The State of South Carolina
In the Court of Appeals

Appeal from Dillon County
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case # 2014-CP-17-00348

Christopher Lampley, ... Appellant

v.

Major Hulon, Dillion County Sheriff, ... Respondent

Appellant's Reply Brief

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Table of Contents

Table of Authorities

Cases

Statutes

Other

Argument

The Sheriff does not employ Lampley, a fireman. The Sheriff still wants to be "deemed" as the fireman's employer, meaning that he wants the Court to act as if the Sheriff is something that he is not. Unambiguous statutes are not applied this way. The summary-judgment order must be reversed, and the case remanded to proceed on Lampley's bodily injury claims.

I. The statute unambiguously allows a fireman to sue a sheriff.

The Sheriff launched into canons and policy arguments without dealing with the statute's crystal clarity. This misses a crucial step. Courts may not resort to extrinsic aids when a statute is unambiguous.[1] Lampley's opening brief lead with this point, noting that S.C. Code Ann. § 15-78-60(14) unambiguously allows him to sue the Sheriff because the Sheriff is not his employer. The statute's clarity went unanswered, dooming the Sheriff's reliance on canons and policy arguments. Unambiguous statutes like this one are applied, not construed.

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[1] *See Buchanan v. South Carolina Property and Cas. Ins. Guar. Ass'n*, Op. No. 27840 (S.C. Sup. Ct. filed Sept. 5, 2018) (Sherouse Ad. Sh. No. 36 at 18) ("There is no principle of statutory interpretation that allows a court to simply do what it thinks is just and right.")(Few, J., concurring); *Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265, 281, 802 S.E.2d 794, 802 (2017) ("However, the statute is not ambiguous, and our rules of statutory interpretation require us to give effect to its unambiguous language. We leave Defendant's policy concerns for the legislature."); *Smith v. Tiffany*, 419 S.C. 548, 555-56, 799 S.E.2d 479, 483 (2017) ("There is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning unless a statutory provision is ambiguous.").

The application is straightforward. Lampley is a fireman employed by Dillion County, not the Sheriff. So there is no indication that the Sheriff pays him or any other fireman, hires or fires firemen, or provides equipment to firemen. Nothing in S.C. Code Ann. §§ 23-15-20 *et. seq.*, which grants sheriffs their general powers and duties, suggests that they have anything to do with firemen.

Nor is Lampley co-employed with the deputy or the Sheriff. The Sheriff, not the County, employs the deputy and exercises "unreviewable" control over the deputy's employment and discharge. *Heath v. County of Aiken*, 295 S.C. 416, 420, 368 S.E.2d 904, 906 (1988). The County likewise does not employ the Sheriff. Counties do not hire or fire sheriffs, set their constitutional term of office, fill their vacancies, establish their qualifications or duties, or have a say in how much sheriffs are paid. S.C. Const. art. V, § 24; *Cone v. Nettles*, 308 S.C. 109, 112, 417 S.E.2d 523, 524 (1992) (holding that sheriffs and deputies are not county officials).

Sheriffs have for 30 years successfully raised these distinctions to legally sever themselves from county governments. Lampley's Opening Brief, pp. 5-6. There is no reason to depart from the very distinctions that sheriffs have repeatedly convinced the state and federal courts to draw.

Trousdell confirms that there is no good reason to stich the Sheriff and County back together here. Again, the Court there dealt with a deputy sheriff

who ran his vehicle into the back of a trooper's patrol car as the two were pursuing a suspect. The patrolman got workers' compensation from the State and then sued the Sheriff in tort. The Supreme Court made a point to analyze the "specific exceptions to the waiver of immunity" in § 15-78-60, determined that the action "does not fall within any of the listed exceptions," and so concluded that the Sheriff "is not immune from suit." *Trousdell v. Cannon*, 351 S.C. 636, 642, 572 S.E.2d 264, 267 (2002).

"[A]ny of the listed exceptions" in § 15-78-60 that the Court analyzed of course includes § 15-78-60(14). So dicta or not, *Trousdell* reasoned on remarkably similar facts that a sheriff is not immune from suit simply because the injured employee got workers' compensation from another governmental employer. If not binding, our highest court's conclusion persuasively shows that the term "employer" deserves its plain meaning.

II. The Sheriff relies on canons that do not apply or help him.

The Sheriff nevertheless presses three canons to depart from the text's plain meaning. None are persuasive even if the Court rules *sua sponte* that the unambiguous statute is ambiguous.

Initially, the Sheriff on appeal did not press the canon that favors employees when there are doubts over whether workers' compensation coverage exists. The point was thus abandoned.

The Sheriff replaced that canon with the one where § 15-78-60(14) must be liberally construed in favor of limiting the liability of the state. While true, this is not a license to make the term "employer" mean whatever one wishes. It is also not a license to ignore binding precedent. The Supreme Court has already defined the term "employer" in the Tort Claims Act. The Sheriff does not qualify because he does not pay firemen, control them, hire them, fire them, or provide them equipment. *See Faile v. S.C. Dep't of Juv. Justice*, 350 S.C. 315, 329, 566 S.E.2d 536, 543 (2002) (defining the term "employer").

Section 15-78-200, S.C. Code Ann., and the Act's entire structure, answers the next canon that the Sheriff relies on. As Lampley earlier explained, S.C. Code Ann. § 15-78-60(14) is not surplusage to the general workers' compensation statutes because the legislature intended for the Tort Claims Act to contain all the limitations to the liability that the Act creates. The Act begins by allowing tort suits against the government, subject to the limitations "contained herein." S.C. Code Ann. § 15-78-40. Section 15-78-60 then lists the limitations contained herein. The Act next repeats, "The provisions of this chapter [the Tort Claims Act] establish limitations on and exemptions to the liability of the governmental entity[.]"). S.C. Code Ann. § 15-78-200. So pointing to statutes outside the Tort Claims Act ignores the legislature's stated goal that the limitations to the liability created by the Act be contained within the Act. This gives § 15-78-60(14) ample work to do.

Lampley is also happy for the general statutes to apply. Like § 15-78-60(14), §§ 42-1-540 and -550 and -560 provide that "a plaintiff may collect workers' compensation benefits *and* sue the third party responsible for causing the injuries." *Machin v. Carus Corp.*, 419 S.C. 527, 534-35, 799 S.E.2d 468, 471-72 (2017) (emphasis in original). This shows that what the Sheriff really wants to give the term "employer" in the Tort Claims Act a broader meaning than the term "employer" has in these related statutes.

This is odd. Identical terms within related statutes are normally given an identical meaning to harmonize and reconcile the two provisions. This is how this Court construed these precise statutes in *Buff v. S.C. DOT*, 332 S.C. 472, 475, 505 S.E.2d 360, 362 (Ct.App. 1998), *rev'd on other grounds*, 342 S.C. 416, 537 S.E.2d 279 (2000). And *Buff* remains good law on this point in that the Supreme Court dealt only with jury deliberations, not with § 15-78-60(14). According to LexisNexis, this Court and the Supreme Court have cited cases that were "rev'd on other grounds" in over 50 decisions. So *Buff* remains precedential on how to construe § 15-78-60(14).

The last canon the Sheriff advocates, against circuitous actions, ignores Lampley's pain and suffering from the crash. "Workers' compensation benefits do not include all the various types of damages that may be recovered in a personal injury suit against a third-party tortfeasor." *Breeden v. TCW, Inc./Tenn. Express*, 355 S.C. 112, 118, 584 S.E.2d 379, 382 (2003). In

particular, workers' compensation does not cover an injured worker's pain and suffering. *Id.* at 118, 584 S.E.2d at 382. Lampley alleges that the crash has caused him "extreme and excruciating pain continuously to this date" and will cause him to "suffer such pain in the future." ROA 28 ¶ 5. To recover for this pain and suffering, Lampley must sue the Sheriff, the third party who employed the tortfeasor.

Now the lien that the Sheriff emphasizes does prevent Lampley from recovering twice for the same injuries. He cannot sue the Sheriff to pocket the workers' compensation carrier's fair share of the lost wages and medical bills that the carrier has paid. But the carrier does not have any claim to the pain-and-suffering damages that it has never paid. Its lien on Lampley's anticipated judgment against the Sheriff is limited "to the extent the recovery shall be deemed to be for the benefit of the carrier." S.C. Code Ann. § 42-1-560(b). Recovery for Lampley's pain and suffering cannot benefit the workers' compensation carrier because it has never paid Lampley anything for his pain and suffering. *See Breeden*, 355 S.C. at 118, 584 S.E.2d at 382 (noting that the amount of the lien must account for the elements of damages that are not included in the workers' compensation benefits).

That is not all. Even for lost wages and medical bills, the Workers' Compensation Commission is authorized to reduce the lien if Lampley's

judgment against the Sheriff is for an amount less than his estimated total damages. S.C. Code Ann. § 42-1-560(f).

So Lampley is not seeking a double recovery or proposing a futile, circuitous act. He only wants a single recovery for all his damages, including the pain and suffering for which he has never been compensated.

III. The statute turns on who employed whom, not who paid for what insurance.

The Sheriff lastly advances a policy argument that is unmoored to the statute's text or any canon of construction. Boiled down, the Sheriff wants to be deemed the fireman's employer merely because the County chose to insure him and the fireman under the same workers' compensation policy. But the Sheriff admits that he is a "governmental entity" under the Tort Claims Act. Sheriff's Brief, p. 9 n. 4. As such, the Sheriff must purchase liability insurance for his own, separate liabilities under the Act. S.C. Code Ann. § 15-78-140(a).

The Sheriff does not explain why his statutorily-mandated liability carrier should be off the hook merely because of where he gets his workers' compensation insurance. Any conflict between the Sheriff's liability carrier and his workers' compensation carrier is between the two insurance companies. It does not affect who employed whom, nor strip Lampley of his statutory right to sue every tortfeasor but his employer.

The Sheriff's repeated references to the taxpayers is also overstated. Sheriffs enjoy an independent source of funding through fees and must account for the licenses, fines, penalties, and forfeitures that they also collect. *See* S.C. Code Ann. § 23-15-130 (requiring a monthly accounting). No matter where these sums are ultimately deposited, the money is traceable to the Sheriff's efforts rather than property taxes. A forensic accountant could thus run the numbers, offset other costs, including the cost of the Sheriff's office in the courthouse, and see whether a particular sheriff at a particular time funded his or her fair share of the workers' compensation premiums.

Such inquiries are time-consuming, expensive, and wholly unnecessary under the statute. The statute by its terms turns on who employed whom, not who funded what insurance.

Finally, the Sheriff on appeal abandoned his earlier reliance on S.C. Code Ann. § 4-9-30(5)(a). The Sheriff's failure to cite the statute on appeal seems to acknowledge that the view it successfully pressed in the trial court leads to absurd results. The parties can apparently agree that the Sheriff does not employ road-crew workers, water-treatment personnel, sewage collectors, court clerks, DSS case workers, doctors, librarians—or firemen. The Sheriff understandably dropped the point.

Conclusion

The Sheriff did not employ Lampley and should not be deemed to be his employer. The unambiguous terms do not allow it. And to avoid liability sheriffs across the state have for decades successfully severed themselves from county governments. This same distinction holds true here.

The summary-judgment order must be reversed, and the case remanded for proceedings on Lampley's bodily-injury claims. Lampley is statutorily entitled to pursue a single recovery for all his damages, including the uncompensated pain and suffering that he has endured since the crash.

Respectfully,

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Rule 211(b), SCACR, Certificate

I, Robert Hill, certify that I prepared the Appellant Christopher Lampley's final opening brief and his final reply brief. Both brief comply with Rule 211(b), SCACR.

By: _____

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