public policy. Accordingly, the trial court's treatment of the County and Sheriff, which are insured under the *same* workers' compensation policies and tort liability policies, as the same "employer" pursuant to Section 15-78-60(14) makes legal and practical sense and should be affirmed.

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[8] Section 42-1-560(b) provides in part: "In such case the carrier shall have a lien on the proceeds of any recovery from the third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses, paid, or to be paid by such carrier, less the reasonable and necessary expenses, including attorney fees, incurred in effecting the recovery, and to the extent the recovery shall be deemed to be for the benefit of the carrier. Attorney fees owed and payable by the carrier to the attorneys effecting the recovery shall be set by the commission but shall not exceed one third of the total claim amount paid by the carrier to the injured employee. Such fees shall be paid from the funds recovered by the carrier. Any balance remaining after payment of necessary expenses and satisfaction of the carrier's lien shall be applied as a credit against future compensation benefits for the same injury or death and shall be distributed as provided in subsection (g)." S.C. Code Ann. § 42-1-560(b).

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Major Hulon as the Dillon County Sheriff respectfully requests that this Court affirm the partial summary judgment entered by Circuit Court Judge Paul M. Burch granting the dismissal of the Appellant's bodily injury claims.

Respectfully submitted,

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October 29, 2018

The Honorable Jenny Abbott Kitchings
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RE: Christopher Lampley v. Major Hulon, Dillon County Sheriff
Appellate Case Number: 2018-000405
Civil Action Number: 2014-CP-17-0348
Claim Number: EV2012004994
Our File Number: 290.20003

Dear Ms. Kitchings:

Please find enclosed for filing the originals and copy each of the **Initial Brief of Respondent** and **Respondent's Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record. Thank you for your assistance in this matter.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: (w/ Enclosures)

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