

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2021-001028
Unpublished Opinion No. 2021-UP-151; Filed May 5, 2021

Elvia Stoppiello and Gilberto Garcia,.....Petitioners,

v.

William D. Turner and Charter Communications, LLC,.....Respondents.

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

Brian T. Smith (S.C. Bar No. 70232)
The Law Office of Brian T. Smith
714 Pettigru Street
Greenville, SC 29601
Phone: 864-239-2007
Fax: 864-239-2039
bsmith@btsmithlaw.com
Attorney for Petitioners

Other Counsel of Record:
Michelle DuLuca Yarborough (S.C. Bar No. 15603)
Natalie Rae Ecker (S.C. Bar No. 103624)
Gallivan, White & Boyd, P.A.
P.O. Box 10589
Greenville, SC 29603
Phone: 864-271-5349
Fax: 864-271-7502
myarbrough@gwblawfirm.com
eckern@gwblawfirm.com
Attorneys for Respondents

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ARGUMENTS

Petitioners Elvia Stoppiello and Gilberto Garcia submits this Reply in Support of Petition for Writ of Certiorari to Respondents William D. Turner and Charter Communications, LLC's Return to Petition for Writ of Certiorari ("Return").

I. The South Carolina Court of Appeals erred in affirming the trial court's dismissal pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

At question is if pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Petitioner failed to state facts sufficient to constitute a cause of action. Respondents sites *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006) "In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint," and "If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Id.* With that in mind, Petitioners have laid out in paragraphs nineteen (19) and twenty (20) of their Complaint, that Petitioner Stoppiello suffered a traumatic brain injury that was discovered and diagnosed on March 28, 2016. (App. p. 23, ¶¶ 19, and 20). In accordance with *Spence*, viewing the allegations "in the light most favorable to the plaintiff," the Petitioners should be entitled to relief based on their reliance on the discovery rule in determining when the statue of limitation should begin to run. "Applying the discovery rule in this context, the determination to be made is when temporary symptoms become an 'injury' from which the surrounding facts and circumstances should put a person on notice that a cause of action exists." *Grillo v. Speedrite Prods., Inc.*, 532 S.E.2d 1 (S.C. Ct. App. 2000).

This Court has ruled on the existence of circumstances in which the Statute of Limitations

as it is written, should be viewed in a more objective manner. In *Grillo v. Speedrite Products*, 340 S.C. 498, 508, 532 S.E2d 1 (S.C. Ct. App. 2000), in ruling on a case where the cause of the injury, toxic exposure, was not immediately known and instead was recognized at a later date, the Court held that, "We find more than one inference can be drawn as to when a reasonable person would have been on notice that he might have a cause of action Institution of an action based on those temporary symptoms would have been premature and possible frivolous." Here, Petitioner Stoppiello was suffering cognitive deficits brought on by a traumatic brain injury and it is arguable as to whether she is a person of common knowledge and experience. It is also arguable as to whether the symptoms she was suffering put her under knowledge she had suffered a traumatic brain injury and would have been premature and possibly frivolous. Petitioners argue in their Motion to Reconsider that the discovery rule is made specifically for traumatic brain injury cases. (App. p. 11). Especially, when more than one inference can be drawn as to when a reasonable person would have been on notice that they might have a cause of action.

"Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); see also Rule 56(c), SCRPC.

Questions to be clarified are:

1. Does a person of common knowledge and experience require a professional neurologist opinion to know they have traumatic brain injury when they experience symptoms consistent with those listed in Grillo as temporary and diffuse?
2. Do those symptoms alone make filing a lawsuit premature and frivolous?

3. Did Petitioner Stoppiello operate at less than the level of a person of common knowledge and experience?
4. Can Petitioners traumatic brain injury cause her to operate at less than the level of a person of common knowledge and experience?

In this case, Petitioners assert there are facts to be clarified and this case should therefore survive summary judgment. Dismissal under Rule 12(b)(6), SCRCP was not proper.

II. The South Carolina Court of Appeals erred affirming the trial court's dismissal pursuant to Sections 15-530(5) and 15-3-535 of the South Carolina Code.

The trial court improperly used a strict interpretation of Sections 15-530(5) and 15-3-535 when it dismissed the case. Respondents argue that “in support of this contention, Petitioners proffer excerpts from Petitioner Stoppiello’s medical records. Such information is not properly before this Court and was not properly before the South Carolina Court of Appeals, as the South Carolina Court of Appeals reviewed the trial court’s Order granting Respondents’ Motion to Dismiss based on facts alleged in the complaint.” Petitioner’s filed a Motion to Reconsider the trial courts decision on December 6, 2018. (App. pp. 8-13). The records in question, specifically Dr. White’s report, are attached to the motion as Exhibit A and referenced within the motion as such. (App. p. 9).

Respondents admit that they do not dispute Petitioners’ reliance on the South Carolina Supreme Court’s application of the statute of limitations in *Snell v. Columbia Gun Exch., Inc.*, 276 S.C. 301, 278 S.E.2d 333 (1981) when it held that:

The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury 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. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.

Respondents also admit that “for the purpose of the Motion to Dismiss only, Respondents do not dispute that Petitioner Stoppiello was not aware until March 28, 2016 that she had a “traumatic brain injury” stemming from the automobile accident. (App. p. 23, ¶¶ 19-20).” Respondents claim that Petitioners’ complaint acknowledges that Petitioner Stoppiello knew she was injured before May 24, 2015. The complaint makes no mention of any other dates or references regarding knowledge of an injury prior to March 28, 2016. *See* App. pp. 22-23 ¶¶ 16-20. Construing the allegations in the complaint in a light most favorable to Petitioners, it is clear that Petitioner Stoppiello was injured and that she may have a claim against Respondents as a result of the automobile accident.

Petitioners contend that the South Carolina Court of Appeals, in *Grillo v. Speed Rite Products, Inc.*, 340 S.C. 498, 532 S.E. 2d 1 (Ct. App. 2000), ruled on the existence of circumstances in which the statute of limitations, as written, should be viewed in a more objective matter. The court ... determined that a reasonable person might have a different opinion as to the cause of the plaintiff’s headaches. *Id.* As such, only the specific diagnosis that the plaintiff’s symptoms resulted from the ink exposure put the plaintiff on notice of a legally compensable injury. *Id.*

In *Miller v. Blumenthal Mills, Inc.*, 616 SE2d 722, 365 S.C 204,220 (Ct. App. 2005), the Court argues that "Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law". *Id.* In *Miller*, the court goes on to say that "Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure

that a litigant is not improperly deprived of a trial on disputed factual issues. *Id.* This case has genuine issues of fact.

Without a medical finding of a concussion, in Petitioner Stoppiello's case, a reasonable person with common knowledge and experience may have a different inference for the cause of her injuries. Petitioner Stoppiello had headaches and felt electricity. She then, as laid out in Dr. White's evaluation, suffered memory loss, memory lapses accompanied by cognitive decline, and personality changes. (App. pp. 86-87). She and her husband began to have marital issues because they did not understand what Petitioner Stoppiello was going through. She sought medical care that didn't help with her symptoms. She was diagnosed by Dr. Fox in the summer of 2015 with simple tension headaches. (App. pp. 82-83). Stress causes tension headaches and marital issues cause stress. A reasonable person of common knowledge and common experience with marital issues that is having headaches could infer, as in Petitioner Stoppiello's case, that these issues were the cause of tension headaches.

III. The South Carolina Court of Appeals erred in holding that Petitioner Stoppiello was not entitled to the toll the statute of limitations pursuant to Section 15-3-40 of the South Carolina Code.

Petitioners contend that they are entitled to the protections set forth in Section 15-3-40(2) of the South Carolina Code because Petitioner Stoppiello was diagnosed with a traumatic brain injury on March 28, 2016. *Wiggins v. Edwards*, 442 S.E.2d 169 (1994), states that

The general rule as to the standard for insanity under tolling statutes is that: Insanity or mental incompetency that tolls the statute of limitations consists of a mental condition which precludes understanding the nature or effects of one's acts, an incapacity to manage one's affairs, an inability to understand or protect one's rights, because of an over-all inability to function in society, or the

mental condition is such as to require care in a hospital.

Accordingly, Petitioners are entitled to toll the statute of limitations only if Petitioner Stoppiello was unable to understand the nature or effects of her acts, manage her own affairs, or understand or protect her rights at the time the cause of action was accrued.

Respondents further argue that Petitioner Stoppiello retained counsel on or before April 23, 2015, two days after the automobile accident at issue. (App. p. 52). As held in *Snell v. Columbia Gun Exch., Inc.*, 276 S.C. 301, 278 S.E.2d 333 (1981), the statute of limitations does not begin to run from the point when advice of counsel is sought or a full-blown theory of recovery developed.

CONCLUSION

For the reasons stated, petitioner moves that the Court grant the petition for a writ of certiorari.

October 28, 2021
Greenville, SC

Respectfully submitted,

s/Brian T. Smith
Brian T. Smith (S.C. Bar No. 70232)
The Law Office of Brian T. Smith
714 Pettigru Street
Greenville, SC 29601
Phone: 864-239-2007
Fax: 864-239-2039
bsmith@btsmithlaw.com
Attorney for Petitioners