The State of South Carolina
In the Court of Appeals

Appeal from Dillon County
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case # 2014-CP-17-00348

Christopher Lampley, ... Appellant

v.

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

Appellant's Brief

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Statement of the Issue

Section 15-78-60(14), S.C. Code Ann., allows an injured employee whose claim is covered by workers' compensation "to recover damages from any person other than the employer[.]" Does this allow a fireman to sue a Sheriff or is the Sheriff deemed the fireman's employer?

Statement of the Case

Christopher Lampley, a fireman employed by Dillon County, and Randolph Tyler, a Deputy Sheriff employed by the Dillon County Sheriff, were responding to a fire call when their vehicles collided. ROA 2, Findings 1-2; ROA 43 ll.9-19. Lampley initially sued the County and limited his suit to his property damage claims because the County provided him with workers' compensation coverage. ROA 2, Finding 4; ROA 15 ¶ 6; ROA 48 ll.11-20. The County answered that Lampley sued the wrong defendant because the Sheriff, not the County, employed the Deputy. ROA 17 ¶ 8; ROA 21 ¶ 31.

The County moved to dismiss because the Tort Claims Act required Lampley to sue the Sheriff. ROA 24 ¶ 2. Lampley substituted Major Hulon, the Sheriff, as the named Defendant and added claims for his bodily injuries. ROA 28 ¶ 5. The Sheriff admitted that his Deputy was at the time of the accident acting within the course and scope of his employment with the Sheriff. ROA 35 ¶ 31.

The Sheriff then relied on S.C. Code Ann. § 15-78-60(14) in his motion to dismiss or for summary judgment. ROA 39 ¶ 4. The statute 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.

At the motion's hearing, Lampley argued that the statute allowed him to sue the Sheriff because the Sheriff was not his employer. ROA 5-6; ROA 49 ll.9-13. The Sheriff, whose counsel earlier represented the County, argued that the Sheriff and County should be treated as one entity when applying § 15-78-60(14) and observed that "at first blush it may seem like I'm arguing out of both sides of my mouth on this by saying that the County and the Sheriff are each separate entities for purposes of applying the truth[.]" ROA 46 ll.4-9.

The circuit court granted the Sheriff summary judgment on the bodily injury claims and ordered the property damage claims to proceed. ROA 2-8. In granting summary judgment, the court did not find that the term "employer" in S.C. Code Ann. § 15-78-60(14) is

ambiguous yet read the term to mean that the Sheriff employed the fireman. ROA 5-8.

A jury later found Lampley and the Sheriff equally at fault for the accident. ROA 11. Final judgment was entered February 14, 2018. ROA 9. Lampley appealed the summary-judgment order within 30 days of the final judgment. ROA 52-54.

Standard of Review

"When the trial court grants summary judgment on a question of law, we review the ruling de novo." *Bennett v. Carter*, 421 S.C. 374, 380, 807 S.E.2d 197, 200 (2017). The Court likewise enjoys de novo review on how S.C. Code Ann. § 15-78-60(14) applies. *Hueble v. S.C. Dep't of Nat'l Res.*, 416 S.C. 220, 228, 785 S.E.2d 461, 465 (2016).

Argument

Section 15-78-60(14), S.C. Code Ann., allows Lampley to recover damages from the Sheriff because the Sheriff was never the fireman's employer. The circuit court improperly ventured outside this text and applied canons that do not apply in any event. The summary-judgment order must be reversed, and the case remanded to proceed on Lampley's bodily injury claims.

I. Section 15-78-60(14), S.C. Code Ann., unambiguously allows Lampley to recover damages from the Sheriff because the Sheriff was not the fireman's employer.

The summary-judgment order did not find that S.C. Code Ann. § 15-78-60(14) is ambiguous. ROA 5-8. It is not. It clearly identifies who is who. There is the employee whose claim is covered by the South Carolina Workers' Compensation Act. Next is the employer that provided that coverage. And then there is "any person other than the employer" whom the statute allows the injured employee to sue.

Such unambiguous terms need to be applied, not construed. "It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question. Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning. There is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning unless a statutory provision is ambiguous." *Smith v. Tiffany*, 419 S.C. 548, 555-56, 799 S.E.2d 479, 483 (2017) (internal citations and quotation marks omitted).

Applying the text, Lampley may sue the Sheriff because the County employed Lampley and provided his workers compensation. ROA 2, Finding 3; ROA 5-6. The Sheriff is an entity "other than the employer" and so may be sued. The Sheriff admitted as much when he told the circuit court that

Lampley "was a Dillon County fireman" and "that the County and Sheriff are each separate entities for purposes of applying the truth[.]" ROA 43 ll.10-11; ROA 46 ll.6-7.

The statute would also be just as unambiguous absent the Sheriff's frank concession. The factors governing who employs whom under the Tort Claims Act focuses on who pays the employee, who can control and fire him or her, and who provides the equipment. *Faile v. S.C. Dep't of Juv. Justice*, 350 S.C. 315, 329, 566 S.E.2d 536, 543 (2002) (listing factors on who is the "employer" under the Act). This confirms that the Sheriff is not Lampley's employer. The Sheriff presented nothing hinting that he had anything to do with the fireman's employment.

And the distinction between sheriffs and firemen is also not the only relevant one. South Carolina law likewise distinguishes between sheriffs and counties. *See, e.g., Edwards v. Lexington County Sheriff's Dep't,* 386 S.C. 285, 287 n.1, 688 S.E.2d 125, 127 n.1 (2010) (describing as "legally settled" the "distinction between a county government and a sheriff's office for liability purposes."); *Heath v. County of Aiken*, 295 S.C. 416, 368 S.E.2d 904 (1988) (holding that sheriffs employ deputies, not counties).

Sheriffs have for example convinced the courts that they are state officials, not county employees, to avoid liability under 42 U.S.C. § 1983 and suits in federal court. *See, e.g. , Wyatt v. Fowler,* 326 S.C. 97, 101-02, 484 S.E.2d 590,

592-93 (1997) (holding that deputies are immune from § 1983 actions because they are state officials, not county employees); *Cone v. Nettles*, 308 S.C. 109, 112, 417 S.E.2d 523, 524 (1992) (same for sheriffs and deputies); *Cromer v. Brown*, 88 F.3d 1315, 1331 (4th Cir. 1996) (holding that South Carolina sheriffs enjoy Eleventh Amendment immunity as an arm of the state); *Williams v. Dorchester County Det. Ctr.*, 987 F. Supp. 2d 690, 695-96 (D.S.C. 2013) (same); *Jones v. Lexington County Det. Center*, 586 F. Supp. 2d 444, 451-52 (D.S.C. 2007) (same); *Stewart v. Beaufort County*, 481 F. Supp. 2d 483, 492-93 (D.S.C. 2007) (same); *Carroll v. Greenville County Sheriff's Dep't*, 871 F. Supp. 844 (D.S.C. 1994) (same); *Gulledge v. Smart*, 691 F. Supp. 947, 955 (D.S.C. 1988), *aff'd mem.* 878 F.2d 379 (4th Cir. 1989) (same).

Now this does not make the State a sheriff's employer under S.C. Code Ann. § 15-78-60. In *Trousdell,* a deputy from Charleston County collided into the back of a patrol car driven by a South Carolina Highway Patrolman as the two were pursuing a suspect. The patrolman got workers compensation benefits from the State and then sued the Sheriff. The Supreme Court held that nothing in §15-78-60 barred the suit. *Trousdell v. Cannon*, 351 S.C. 636, 642, 572 S.E.2d 264, 267 (2002). *Trousdell* thus confirms that the proper focus under S.C. Code Ann. § 15-78-60 is on who actually employed whom.

In this case, the Sheriff's counsel, while representing the County, pointed out that Lampley had to sue the Sheriff and not the County. ROA 24 ¶ 2.

Counsel was right. The Tort Claims Act required Lampley to sue the entity that actually employed the employee whose act gives rise to the claim. *Faile*, 350 S.C. at 329-30, 566 S.E.2d at 543. This admittedly was the Sheriff, not the County. ROA 35 ¶ 31.

The Sheriff has not adequately explained why the Act renders sheriffs and counties asunder when figuring out who to sue yet solders them back together when deciding who is immune from suit. The circuit court nevertheless accepted the obvious contradiction and read into the term "employer" the Sheriff's view on what the statute should say.

II. The circuit court improperly altered the statute's unambiguous text with canons that do not apply or help the Sheriff.

The circuit court first relied on canons of construction that do not apply because the statute's text is unambiguous. And in this case neither canon applies even if the text is ambiguous.

One canon is that doubts over whether workers' compensation coverage exists favors employees in their disputes with their employers. ROA 6-7. In this case, however, the existence of workers' compensation coverage was never doubtful: Lampley had coverage through the County, his employer. ROA 2, Finding 3. The fighting issue is whether Lampley may still "recover damages from any person other than the employer."

Even if this unambiguous text is considered ambiguous, the circuit court twisted a canon favoring compensation into a bar against compensation from others. This turns the canon favoring compensation upside down.

The circuit court next thought that it needed to deem the Sheriff the fireman's employer to avoid rendering S.C. Code Ann. § 15-78-60(14) surplusage to S.C. Code Ann. § 42-1-540. ROA 7. But there is good reason for duplication and, in any event, both statutes allow injured employees to sue third parties.

Some duplication between the Tort Claims Act and statutes governing private persons is required because the Tort Claims Act—and only the Act—governs tort actions where a governmental employee commits the tort in the course and scope of his or her employment.

The collision at issue admittedly occurred while the Deputy was acting within the course and scope of his employment with the Sheriff. ROA 35 ¶ 31. This meant that the Act was Lampley's only remedy in tort. *See* S.C. Code Ann. §§ 15-78-70(a), 15-78-200. But by the same token, the Act itself establishes the limitations on and exemptions to the liability that the Act creates. *See* S.C. Code Ann. § 15-78-200 ("The provisions of this chapter [the Tort Claims Act] establish limitations on and exemptions to the liability of the governmental entity[.]").

Under this statutory scheme, placing S.C. Code Ann. § 15-78-60(14) within the Tort Claims Act was not an oversight. Duplication was necessary to give governmental employers the same protection that private employers enjoy under S.C. Code Ann § 42-1-540.

In any event, both statutes allow suits against third parties. In what is becoming a refrain, S.C. Code Ann. § 15-78-60 allows injured employees to collect workers' compensation benefits and then sue a third-party, governmental entity. *See Trousdell*, 351 S.C. at 642, 572 S.E.2d at 267 (patrolman could collect workers' compensation from the State and them sue the sheriff); *Buff v. S.C. DOT*, 332 S.C. 472, 475, 505 S.E.2d 360, 362 (Ct.App. 1998), *rev'd on other grounds*, 342 S.C. 416, 537 S.E.2d 279 (2000) (employee could collect workers' compensation from a private employer and then sue the DOT). Section 42-1-540 likewise provides that "a plaintiff can collect workers' compensation benefits and sue the third party responsible for causing the injuries." *Mendenall v. Anderson Hardwood Floors, L.L.C.*, 401 S.C. 558, 562, 738 S.E.2d 251, 253 (2013).

It thus makes little sense to say that the canon against surplusage helps bar Lampley's suit. Even if S.C. Code Ann. § 42-1-540 applies and knocks S.C. Code Ann. § 15-78-60(14) out as surplusage, S.C. Code Ann. § 42-1-540 would still apply and allow the suit.

III. The circuit court's focus on who funded what insurance, rather than who employed whom, interjects uncertainty into a clear statute.

The circuit court lastly created significant uncertainties in applying an otherwise clear statute when the court accepted the Sheriff's argument that the Sheriff got workers' compensation coverage through the County from the County's collection of ad valorem property taxes. ROA 7-8.

One uncertainty is whether the Sheriff must rely on property taxes to fund the Sheriff's fair share of any insurance premiums. Besides taxes, sheriffs collect fees for their work. *See* S.C. Code Ann. § 23-19-10 (listing the litany of fees that sheriffs may collect). This independent source of income at least poses factual disputes over what funds funded what insurance.

Such factual disputes are often difficult to resolve. Returning to *Trousdell*, the Supreme Court held that nothing in § 15-78-60 barred a state highway patrolman from collecting workers' compensation from the State and then suing a sheriff. *Trousdell*, 351 S.C. at 642, 572 S.E.2d at 267. If the statute turns on funding, as the circuit court reasoned, then the Supreme Court in *Trousdell* would have had to explore the funding arrangements between the State and that particular sheriff at that particular time. Similar issues bedevil federal court judges who grapple with who pays for what when determining whether sheriffs are state officials. *See Cromer*, 88 F.3d at 1332

(noting the difficulty in deciding who paid for the Greenville County Sheriff's insurance or would pay a judgment against the Sheriff).

This interjects uncertainty into an otherwise crystal-clear statute. Section 15-78-60(14) does not peg who may sue whom on who funded what insurance. It pegs who may sue whom on who employs whom. Nothing in this plain text strips Lampley of his right to sue entities other than his employer simply because the employer chose to insure those it does not employ.

The circuit court lastly created a second, more breathtaking uncertainty. The circuit court relied on S.C. Code Ann. § 4-9-30(5)(a) to treat the Sheriff as the fireman's employer. ROA 7. The statute is incredibly broad. Jobs listed include:

> general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries[.]

If the circuit court is right, and this statute means that the Sheriff employs firemen, does the Sheriff likewise employ road-crew workers, water treatment personnel, sewage collectors, court clerks, DSS case

workers, doctors, and librarians? How far does this go? What limiting principle exists to prevent all this from becoming absurd?

Conclusion

The circuit court wrongly deemed the Sheriff the fireman's employer to achieve the result it thought best. This is error. The statute is unambiguous and allows Lampley to sue the Sheriff because the Sheriff was never the fireman's employer. A Sheriff does not employ a fireman any more than he does a librarian. The summary-judgment order must be reversed, and the case remanded for proceedings on Lampley's bodily-injury claims.

Respectfully,

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