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SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Henry Lee Bradley,

Plaintiff,

v.

South Carolina Department of Corrections,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-07010

ORDER GRANTING DEFENDANT'S
SUMMARY JUDGMENT
AND
DENYING PLAINTIFF'S MOTION TO
APPOINT COUNSEL

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FILED
RICHLAND COUNTY
JANETTE W. HERRON
CLERK, S.C.P., G.S., F.C.

This matter came before the Court for a hearing on the Defendant's Motion for Summary Judgment and Plaintiff's Motion to Appoint Counsel. Present representing the Defendant was Damon C. Wlodarczyk. The Plaintiff, appearing *pro se*, was also present.

Plaintiff brings this action pursuant to the S.C. Tort Claims Act ("the Act") against the South Carolina Department of Corrections ("SCDC"), a government agency. Plaintiff alleged in his Complaint that the acts or omissions giving rise to his cause of action took place on or before May 26, 2013.

Defendant moved pursuant to Rules 56, SCRCP, for an Order granting it judgment as a matter of law on the following grounds:

- 1) The Act provides in part, "...any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered. . . ." S.C. Code § 15-78-110.
- 2) The action was filed more than two (2) years after the injury occurred and there are no facts to support the equitable tolling of the statute of limitations and, therefore, the claim is time barred per S.C. Code § 15-78-110;

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3) Plaintiff cannot show a genuine issue of material fact to support his allegation of gross negligence.

After reviewing the pleadings and hearing arguments by counsel and the Plaintiff, the Court hereby grants Defendant's Motion for Summary Judgment as more fully set forth below.

Summary Judgment is warranted only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." *Bloom v. Ravoira*, 339 S.C. 417, 529 S.E.2d 710 (2000). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. However, once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent must come forward with specific facts showing there is a genuine issue for trial." *Garvin v. Bi-Lo, Inc.*, 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999). The opponent cannot merely rely upon the pleadings but must submit some additional evidence creating a genuine issue of material fact.

I. Summary judgment is granted as the statute of limitations was not equitably tolled and, therefore, the claims are time barred.

On May 26, 2013, Plaintiff was stabbed by a fellow inmate. Plaintiff filed a lawsuit on May 18, 2015, alleging gross negligence against the Department of Corrections and its employees for failing to protect him. *Henry Bradley v. S.C. Dept. of Corrections et al.*, Civil Action No. 2015-CP-40-03008. The claim was brought under the S.C. Tort Claims

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Act. The Complaint was filed eight (8) days before the statute of limitations was served. The Complaint was delivered to SCDC but was never served on the Attorney General's Office as required by Rule 4, SCRCP.

On December 7, 2015, Defendants filed and served a Motion to Dismiss and Memorandum in Support specifically pointing out the service error. Plaintiff admitted in his deposition testimony that he received the motion and memorandum yet took no steps to correct the service error.

On July 22, 2016, Judge L. Casey Manning issued an Order dismissing the 2015 case as to SCDC for lack of proper service. The dismissal was without prejudice. The dismissal was not appealed.

On December 6, 2016, Plaintiff filed the present action against SCDC, which alleged the same facts that were set forth in the 2015 Complaint. Defendant moved prior to filing an Answer to dismiss the case as time barred. However, there was an issue as to whether equitable tolling should apply and the motion was denied to allow the case to proceed with discovery.

Discovery is complete and Defendant now moves for summary judgment alleging the case is time barred.

“[I]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations.” 54 C.J.S. *Limitations of Actions* § 115 (2005). “Equitable tolling is a nonstatutory tolling theory which suspends a limitations period.” *Ocana v. Am. Furniture Co.*, 135 N.M. 539, 91 P.3d 58, 66 (2004).
4 Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. *Rodriguez v. Superior Court*, 176 Cal.App.4th 1461, 98 Cal.Rptr.3d 728 (2009). “Where a statute sets a limitation period for action, courts have

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invoked the equitable tolling doctrine to suspend or extend the statutory period 'to ensure fundamental practicality and fairness.' " *Id.* at 736 (citation omitted).

5 The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. *Ocana*, 91 P.3d at 65; *see also* 54 C.J.S. *Limitations of Actions* § 115 ("The party who seeks to invoke equitable tolling bears the devoir of persuasion and must, therefore, establish a compelling basis for awarding such relief.").

*116 It has been observed that "[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." *Ocana*, 91 P.3d at 66. However, jurisdictions have considered tolling in a variety of contexts and have developed differing parameters for its application.⁶ *See, e.g., Irbyv. **33 Fairbanks Gold Mining, Inc.*, 203 P.3d 1138, 1143 (Alaska 2009) ("Under the doctrine of equitable tolling, when a party has more than one legal remedy available, the statute of limitations is tolled while the party pursues one of the possible remedies."); *Abbott v. State*, 979 P.2d 994, 998 (Alaska 1999) ("Federal precedent equitably tolls the limitations period in three circumstances: (1) where the plaintiff has actively pursued his or her judicial remedies by filing a timely but defective pleading; (2) where extraordinary circumstances outside the plaintiff's control make it impossible for the plaintiff to timely assert his or her claim; or (3) where the plaintiff, by exercising reasonable diligence, could not have discovered essential information bearing on his or her claim." (footnotes omitted)); *Kaplan v. Morgan Stanley & Co.*, 186 Vt. 605, —, 987 A.2d 258, 264 (2009) (2009 WL 2401952) ("Equitable tolling applies either where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff has timely raised the same claim in the wrong forum.") (citing *Beecher v. Stratton Corp.*, 170 Vt. 137, 743 A.2d 1093, 1098 (1999)); *cf. Machules v. Dep't of Admin.*, 523 So.2d 1132, 1134 (Fla.1988) (stating the doctrine of equitable tolling, unlike equitable estoppel, does not require deception or misrepresentation by the defendant; rather, it serves to ameliorate the harsh results that sometimes flow from a strict, literalistic application of administrative time limits).

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Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 115–16, 687 S.E.2d 29, 32–33 (2009).

As an initial matter, the Court finds the Plaintiff was not actively misled or prevented in any way from discovering facts essential to the filing of a timely lawsuit. The Court further finds the Plaintiff did not timely raise the claim in the wrong forum. There are no facts to support invoking the doctrine of equitable tolling. Accordingly, the Court concludes that equitable tolling does not apply and judgment in favor of the Defendant should be granted as the Plaintiff's claim is time barred.

Moreover, even if equitable tolling could apply, the claim is still time barred.

Plaintiff was put notice on December 7, 2015, of the defective service issue. Plaintiff took no steps to correct the defective service issue. To the extent there should be any equitable tolling, the tolling would only be from the date of the filing of the Complaint to the date Plaintiff was put on notice of the defect, which is 203 days. Therefore, Plaintiff had until June 24, 2016 to correct the defect applying tolling principles. To the extent there would be an equitable tolling period, the tolling period expired prior to the July 22, 2016 final order dismissing the 2015 case.

The Court finds that even if equitable tolling applied, the case is still time barred as the present action was filed more than five (5) months after any tolling period expired. Therefore, the Defendant's motion is granted as the claim is time barred.

II. Summary Judgment is denied without prejudice as to Defendant's claims that there is no evidence of gross negligence as moot.

Defendant argued as an additional ground for summary judgment that there was no evidence of gross negligence. As the Court has granted summary judgment based upon



the statute of limitations defense, it need not address the additional argument and, therefore, the motion is denied without prejudice as to this issue.

III. Plaintiff's motion to appoint counsel is denied as moot.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for Summary Judgment is granted as to the statute of limitations argument and denied without prejudice as to the failure to show gross negligence argument.

IT IS FURTHER ORDERED that the Plaintiff's Motion to Appoint Counsel is denied as moot.

IT IS SO ORDERED.


R. Keith Kelly
Presiding Judge

Gaffney, South Carolina

~~May 2019~~

1 July 2019

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Henry Lee Bradley,

Plaintiff,

v.

South Carolina Department of Corrections,

Defendant.

(Our File No.: 5021.01316)

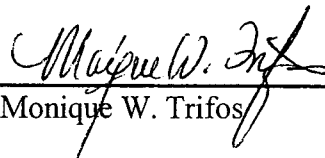
IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-07010

CERTIFICATE OF SERVICE

This is to certify that I, Monique W. Trifos, employee of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached proposed **ORDER GRANTING DEFENDANT'S SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION TO APPOINT COUNSEL** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Henry Lee Bradley #141371
Broad River Correctional Institution
Murray – 169
4460 Broad River Road
Columbia, SC 29210



Monique W. Trifos

Columbia, South Carolina
July 15, 2019