

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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SC Court of Appeals

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

Christopher Lampley,.....

Respondent,

v.

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

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on February 23, 2021.

QUESTIONS PRESENTED

- I. Did the Court of Appeals err in ruling that the trial court found Section 15-78-60(14) of the South Carolina Tort Claims Act was unambiguous when, in actuality, the trial court found Section 15-78-60(14) to be ambiguous thereby requiring judicial construction so as not to render it unnecessary, meaningless, and superfluous?

- II. Did the Court of Appeals err in failing to even consider or address the unique and symbiotic relationship between a county and county-wide elected officials, as established by South Carolina statutory law, which underlies the trial court's ruling and supports its interpretation and application of Section 15-78-60(14)?

STATEMENT OF THE CASE

This is an appeal from the grant of partial summary judgment in favor of the Petitioner Major Hulon, who is the Dillon County Sheriff (“hereafter referred to as “Sheriff”).

The Respondent Christopher Lampley is a fireman employed by Dillon County. Dillon County Deputy Sheriff Randolph Tyler and Lampley were responding to an emergency fire call when their vehicles collided. Lampley filed an Amended Complaint against the Sheriff alleging a negligence cause of action for the motor vehicle accident in which Lampley sought to recover for bodily injury and property damage. (R. 26-29).

The Sheriff filed a motion to dismiss, or in the alternative, a motion for summary judgment based, in part, on Section 15-78-60(14) of the South Carolina Tort Claims Act, which provides sovereign immunity for “a loss resulting from 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.” S.C. Code Ann. § 15-78-60(14).

That motion was heard by Circuit Court Judge Paul M. Burch on October 6, 2015. By Order filed November 19, 2015, Judge Burch granted partial summary

judgment and dismissed Lampley's claim for bodily injuries. He allowed Lampley's remaining claim for property damage to proceed to trial. (R. 2-8).

On February 13, 2018, the case was tried, and the jury ultimately found that Lampley and the Sheriff were equally at fault. (R. 11-12).

Lampley thereafter appealed to the Court of Appeals challenging only the partial summary judgment granted on his bodily injury claim. On February 3, 2021, the Court of Appeals issued a published opinion reversing the partial summary judgment and remanding "for a determination on the amount of damages for bodily injury based on the jury's finding of equal liability." (App. 5).

The Sheriff filed a petition for rehearing, which was summarily denied by order issued on February 23, 2021.

ARGUMENTS

- I. The Court of Appeals erred in ruling that the trial court found Section 15-78-60(14) of the South Carolina Tort Claims Act was unambiguous when, in actuality, the trial court found Section 15-78-60(14) to be ambiguous thereby requiring judicial construction so as not to render it unnecessary, meaningless, and superfluous.**

In its published opinion, the Court of Appeals writes: “Lampley asserts the trial court did not find section 15-78-60(14) was ambiguous.” (App. 4). The Court of Appeals did not specifically state whether it agreed with that “assertion,” but the Court did 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). (App. 4). In making this ruling, the Court of Appeals erred in two key respects.

First, the Court of Appeals 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 Section 15-78-60(14) to be ambiguous and requiring judicial interpretation to ascertain the legislative intent and purpose of that immunity provision. Thus, given the Court of Appeals' apparent agreement with Lampley's assertion that the trial court did not find Section 15-78-60(14) to be ambiguous, that was in error and warrants the issuance of a writ of certiorari for this Court to review.

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), the Court of Appeals rejected a statutory construction

which “robbed” the statute “of any meaning and render [ed] it superfluous.” 543 S.E.2d at 563. In this case, given the Court of Appeals’ ruling, Section 15-78-60(14) serves absolutely no purpose; it is meaningless and mere surplusage. Clearly, the General Assembly enacted Section 15-78-60(14) to serve some purpose, and the issuance of a writ of certiorari will allow this Court to assess and give the appropriate meaning and construction to Section 15-78-60(14).

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, the Court of Appeals interpreted 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*. The Court of Appeals explicitly stated 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.” (App. 4). Thus, according to the Court of Appeals, 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 the Court of Appeals, 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. The Court of Appeals erred in failing to even consider or address the unique and symbiotic relationship between a county and county-wide elected officials, as established by South Carolina statutory law, which underlies the trial court’s ruling and supports its interpretation and application of Section 15-78-60(14).

The Court of Appeals also failed to consider or address the crux of the issue on which the trial court actually granted summary judgment. The Sheriff never argued that Lampley 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 as established in such cases as *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992). 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. The Court of Appeals did not consider or address those critical points in its opinion.

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 for a governmental employee injured on the job, there is a recognition that the government should not be compelled to compensate that employee twice -- with both workers' compensation benefits *and* a recovery of compensatory damages in tort. In sum, this construction provides meaning and purpose to Section 15-78-60(14) and would not render the statute duplicative, meaningless, and of no consequence.

The Court of Appeals 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 elected officials within the county, including the sheriff, auditor,

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.

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 Lampley was compensated is the *very same coverage* through which Dillon County covers the employees of the Sheriff’s Department.³ In effect, Lampley 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. Thus, the trial court was correct in also recognizing that the County and the Sheriff should then be deemed to be the same “employer”

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).

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. Essentially, the Sheriff was correctly treated as a type of "statutory employer" for workers' compensation purposes.

In effect, if the Court of Appeals' 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. Section 15-78-60(14) must be read as having a purpose and meaning, rather than being mere surplusage. The realities of the unique and symbiotic relationship between a county and county-wide elected officials, as created by South Carolina statutory law, is an important part of that analysis. Clearly, in enacting Section 15-78-60(14), the General Assembly intended to limit a governmental employee to his workers' compensation remedies, particularly as here, where the county employee was injured by the acts of an employee of a county-wide elected official, both of whom are working for a common employer – the taxpayers of Dillon County which funds *both* the sheriff's department and the fire department. This Court is respectfully requested to grant a writ of certiorari to review these important issues.

CONCLUSION

Based on the foregoing discussion, the Petitioner Major Hulon, as the Dillon County Sheriff, respectfully requests that this Court grant his petition for a writ of certiorari.

Respectfully submitted,

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Christopher Lampley,..... Respondent,

v.

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

CERTIFICATE OF SERVICE

Pursuant to Section (g)(3) of the Supreme Court’s Order Re: Operation of the Trial Courts During the Coronavirus Emergency (as amended May 29, 2020), the undersigned employee of Lindemann & Davis, P.A., counsel for the Petitioner, does hereby certify that service of the **Petition for Writ of Certiorari** and **Appendix** was made upon all counsel of record and the Clerk of the South Carolina Court of Appeals by email only this the 25th day of March 2021:

The Honorable Jenny Abbott Kitchings
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The Honorable Daniel E. Shearouse
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RE: Christopher Lampley v. Major Hulon, Dillon County Sheriff
Appellate Case Number: 2018-000405
Civil Action Number: 2014-CP-17-0348
Claim Number: EV2012004994
Our File Number: 290.20003

Dear Mr. Shearouse:

Pursuant to Section (c)(6) of the Supreme Court's Amended Order Re: Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020), please find enclosed for filing by email only the **Petition for Writ of Certiorari** and **Appendix** in the above referenced matter. By copy of this letter, I am serving copies on all counsel of record by email only in accordance with Section (g)(3) of the same order.

The check for the \$250.00 check for the filing fee will be sent under separate cover. Thank you for your assistance in this matter.

Sincerely,

LINDEMANN & DAVIS, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: The Honorable Jenny Abbott Kitchings (w/ Enclosures, Via Email Only)
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