

RECEIVED

APR 18 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.
Chief Administrative Judge, Ninth Judicial Circuit

Case No.: 2014-002243

City of Charleston, Charleston Police & Fire
Departments,.....Respondents.

v.

Derrell Beckley.....Appellant.

FINAL BRIEF OF RESPONDENTS

CHRISTOPHER T. DORSEL
SC Bar #72504
Senn Legal, LLC
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045
Attorney for the Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.
Chief Administrative Judge, Ninth Judicial Circuit

Case No.: 2014-002243

City of Charleston, Charleston Police & Fire
Departments,.....Respondents.

v.

Derrell Beckley.....Appellant.

FINAL BRIEF OF RESPONDENTS

CHRISTOPHER T. DORSEL
SC Bar #72504
Senn Legal, LLC
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045
Attorney for the Respondent

TABLE OF CONTENTS

Table of Authorities	ii.
Statement of Issues on Appeal	iii.
Statement of the Case	1
Standard of Review	2
Argument	3
I. The Trial Court properly dismissed Plaintiff's Complaint as being filed past the applicable statute of limitations established by the SCTCA.	3
II. Discovery is not appropriate for a motion to dismiss.	5
Conclusion	6

TABLE OF AUTHORITIES

Cases

<u>Capital City Ins. Co. v. BP Staff, Inc.</u> , 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009)	3
<u>Charleston Cnty. Sch. Dist. v. Harrell</u> , 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011)	3, 4, 5
<u>Doe v. Greenville Cnty. Sch. Dist.</u> , 375 S.C. 63, 66, 651 S.E.2d 305, 307 (2007)	5
<u>Logan v. Cherokee Landscaping & Grading Co.</u> , 389 S.C. 611, 616–17, 698 S.E.2d 879, 882 (Ct. App. 2010)	3
<u>Tanyel v. Osborne</u> , 312 S.C. 473, 441 S.E.2d 329 (Ct. App. 1994).....	5
<u>Vines v. Self Mem'l Hosp.</u> , 314 S.C. 305, 307, 443 S.E.2d 909, 910 (1994).....	3

Statutes

S.C. Code Ann. § 15-78-110	2, 3, 4
S.C. Code Ann. § 15-78-80	3, 4

Rules

Rule 3(a), SCRCP	2, 3
Rule 56, SCRCP	5

STATEMENT OF THE ISSUE ON APPEAL

- I. DID THE CIRCUIT COURT PROPERLY DISMISS THIS LAWSUIT AS BEING FILED PAST THE TWO YEAR STATUTE OF LIMITATIONS ESTABLISHED BY THE SOUTH CAROLINA TORT CLAIMS ACT?**

STATEMENT OF THE CASE

This is an appeal from an Order granting Defendants' Motion to Dismiss Appellant's Complaint. Appellant brought suit against the City of Charleston and the City of Charleston Police and Fire Departments for an incident he alleges occurred on April 14, 2011. (R. p. 4). April 14, 2011, is the only date given throughout the entire Complaint and the only date of reference for any acts taken by the named governmental defendants.¹ (R. p. 2-6).

Appellant filed his Complaint on April 16, 2014. (R. p. 2). According to the Complaint, Appellant was involved in an accident on April 14, 2011, when the bicycle he was riding was struck by a truck. (R. p. 4). Appellant alleges that the Charleston Police Department and Charleston Fire Department responded to the accident, but did not complete any reports and allowed the other driver to leave the scene of the accident. (R. p. 4). Appellant alleges that he was threatened and therefore, left town for an indeterminate amount of time. (R. p. 4).

Upon his return to Charleston (date unspecified), Appellant fired his attorney and contacted the Charleston Police Department. (R. p. 4). Appellant was contacted by the Police Department and eventually went into the Department to file a Complaint and give a statement. (R. p. 4). In the last paragraph of his complaint, Appellant asserts allegations about the reporting completed by the Respondents. (R. p. 4). Appellant then brings the

¹ There is a discrepancy as to the actual date of injury. In both the Order granting Respondent's Motion to Dismiss as well as in the Brief of the Appellant, the date of June 14, 2011, is referenced as the accident date. However, the only date listed in the Complaint is April 14, 2011. For that reason, the only applicable date to be considered for purposes of this appeal is April 14, 2011. However, the discrepancy in dates is immaterial to the Motion to Dismiss and this appeal. Both dates fall well after the two year statute of limitations proscribed by the South Carolina Tort Claims Act, and therefore, the outcome would be the same using either date.

following “charges”: a) Color of Law; b) Due Process; c) Conspiracy; and d) Police Misconduct. (R. p. 5).

Respondents filed a Motion to Dismiss on May 28, 2014, based on Rule 3(a), SCRCP, and S.C. Code Ann. § 15-78-110. (R. p. 14-15). Appellant did not file any response to the Motion to Dismiss nor did he move to amend his Complaint. The Court heard arguments on Defendants’ Motion to Dismiss at a hearing on September 11, 2014. Appellant’s only arguments against the statute of limitations defense was that he filed his Complaint on April 10, 2014 and that he had a lawyer. (R. p. 19, line 20-p. 20, line 6). The hearing judge correctly pointed out that based on the allegations in the Complaint, this case was subject to the two-year statute of limitation established by the South Carolina Tort Claims Act (“SCTCA”). (R. p. 19, line 10-p. 20, line 6). Because the lawsuit was filed more than two years after the incident date alleged in the complaint, the case was dismissed as being filed past the applicable statute of limitations. (R. p. 19, line 10-p. 20, line 6).

An Order of dismissal was filed on September 16, 2014, dismissing the case with prejudice. (R. p. 24-25). The Court held that based on the allegations in the Complaint, the claims were subject to the statute of limitations established by the SCTCA. (R. p. 24). The Order correctly stated that Appellant’s lawsuit was not filed within the applicable two year statute of limitation, and therefore, Appellant’s claims were barred. (R. p. 24). Appellant timely filed a Notice of Appeal on October 10, 2014.

STANDARD OF REVIEW

An appellate court applies the same standard of review as a trial court for a Motion to Dismiss. Logan v. Cherokee Landscaping & Grading Co., 389 S.C. 611, 616–

17, 698 S.E.2d 879, 882 (Ct. App. 2010). “In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). Under Logan and Capital City Ins. Co., the appellate court should only look to the allegations made in the complaint when it is ruling on a Motion to Dismiss.

ARGUMENT

I. The Trial Court properly dismissed Plaintiff’s Complaint as being filed past the applicable statute of limitations established by the SCTCA.

Plaintiff has focused his claims on the SCTCA. As such, any action brought pursuant to the SCTCA is “forever barred” unless it is commenced within two (2) years after the date of the alleged loss. S.C. Code Ann. § 15-78-110. A civil action is generally deemed commenced by filing and serving a summons and complaint. Rule 3(a), SCRPC. This two (2) year statute can be extended to three (3) years if a verified claim is filed. S.C. Code Ann. § 15-78-80. However, if a person chooses to file a verified claim, “the claim must be received within one year after the loss was or should have been discovered.” Id. The South Carolina Supreme Court has held that strict compliance with the statute is required when filing a verified claim. Vines v. Self Mem'l Hosp., 314 S.C. 305, 307, 443 S.E.2d 909, 910 (1994).

Plaintiff alleges that on April 14, 2011, he was involved in a bicycle/truck accident in Charleston. In his Complaint, he does not give any other dates for which he is claiming injury. As such, in ruling on a motion to dismiss based on the statute of limitations, the applicable date for the court to consider is April 14, 2011. According to the SCTCA,

Appellant had two years from April 14, 2011, to file his suit. Appellant did not assert in his Complaint nor during oral arguments that he filed a verified claim pursuant to S.C. Code § 15-78-80. Rather, the only explanations Appellant gave in regard to the filing date is that he filed a Motion to Proceed *in forma pauperis* on April 10, 2014 and that he had a lawyer at some point after the accident. (R. p. 16, line 20-p. 17, line 6). Even if the April 10, 2014, date could be considered the applicable filing date, Appellant would have still filed his lawsuit outside the applicable two year statute of limitations.

In Appellant's brief, he references filing a verified claim and includes materials that are outside the four corners of the Complaint. Br. of Appellant at 5; See Charleston Cnty. Sch. Dist. v. Harrell, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011) (holding trial court must base its ruling on motion to dismiss "solely upon the allegations set forth on the face of the complaint."). The filing of a verified claim was not raised at the trial court level, and therefore, has not been properly preserved and should not be considered.

Even if this issue had been properly raised and preserved, Appellant admits in his brief that a verified claims was not filed within 2 years of the incident date and was certainly not filed within one year, as is required by the SCTCA to extend the statute of limitations to three years. Br. of Appellant at 6. Further, Appellant's only proffered explanation for why he did not file a verified claim within the one year period mandated by the SCTCA is "I had The Lawyer for all, but one week of the two year statute of limitations." Br. of Appellant at 6. Whether someone does or does not have an attorney does not change the requirements of the SCTCA, and strict compliance is required. See Vines, 314 S.C. at 307, 443 S.E.2d at 910.

In his brief, Appellant also appears to raise an issue concerning when he should have discovered his claim in this matter. First, this issue was not raised at the trial court level, and therefore, is not properly preserved and should not be considered on appeal. However, if this issue is considered by the court, the allegations in the Complaint show that Appellant (and his lawyer) had all the information necessary regarding the potential claims in this case as of the date of the accident. Tanyel v. Osborne, 312 S.C. 473, 475, 441 S.E.2d 329, 331 (Ct. App. 1994) Therefore, the date of the accident alleged in the Complaint, April 14, 2011, is the applicable start date for the statute of limitations in this matter.

II. Discovery is not appropriate for a motion to dismiss.

Appellant lists as one of his Issues on Appeal “Do the rules of discovery apply in this matter?” Br. of Appellant at 1. In his actual brief, the only reference to this Issue on Appeal is when Appellant states, “One more does the rule of discovery applies in this case? I would like to know because; I was not allowed to ask these questions.” Br. of Appellant at 8.

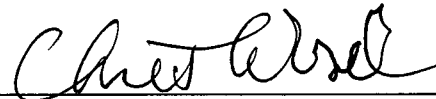
In considering a motion to dismiss, the trial court must base its ruling solely upon the allegations set forth on the face of the complaint. Harrell, 393 S.C. at 557, 713 S.E.2d at 607; Doe v. Greenville Cnty. Sch. Dist., 375 S.C. 63, 66, 651 S.E.2d 305, 307 (2007). While discovery and documents outside the pleadings can be used to defend against a motion for summary judgment pursuant to Rule 56, SCRCF, the court cannot rely on similar documents in ruling on a motion to dismiss. Id. At the hearing on Defendants’ Motion to Dismiss, no materials were considered outside the pleadings, and the Court did not consider converting the Motion to Dismiss into a Motion for Summary Judgment. (R.

p. 18-20). Therefore, the Motion to Dismiss was properly granted based on the pleadings alone.

CONCLUSION

Based on all of the above as well as on the Record on Appeal, Respondents respectfully request that this Honorable Court affirm the Order of Dismissal issued by the Charleston County Court of Common Pleas and dismiss Appellant's appeal.

Respectfully submitted,



Christopher T. Dorsel
SC Bar #72504
Senn Legal, LLC
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045
Attorney for the Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.
Chief Administrative Judge, Ninth Judicial Circuit

RECEIVED

APR 18 2016

SC Court of Appeals

Case No.: 2014-002243

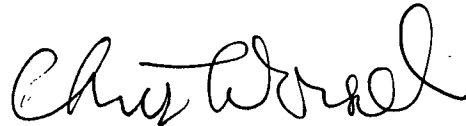
City of Charleston, Charleston Police & Fire
Departments,.....Respondents.

v.

Derrell Beckley.....Appellant.

CERTIFICATE OF COUNSEL

I certify that the Final Brief filed on behalf of Respondents herein complies with Rule 211(b).



CHRISTOPHER T. DORSEL
Senn Legal, LLC
P.O. Box 12279
Charleston, SC 29422
(843) 556-4045
Attorney for Respondents