

RECEIVED

AUG 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY

Court Of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case # 2016-CP-40-7010

Henry L. Bradley.....Appellant.

v.

S.C. Dept. Of Corrections.....Respondent.

APPELLANT'S "REPLY" TO RESPONDENT'S INITIAL BRIEF

Henry L. Bradley # 141371
B.R.C.I. 4460 Broad River Rd.
Marion # 128
Columbia, S.C. 29210

TABLE

TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF THE ISSUES ON APPEAL	4
STATEMENT OF THE CASE	5
ARGUMENT:	
The Lower Court Was In Error When It Ruled That Appellant Was Barred By The Statute Of Limitations	7
CONCLUSION	9

TABLE OF AUTHORITIES

Norris v. State 335 S.C. 30,33, 515 SE2d 523,524-25 (1999)

Rule 60 S.C. Circuit Court Rules Of Practice

STATEMENT OF ISSUES ON APPEAL

WAS THE LOWER COURT IN ERROR WHEN IT RULED THAT APPELLANT WAS BARRED BY THE
STATUTE OF LIMITATIONS?

STATEMENT OF THE CASE

On May 26, 2013 appellant being an inmate in the S.C. Dept. Of Corrections (SCDC) was involved in a stabbing incident.

On May 18, 2015 appellant filed a Summons and Complaint against SCDC for negligence (case # ~~2015-cp-40-3008~~) It must be noted that appellant filed this complaint 8 days before the expiration of the 2 year statute of limitations (R. 2-2-1)

On December 7, 2015 the respondent submitted a motion to dismiss citing the appellant never served the opposing parties involved with the complaint. The respondent further contends that if service is not made within the statute of limitations, a plaintiff has 120 days after the filing of the complaint to serve all parties. And since appellant failed to make service, the action is time barred. The respondent asked that the case be dismissed with prejudice. (see respondent's December 7, 2015 motion to dismiss)

On March 29, 2016 Judge Manning issued an Order in accordance to the respondent's motion. However, Judge Manning dismissed the case without prejudice. (R. pp.1)

On December 6, 2016 appellant filed a second action against SCDC base on the same set of facts outlined in the first complaint. (case # ~~2016-cp-40-7010~~) (R. pp.6)

On January 9, 2017 the respondent submitted a motion to dismiss the second complaint contending that the statute of limitations had run prior to the filing of the second complaint. Therefore, the second complaint is time barred. (see respondent's January 9, 2017 motion to dismiss)

On April 6, 2017 a hearing was held before Judge Jean Toal on the respondent's January 9, 2017 motion to dismiss. At the hearing, Judge Toal denied the respondent's Motion to dismiss. (R. pp16)

On March 14, 2018 despite Judge Toal's Ruling, the respondent submitted a motion for summary judgment alleging that the second action was filed more than 2 years after the stabbing incident occurred and that no facts exist to support equitable tolling of the statute of limitations. Therefore, the second action is time barred. (R. pp-17)

On October 1, 2018 the respondent submitted a memorandum in support of summary judgment. On October 16, 2018 appellant submitted a response to the summary judgment. (R. pp-19)

On July 10, 2019 Judge R. Keith Kelly granted summary judgment. (R. pp.22) On August 7, 2019 appellant submitted a 59(e) motion. On August 22, 2019 Judge Kelly denied appellant's 59(e) motion. (R. pp29)

Appellant's Reply to the respondent's initial brief now follows:

THE LOWER COURT WAS IN ERROR WHEN IT RULED THAT APPELLANT WAS BARRED BY THE
STATUTE OF LIMITATIONS

In general, when an action is dismissed without prejudice, the statute of limitations will bar a subsequent suit if the statute runs in the interim. However, a defendant is estopped from claiming the defense of statute of limitations when the defendant consents to the plaintiff's dismissal without prejudice, and the statute has run prior to the granting of the dismissal. Norris v. State 335 S.C. 30,33, 515 SE 2d 523,524-25 (1999)

The respondent contends that in their motion to dismiss the first complaint, they asked that the first complaint be dismissed with prejudice. However, Judge Manning dismissed the first complaint without prejudice. (R. pp.1)

Therefore, the respondent further contends that since they never consented to the first complaint being dismissed without prejudice by Judge Manning, the statute of limitations was not equitably tolled to allow appellant to submit a second complaint. Thus, they have a right to argue a defense of statute of limitations against the second complaint. (respondent's initial brief p.4-6)

Appellant argues that when Judge Manning dismissed the matter without prejudice which was contrary to what the respondent wanted (a dismissal with prejudice) the burden was on the respondent to ask Judge Manning for a reconsideration of his Order to have the matter dismissed with prejudice.

Not only did the respondent failed to asked Judge Manning for a reconsideration of his final Order, the respondent's attorney drafted the final Order for Judge Manning without voicing any concerns to Judge Manning about the first complaint being dismiss without prejudice.

Only when appellant submitted a second complaint did the respondent invoked the defense of statute of limitations citing that since they never consented to the first complaint being dismissed without prejudice, there was no equitable tolling. Thus, the second complaint is time--barred. (see respondent's January 9, 2017 motion to dismiss 2nd complaint)

However, when a hearing was held on the respondent's motion to dismiss the second complaint, Judge Jean Toal in denying the motion Ruled that:

The defendant's motion is denied on the bases that plaintiff intended to amend his complaint in accord with Judge Manning's Ruling in the first action. Instead, he brought a second case. And this second case is the very same case as the first, which has not been dismissed with prejudice. I regard the new suit as an amendment to the older. (R. pp.16)

Dispite Judge Toal's denial of their motion to dismiss, the respondent submitted a motion for summary judgment before Judge R. Keith Kelly based on the same set of facts alleged in their motion to dismiss before Judge Toal. (see respondent's October 1, 2018 memorandum in supprt of summary judgment)

Appellant responded to the respondent's motion for summary judgment alleging that the respondent violated Rule 60 of the S.C. Circuit Court Rules Of Practice which states:

When an application for an Order is made to any Judge and such is refused in whole or in part, no subsequent application upon the same set of facts shall be made to any other judge. And if upon any such subsequent application an Order is made, the Order shall be revoked. (Rule 60 S.C. Circuit Court Rules Of Practice) (R. ppl9)

In short, the respondent violated Rule 60 by presenting the same facts that was denied by Judge Toal and re-presenting them before Judge Kelly. Therefore, since Judge Kelly's Order granting summary judgment is based on the same set of facts that Judge Toal previously denied, Judge Kelly's Order is invalid and should be revoked. (R- pp23)

In mitigating that argument, the respondent contends that Judge Toal at the hearing made no Ruling on the statute of limitations or equitable tolling. (see respondent's initial brief p.6)

Appellant argues that in denying the respondent's January 9, 2017 motion to dismiss, Judge Toal's Order did not mention about the statute of limitations per-se, but it was implied. The record clearly states that the April 6, 2017 hearing before Judge Toal was based on whether appellant's second complaint was time-barred. (statute of limitations)

CONCLUSION

Lastly, although this argument is loosely constructed, nevertheless it is preserved for appellate review being that it was presented in the 59(e) motion. (see appellant's August 7, 2019 59(e) motion)

Wherefore, appellant Henry L. Bradley now ask this court to reverse the Order granting summary judgment and remand to the lower court for trial, or on it's own motion grant any relief the court deems proper for this matter.

Respectfully Submitted,


Henry L. Bradley # 141371

B.R.C.I. 4460 Broad River Rd.

Marion # 128

Columbia, S.C. 29210

Date AUGUST 17, 2021

RECEIVED

AUG 19 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY

Court Of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case # 2016-CP-40-7010

Henry L. Bradley.....Appellant.

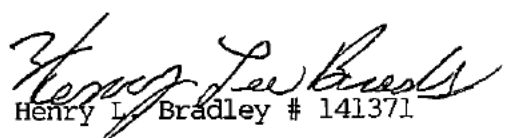
v.

S.C. Dept. Of Corrections.....Respondent.

PROOF OF SERVICE

I certify that I have served the "Reply" To The Respondent's Initial Brief on the S.C. Dept. Of Corrections by depositing a copy of it in the U.S. Mail postage prepaid on 8-17-2021 addressed to their attorney on record: Damon C. Wlodarczyk Esq. P.O. Box 11412 Columbia, S.C. 29211

Date AUGUST 17, 2021


Henry L. Bradley # 141371

B.R.C.I. 4460 Broad River Rd.

Marion # 128

Columbia, S.C. 29210

Henry L. Bradley # 141371
B.R.C.I 4460 Broad River Rd.
Marion # 128
Columbia, S.C. 29210

RECEIVED

AUG 19 2021

SC Court of Appeals

Date AUGUST 17, 2021

The Hon. Jenny A. Kitchings
Clerk, S.C. Court Of Appeals
1220 Senate St.
Columbia, S.C. 29201

RE: Filing Of Appellant's "Reply" To Respondent's Initial Brief
Henry L. Bradley v. S.C. Dept. Of Corrections
Case # 2020-001332

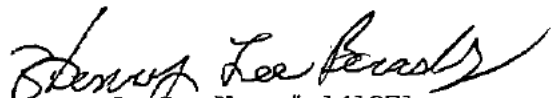
Dear Hon. Kitchings;

Enclosed for filing in your office 1 original copy of my "Reply" to the respondent's initial brief along with proof of service. Please make note that this "Reply" is my last filing in this matter being that I have already submitted all of the necessary documents below:

- *Initial Brief
- *Designation Of Matter
- *Final Brief
- *Record On Appeal

Also enclosed is an extra cover page to be filed stamped and returned to me in the self-addressed stamped envelope provided.

Sincerely,

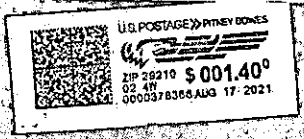

Henry L. Bradley # 141371

cc: _____

cc: _____

CC: Damon C. Wlodarczyk Esq.
(attorney For Respondent)

Henry Lee Bradley #141371
B R C I 4460 Broad river Rd.
Marion #128
Columbia, S.C. 29210



RECEIVED
AUG 19 2021
SC Court of Appeals

The Hon. Jenny A. Kitchings
Clerk, S.C. Court of Appeals
1220 Senate St.
Columbia, SC 29201

