

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APR 30 2013

APPEAL FROM AIKEN COUNTY
Doyet A. Early, III, Circuit Court Judge

S.C. SUPREME COURT

Opinion No. 2012-UP-662
(S.C. Ct. App. filed December 19, 2012)
Case Tracking No. 2013-000351

Carlton E. Cantrell,..... Petitioner,

v.

Aiken County, Aiken County Animal Control,
Shirley Hardin, Officer Bobby Arthrus,
and Judge Charles T. Carter,..... Respondents.

**RETURN TO PETITION
FOR WRIT OF CERTIORARI**

Daniel C. Plyler, Esquire
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondent

STATEMENT OF THE CASE

The Petitioner, Carlton E. Cantrell filed this action against Defendants Aiken County, [former] Aiken County Animal Control Director Shirley Hardin, Aiken County Animal Control Officer Bobby Arthurs, and [Magistrate or Summary Court] Judge Charles T. Carter [hereinafter, “Respondents”] in the Court of Common Pleas for Aiken County on July 7, 2011. The Complaint asserted the exact same allegations, against the exact same defendants, as the Complaint filed by the Petitioner on May 19, 2008.¹

In the Complaint the Petitioner asserts claims relating to the seizure of a number of goats from his property by Aiken County Animal Control. The seizure in question occurred on May 19, 2005. According to the facts set forth in the Complaint, the Petitioner entered into a plea agreement regarding charges stemming from the seizure of his goats, which he later had overturned and set aside. Specifically, the Petitioner alleges that the plea agreement was set aside on October 3, 2007. These facts are clearly stated on the face of the Complaint.

The Respondents moved to dismiss the Petitioner’s Complaint on July 26, 2011. That motion was heard by the Honorable Doyet A. Early, III on August 8, 2011. Judge Early issued an order dated August 25, 2011, which dismissed the Petitioner’s Complaint in its entirety. That order was filed on September 2, 2011.

Judge Early found that the Petitioner’s claims were time-barred by the applicable statute of limitations as set forth under the provisions of the South Carolina Tort Claims Act; that Respondents Hardin, Arthurs and Carter were subject to dismissal pursuant to S.C. Code Ann. §

¹ That earlier Complaint was dismissed, as to defendants Hardin and Arthurs in December of 2008, and was that decision was not appealed. Additionally, defendant Carter was granted summary judgment. The Petitioner appealed the grant of summary judgment to defendant Carter to the Court of Appeals, where it was affirmed, by unpublished opinion 2010-UP-533. The Petitioner then filed a Petition for Writ of Certiorari with this Court on December 14, 2010, which was denied on June 8, 2011.

15-78-70; and that Respondent Carter was entitled to judicial immunity. The Petitioner did not file a Rule 59(e) Motion.

Petitioner then filed a notice of appeal with the Court of Appeals on, or about, September 30, 2011. The Court of Appeals affirmed the dismissal of the Petitioner's Complaint by Unpublished, *per curiam*, Opinion No. 2012-UP-662, which was submitted November 1, 2012 and filed December 19, 2012.

The Petitioner filed a petition for rehearing with the Court of Appeals on January 2, 2013, which was denied by Order filed January 25, 2013. The Petitioner then sought, and received, an extension of time in which to file a petition for writ of certiorari with this Court. The Petitioner then filed his petition for writ of certiorari on March 25, 2013, seeking to have this Court review the Opinion of the Court of Appeals, which affirmed the dismissal of the Petitioner's Complaint.

STATEMENT OF THE FACTS

In this case the Petitioner has sued seeking compensation relating to the seizure, and alleged loss, of a number of goats by Aiken County Animal Control. The Petitioner asserts in his Complaint, that the goats in question were seized on May 19, 2005. According to the facts set forth in the Complaint, the Petitioner entered into a plea agreement regarding charges stemming from the seizure in question, which he later had overturned and set aside. Specifically, the Petitioner alleges, in his Complaint, that the plea agreement was set aside on October 3, 2007.

ARGUMENTS

I. The decision of the South Carolina Court of Appeals does not warrant the issuance of a writ of certiorari.

Rule 226(b), SCACR, sets forth general factors considered by this Court in determining whether issues require review on certiorari. The Respondents submit that, aside from the merits which are addressed below, there are several factors that demonstrate that a writ of certiorari is entirely unwarranted in this case.

First, the unpublished, *per curiam* decision of the three-judge panel in the Court of Appeals contained no dissenting opinion. Moreover, the decision of the Court of Appeals does not conflict with any existing decisions of this Court. In addition, this case does not involve any issue of first impression, nor any issue of great public interest or importance. Further, because the Court of Appeals' *per curiam* opinion is unpublished, it has no precedential value that would potentially impact any future cases.

Based upon the foregoing considerations, there is simply no need for this Court to review the decision of the Court of Appeals.

II. The Court of Appeals ruled correctly that dismissal of the Petitioner's Complaint was appropriate

The Respondents argue that the Court of Appeals was correct in affirming the order issued by Judge Early, dismissing the Petitioner's Complaint. Judge Early found that the Complaint was time-barred, that the individual defendants were subject to dismissal under S.C. Code Ann. § 15-78-70, and that defendant Carter was entitled to judicial immunity. Specifically, Judge Early found that "it is clear that Defendant Carter is entitled to Judicial Immunity, and must be dismissed even if the Plaintiff's claims were timely. *See*, Unpublished Opinion of South

Carolina Court of Appeals 2010-UP-533.” *See*, August 25, 2011 Order, pg. 2. Judge Early’s finding that Respondent Carter is entitled to judicial immunity has not been appealed. There was no mention of the judicial immunity defense in the Petitioner’s brief to the Court of Appeals, nor in his petition for writ of certiorari to this Court.

In *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986), the Court of Appeals held that “[a]n alternative ruling of a lower court that is not excepted to constitutes a basis for affirming the lower court and is not reviewable on appeal.” *Folkens*, 348 S.E.2d at 845. Such a ruling becomes the law of the case. *Id.* *See also*, *Eagles v. South Carolina National Bank*, 301 S.C. 402, 392 S.E.2d 187 (Ct. App. 1990). Because the Petitioner did not appeal from the alternative ruling by Judge Early dismissing Respondent Carter on the basis of judicial immunity, the dismissal of Respondent Carter was properly affirmed.

Furthermore, as is correctly stated in Judge Early’s Order dismissing the Petitioner’s Complaint, the Petitioner filed this lawsuit outside the time allowed to do so by the applicable statute of limitations. The statute of limitations at issue in this matter is the statute of limitations set forth in the South Carolina Tort Claims Act (hereinafter the “Act”), S.C. Code Ann. §§ 15-78-10 *et seq.* The Act provides for a two-year statute of limitations. S.C. Code Ann. § 15-78-110; *see also*, *Flateau v. Harrelson*, 355 S.C. 197, 207, 584 S.E.2d 413, 418 (Ct. App. 2003).

In *Flateau* the Court of Appeals held that the Act’s two-year statute of limitations applies, even if the claim at issue alleges that the employees at issue acted outside the scope of their official duties or that those actions “constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” *Flateau*, 355 S.C. at 208, 584 S.E.2d at 419, *citing* S.C. Code Ann. § 15-78-70(b). Importantly, the decision of the Court of Appeals in *Flateau* was also

a review of an order granting a motion to dismiss. The Court of Appeals cited the appropriate authority in its opinion, and applied it correctly in affirming the dismissal.

It was clear from the Petitioner's brief in the Court of Appeals, and is not refuted in his petition for writ of certiorari to this court, that he admittedly filed his Complaint outside of the applicable two-year statute of limitations. The only argument set forth by the Petitioner on appeal before the Court of Appeals was that "there is no prejudice to the Defendants in terms of the timing of bringing this cause of action," because the Petitioner asserted that the damages can easily be calculated and determined. *See*, Brief of Appellant. However, the Petitioner did not provide any legal authority to support that contention. Simply put, Judge Early correctly ruled that the facts set forth on the face of the Complaint, even taken in the light most favorable to the Petitioner, clearly showed that the Petitioner's claims are time-barred. As such the Court of Appeals correctly denied the Petitioner's appeal, and affirmed the August 25, 2011 Order of Judge Early.

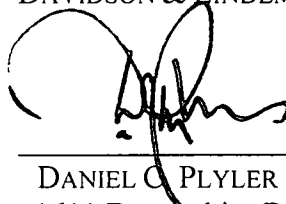
The Respondents assert that this Court need go no further in its analysis of the Court of Appeal's opinion affirming Judge Early's August 25, 2011 Order. However, the Respondents assert that Judge Early's alternative ruling, finding that Respondents Hardin, Arthurs and Carter were also subject to dismissal under S.C. Code Ann. 15-78-70, was also correct, and provides an alternative basis for affirming the dismissal. It is clear from the face of the Petitioner's Complaint that the allegations against the Respondents are for actions taken in the course of their employment. The Petitioner did not allege otherwise in his Complaint. Therefore, the dismissal of Respondents Hardin, Arthurs, and Carter under S.C. Code Ann. § 15-78-70 was appropriate, and provided an alternative basis for affirming the dismissal of those defendants.

CONCLUSION

Based on the foregoing discussion, the Respondents respectfully request that this Court deny the Petitioner's petition for writ of certiorari.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.



DANIEL C. PLYLER
1611 Devonshire Drive, 2nd Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
T: 803-806-8222
F: 803-806-8855

Counsel for the Respondents

Columbia, South Carolina

April 26, 2013

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Doyet A. Early, III, Circuit Court Judge

Opinion No. 2012-UP-662
(S.C. Ct. App. filed December 19, 2012)
Case Tracking No. 2013-000351

RECEIVED

APR 30 2013

S.C. SUPREME COURT

Carlton E. Cantrell,..... Petitioner,

v.

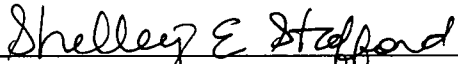
Aiken County, Aiken County Animal Control,
Shirley Hardin, Officer Bobby Arthrus,
and Judge Charles T. Carter,..... Respondents.

PROOF OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent, does hereby certify that service of the **Return to Petition for Writ of Certiorari on behalf of the Respondents** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail,

first class postage prepaid, at the below listed address clearly indicated on said envelope this the 26th day of April, 2013, addressed as follows:

Mr. Carlton E. Cantrell
223 Muddy Branch Road
Aiken, South Carolina 29805



Shelley E. Stafford