SUPPLEMENTAL CITATION FOR PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In The SUPREME COURT

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S.C. SUPREME COURT

Appeal from Georgetown County
Court of Common Pleas

Larry B. Hyman, Presiding Circuit Court Judge

Appellate Case No. 2012=211946

Willie Singleton and Julia Thomas, Heirs at Law of Victoria Gadson, Petitioner.

v.

City of Georgetown Building Official Stephen Stack, et. Al. Respondent,

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SUPPLEMENTAL CITATION

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ARGUMENTS

1.DID THE LOWER COURT ERR RUILING THAT THE INDIVIDUAL DEFENDANTS AND PUNTITIVE DAMAGES BE STRICKEN FROM THE COMPLAINT, ALSO THAT THE INDIVIDUAL DEFENDANTS ACTION WERE WITHIN THE SCOPE OF THEIR OFFICIAL DUTIES AND THAT THE INDIVIDUAL DEFENDANTS ACTION FALL UNDER THE TORTS CLAIM ACT BASED ON THE FACE OF THE COMPLAINT, PURSUANT TO A 12(B)(6) BEFORE THE DEFENDANTS PRESENTED ANY EVIDENCE.

The lower court in a motion hearing forty nine days after the plaintiffs filed their complaint made it ruling on the face of the complaint without any evidence from the defendants, the court made it ruling that the individual defendants and punitive damages be stricken from the complaint, also that the defendants action were within the scope of their official duties and that the individual defendants action fall under the torts claim act. The plaintiffs argue issues for review.

I . Did the court err dismissing the individual defendants from the face of the complaint before any evidence was presented by the defendants pursuant to Rules 12(b)(6), SCRCP?

II. Did the court err striking punitive damages from the complaint before the defendants presented any evidence pursuant to Rules 12(b)(6), SCRCP?

III. Did the court err ruling that the individual defendants action were under the scope of their official duties pursuant to Rules 12(b)(6), SCRCP?

IV. Did the court err ruling that the individual defendants actions fell under the tort claim act pursuant to Rules 12(b)(6), SCRCP?

V. Did the court err ruling to dismiss defendant Steven Stack, a defendant who plead guilty in a consent order that he had broken State law and city ordinance after he(and other named defendants) had been warned in writing several times over the course of a year before the incident that he was breaking the law, and that Mr. Stack action were outside the scope of his official duties. With all that evidence presented to the Court, the Court still ruled that his action fell under the tort claim and that punitive damage be stricken from the complaint against Stack pursuant to Rules 12(b)(6), SCRCP?

See ***Freemantle v. Preston.2010181306***

Freeman filed suit against Preston and the other defendants in their official capacity and individually. Thereafter.

Respondents moved for the suit to be dismissed pursuant to Rules 12(b)(6), SCRCP, asserting that Appellant, as a taxpayer, lacked standing. Respondents further asserted that they were entitled to legislative immunity, in an order of dismissal, the trial court found that Appellant lacked standing under the constitution, the public importance exception, and pursuant to state statute The trial court found that Appellant lacked standing under the constitution, the public importance exception, and pursuant to state statute. Alternatively, the trial court held that Respondents were entitled to legislative immunity.

The plaintiff appealed the trial court's dismissal of claim pursuant to Rule 12(b)(6),plaintiff stated, "On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." ***Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009).** "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." Id. (internal quotations omitted). If the facts alleged and inferences deducible therefrom would entitle the plaintiff to any relief, then dismissal under Rule 12(b)(6) .

The dismissal of the Defendants was over ruled by the court in ***Freemantle v.Preston 2010181306*** .*under* ***Frazier v. Badger*** , **361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004)**

26062 Brown v. Berkeley County

This is a dispute between branches of Berkeley County Government. Mary P. Brown (Brown) had served as the Berkeley County Clerk of Court (the Clerk) since being first elected to that office in 1983. Under South Carolina law, Berkeley County (the County) is subject to an annual financial audit conducted by independent and outside auditors. ***S.C. Code Ann. § 4-9-150 (Supp. 2004).*** The outside financial audit for the fiscal year 2002-2003 began in early August, 2003.

In November of 2003, the outside auditor issued a financial report to the County. The auditor found no major instances of noncompliance, but did report some "immaterial instances of noncompliance." Over the course of the next few months, the auditor raised concerns regarding Brown's use of the county credit card, the reporting of interest earned on the Clerk's escrow accounts, and instances of payments to employees that may not have been reported on the proper federal tax forms. The auditor also observed that certain details of the Clerk's handling of discretionary funds, specifically funds collected by the issuance of professional or surety bondsman licenses, were not maintained in accordance with the applicable statutes. Throughout this process of investigation, the auditor maintained that these findings did not materially alter the November report. The auditor instead classified these findings as "opportunities for strengthening internal controls and operating efficiency." The dispute in this case involves the actions of the Berkeley County Council (the County Council) during this same time period. In November of 2003, the County Council enacted a written request for Brown to produce financial documentation for the past two years regarding ten (10) county bank and credit card accounts. In reply to the County Council's request, Brown asserted that the County Council violated the Freedom of Information Act (FOIA) by authorizing the request to produce in a closed executive session. Brown additionally claimed that James H. Rozier, Jr., Supervisor and Chairman of the County Council, improperly accused Brown of misusing the county credit card. Following three months of discourse between the clerk's office and the County Council, the County Council enacted a resolution approving an "expanded audit" of the clerk's office. Brown filed suit seeking, among other forms of relief, a preliminary injunction prohibiting the audit of the clerk's office, and damages against the County, the County Council, and the individual council members for defamation, defamation *per se*, and intentional infliction of emotional distress.

In this case ***26062Brown v. Berkeley County*** brown sued the defendants in their official capacity and individually The individual council members argued that they should be dismissed from brown's suit Pursuant to the principle of absolute immunity and the terms of the South Carolina Tort Claim Act. The courts disagreed instead they held that the denial of the individual council members motion to dismiss is not reviewable at that time. It is well settled that an interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right. ***S.C. CODE ANN. §14-3-330*** **(supp.2003):*Woodward v. Westvaco* Corp.,319 S.C. 240, 243. 460 S.E.2d 392,394 (1995); *Mid –State Distriibtors, Inc, v Century Importers*, 310 S. C. 334-35,426 S. E. 2d 777, 780 (1993); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482 (1991)** to involve the merits of a case the order must *"finally determine some substantial matter forming the whole or a part of some cause of action or defense"* ***Woodward*, 319 S.C. at 394** to affect a substantial right the order must *"determine the action and prevent a judgment from which an appeal might be taken or discontinue the action"* id we decide, then, whether the trial courts order denying the individual councilmember's' motion to dismiss is an immediately appealable order.

Individual members of a local county council are not entitled to absolute immunity. ***see*** **Richardson v. Mcgill, 273 s.c. 142, 146, 255 s.e.2d 341, 343 (1979)** (noting that privilege depends not on rigid requirements but is determined by consideration of public policy). furthermore, the trial court's denial of the individual council members' motion to dismiss does not preclude the individual council members from raising the issues presented in their motion at a later point in the case. *see* **Frazier v. Badger, 361 s.c. 94, 101, 603 s.e.2d 587, 590 (2004)** (stating that immunity under the tort claims act is an affirmative defense that must be proved at trial); ***Sanders v. Prince*, 304 s.c. 236, 240, 403 s.e.2d 640, 643 (1991)** (stating that when a government employee's conduct constitutes actual malice, he is not entitled to immunity from suit).

The South Carolina Tort Claims Act provides "[n]othing in this chapter may be construed to give an employee of a governmental entity immunity from suit...if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." **S.C. CODE ANN. § 15-78-70 (B) (2005).**

Were we to recognize that the individual members of the county council enjoyed absolute immunity from suit, the above statute would be meaningless. Additionally, the individual council members will be free to raise such issues as qualified immunity, qualified privilege, and the provisions of the Tort Claims Act, at later stages of this case. For these reasons, we hold that the denial of the individual council members' motion to dismiss is not presently reviewable. The Supreme Court affirmed the court's decision. Immunity for individual Defendants was denied under tort in ***26062Brown v. Berkeley County*** under ***Frazier v. Badger*****,361 S.C. 94, 101 603 S.E. 2d 587, 590 (2004)"** tort claims act is an affirmative defense that must be proved at trial."

Frazier v. Badger **, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004)**

Frazier was employed to supervise the in-school suspension lab at Clark Middle School ,, Badger was the assistant principal of Clark Middle School and was Frazier's direct supervisor. . Around the beginning of the school year, Badger began visiting Frazier's classroom and making explicit, sexual advances towards her. When Frazier refused Badger's propositions, he told her that eventually he was going to "break her." As the school year progressed, Badger's visits became more frequent, and his advances became physical. Frazier testified that Badger would grab her legs and breasts and that she had to "fight him off" of her on several occasions.

On August 1, 1996, Frazier wrote Priscilla Robinson ("Robinson"), Principal of Clark Middle School, about Badger's conduct, which led to a meeting between Robinson, Badger, and Frazier. After the meeting, Robinson wrote Frazier a letter acknowledging that Badger had admitted to and apologized for making inappropriate comments. She also wrote in her letter that it appeared that Badger had submitted work orders for the heating and air conditioning. He admitted to making inappropriate remarks and inviting her to dinner, , but he denied making sexually explicit comments or grabbing her. The Court of Appeals affirmed the trial court's ruling in an unpublished opinion. ***Frazier v. Badger, Op.*** **. (2002-up-513 (ct. app., filed August 20, 2002.)** .

Badger presented the following issues for review on certiorari:

1 Did the Court of Appeals err in affirming the trial court's refusal to charge the jury on the law of tort immunity for government employees?

2 Did the court of Appeals err in affirming the punitive damages award?

Governmental Immunity

Badger argues that he was immune from tort actions stemming from conduct within the scope of his official duties pursuant to ***South Carolina Code Ann. section 15-78-70 (Supp. 2003),*** and therefore the trial court abused its discretion when it refused to charge the jury on the law concerning immunity. The Court disagreed **with.** ***(Emphasis added).***

> Immunity under the statute is an affirmative defense that must be proved by the Defendant at trial. ***Tanner v. Florence City-County Bldg. Comm'n, 333 S.C. 549, 552, 511 S.E.2d 369, 371 (Ct. App. 1999*** **South Carolina Code Ann. section 15-78-70** specifically provides that government employees may be liable in tort This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the *scope of his official duty* is not liable therefore except as expressly provided for in subsection .Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the *scope of his official duties* or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude....Accordingly, we hold that the trial judge did not err in rejecting Badger's request to charge the jury on the defense of governmental immunity because the evidence did not support such a charge.
>
> The Supreme Court affirmed the lower court decision ***Frazier v Badger, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004)*** (stating that punitive damages immunity under the Tort Claims Act is an affirmative defense that must be proved at trial.

In the Plaintiffs case before the court the plaintiff inform the Building Official Steven Stack, that he was breaking the law by not allowing them to repair their home, Stack refuse to submit to the law, as did Frazer reported the action of Badger to his superior, the plaintiffs reported the action of Stack to the Mayor, the City Attorney and the other Defendants, they refuse to address the issue.

The plaintiff requested another building permit and was denied again. The Plaintiff contacted the State LLR for help the LLR informed the plaintiff that Stack's actions was against the city ordinance but they the State could not do anything, at that time but if the defendants demolish the plaintiff house as the Defendants has threaten they would have violated state law then the state could step in. the Defendants demolish the Plaintiffs house.

The Plaintiff filed a complaint against Stack to the State LLR. Stack plead guilty to violating State law and city ordinance and signed a Consent Agreement which allowed him to receive a six months suspension, the plaintiffs told the LLR that they felt Stack license should have been suspended the LLR said because Stack told them in the investigation that he was force to demolish the Plaintiffs house they felt Stack should have received the six months probation..

Conclusion

The Supreme Courts has ruled that the lower court cannot remove Individual Defendants from the face of complaints pursuant to a 12(B) (6) ***Richard Freemantle v. Preston*** **2010181306** also The supreme court has affirm with the ruling of the appeals court that individual defendants should not be removed from a suit pursuant to the principle of absolute immunity and the terms of the **South Carolina Tort Claims Act**, before the evidence or the merit of the case is present because , the order must "finally determine some substantial matter forming the whole or a part of some cause of action or defense, the order must "determine the action and prevent a judgment from which an appeal might be taken or discontinue the action. ***Brown v, Berkeley county*** **26062** and that punitive damages immunity under the **Tort Claims Act** is an affirmative defense that must be proved at trial.

The Plaintiff believes that because Steven Stack had already pled guilty. According to **Frazer v. Badger, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004) . Freemantle v. Preston 2010 181306** ***and*** **Brown v. Berkeley County26062**, the Courts err dismissing Stack and the other Defendants from the suit, from punitive damages, also ruling that their action was under the scope of their official duties and that their action falls under tort claims act pursuant to Rules 12(b)(6), SCRCP before the Defendants presented any evidence proving the above..

II. DID THE APPEALS COURT ERR AFFIRMING THE LOWER COURTS ORDER HAVING FULL KNOWLEDGE THAT THE LOWER COURT MADE IT'S RULING WITHOUT ANY EVIDENCE FROM THE DEFENDANTS.

The plaintiffs in two briefs informed the Appeals Court that the lower court made its ruling to stricken the individual defendants and punitive damages from the complaint, ordering that the individual defendants action were within the scope of their official duties and that the defendants action fall under the torts claim act before depositions, interrogatories and before the defendants presented any evidence to support court order. Because the Supreme Courts has ruled that the lower court cannot remove individual defendants from the face of complaints pursuant to a 12(B)(6)**See Frazer v. Badger, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004) . Freemantle v. Preston 2010 18130**

The Supreme Court has affirm with the ruling of the appeals court that individual defendants should not be removed from a suit pursuant to the principle of absolute immunity and the terms of the **South Carolina Tort Claims Act**, before the evidence or the merit of the case is present of some cause of because , the order must "finally determine some substantial matter forming the whole or a part action or defense, the order must "determine the action and prevent a judgment from which an appeal might be taken or discontinue the action. **Frazer v. Badger , , 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004) . Brown v Berkeley County. 26062**

Also the Supreme Court has ruled that punitive damages immunity under the **Tort Claims Act** is an affirmative defense that must be proved at trial **Frazier v. Badger , 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004) .**

The plaintiff believes the appeals court should have read the complaint,59(e) motion request, the 59(e) motion transcript and the record on appeal ***Haines v.Kerner***, once the appeals court found that the defendants did not present any evidence the appeals court should have reverse the lower court decision.

The Supreme Court has instructed the district courts to construe pro se complaints liberally and to apply a more flexible standard in determining the sufficiency of a pro se complaint than they would in reviewing a pleading submitted by counsel. **See e.g., *Hughes v. Rowe*, 449 U.S. 5, 9-10, 101 S.Ct. 173, 175-76, 66 L.Ed.2d 163 (1980) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972) (per curiam);** see also ***Elliott v. Bronson*, 872 F.2d 20, 21 (2d Cir.1989) (per curiam).** In order to justify the dismissal of a pro se complaint, it must be " 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " ***Haines v. Kerner*, 404 U.S. at 521, 92 S.Ct. at 594** (quoting ***Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)**).

CONCLUSION

For these reasons stated, it is respectfully submitted that this Court except this supplemental citation to the Writ of Certiorari and reverse the order of the Lower Courts ruling that this case falls under the provision of the South Carolina Tort's Clam's Act, that the individual Defendants be removed and that punitive damages be removed from the complaint ,we respectfully ask that all thy above ruling by the lower courts be reversed.

Respectfully submitted,

April 19, 2013

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PROOF OF SERVICE

I certify that I have served a **Supplemental Citation For Petition For a Writ of Certiorari** Of Plaintiff on City of Georgetown Building Official Steven Stack, et. al. by depositing a copy in the U.S. Mail, First Class Postage prepaid, on the 15th day of April, 2013, addressed to their attorney of record, Richard Plowden &Robinson, P.A. Post Office Drawer 7788 Columbia South Carolina 29202. (803) 771-4400

April 19, 2013

s/ Willie Singleton

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