

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

Apr 15 2021
S.C. SUPREME COURT

Appellate Case No. 2021-000314
Case No. 2014-CP-17-0348

Christopher Lampley,.....

Respondent,

v.

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

Petitioner.

**REPLY TO RESPONDENT'S RETURN TO
PETITION FOR WRIT OF CERTIORARI**

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ARGUMENTS

The Respondent Christopher Lampley attempts to oversimplify this case, and in doing so, he asks this Court to disregard, as the Court of Appeals did, what obviously troubled the trial court – that Lampley's analysis renders Section 15-78-60(14) of the South Carolina Tort Claims Act unnecessary, meaningless, and superfluous. Lampley wins only if we do not care that Section 15-78-60(14) serves no purpose. Lampley wins only if we ignore this Court's long held admonition that courts "must read [a] statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law." *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877, 881 (2011).

In his return, Lampley insists that Section 15-78-60(14) is not ambiguous and does not require any judicial construction. Yet, if he is correct, Section 15-78-60(14) serves absolutely no purpose. It provides the *exact same immunity* that every employer – including governmental employers – enjoy under the Workers' Compensation Act and have enjoyed long before the Tort Claims Act was enacted. *See*, S.C. Code Ann. § 42-1-540.¹ There was no need or purpose for the General

¹ As an example, in *Doe v. South Carolina State Hospital*, 285 S.C. 183, 328

Assembly to provide the *same immunity* to a governmental entity a second time. There was no need for such duplication. Section 15-78-60(14) has to accomplish something else.

Lampley conveniently ignores that fact and insists instead that Section 15-78-60(14) is unambiguous. He says the term "employer" should be given its plain and ordinary meaning, and as the Court of Appeals ruled, the Dillon County Sheriff was not Lampley's "employer." He says that "ends the inquiry" and "[i]f the Sheriff wants to be a statutory employer, the Sheriff needs to lobby the General Assembly." *See* Respondent's Return, p. 3. However, the General Assembly need not be lobbied because Section 15-78-60(14) already serves a purpose and has meaning. Section 15-78-60(14) provides for sovereign immunity where, as here, a governmental employee is injured by a tort committed by another governmental employee and has received workers' compensation as his/her remedy. As the trial court aptly observed, Section 15-78-60(14) prevents the taxpayers from footing the bill for *both* a workers' compensation remedy and a tort remedy. (R. 8). This construction is exceedingly rational given that the General Assembly has mandated that all governmental employees, regardless of whether they work for the State or a

S.E.2d 652 (Ct. App. 1985), the Court of Appeals applied Section 42-1-540 immunity to bar a negligence action brought by a nursing supervisor against her employer, the South Carolina Department of Mental Health. That case pre-dated the enactment of the Tort Claims Act in 1986.

local political subdivision, must be provided workers' compensation coverage. *See*, S.C. Code Ann. § 42-1-320.

Lampley argues that the trial court did not consider whether Section 15-78-60(14) was ambiguous and should have "first addressed the statute's clarity." Of course, a review of the record shows that Lampley never argued to the trial court that Section 15-78-60(14) is unambiguous and did not require judicial interpretation. (R. 48-49). That argument was made for the first time on appeal. Obviously, "it is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review". *See, Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Here, Lampley did not file a Rule 59(e) motion and never asked the trial court to first address the statute's clarity. Lampley is thus barred by basic rules of issue preservation from raising that issue at this stage.

Nonetheless, that argument presents a red herring. The trial court's rulings make it abundantly clear that the court found Section 15-78-60(14) to be ambiguous and requiring judicial interpretation to ascertain the legislative intent and purpose of the immunity provision. The Court of Appeals clearly erred in finding otherwise.

Lampley also raises a new theory – not mentioned in previous filings – to attempt to justify the General Assembly's inclusion of Section 15-78-60(14) in the

Tort Claims Act, but to no avail. He argues that he could not "use Title 42 to bring a third-party suit against the Sheriff" but had to "use" the Tort Claims Act. *See*, Respondent's Return, p. 6. He also claims that Section 15-78-60(14) "waives sovereign immunity to give workers compensation claims the same right to sue a third-party governmental entity that others enjoy when the third party is not a governmental entity." *See*, Respondent's Return, p. 6. This highlights Lampley's misunderstanding of the Tort Claims Act, which does not create any cause of action nor any new duties of care. As this Court has held, "[t]he [Tort Claims Act] does not create causes of action, but removes the common law bar of sovereign immunity in certain circumstances." *Arthurs v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579, 583 (2001). *See also*, *Moore v. Florence School District No. 1*, 314 S.C. 335, 444 S.E.2d 498, 500 (1994) ("[t]he Tort Claims Act does not create a new substantive cause of action against a government entity"). Moreover, contrary to Lampley's claim, Section 15-78-60(14) does not waive sovereign immunity; rather, it is an exception to the waiver of sovereign immunity. *See*, *Repko v. County of Georgetown*, 424 S.C. 494, 818 S.E.2d 743, 747 (2018) ("Section 15-78-60 lists forty exceptions to the waiver of sovereign immunity"). In short, Lampley engages in a convoluted analysis to suggest – albeit incorrectly -- that Section 15-78-60(14) was enacted to "waive sovereign immunity by allowing third-party suits against the government." *See*, Respondent's Return, p. 8. In reality, Section 15-78-60(14)

does no such thing. Section 15-78-60(14) is an *exception* to the waiver of immunity, or in other words, is an affirmative grant of immunity to governmental entities. Clearly, that grant of immunity must serve some purpose. That is the very basis for the trial court's ruling. Ironically, Lampley's analysis illustrates the Sheriff's point and the trial court's conclusion: the General Assembly must have intended some purpose in enacting Section 15-78-60(14) and that purpose was not to provide governmental entities *with exactly the same immunity* that they already enjoyed under the Workers' Compensation Act long before the Tort Claims Act was enacted.²

Finally, Lampley offers only brief mention of the unique and symbiotic relationship between a county and county-wide elected officials under South Carolina law. That relationship is mandated by the statutory requirement that a county provide for the funding of the county sheriff under Section 4-1-80, which

² Lampley's reliance on *Trousdell v. Cannon*, 351 S.C. 636, 572 S.E.2d 264 (2002), is inapposite. *Trousdell* involved an automobile accident during a police pursuit where a highway patrolman was struck by a deputy sheriff. The highway patrolman brought suit against the Charleston County Sheriff. The trial court granted summary judgment to the Sheriff based on the application of the "Fireman's Rule" and the public duty rule. The summary judgment was not based on the application of Section 15-78-60(14). This Court nonetheless commented: "Section 15-78-60 contains specific exceptions to the waiver of immunity, and the circumstances presented in this case are not included. Appellant's action against Respondent does not fall within any of the listed exemptions." This Court did not, however, directly address or analyze Section 15-78-60(14). Moreover, the language from *Trousdell* is pure dicta. See, *Hampton v. Richland County*, 296 S.C. 72, 370 S.E.2d 714, 714 (1988) (concluding discussion of a legal principle in an opinion was dicta where it was "clearly unnecessary to a resolution of the issue before the court"). The trial court in *Trousdell* never relied on nor discussed Tort Claims Act immunities, and no litigant raised Section 15-78-60(14) as a defense.

includes the provision of workers' compensation and liability insurance coverage. *See, 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”). Thus, as the Sheriff has argued and the trial court agreed, 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.

Lampley tries to deflect from this critical point by suggesting that confusion will run rampant because "funding issues" are "befuddling." *See*, Respondent's Return, p. 10. He suggests that the application of Section 15-78-60(14) will turn on a question of who pays for the workers' compensation insurance, which is not the case. Nonetheless, in an attempt to make his point, Lampley points to Section 23-19-10 as describing a number of fees that a sheriff may collect and surmises that such fees may be used by the Sheriff to purchase insurance. However, subsection (f) of the statute provides that “[a]ll monies collected under this section must be deposited into the treasury of that county employing the sheriff collecting those monies.” S.C. Code Ann. § 23-19-10(f). Thus, the Sheriff cannot utilize

those funds to purchase insurance but instead must deposit such revenue in the County's general fund. This, in fact, is yet another illustration of the symbiotic relationship between a county and sheriff under South Carolina law.

The bottom line is this: Section 15-78-60(14) of the South Carolina Tort Claims Act cannot be read as being unnecessary, meaningless, and superfluous. The Court of Appeals 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." (App. 4). According to the Court of Appeals, Section 15-78-60(14) provides the *exact same immunity* already provided to a governmental employer under the Workers' Compensation Act – immunity that long pre-dated the Tort Claims Act. That ruling thus makes Section 15-78-60(14) an unnecessary, meaningless, and superfluous statute. This Court is urged to grant a writ of certiorari to give meaning to Section 15-78-60(14) as the General Assembly intended. As this Court has stated repeatedly, "the General Assembly obviously intended [a] statute to have some efficacy, or the legislature would not have enacted it into law." *CFRE, LLC*, 716 S.E.2d at 881. The trial court recognized this rule of law. The Court of Appeals ignored it.

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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