

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DILLON COUNTY
Paul M. Burch, Circuit Court Judge

Op. No. 5798
(S.C. Ct. App. filed February 3, 2021)
Case No. 2014-CP-17-0348

RECEIVED

Mar 25 2021

S.C. SUPREME COURT

Christopher Lampley,.....

Respondent,

v.

Major Hulon, Dillon County Sheriff,.....

Petitioner.

APPENDIX

Andrew F. Lindemann
LINDEMANN & DAVIS, P.A.
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

C. Heath Ruffner
MCLEOD & RUFFNER
222 Market Street
Post Office Drawer 1449
Cheraw, South Carolina 29520
(843) 537-5204

Counsel for Petitioner

K. Lindsay Terrell
THE WARD LAW FIRM, P.A.
233 South Pine Street
Post Office Box 5663
Spartanburg, South Carolina 29304
(864) 573-8500

Counsel for Petitioner

INDEX

<i>Lampley v. Hulon</i> , Op. No. 5798 (S.C. Ct. App. filed February 3, 2021)	1
Order Denying Petition for Rehearing	6
Petition for Rehearing.....	7
Memorandum in Support of Petition for Rehearing	9

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Christopher Lampley, Appellant,

v.

Major Hulon, Dillon County Sheriff, Respondent.

Appellate Case No. 2018-000405

Appeal From Dillon County
Paul M. Burch, Circuit Court Judge

Opinion No. 5798
Heard November 12, 2020 – Filed February 3, 2021

REVERSED AND REMANDED

Robert Norris Hill, of Law Office of Robert Hill, of Lexington, and William P. Hatfield, of Hatfield Temple, LLP, of Florence, both for Appellant.

Kevin Lindsay Terrell, of Clarkson, Walsh & Coulter, P.A., of Spartanburg; C. Heath Ruffner, of McLeod & Ruffner, of Cheraw; and Andrew F. Lindemann, of Lindemann & Davis, P.A., of Columbia; all for Respondent.

THOMAS, J.: Christopher Lampley appeals from an order granting partial summary judgment to the Dillon County Sheriff (Sheriff) based on section 15-78-60(14) of the South Carolina Code (2005). Lampley argues the trial court erred in (1) not finding section 15-78-60(14) unambiguously allows Lampley to recover damages from the Sheriff because the Sheriff was not his employer; (2) improperly

altering the statute's unambiguous text with canons that do not apply; and (3) focusing on who funded the insurance, rather than who employed Lampley, which interjected uncertainty into an unambiguous statute. We reverse and remand.

FACTS

A Dillon County Deputy Sheriff and Lampley, who was a fireman employed by Dillon County, were responding to a house fire with entrapment. In the process of responding to the fire, there was a collision between the two vehicles just outside Dillon County. Both Lampley and the Deputy Sheriff were on duty and acting within the course and scope of their employment at the time of the accident. Lampley was injured in the accident and received worker's compensation benefits through Dillon County.

Lampley also filed an action against the County and limited his suit to his property damage claims because the County provided him with workers' compensation coverage. However, the County answered, asserting Lampley sued the wrong defendant because the Sheriff, not the County, employed the Deputy Sheriff. The County moved to dismiss because the Tort Claims Act required Lampley sue the Sheriff, not the County. Therefore, Lampley filed an amended complaint, substituting the Dillon County Sheriff as the named defendant and adding a claim for bodily injury to the prior claim for property damage.

The Sheriff then filed a motion to dismiss, or in the alternative, a motion for summary judgment. After a hearing, the trial court granted the Sheriff partial summary judgment and dismissed Lampley's claim for bodily injuries. The court allowed Lampley's claim for property damage to proceed to trial. The jury found Lampley and the Deputy Sheriff were equally at fault for the accident. Lampley now appeals only the partial summary judgment on his bodily injury claim.

STANDARD OF REVIEW

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCF." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF. "In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be

reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Med. Univ. of S.C. v. Arnaud*, 360 S.C. 615, 619, 602 S.E.2d 747, 749 (2004). Our supreme court has established "[t]he plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357-58, 650 S.E.2d 68, 71 (2007) (quoting *Baughman v. Amer. Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991)).

LAW/ANALYSIS

Lampley argues the trial court erred in not finding section 15-78-60(14) of the South Carolina Tort Claims Act unambiguously allows him to recover damages from the Sheriff because the Sheriff was not his employer. We agree.

Section 15-78-60(14) provides:

The governmental entity is not liable for a loss resulting from: (14) any claim covered by the South Carolina Workers' Compensation Act, *except claims by or on behalf of an injured employee to recover damages from any person other than the employer*, the South Carolina Unemployment Compensation Act, or the South Carolina State Employee's Grievance Act.

(emphasis added).

The trial court noted the issue of whether "as to the collection of workers' compensation benefits, County and Sheriff are, for all intents and purposes, the same 'employer' as contemplated by § 15-78-60(14)" is one of first impression in our state. The trial court considered *Buff v. South Carolina Department of Transportation*, 332 S.C. 472, 505 S.E.2d 360 (Ct. App. 1998), *rev'd on other grounds*, 342 S.C. 416, 537 S.E.2d 279 (2000), stating:

[T]he Court of Appeals held that a private employee may receive workers' compensation benefits from his private employer and maintain an action in tort against a third-party governmental tortfeasor, but the Court is unaware of any reported decision involving a workers'

compensation claim and third-party tort action against a government employer as in the case at bar.

The trial court then determined that "the County and Sheriff are so closely related for purposes of workers' compensation claims and benefits so as to constitute the same 'employer' as that term is used in §15-78-60(14)."

Lampley asserts the trial court did not find section 15-78-60(14) was ambiguous. Therefore, Lampley argues the statute allows him to sue the Sheriff because the Sheriff was not his employer. He maintains the County was his employer and provided his workers' compensation. Lampley asserts under South Carolina law, the Sheriff is a State employee.

In *Edwards v. Lexington County Sheriff's Department*, 386 S.C. 285, 287 n.1, 688 S.E.2d 125, 127 n.1 (2010), the Lexington County Sheriff's Department asserted the Lexington County Sheriff's Department and Lexington County were "one and the same entity." However, our supreme court held it is well-settled under South Carolina law that the Sheriff and Sheriff's deputies are state, not county, employees. *Id.* (citing *Cone v. Nettles*, 308 S.C. 109, 112, 417 S.E.2d 523, 524 (1992) (holding sheriffs and deputies are state officials); *Heath v. Aiken Cty.*, 295 S.C. 416, 418, 368 S.E.2d 904, 905 (1988) (finding deputies are not county employees). *See also Gullede v. Smart*, 691 F. Supp. 947, 954-55 (D.S.C. 1988), *aff'd*, 878 F.2d 379 (4th Cir. 1989) (holding sheriffs and deputy sheriffs in South Carolina are state officials).

Further, in *Faile v. South Carolina Department of Juvenile Justice*, 350 S.C. 315, 329, 566 S.E.2d 536, 543 (2002), the court stated the following four factors are used to determine whether a person is an employee of an entity: "(1) who has the right to control the person; (2) who pays the person; (3) who furnishes the person with equipment; and (4) who has the right to fire the person." Applying those factors to this case, the Sheriff does not control Lampley, does not pay Lampley, does not furnish Lampley with equipment, and does not have the right to fire Lampley. Thus, under *Faile*, the Sheriff is not Lampley's employer.

Therefore, we find South Carolina case law states the sheriff and sheriff's deputies are state employees. Because Lampley's employer is the County, he should not be barred from suing the Sheriff, who is an employee of the State. Section 15-78-60(14) provides an injured employee can receive benefits under the South Carolina Workers' Compensation Act and recover damages from any person other than their employer.

Accordingly, we find the trial court erred in granting partial summary judgment on Lampley's claim for bodily injuries. *See Med. Univ. of S.C.*, 360 S.C. at 619, 602 S.E.2d at 749 ("In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party."); *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 713 (2000) ("[S]ummary judgment is generally not appropriate in a comparative negligence case."). Because the issue of property damage was allowed to go to trial and the jury found Lampley and the deputy sheriff were equally responsible for the accident, we need not remand for a determination of liability. We remand the case for a determination on the amount of damages for bodily injury based on the jury's finding of equal liability. *See Nelson v. Concrete Supply Co.*, 303 S.C. 243, 245, 399 S.E.2d 783, 784 (1991) ("For all causes of action arising on or after July 1, 1991, a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant. The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his or her negligence.").

Lampley argues the trial court also erred in (1) improperly altering the statute's unambiguous text with canons that do not apply, and (2) focusing on who funded the insurance, rather than who employed him, which interjected uncertainty into an unambiguous statute. We need not address these issues as the first issue is dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of another issue is dispositive of the appeal).

CONCLUSION

Accordingly, the trial court's grant of partial summary judgment on Lampley's claim for bodily injuries is reversed, and the case is remanded for a determination on the amount of damages for bodily injury based on the jury's finding of equal liability.

REVERSED and REMANDED.

HILL and HEWITT, JJ., concur.

The South Carolina Court of Appeals

Christopher Lampley, Appellant,

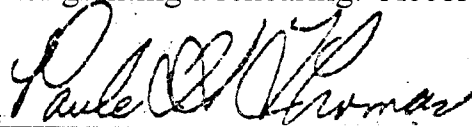
v.

Major Hulon, Dillon County Sheriff, Respondent.

Appellate Case No. 2018-000405

ORDER

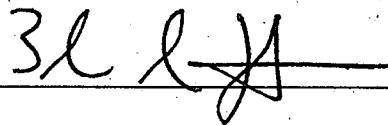
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


Paul M. Burch

J.


D. Manli

J.


3L Liff

J.

Columbia, South Carolina

cc:

Robert Norris Hill, Esquire
William P. Hatfield, Esquire
C. Heath Ruffner, Esquire
Kevin Lindsay Terrell, Esquire
Andrew F. Lindemann, Esquire
The Honorable Paul M. Burch

FILED
Feb 23 2021

RECEIVED
Feb 18 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Paul M. Burch, Circuit Court Judge

Appellate Case No. 2018-000405
Case No. 2014-CP-17-0348

Christopher Lampley,..... Appellant,

v.

Major Hulon, Dillon County Sheriff,..... Respondent.

PETITION FOR REHEARING

The Respondent Major Hulon, Dillon County Sheriff, petitions the South Carolina Court of Appeals for a rehearing of the Court’s recent decision in *Lampley v. Hulon*, Op. No. 5798 (S.C. Ct. App. filed February 3, 2021).

The grounds for the Respondent’s petition for rehearing are addressed in detail in the supporting memorandum filed herewith and incorporated herein.

The Respondent's petition for rehearing is based on the Court's decision in *Lampley v. Hulon*, Op. No. 5798 (S.C. Ct. App. filed February 3, 2021); the supporting memorandum filed herewith; the briefs and Record on Appeal; Rule 221(a), SCACR; Rule 224, SCACR; and other rules of court.

LINDEMANN & DAVIS, P.A.

BY: s/Andrew F. Lindemann

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

C. HEATH RUFFNER #11214
MCLEOD & RUFFNER
222 Market Street
Post Office Drawer 1449
Cheraw, South Carolina 29520
(843) 537-5204

K. LINDSAY TERRELL #9072
THE WARD LAW FIRM, P.A.
233 South Pine Street
Post Office Box 5663
Spartanburg, South Carolina 29304
(864) 573-8500

Counsel for Respondent

February 18, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Feb 18 2021

SC Court of Appeals

APPEAL FROM DILLON COUNTY
Paul M. Burch, Circuit Court Judge

Appellate Case No. 2018-000405
Case No. 2014-CP-17-0348

Christopher Lampley,..... Appellant,

v.

Major Hulon, Dillon County Sheriff,..... Respondent.

**MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING**

The Respondent Major Hulon, Dillon County Sheriff, has petitioned this Court for a rehearing of the recent decision *Lampley v. Hulon*, Op. No. 5798 (S.C. Ct. App. filed February 3, 2021). Sheriff Hulon respectfully submits that the following points were overlooked or misapprehended by this Court:

I.

In its opinion, this Court writes: "Lampley asserts the trial court did not find section 15-78-60(14) was ambiguous." *See*, Slip Op. at 4. The Court did not specifically state whether it agreed with that "assertion," but the Court does proceed to rule that that "the Sheriff is not Lampley's employer" and thus his claim was not barred by Section 15-78-60(14). *See*, Slip Op. at 4. In making this ruling, the Court erred in two key respects.

First, the Court misapprehended or misconstrued the trial court's order. The trial court ruled that "the County and Sheriff are so closely related for purposes of workers' compensation claim and benefits so as to constitute the same 'employer' as that term is used in § 15-78-60(14)." (R. 7). The trial court explained that "to interpret § 15-78-60(14) as narrowly as argued by the Plaintiff would render it meaningless as the exclusivity provision of the Workers' Compensation Act already prohibits an employee from recovering workers' compensation benefits and maintaining an action in tort against his employer." (R. 7). The trial court further recognized that Dillon County provides for the workers' compensation coverage for the Sheriff's employees and County employees, and as a result, it is appropriate to treat the Sheriff and County as the same "employer." Otherwise, as the trial court noted, "[t]o permit the Plaintiff to now pursue a claim for the same bodily injuries against the Sheriff would defeat the clear intention of the immunity provided by § 15-78-60(14) which prevents a double recovery from the same

governmental entity, in workers' compensation benefits and then in tort.” (R. 8). Based on these rulings, it is clear that the trial court did find that Section 15-78-60(14) was ambiguous and required judicial interpretation to ascertain the legislative intent and purpose of that immunity provision. Thus, to the extent that this Court agreed with the Appellant's assertion that the trial court did not find Section 15-78-60(14) to be ambiguous thereby requiring judicial construction, that was in error and should be reconsidered on rehearing.

Second, Section 15-78-60(14) is indeed ambiguous. A statute cannot be read with blinders as to all other existing law. Indeed, the law recognizes that “the legislature did not intend a futile act, but rather intended its statutes to accomplish something.” *TNS Mills, Inc. v. South Carolina Department of Revenue*, 331 S.C. 611, 503 S.E.2d 471, 476 (1998). *See also, Home Health Services, Inc. v. South Carolina Department of Revenue*, 333 S.C. 691, 511 S.E.2d 404 (Ct. App. 1999). In *Duke Power Co. v. Laurens Electric Cooperative, Inc.*, 344 S.C. 101, 543 S.E.2d 560 (Ct. App. 2000), this Court rejected a statutory construction which “robbed” the statute “of any meaning and render [ed] it superfluous.” 543 S.E.2d at 563. However, given this Court's ruling, Section 15-78-60(14) serves absolutely no purpose; it is meaningless and mere surplusage.

As the trial court correctly recognized, the provisions of the Workers' Compensation Act, specifically Sections 42-1-540 through 42-1-560, already bar any tort liability of an employer for claims by an employee covered under the Act.

Yet, in its opinion, this Court now interprets Section 15-78-60(14) as being a duplicative statute that provides the *exact same immunity* as Sections 42-1-540 through 42-1-560 *and nothing more*. This Court explicitly states that "Section 15-78-60(14) provides an injured employee can receive benefits under the South Carolina Workers' Compensation Act and recover damages from any person other than their employer." *See*, Slip Op. at 4. Thus, according to this Court, Section 15-78-60(14), which is an immunity statute, provides precisely the *same immunity* already provided to a governmental employer under the Workers' Compensation Act, thereby making Section 15-78-60(14) an unnecessary, meaningless, and superfluous statute.

Consequently, Section 15-78-60(14), as applied by this Court, must be deemed ambiguous – just as the trial court determined it to be. To reiterate, the trial court explained that “to interpret § 15-78-60(14) as narrowly as argued by the Plaintiff would render it meaningless as the exclusivity provision of the Workers’ Compensation Act already prohibits an employee from recovering workers’ compensation benefits and maintaining an action in tort against his employer.” (R. 7). The trial court was correct in its assessment and should be affirmed.

II.

Moreover, this Court ultimately failed to consider or address the crux of the issue on which the trial court actually granted summary judgment. The Sheriff never argued that the Appellant was an employee of the Sheriff in the traditional

sense. The Sheriff also never disputed that a county and a sheriff in South Carolina are treated historically as separate entities. The essence of the trial court's order, however, is that the County and the Sheriff should be construed as the same "employer" for purposes of Section 15-78-60(14) immunity because otherwise Section (14) is rendered meaningless. Moreover, because state statutory law makes the County responsible for funding the Sheriff and for furnishing equipment, payroll, employee benefits, and insurance (including liability and workers' compensation insurance), it is a logical and reasonable construction for the County and the Sheriff to be considered the same "employer" for purposes of workers' compensation immunity. This Court did not consider or address those points in its opinion but is respectfully requested to do so on rehearing.

As previously indicated, the General Assembly is presumed to have intended to accomplish some purpose with the enactment of Section 15-78-60(14). *See, Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760, 792 (1993) ("[w]e have repeatedly held that there is a presumption that the legislature intended to accomplish something with a statute rather than to engage in a futile exercise"). In light of the purpose of Section 15-78-60 as a whole to provide for governmental immunity in various particulars, the General Assembly obviously intended to provide governmental entities some additional immunity that it did not already enjoy under the law when it enacted Section 15-78-60(14). The interpretation proffered by the Sheriff and adopted by the trial court provides meaning and

purpose to Section 15-78-60(14). By enacting Section 15-78-60(14), the General Assembly intended to provide immunity for all work-related claims by a governmental employee except where the injury was caused by a non-governmental actor.¹ Such public policy set by the General Assembly is exceedingly rational given the statutory mandate that the State, its political subdivisions, and all employees thereof must be covered by the Workers' Compensation Act. *See*, S.C. Code Ann. § 42-1-320.² Because the government, i.e., the taxpayers, already provides and funds workers' compensation as a remedy to a governmental employee injured on the job, there is a recognition that the government should not be compelled to compensate that employee with both workers' compensation benefits *and* a recovery of compensatory damages in tort. In sum, this construction provides meaning and a purpose to Section 15-78-60(14) and would not render the statute duplicative, meaningless, and of no consequence.

This Court also did not consider or address that the trial court's decision is particularly appropriate in light of how South Carolina statutory law treats the relationship between a county and county-wide elected officials such as a county sheriff. Section 4-1-80 and other statutes require a county to fund the operation of

¹ The term “governmental entity” is defined under the Tort Claims Act as “the State and its political subdivisions.” *See*, S.C. Code Ann. § 15-78-30(d). Thus, the term “governmental entity” is inclusive of both the State of South Carolina and the political subdivisions of the State, and accordingly includes counties and sheriffs.

² “The State, its municipal corporations and political subdivisions thereof, and the employees of the State or its municipal corporations and political subdivisions are subject to this title.” S.C. Code Ann. § 42-1-320.

elected officials within the county, including the sheriff, auditor, assessor, election officials, coroner, and clerk of court. *See*, S.C. Code Ann. § 4-1-80 (requiring the governing body of each county to furnish county officers including the sheriff with office space and “other incidentals necessary to the proper transaction of the legitimate business of such offices”). *See also*, *Kramer v. County Council for Dorchester County*, 277 S.C. 71, 282 S.E.2d 850, 852 (1981) (“[i]t is certainly competent for the General Assembly to mandate county funding of county agencies, as in Section 4-1-80”).

This unique and symbiotic relationship between a county and county-wide elected officials under South Carolina law underlies the trial court's ruling and supports its interpretation and application of Section 15-78-60(14). The trial court correctly determined, without dispute, that the workers’ compensation coverage by which the Appellant was compensated is the *very same coverage* through which Dillon County covers the employees of the Sheriff’s Department.³ If effect, the Appellant and the deputy involved in the accident in question were “co-employees” for workers' compensation purposes – they were both paid by the County, their vehicles were both owned and insured by the County, and their workers' compensation coverage was provided by the County. Therefore, the trial court was correct in also recognizing that the County and the Sheriff should then be deemed

³ The trial court explained that sheriff deputies are covered by “the same workers' compensation coverage through Dillon County under which the Plaintiff made and collected benefits.” (R. 8).

to be the same "employer" as contemplated by Section 15-78-60(14), so as to prevent a double recovery against the same governmental entity for both workers' compensation benefits and a tort remedy. In effect, if this Court's decision stands, the result will be contrary to the limitation on liability that was the intent of the General Assembly in enacting Section 15-78-60(14) and will allow for the recovery of both workers' compensation benefits and tort damages from the same source, that being the taxpayers of Dillon County. That is not and should not be the law.

CONCLUSION

Based on the foregoing discussion, the Respondent Major Hulon, Dillon County Sheriff, respectfully requests that the Court rehear its decision in this case.

Respectfully submitted,

LINDEMANN & DAVIS, P.A.

BY: s/ Andrew F. Lindemann

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

C. HEATH RUFFNER #11214
MCLEOD & RUFFNER
222 Market Street
Post Office Drawer 1449
Cheraw, South Carolina 29520
(843) 537-5204

K. LINDSAY TERRELL #9072
THE WARD LAW FIRM, P.A.
233 South Pine Street
Post Office Box 5663
Spartanburg, South Carolina 29304
(864) 573-8500

Counsel for Respondent

February 18, 2021