

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON) FOURTH JUDICIAL CIRCUIT
C/A NO. 2019-CP-16-0705

Angel D. Phillips,)
Plaintiff,)

vs.)

Hartsville Department of Social Services,)
Defendant.)

ORDER GRANTING
MOTION TO DISMISS
RECEIVED
JAN 14 2020
SC Court of Appeals

This matter came before me as presiding judge for the Fourth Judicial Circuit on November 14, 2019, upon plaintiff's Motion for Discovery and defendant's Motion to Dismiss. Present were *pro se* plaintiff Angel D. Phillips and Joseph P. McLean, attorney for defendant. The court has reviewed the record in this case and heard arguments from the parties on the pending motions.

FACTS

In June 2016, a report of child neglect was made against plaintiff which resulted in her son being placed into emergency protective custody. After investigation and assessment, defendant found the report of neglect unfounded, it notified plaintiff of this fact by letter dated August 5, 2016. The child was returned, and defendant closed its file.

¹ Defendant is misidentified in the pleadings as "Hartsville Department of Social Services." The correct defendant is the South Carolina Department of Social Services which is the state entity with the duty to investigate all reports of child neglect to see if the allegations have merit. S.C. Code Ann. §63-7-10 (2018 Cum. Supp.); *SCDSS v Pritcher*, 329 S.C. 242, 495 S.E.2d 242 (Ct. App. 1997).

TRUE CERTIFIED COPY,

Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,

Scott B. Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

2019 DEC 20 PM 1:28
FILED

FILED

This action was filed on July 3, 2019. In it, plaintiff seeks damages against defendant for wrongfully placing her son into emergency protective custody.

Defendant contends this action is barred by the statute of limitations and has moved to dismiss. Plaintiff has moved for an order to require defendant to produce to her its unredacted file on the underlying report of child neglect and defendant's investigation.

MOTION TO DISMISS

Defendant is a governmental agency of the State of South Carolina. The South Carolina Tort Claims Act governs all tort claims against governmental agencies, and it is the exclusive civil remedy available in an action against a governmental agency. Defendant is only liable for torts within the limitations of the Tort Claims Act. See, S.C. Code Ann. §15-78-20 (2019 Cum. Supp.).

Any action brought pursuant to the Tort Claims Act is subject to a two-year statute of limitations which begins to run on the date the loss was or should have been discovered unless the claimant has first filed a verified claim which extends the statute of limitations to three years. S.C. Code Ann. §15-78-110 (2018 Cum. Supp.). The discovery rule is applicable to actions brought under the Tort Claims Act. *Barr v. City of Rock Hill*, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998). According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from wrongful conduct. The

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

phrase "exercise of reasonable diligence" means that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. *Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996). The date on which discovery should have been made is an objective, not subjective, question. *Kreutner v. David*, 320 S.C. 283, 465 S.E. 2d 88 (1995). In other words, whether the particular plaintiff actually knew (s)he had a claim is not the test. Rather, courts must determine whether the circumstances of the case 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. *Young v. South Carolina Dept. of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

Viewing the facts and inferences in the light most favorable to plaintiff, the court finds that she was put on notice in August of 2016 that she had a potential claim against defendant. Plaintiff was advised in writing that the report of neglect made to defendant which served as the basis for taking her son into emergency protective custody was determined to be unfounded. This fact would have put a person of common knowledge and experience on notice that some right of hers had been invaded or that some claim in tort against defendant might exist.

This action was filed on July 3, 2019 which is more than two years from August

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

2019 OCT 28 PM 1:28
FILED

2016. Plaintiff did not file a verified claim. 2 Therefore, the statute of limitations is two years. Plaintiff did not file this action within two years from the time she discovered or reasonably should have discovered the existence of a potential cause of action. As a result, her claim is barred by the statute of limitations.

MOTION FOR DISCOVERY

Because this action is barred by the statute of limitations, it is not necessary to rule upon plaintiff's Motion for Discovery which is rendered moot.

BASED ON THE FOREGOING, IT IS HEREBY ORDERED:

1. Defendant's Motion to Dismiss is granted, and this action is dismissed with prejudice.
2. Plaintiff's Motion for Discovery is moot.

[E-SIGNATURE OF JUDGE TO FOLLOW]

FILED
 2019 DEC 20 PM 1:28
 CLERK OF COURT
 DARLINGTON COUNTY, S.C.

2 Plaintiff did file a complaint with the South Carolina Office of Inspector General, but it does not meet the plain requirements of a verified claim as set forth in S.C. Code Ann. §15-78-80 (2018 Cum. Supp.). Among other things, the complaint was not verified and it was not filed with the defendant, the State Fiscal Accountability Authority, or with the Attorney General.

4
 TRUE CERTIFIED COPY,
Scott B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.



Darlington Common Pleas

Case Caption: Angel D Phillips VS Hartsville DSS

Case Number: 2019CP1600705

Type: Order/Dismissal

So Ordered

s/Roger E. Henderson 2754

Electronically signed on 2019-11-15 12:17:35 page 5 of 5

FILED

2019 DEC 20 PM 1:28

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.