

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM KERSHAW COUNTY
Court of Common Pleas
Brian M. Gibbons, Circuit Court Judge

NOV 12 2019
SC Court of Appeals

Civil Action No. 2019-CP-28-00101
Appellate Case No. 2019-001041

James Teal,.....Appellant,

v.

South Carolina Department of Transportation.....Respondent.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court correctly find that the statute of limitations operated to bar Plaintiff's Amended Complaint?

STATEMENT OF THE CASE

Appellant wrecked his vehicle at the end of a dead-end road on November 23, 2014. (R. p. ___; Complaint filed February 5, 2019) Plaintiff filed this lawsuit, alleging gross negligence and criminal conspiracy to entrap, against Respondent on February 5, 2019. (Id.)

Respondent filed a motion to dismiss the Complaint on March 21, 2019. (R. p. ___; Motion to Dismiss) Among other things, Respondent argued the Complaint should be dismissed because Appellant failed to commence the action within the statute of limitations.

Appellant filed an Amended Complaint on April 3, 2019. (R. p. ___; Am. Comp.) The Amended Complaint asserted Appellant had suffered a fall in 2010, and had been involved in a work zone accident in 2014, which hindered Appellant's "full and effective daily living and Plaintiffs [sic] Litigation." (Id.) Appellant requested tolling of the statute of limitations pursuant to S.C. Code Ann. §15-3-60 (Supp. ____).

Respondent filed a motion to dismiss the Amended Complaint on April 8, 2019. (R. p. ___; Mo. to Dismiss Am. Comp.)

The circuit court heard arguments on the matter and issued a Form 4 Order ending the case on May 28, 2019. (R. p. __; Transcript; Form 4 Order) The Form 4 Order stated Respondent's motion to dismiss was being granted solely on the basis of the statute of limitations. (Id.)

Appellant filed a Notice of Appeal with this Court on June 25, 2019.

STANDARD OF REVIEW

A Rule 12(b)(6) motion must be based solely upon the allegations set forth on the face of the complaint. *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987). Viewing the evidence in the light most favorable to the plaintiff, the motion must be granted if the facts alleged in the pleading and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case. *Id.*

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY FOUND THAT THE STATUTE OF LIMITATIONS BARS PLAINTIFF'S AMENDED COMPLAINT.

The pleadings in this matter allege Appellant was involved in a single-vehicle accident on November 23, 2014. (R. pp. __; Complaint and Amended Complaint) Appellant wrecked at the end of a dead end road. (Id.) Appellant alleges the dead end sign was not visible to warn him of the end of the road. (Id.)

Appellant alleges Respondent, a state agency, failed to maintain traffic control devices to ensure safe passage for motorists. (Id.) Appellant alleges Respondent had recently paved the dead end road and should have noticed and replaced the "antique" dead end sign with a more visible sign. (Id.) Appellant also alleged Respondent replaced the dead-end sign one day after the accident. (Id.)

Plaintiff alleged physical injuries to his neck and right hip. (Id.) Appellant also alleged that the wreck on the dead-end road exacerbated injuries to his left knee that he suffered after an accident that occurred only weeks prior on September 11, 2014. (Id.)

Appellant recognized the statute of limitations hurdle in his Amended Complaint but alleged that the statute should be tolled pursuant to S.C. Code Ann. §15-3-60 because he is a

“multi-handicap”. (R. p. ___; Am. Compl.) By this, Appellant explained he suffers from long term disabilities arising out of a 25’ fall in 2010, and a “work zone” accident in 2014.¹ (Id.)

Appellant asserts that his physical disabilities resulting from this accident and previous incidents entitle him to the tolling of the statute of limitations. Appellant misapprehends and misunderstands the effect of the tolling statutes.

The statute of limitations for a cause of action against a state agency is two years. S.C. Code Ann. §15-78-110 (stating any action brought pursuant to the Tort Claims Act is forever barred unless commenced within two years after the date the loss was or should have been discovered); *Hackworth v. Greenville County*, 371 S.C. 99, 103-104, 637 S.E.2d 320, 322 (Ct. App. 2006) (“For claims filed under the Tort Claims Act, the statute of limitations is two years after the loss was or should have been discovered.”).

Appellant acknowledges that he failed to commence this action within the statute of limitations.

Appellant attempts to salvage his civil action by requesting the statute of limitations be tolled pursuant to S.C. Code Ann. §15-3-60 (2005). Appellant’s reliance on this section is without merit.

Section 15-3-60 addresses the tolling of the statute of limitations in the event a claimant has “two or more disabilities.” S.C. Code Ann. §15-3-60 (“When two or more disabilities shall coexist at the time the right of action accrues the limitation shall not attach until they all be removed.”). The “disabilities” referred to in this section are those set forth in section 15-3-40: infancy or insanity. *See* S.C. Code Ann. §15-3-40 (stating that if a party is either a minor or

¹ In the Amended Complaint, Plaintiff referred to an accident on September 11, 2014, that damaged his left knee. Appellant also states he was injured in a “work zone” accident in 2014. Plaintiff filed a previous civil action arising out of a motor vehicle collision that occurred on September 11, 2014. *See Teal v. Edwards Telecomm., Inc.*, Case Number 2016-CP-28-00583.

insane at the time the cause of action accrued, the time of such disability is not a part of the time limited for the commencement of the action).²

Appellant admits that he is not relying on infancy or insanity for the tolling of the statute of limitations. (Transcript, p. 6) Instead, Appellant argues his multiple physical injuries should operate to toll the statute. Sections 15-3-40 and -60 do not operate to toll the statute of limitations where a party previously suffered from one or more physical disabilities, such as an earlier injury. These sections work together only to toll the statute of limitations where a disability, or multiple disabilities, exist in the form of infancy or insanity. A statute “must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.” *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). “Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative.” *Azar v. City of Columbia*, 414 S.C. 307, 315, 778 S.E.2d 315, 319 (2015).

Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994), addresses the tolling issue raised by Appellant and explains that section 15-3-40 provides for tolling only in the limited situations of age of minority or insanity. The plaintiff in *Wiggins* argued that her physical disability should toll the statute of limitations. *Id.* at 129, 442 S.E.2d at 171. The supreme court rejected this argument and confirmed the section 15-3-40 does not include a tolling provision for a physical disability. *Id.* The statute clearly does not refer to physical injuries or disabilities, no matter the number of physical injuries from which one may suffer.

² A previous version of S.C. Code Ann. §15-3-40 provided for tolling of the statute of limitations for persons imprisoned for certain offenses. *See* 1996 S.C. Laws Act 234 (H.B. No. 3204); *Wiggins*, 314 S.C. at 129, 442 S.E.2d at 170 (setting forth the language of S.C. Code Ann. §15-3-40 (1992) as providing for tolling in the event of infancy, insanity, and imprisonment). This would explain the reference in section 15-3-60 to “two or more disabilities.”

Therefore, the statute of limitations should not have been tolled based on Appellant's claim of multiple physical disabilities, and the circuit court correctly found that the Amended Complaint should be dismissed.

II. THE CIRCUIT COURT'S ORDER SHOULD BE AFFIRMED BECAUSE APPELLANT HAS ABANDONED HIS ISSUES ON APPEAL.

Appellant's argument has been abandoned on appeal and should not be considered by the Court of Appeals. Appellant's entire Argument consists of three paragraphs with no argument as to why the statute of limitations should be tolled.

This Court's rules require each argument to be "followed by discussion and citations of authority." Rule 208(b)(1)(D), SCACR. Appellant's brief is devoid of any real discussion of the facts and application of the law to such facts.

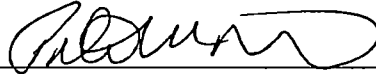
Our courts have long held that issues are deemed abandoned where an appellant's arguments are short and conclusory and do not include supporting authority. For example, a half-page argument has been held to be an abandonment of an issue. *See Transportation Ins. Co. and Flagstar Corp. v. South Carolina Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687 (2010), citing *First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994) (finding an issue deemed abandoned where appellant failed to provide arguments or supporting authority for assertion) and *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 584 S.E.2d 390 (Ct. App. 2003) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.").

Appellant's brief is a prime example of issues that have been abandoned on appeal. Appellant's arguments are too short for any court to discern an argument. Appellant's arguments should be deemed abandoned on appeal.

CONCLUSION

For the reasons stated herein, the circuit court's decision to dismiss the Amended Complaint should be affirmed.

Respectfully submitted,



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James Teal,.....Appellant,

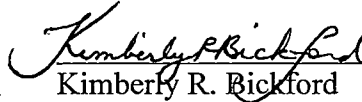
v.

South Carolina Department of Transportation.....Respondent.

CERTIFICATE OF SERVICE

I do hereby certify that I caused to be served the **RESPONDENT'S INITIAL BRIEF** and **RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** upon the below-named party by depositing a copy of the same in the U.S. Mail, first class postage prepaid, and addressed as follows:

James Teal, *pro se*
2832 Tee Pee Trail
Elgin, South Carolina 29045-9758



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November 11, 2019

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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SC Court of Appeals

Re: James Teal v. South Carolina Department of Transportation
C/A No.: 2019-CP-28-00101, 2019-001041
Our File No.: 5021.00719

Dear Ms. Kitchings:

Please find enclosed the original and one copy of the *Respondent's Initial Brief* and *Respondent's Designation of Matter to be Included in the Record on Appeal*, with *Certificate of Service* attached in connection with the above-referenced matter. Please file the enclosed documents and return a filed copy with my runner.

Thank you for your kind assistance in this matter.

Sincerely,



Kimberly R. Bickford
Paralegal

/krb

Enclosures

Cc: James Teal, *pro se*