

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 14 2020

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Michael G. Nettles

Trial Case No. 2019-CP-21-03521
Appellate Case No. 2020-000479

Edward Spears.....Appellant,

v.

Michael S. Hopewell.....Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID JUDGE NETTLES CORRECTLY RULE THAT THE UNDERLYING MAGISTRATE'S COURT CASE WAS PROPERLY TRANSFERRED TO CIRCUIT COURT PURSUANT TO THE APPLICABLE RULES OF MAGISTRATE'S COURT AND CIVIL PROCEDURE?
2. DID JUDGE NETTLES CORRECTLY RULE THAT "OBSTRUCTION OF JUSTICE" IS NOT A CIVIL CAUSE OF ACTION UNDER SOUTH CAROLINA LAW AND THEREFORE DISMISSED THE CASE PURSUANT TO THE APPLICABLE RULE OF CIVIL PROCEDURE?
3. DID JUDGE NETTLES CORRECTLY RULE THAT THE STATUTE OF LIMITATIONS FOR A CIVIL CAUSE OF ACTION IS THREE YEARS, AND THEREFORE DISMISSED THE CASE FOR BEING OUTSIDE THE APPLICABLE STATUTE OF LIMITATIONS?

STATEMENT OF THE CASE

On August 28, 2019, the Appellant filed a civil action against the Respondent in the Florence County Magistrate's Court. In his Complaint, the Appellant stated that "Plaintiff is filing for obstruction of justice." No other allegation was made as to the underlying cause of action. The Respondent was served on September 3, 2019 and filed an Answer on September 27, 2019. On November 19, 2019, the Respondent filed a Memorandum in Support of his Motion to Dismiss, which had been contained within the Answer. On November 21, 2019, the Appellant filed another Complaint in the same case. In this Complaint, which was treated as an Amended Complaint, the Appellant alleges that "on Aug 15, 2016 Mike Hopewell decieve & deberlyaty Brought False &

untrue documents in a default hearing an violation of U.S. Codes 1505-1518.” (*sic*) A hearing was held before Magistrate Owens in Lake City on December 2, 2019. No written order emanated from the hearing, however, at the hearing, Judge Owens ruled from the bench that the second Complaint filed by Appellant on November 21, 2019 would be treated as an Amended Complaint.

Respondent filed an Answer and Counterclaim to the Amended Complaint on December 5, 2019. The counterclaim sought actual and punitive damages in excess of \$7,500.00 and contained a request that the case be transferred to the Court of Common Pleas pursuant to rule.

The case was transferred to the Court of Common Pleas by the Magistrate’s Court on December 9, 2019. A Notice of Transfer of Case to Court of Common Pleas was served by the Florence County Clerk of Court on December 16, 2019.

On December 23, 2019, the Appellant filed a Motion to Reinstate the case to Magistrate’s Court. A hearing was set before the Honorable Michael G. Nettles on February 3, 2020. The court ruled on Appellant’s Motion to Reinstate the Case to Magistrate’s Court and on the Respondent’s Motion to Dismiss the Plaintiff’s Complaint. As a result of the hearing, the Appellant’s Motion to Reinstate the Case to Magistrate’s Court was denied and the Respondent’s Motion to Dismiss the Appellant’s case was granted and the Appellant’s case was dismissed with prejudice.

Appellant filed a Notice of Appeal on or about March 26, 2020.

ARGUMENTS

- 1. JUDGE NETTLES CORRECTLY RULED THAT THE UNDERLYING MAGISTRATE’S COURT CASE WAS PROPERLY TRANSFERRED TO**

**CIRCUIT COURT PURSUANT TO THE APPLICABLE RULES OF
MAGISTRATE'S COURT AND CIVIL PROCEDURE.**

Rule 9(b), SCMCR, provides, *inter alia*, that, unless the Respondent waives the excess of any claim over the jurisdictional amount of the Magistrate's Court, it shall be transferred to the Circuit Court of the county in which it was brought. Rule 13(j), SCRCF, provides that an action brought in a court of limited jurisdiction shall be transferred to the Circuit Court in the event that the counterclaim is in excess of the jurisdictional amount of the court of limited jurisdiction.

In his Answer and Counterclaim, the Respondent alleged causes of action for abuse of process, defamation and violation of the South Carolina Frivolous Proceedings Sanctions Act and prayed for actual and punitive damages in an amount in excess of \$7,500.00. Respondent further prayed that the case be transferred to the Florence County Court of Common Pleas pursuant to Rule 9(b), SCRMF, clearly indicating that he was not waiving the right to have the case transferred. (Defendant's Answer and Counterclaim to Plaintiff's Amended Complaint),

Therefore, Judge Nettles correctly ruled that the proper venue of the case was Circuit Court and the Appellant's Motion to Reinstate the Case to Magistrate's Court was denied (Order of Judge Nettles).

**2. JUDGE NETTLES CORRECTLY RULED THAT "OBSTRUCTION OF
JUSTICE" IS NOT A CIVIL CAUSE OF ACTION UNDER SOUTH CAROLINA
LAW AND THEREFORE DISMISSED THE CASE PURSUANT TO THE
APPLICABLE RULE OF CIVIL PROCEDURE.**

In his original Complaint, Plaintiff stated "Plaintiff is filing for obstruction of justice." (Plaintiff's Complaint dated August 28, 2019). After receiving the Answer of Defendant and Defendant's Memorandum in Support of Defendant's Motion to Dismiss, Plaintiff filed a second Complaint, which was ultimately ruled to be an Amended Complaint. In the Amended Complaint, dated November 21, 2019, the Appellant clarified his claim by stating "On Aug 15, 2016, Mike Hopewell decieve & deberlyaty Brought False & untrue documents in an default hearing an violation of U.S. Codes 1505-1518." (*sic*) (Plaintiff's Amended Complaint dated November 21, 2019.) Plaintiff attempted to bring a civil claim for obstruction of justice. Obstruction of justice is not a civil cause of action under South Carolina law. South Carolina Code Ann. §16-9-340, a criminal statute, discusses intimidation of court officials, jurors or witnesses. That statute reads as follows:

- (A) It is unlawful for a person by threat or force to:
 - (1) intimidate or impede a judge, magistrate, juror, witness, or potential juror or witness, arbiter, commissioner, or member of any commission of this State or any other official of any court, in the discharge of his duty as such; or
 - (2) destroy, impede, or attempt to obstruct or impede the administration of justice in any court.
- (B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

This is a criminal statute.

There is no corresponding statute granting a civil cause of action for alleged violation of §16-9-340, nor could any case be found that created a civil cause of action under South Carolina law. Appellant was attempting to go forward under a cause of action that simply does not exist in South Carolina.

Therefore, Judge Nettles correctly ruled that the case should be dismissed pursuant to Rule 12(b)(6), SCRPC.

3. JUDGE NETTLES CORRECTLY RULED THAT THE STATUTE OF LIMITATIONS FOR A CIVIL CAUSE OF ACTION IS THREE YEARS AND THEREFORE DISMISSED THE CASE.

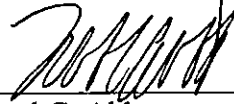
Even if Appellant had stated a claim upon which relief could be granted, he failed to file his Complaint within the applicable three year statute of limitations. The Plaintiff's original Complaint was dated August 28, 2019 and filed on that same date. (Plaintiff's Complaint dated August 28, 2019). The original Complaint did not include a date when the alleged tort was committed, however, the Amended Complaint states that the actions complained of by the Appellant occurred on August 15, 2016. (Plaintiff's Amended Complaint dated November 21, 2019).

The "catch all" statute for commencement of tort actions is codified in South Carolina Code Ann. §15-3-530, which provides for a three year statute of limitations. Therefore, even if Appellant had stated a cognizable cause of action, Judge Nettles correctly ruled that the statute of limitations required that the case be dismissed. (Order of Judge Nettles, Page 2).

CONCLUSION

The ruling of the trial court is clear and correct and according to the applicable rules and statutes of South Carolina, therefore, it should be affirmed.

Respectfully submitted,



October 8, 2020

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SC Court of Appeals

Edward Spears.....Appellant,


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Michael S. Hopewell.....Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal on the Appellant, Edward Spears, by depositing a copy of same in the United States Mail, postage prepaid, on October 8, 2020, addressed to 503 Roughfork Street, Florence, SC 29501.

October 8, 2020



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The Honorable Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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Re: Edward Spears
vs. Michael S. Hopewell
Appellate Case #2020-000479
Our File #2016008

Dear Ms. Kitchings:

Pursuant to Rules 208(a)(1) and 209(a), South Carolina Appellate Court Rules, I enclose the original and one (1) copy of the Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal. Also enclosed is the Proof of Service reflecting service by mail of the aforementioned documents on the Appellant.

I would very much appreciate your filing the original documents and Proof of Service and stamping as received the enclosed copy of same as well as the enclosed copy of this correspondence, and returning the copies to me in the self-addressed, stamped envelope provided. If you have any questions or concerns, please do not hesitate to let me know.

Thank you for your assistance in this matter.

With kind regards, we are

Very truly yours,



MICHAEL C. ABBOTT

MCA/kch
Enclosures
cc: Mr. Edward Spears

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