THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Court Judge

Case No. 2020-000058

Angel Phillips, ……Appellant

v.

Hartsville Department of Social Services, …….Respondent

RESPONDENT'S FINAL BRIEF

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s/Joseph P. McLean

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Statement of Issues on Appeal

Did the Circuit Court err as a matter of law by dismissing the plaintiff's civil action based upon the two-year statute of limitations under the South Carolina Tort Claims Act found at S.C. Code Ann. §15-78-110 (2020 Cum. Supp.)?

Statement of the Case

In June 2016, a report of child neglect was made against Appellant which resulted in her son being placed into emergency protective custody (Appendix, p. 3). After investigation and assessment, Respondent [1] found the report of neglect unfounded, it notified Appellant of this fact by letter dated August 5, 2016 (Appendix p. 5 and p.9), the child was returned, and Respondent closed its file. On November 17, 2017, Appellant filed a complaint form with the South Carolina Office of Inspector General (OIG) (Appendix pp. 7-8). This action was filed on July 3, 2019. In it, Appellant seeks damages against Respondent for wrongfully placing her son into emergency protective custody (Appendix p.3) [2]

Respondent is a governmental agency of the State of South Carolina. The South Carolina Tort Claims Act governs all tort claims against governmental agencies, and it is the exclusive civil remedy available in an action against a governmental agency. Respondent is only liable for torts

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[1] Respondent is misidentified in the pleadings as "Hartsville Department of Social Services." The Respondent is correctly identified as the South Carolina Department of Social Services (SCDSS) which is the state entity with the duty to investigate all reports of child neglect to see if the allegations have merit. S.C. Code Ann. §63-7-10 (2010); *SCDSS v Pritcher*, 329 S.C. 242, 495 S.E.2d 242 (Ct. App. 1997).

[2] Appellant revealed at oral arguments on the motion to dismiss that another reason she filed this action was to get an unredacted copy of Respondent's file on the report of child neglect made against her so she could learn the identity of the reporter of the neglect. However, the identity of the reporter is strictly confidential. *See,* S.C. Code Ann. 63-7-940 (2010)(confidentiality of unfounded case information) and S.C. Code Ann 67-7-1990(E)(2010) (A disclosure pursuant to this section shall protect the identity of the person who reported the suspected child abuse or neglect). Regardless, it appears Appellant already knows the identity of the reporter (Appendix p. 3).

within the limitations of the Tort Claims Act. See, S.C. Code Ann. §15-78-20 (2005). Any action brought pursuant to the Tort Claims Act is subject to a two-year statute of limitations which begins to run on the date the loss was or should have been discovered, unless the claimant has first filed a verified claim which extends the statute of limitations to three years. S.C. Code Ann. §15-78-110 (2005).

The trial court found that the claim form filed with the OIG did not meet the requirements of a verified claim. Therefore, the statute of limitations was two years not three years, this action was not timely filed, and it was dismissed (Appendix pp 39 – 43). This appeal followed.

Standard of Review

1. Motion to Dismiss

In dismissing this action based upon expiration of the statute of limitation, the trial court dismissed granted Respondent's motion to dismiss under Rule 12, SCRCP. A complaint is subject to dismissal when it "fail[s] to state facts sufficient to constitute a cause of action." Rule 12(b)(6), SCRCP. Dismissal under Rule 12(b)(6) is thus appropriate if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, do not entitle the plaintiff to relief on any theory. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). In deciding whether the trial court properly granted the motion to dismiss, this Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. S*ee also Cowart v. Poore*, 337 S.C. 359, 523 S.E.2d 182 (Ct. App.1999) (looking at facts in light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief). *See also, Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413, 415 (Ct. App. 2003) (citations omitted).

2. Motion for Summary Judgment

A motion for summary judgment under Rule 56 SCRCP can also be used to raise the defense of the statute of limitations. *McDonnell v Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638, 639 (1994). If on a motion under Rule 12 matters outside the pleadings are presented and not excluded, the motion shall be treated as one for summary judgment. Rule 12(b) SCRCP.

A copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes if a copy is attached to such a pleading. Rule 10(c), SCRCP. *Brazell v Windsor*, 384 S.C. 512, 682 S.E.2d 824, 826 (2009), *rehearing denied*.

If the trial judge looked at matters outside of the pleadings, this court should apply the standard of review for summary judgment. *Id,* n.2.

In determining whether summary judgment is proper, this court must view all evidence in the light most favorable to the non-moving party. *Barr v. City of Rock Hill,* 330 S.C. 640, 642, 500 S.E.2d 157, 158 (Ct.App.1998). Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *City of Columbia v. ACLU of South Carolina,* 323 S.C. 384, 386, 475 S.E.2d 747, 748 (1996). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Id.*

Argument

The trial court correctly applied the discovery rule and the statutory and case law on verified claims to rule that this action is barred by the two-year statute of limitations.

1. Discovery Rule

The discovery rule is applicable to actions brought under the Tort Claims Act. *Barr v. City of Rock Hill, supra*. According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from wrongful conduct. The phrase "exercise of reasonable diligence" means that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. *Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996). The date on which discovery should have been made is an objective, not subjective, question. *Kreutner v. David,* 320 S.C. 283, 465 S.E. 2d 88 (1995). In other words, whether the particular plaintiff actually knew (s)he had a claim is not the test. Rather, courts must determine whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. *Young v. South Carolina Dept. of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

The trial judge found that receipt of the letter from Respondent to Appellant dated August 5, 2016, and attached to the complaint (Appendix p. 5 and p.9) triggered the running of the statute of limitations. A copy of that letter was filed as an attachment to the complaint in this action.[3]

[3] A copy of a document which is an exhibit to a pleading is a part of the pleading for all purposes if a copy is attached to such a pleading. Rule 10(c), SCRCP." *Brazell v Windsor, supra*.

Appellant has pointed to nothing that occurred after that letter that gave her any reason to know she may have a claim against Respondent for damages such that the statute of limitations would begin to run at a later date. In fact, Respondent had closed its file and had no further involvement with Appellant after August 5, 2016. Appellant was aware of the existence of a statute of limitations and stated to the trial court that she had thought it was 3 years. (Appendix pp. 35 -36). She was wrong.

2. Verified Claim

Filing of a verified claim under the Tort Claims Act extends the statute of limitations from two (2) years to three (3) years. *See,* S.C. Code Ann. §15-78-110 (2005) The Tort Claims Act sets forth with specificity what a verified claim is and how it is filed. *See,* S.C. Code Ann. §15-78-80 (1976).

First, the claim must be "verified," meaning under oath. Without an oath, the claim cannot be considered as having been verified. A verification serves to discourage the filing of false claims because a verification permits a prosecution for perjury if the claim is fraudulent. *Searcy v S.C. Department of Education, Transportation Division,* 303 S.C. 544, 402 S.E.2d 486, 487 (Ct. App. 1991), *rehearing denied, cert. denied*.

Second, if the verified claim is against the state, it must be filed with the State Fiscal Accountability Authority or with the agency employing the employee whose alleged act or admission gave rise to the claim. *See,* S.C. Code Ann. §15-78-80(a)(1) (2005). Where the claim is against a political subdivision, it must be filed with the political subdivision employing an employee whose alleged act or omission gave rise to the claim. *See,* S.C. Code Ann. §15-78-80(a)(2) (1976). Where the identification of the proper defendant is in doubt, it must be filed with the Attorney General. *See,* S.C. Code Ann. §15-78-80(a)(3) (1976). These specific filing requirements put the

governmental entity on notice so that it can both conduct an investigation while the facts are fresh and preserve the evidence. *Searcy* 402 S.E.2d 486, 488.

When a statute requires verification, failure to comply will invalidate the notice, even if no prejudice results to the other party, as a verification is a matter of substance and not form. *Rink v Richland Memorial Hospital,* 310 S.C. 193, 422 S.E.2d 747 (1992), *citing Cochran v City of Sumter,* 242 S.C. 382, 131 S.E.2d 153 (1963) *overruled on other grounds by McCall v. Batson,* 285 S.C. 243, 329 S.E.2d 741 (1985). In *Rink,* a letter sent to a hospital by a patient stating that he was injured while in the hospital was not a verified claim under the Tort Claims act to extend the statute of limitations for 2 years to 3 years because did not set forth any facts, date, names, or the amount of the loss sustained as required by S.C. Code Ann. §15-78-80(a) (1976.). In *Joubert v S.C. Department of Social Services,* 341 S.C. 176, 534 S.E.2d 1(Ct. App. 2000), testimony under oath by a licensed foster care provider at an administrative license revocation hearing before DSS and statements by the provider's attorney at the hearing reserving all rights to pursue a civil action did not meet the requirements of a verified claim.

Most importantly, our courts have repeatedly held strict compliance with the verified claim statute is mandatory. *See, Vines v Self Memorial Hospital,* 314 S.C. 305, 443 S.E.2d 909 (1994) ([a] claim against a state entity under the Tort Claims Act must be verified to entitle a plaintiff to the three-year statute of limitations. Substantial compliance is not sufficient); *Pollard v County of Florence,* 314 S.C. 397, 444 S.E.2d 534 (1994), *cert. denied* (substantial compliance with the statute is not enough; the verified claim procedure must be strictly complied with in order to trigger the three-year limitations period); *Flateau v Harrison, supra* (the record contains no evidence that [plaintiffs] filed a verified claim. Accordingly, the three-year statute of limitations does not apply. Rather, the two-year statute of limitations is applicable).

Appellant filed a complaint form dated November 27, 2017, with the South Carolina Office of Inspector General. A copy of that complaint is attached to her complaint in this action. (Appendix pp. 7-8). It was filed within the two-year period following the letter from Respondent to Appellant dated August 5, 2016. However, the claim form was not verified. It was not filed with the State Fiscal Accountability Authority, with the state DSS office in Columbia, with the local DSS office in Hartsville, or with the Attorney General. The South Carolina Office of Inspector General has no jurisdiction over civil damages claims against the state. It is responsible "for investigating and addressing allegations of fraud, waste, abuse, mismanagement, misconduct, violations of state or federal law, and wrongdoing in agencies." S.C. Code Ann, §1-6-20(B) (2005). Therefore, the claim form filed did not extend the statute of limitations from two years to three years. Appellant filed this action on July 2, 2019, well past the two-year period following the letter from Respondent to Appellant dated August 5, 2016. Adding 5 days for delivery of the letter dated August 5, 2016 (see Rule 6(e), SCRCP), the statute began to run on August 10, 2016, it expired August 10, 2018, and this action was filed on July 3, 2019.

Conclusion

The Tort Claims Act is to be construed liberally in favor of restricting the liability of the state. See, S.C. Code Ann. § 15-78-20(f) (1976). The statute of limitations is two years unless a verified claim is filed. Appellant did not file a claim that met the clear requirements of a statutorily-defined verified claim and, therefore, the statute of limitations is not extended to three years. This action was not timely filed, and the trial court correctly dismissed it.

s/Joseph P. McLean

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CERTIFICATION OF COUNSEL
RULE 211, SCACR

I certify that Respondent s Final Brief complies with Rule 211(b), SCACR.

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