

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

Letitia H. Verdin, Circuit Court Judge

JUL 31 2019

SC Court of Appeals

Case No.: 2019-000046

Elvia Stoppiello and Gilberto Garcia,.....Appellants,

v.

William D. Turner and Charter Communications, LLC,.....Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in ordering a dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.
- II. Whether the trial court erred in ordering a dismissal pursuant to Sections 15-3-530(5) and 15-3-535 of the South Carolina Code.
- III. Whether Appellant Elvia Stoppiello is entitled to the toll the statute of limitations pursuant to Section 15-3-40 of the South Carolina Code.

STATEMENT OF THE CASE

On April 21, 2015, Appellant Elvia Stoppiello (hereinafter referred to as “Appellant Stoppiello”) and Respondent William D. Turner (hereinafter referred to as “Respondent Turner”) were in an automobile accident on Airport Road in Greenville County, South Carolina. (R. p. 20, lines 13-18). At the time of the automobile accident, Respondent Turner was acting within the scope of his employment with Respondent Charter Communications, LLC (hereinafter referred to as “Respondent Charter”). (R. p. 22, lines 11-16).

As a result of the automobile accident, allegedly involving Appellant Stoppiello being struck at a high rate of speed, she was thrown around her vehicle, had headaches, and sought medical treatment. (R. p. 20, lines 15-21). Months later, Appellant Stoppiello sought additional medical treatment for headaches, flashing lights, and other symptoms. (R. p. 21, lines 1-3) (emphasis added). On March 28, 2016, Appellant Stoppiello was diagnosed with a traumatic brain injury that allegedly resulted from a concussion caused by the automobile accident. (R. p. 21, lines 5-12).

On May 24, 2018, Appellant Stoppiello and her husband, Gilberto Garcia, (hereinafter collectively referred to as “Appellants”) filed suit against William D. Turner and Charter Communications, LLC (hereinafter collectively referred to as “Respondents”) in the Greenville County Court of Common Pleas. Appellants allege negligence as to Respondent Turner and

negligence, negligent hiring, negligent training, and negligent supervision as to Respondent Charter. (R. p. 22, line 17-p. 28, line 15).

On June 25, 2018, an Affidavit of Service was filed indicating positive service upon Respondent Charter and, on July 6, 2018, counsel for Respondents filed an answer accepting service for Respondent Charter and Respondent Turner. In their answer, Respondents timely and properly asserted the statute of limitations defense. (R. p. 35, lines 14-19). Respondents also properly asserted that, under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Appellants failed to state facts in their complaint sufficient to constitute a cause of action against them. (R. p. 37, lines 12-17).

On November 2, 2018, Respondents filed a Motion to Dismiss or, alternatively, for Summary Judgment, which was heard on November 28, 2018. (R. pp. 1-2). On November 30, 2018, Judge Letitia Verdin granted Respondents' Motion to Dismiss and, on December 6, 2018, Appellants filed a Motion to Reconsider. (R. pp. 3-11).

On December 12, 2018, Judge Verdin Ordered the case dismissed in its entirety with prejudice based on the following conclusions of law: (1) an injured party must act promptly when the facts and circumstances of an injury would place a reasonable person on notice that a claim against another party might exist; (2) pursuant to Sections 15-3-530(5) and 15-3-535 of the South Carolina Code, Appellants' claims must have commenced within three years after they knew or by reasonable diligence should have known they had a cause of action; and (3) Appellants failed to file their action within the time allowed by the statute of limitations. (R. p. 14). Thereafter, on January 7, 2019, Judge Verdin denied Appellants' Motion to Reconsider based on the prior finding that the statute of limitations had run by the time the action was commenced. (R. p. 16).

STANDARD OF REVIEW

The trial court granted Respondents' Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. "On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." Brouwer v. Sisters of Charity Providence Hosps., 409 S.C. 514, 519, 763 S.E.2d 200, 202 (2014) (citing Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory [] of the case." Id. "The Court may sustain the dismissal when the facts alleged in the complaint do not support relief under any theory of law." Id. (citing Flateau v. Harrelson, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003)).

ARGUMENT

I. This Court should affirm the trial court's decision based on the grounds appearing in the Record of Appeal.

For the reasons outlined below and pursuant to SCACR Rule 220(c), the trial court's order was proper and should be affirmed.

II. The trial court did not err in ordering a dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a motion to dismiss may be granted for failure to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRCPP. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light

most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Id.

Appellants' complaint alleges claims for personal injury arising out of an automobile accident, which are governed by South Carolina Code Sections 15-3-530(5) and 15-3-535. Consistent with these statutes, the trial court properly held that Appellants' claims must have commenced within three (3) years after they knew or by the exercise of reasonable diligence should have known that they had a cause of action. See S.C. Code Ann. §§ 15-3-530(5), 15-3-535.

Further, an injured party must act promptly when the facts and circumstances of an injury would place a reasonable person on notice that a claim against another party might exist. Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp., 332 S.C. 197, 207, 503 S.E.2d 761, 766 (Ct. App. 1998). It is immaterial that an injured party does not comprehend the extent of their injuries. Id. (emphasis added). Therefore, the statute of limitations begins to run when a plaintiff knows or should know of a potential claim against another party, not when the plaintiff develops a full-blown theory of recovery. Id. at 208, 503 S.E.2d at 767.

The South Carolina Supreme Court addressed the statute of limitations issue in a case with facts similar to the allegations made in Appellants' Complaint. In Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994), the plaintiff was involved in a three car accident at which time she sustained a back injury requiring a four day hospitalization. Although South Carolina Code Section 15-3-535 required the plaintiff to file her personal injury complaint within the three (3) year statute of limitations, she failed to file her complaint until four (4) days after the three (3) year period. The plaintiff argued that the statute did not begin to run until she was able to investigate her case, discover a cause of action, and determine who or what caused her injury. The South Carolina Supreme Court disagreed with the plaintiff's argument. Instead, the Court opined that the date the

statute of limitations begins to run is an objective and not subjective determination. Id. at 128-129. Specifically, the Court held that the statute began to run on the date of the accident which was when the plaintiff was on notice that some right of hers had been invaded or that some claim against another party might exist. Id. The fact that she had not yet sought advice of counsel or had developed a full-blown theory of recovery was irrelevant. Id.

According to the facts alleged in Appellants' complaint, the automobile accident occurred on April 21, 2015 at which time Appellant Stoppiello was struck at a high rate of speed and was thrown around in her vehicle. (R. p. 20, lines 17-20). As a result of the accident, Appellant Stoppiello had headaches and sought medical treatment. (R. p. 20, line 21). Considering the above allegations as true, the trial court properly held that Appellants' claims were discoverable on April 21, 2015 because a person exercising reasonable diligence would know they have a cause of action immediately following an automobile accident that resulted in personal injury. See Wiggins, 314 S.C. at 128, 442 S.E.2d at 170 (holding that the statute of limitations began to run on the date of accident and not at the time plaintiff was actually able to investigate her case); see also Moates v. Bobb, 322 S.C. 172, 174, 470 S.E.2d 402, 403 (Ct. App. 1996) (finding that the statute of limitations began to run on the date of the automobile accident and that the defendant was not estopped from asserting the statute of limitations as a defense because the plaintiff never gave the defendant any indication that the claim would be settled without litigation); see also Bayle v. S.C. DOT, 344 S.C. 115, 126, 542 S.E.2d 736, 741 (Ct. App. 2001) (finding that the statute of limitations began to run on the date of the loss, not when the plaintiff develops absolute certainty that a cause of action exists or discovers the cause of the loss).

In addition to the above, the complaint alleges that Appellant Stoppiello sought additional medical treatment for headaches, flashing lights, and other symptoms months after the automobile

accident. (R. p. 21, lines 1-3) (emphasis added). Thereafter, on March 28, 2016, Appellant Stoppiello was diagnosed with a traumatic brain injury that allegedly resulted from a concussion caused by the automobile accident. (R. p. 21, lines 5-12). The fact that Appellant Stoppiello discovered the extent of her injuries on March 28, 2016 is immaterial because she had notice of her claim against Respondents on April 21, 2015, when the automobile accident occurred and when she had headaches for which she sought medical treatment. See Knox v. Greenville Hosp. Sys., 362 S.C. 566, 570, 608 S.E.2d 459, 462 (Ct. App. 2005) (holding that the statute of limitations began to run when the incident occurred and not when the plaintiff discovered the extent of his injury) (emphasis added); see also Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999) (finding that the statute of limitations began to run when the plaintiff suffered an injury and was not tolled during the period of time in which he was unaware of the extent of his actionable injury) (emphasis added).

Accordingly, the statute of limitations began to run on April 21, 2015 and, therefore, Appellants' claims must have commenced by April 21, 2018. See S.C. Code Ann. §§ 15-3-530(5), 15-3-535. Appellants, however, filed their complaint on May 24, 2018 outside the applicable statute of limitations. Thus, the trial court properly granted Respondents' Motion to Dismiss.

III. The trial court did not err in ordering a dismissal pursuant to Sections 15-530(5) and 15-3-535 of the South Carolina Code.

Appellants contend the trial court improperly used a strict interpretation of Sections 15-530(5) and 15-3-535 when it dismissed the case. In support of this contention, Appellants proffer excerpts from Appellant Stoppiello's medical records. Such information is not properly before this Court, as this Court is reviewing the trial court's Order granting Respondents' Motion to Dismiss based on facts alleged in the complaint. However, to the extent that Appellants contend that their

complaint alleges that Appellant Stoppiello did not know she had an injury until March 28, 2016, when she was diagnosed with a concussion, Respondents respectfully disagree.

Respondents do not dispute Appellants' reliance on the South Carolina Supreme Court's application of the statute of limitations in Snell v. Columbia Gun Exch., Inc., 276 S.C. 301, 278 S.E.2d 333 (1981) when it held that:

The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.

For the purpose of the Motion to Dismiss only, Respondents do not dispute that Appellant Stoppiello was not aware until March 28, 2016 that she had a "traumatic brain injury" stemming from the automobile accident. (R. p. 21, lines 7-12). However, Respondents contend that Appellants' Complaint acknowledges that Appellant Stoppiello knew she was injured before May 24, 2015, the earliest day on which the statute of limitations began to run in order for Appellants' complaint to have been timely filed.

The automobile accident occurred on April 21, 2015 at which time Respondent Turner's vehicle struck Appellants' vehicle causing Appellant Stoppiello to be "thrown around her vehicle." (R. p. 20, lines 17-20). As discussed above, Appellants allege in their complaint that Appellant Stoppiello had headaches and sought medical treatment as a result of the automobile accident prior to experiencing flashing lights and other symptoms that led her to seek additional medical treatment months later. (R. p. 20, line 21-p. 21, line 3). Construing the allegations in the complaint in a light most favorable to Appellants, it is clear that Appellant Stoppiello was aware that she was injured and

that she may have a claim against Respondents as a result of the automobile accident on the day it occurred.

To the extent that this Court considers the excerpts of medical records proffered by Appellants, Respondents argue that these medical records actually support the trial court's decision. In particular, a medical report dated September 11, 2015 from NeuroRehab Services reveals that Appellant Stoppiello was evaluated by Dr. Tobi Gilbert. During the evaluation, Appellant Stoppiello claimed that she began to experience pain in her lower and mid back approximately two hours after the collision. (R. p. 72) (emphasis added). In their brief, Appellants point out that "initially following the accident, Appellant Stoppiello presented with sleep disturbances, balance difficulties, light headedness, dizziness, and headaches all of which were temporary in nature. Throughout chiropractic treatment she experienced severe headaches and seeing lights following each treatment session." (Appellants' Initial Brief, p. 3; R. p. 75). Of significance, the medical record cited by Appellants for the claim that Appellant Stoppiello had severe headaches and visual disturbances, was dated May 20, 2015, still more than three (3) years before Appellants filed their complaint on May 24, 2018. Thus, even when considering medical records proffered at the motion hearing, it can be undisputed that Appellant Stoppiello had notice of an injury as a result of the automobile accident at least by May 20, 2015 such that she would have known that a claim against Respondents existed more than three (3) years before Appellants filed their complaint.

Appellants contend that this Court, in Grillo v. Speed Rite Products, Inc., 340 S.C. 498, 532 S.E. 2d 1 (Ct. App. 2000), ruled on the existence of circumstances in which the statute of limitations, as written, should be viewed in a more objective matter. Again, Respondents do not dispute this general proposition. However, Respondents contend that Appellants' reliance on Grillo is misplaced. Grillo was a workplace exposure case in which the plaintiff developed headaches over a

period of a year due to repeat and continuous exposure to poisonous ink. Id. Based on the facts, the court found that there was a distinction between temporary symptoms and the point at which the plaintiff could attribute his symptoms to the poisonous ink. Id. The court based its finding on workplace exposure cases such as asbestos, and determined that a reasonable person might have a different opinion as to the cause of the plaintiff's headaches. Id. As such, only the specific diagnosis that the plaintiff's symptoms resulted from the ink exposure put the plaintiff on notice of a legally compensable injury. Id.

Here, however, Appellant Stoppiello was not repeatedly exposed to anything, nor was the cause of her injury unidentifiable without a diagnosis (i.e. like asbestos). Rather, Appellant Stoppiello was in a single automobile accident, after which she began experiencing and sought treatment for headaches. Accordingly, despite Appellants' contention, this Court's approach to temporary symptoms arising from repeat and continuous workplace exposure in Grillo is not applicable in automobile personal injury cases where such symptoms are attributable to a single identifiable cause (i.e. the automobile accident), after which any reasonable person would be on notice of a claim.

IV. Appellant Elvia Stoppiello is not entitled to the toll the statute of limitations pursuant to Section 15-3-40 of the South Carolina Code.

Finally, Appellants contend that they are entitled to the protections set forth in Section 15-3-40(2) of the South Carolina Code because Appellant Stoppiello was diagnosed with a traumatic brain injury on March 28, 2016. Under Section 15-3-40 of the South Carolina Code, a person is entitled to toll the statute of limitations if, at the time the cause of action is accrued, they are insane. The standard for "insanity" under Section 15-3-40(2) is as follows:

Insanity or mental incompetency that tolls the statute of limitations consists of a mental condition which precludes understanding the nature or effects of one's acts, an incapacity to manage one's affairs, an inability to understand

or protect one's rights; because of an over-all inability to function in society, or the mental condition is such as to require care in a [] hospital.

Wiggins v. Edwards, 314 S.C. 126, 129, 442 S.E.2d 169, 170 (1994) (finding that the claimant was not entitled to toll the statute of limitations because confusion or disorientation, as well as failing to lose consciousness, does not constitute "insanity"). Accordingly, Appellants are entitled to toll the statute of limitations only if Appellant Stoppiello was unable to understand the nature or effects of her acts, manage her own affairs, or understand or protect her rights at the time the cause of action was accrued. See S.C. Code § 15-3-40(2) (emphasis added).

In Wiggins, the South Carolina Supreme Court found that the claimant was not entitled to toll the statute of limitations because "confusion" and "disorientation" do not constitute "insanity." 314 S.C. at 129, 442 S.E.2d at 170. Additionally, in Grant-Davis v. S.C. Office of Governor, the United States District Court for the District of South Carolina, Charleston Division, found that the plaintiff was not entitled to toll the statute of limitations because he failed to provide any evidence that his PTSD, depression, and antisocial symptoms resulted in "an over-all inability to function in society." No. 2:15-cv-02521-PMD-MGB, 2018 U.S. Dist. LEXIS 46494 (D.S.C. Jan. 26, 2018). Moreover, in Grant-Davis, the court found that the plaintiff was reasonably and cogently pursuing his remedies at the time his right to action accrued because he wrote and responded to letters regarding his claim. Id. at *10.

On the other hand, in Timpson v. Haley, the United States District Court for the District of South Carolina, Greenville Division, found that the claimant was entitled to toll the statute of limitations. No. 6:16-1174-MGL, 2017 U.S. Dist. LEXIS 135939 (D.S.C. Aug. 24, 2017). Specifically, the court found that the claimant suffered from mental disabilities that require constant care and, accordingly, rose to the level of "insanity" required under S.C. Code § 15-3-40(2). Id. at *8. Additionally, in Estate of Mims v. S.C. Dep't of Disabilities & Special Needs, the South

Carolina Court of Appeals found that uncontroverted evidence existed that the claimant was mentally incompetent because he required consistent one-to-one care to accomplish daily tasks of living as a result of being born with severe mental disabilities. 422 S.C. 388, 397, 811 S.E.2d 807, 812 (Ct. App. 2017).

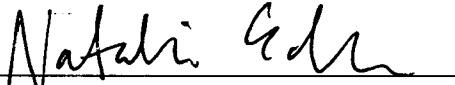
First and most importantly, Appellants do not allege in their complaint that Appellant Stoppiello was insane or mentally incompetent. Appellants also did not argue at the motion to dismiss hearing that the statute of limitations was tolled due to Appellant Stoppiello's alleged insanity. Regardless, Appellants proffer Dr. White's medical opinion as evidence that Appellant Stoppiello's "mental state would prevent her from understanding or protecting her rights." (Appellants' Initial Brief, p. 6). More specifically, Appellants contend that Appellant Stoppiello is "extremely disorganized" and has limited memory and "difficulty concentrating." (*Id.*). Appellants do not allege that Appellant Stoppiello is incapable of understanding her own acts, is unable to manage her affairs, requires constant care, or lacks an overall ability to function in society. See Timpson, 2017 U.S. Dist. LEXIS 135939 at *8; see also Estate of Mims, 422 S.C. at 397, 811 S.E.2d at 812; see also Grant-Davis, 2018 U.S. Dist. LEXIS 46494, at *10. Accordingly, Appellant Stoppiello was not mentally incompetent or "insane" at the time the cause of action accrued to justify tolling the statute of limitations. Thus, the trial court properly granted Respondents' Motion to Dismiss.

Furthermore, Appellant Stoppiello retained Brian T. Smith (hereinafter referred to as "Mr. Smith") as counsel on or before April 23, 2015, two days after the automobile accident at issue. (R. p. 50). Such an act clearly demonstrates Appellant Stoppiello's ability to understand and protect her rights. Additionally, upon retaining Mr. Smith as counsel on or before April 23, 2015, Appellant Stoppiello signed a power of attorney pursuant to which Mr. Smith became Appellant Stoppiello's

agent. (R. p. 49). As a result, Appellant Stoppiello's mental competency became irrelevant on April 23, 2015 as to the tolling of the statute of limitations. Accordingly, Appellant Stoppiello was not mentally incompetent or "insane" at the time the cause of action accrued and Appellants are not entitled to toll the statute of limits pursuant to Section 15-3-40(2) of the South Carolina Code. Thus, the trial court's order granting Respondents' Motion to Dismiss should be affirmed.

CONCLUSION

For the foregoing reasons, Respondents request that the Court deny the appeal and affirm the decision of the trial court.


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July 29, 2019

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RULE 211, SCACR CERTIFICATION
FINAL BRIEF OF APPELLANT

I, Natalie R. Ecker, Esquire, hereby certify that the *Final Brief of Respondents* complies with the requirements of Rule 211(b) of the South Carolina Appellate Court Rules.



Natalie R. Ecker, Esquire

Greenville, South Carolina

July 29, 2019