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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

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Appellate Case No. 2021-000827

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Aretha Elizabeth Bennett,

Appellant,

v.

Theola Pitts and Colleton County School District,

Respondents.

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FINAL BRIEF OF APPELLANT

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/s/William L. Pyatt

William L. Pyatt, SC Bar No. 4599

Post Office Box 12041

Columbia, South Carolina 29210

[pyattlawfirm@gmail.com](mailto:pyattlawfirm@gmail.com)

(803) 750-5929

Attorney for Appellant

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## **STATEMENT OF ISSUES ON APPEAL**

- I. Did the Court of Common Pleas err in granting summary judgment to Respondents based on the statute of limitations, without considering equitable tolling?
  
- II. Did the Court of Common Pleas err in not considering the conduct of Defendant in accepting the claim by negotiating a possible settlement of the claim? Thus, by statute, extending the statute of limitations for one (1) year.

## **STATEMENT OF THE CASE**

This appeal arises from a Summons and Complaint filed by Aretha Bennett against her former employer, Colleton County School District, and Theola Pitts on February 22, 2019. The Plaintiff sought damages against Defendants based upon defamation, slander, negligent retention and invasion of privacy. The Defendants filed an Answer on April 10, 2019, which denied the details of the incident, denied that Defendants should be held liable for any damages to Plaintiff, and asserted affirmative defenses based on the statute of limitations, failure to state a claim, and the South Carolina Tort Claims Act.

The deposition of Defendant Theola Pitts was taken on October 1, 2020, in which she admitted to telling her class that she had saw Plaintiff's daughter during her pregnancy, and that Plaintiff's second daughter was actually her granddaughter. The deposition of Plaintiff was taken on October 28, 2020.

The Defendants filed a Motion for Summary Judgment on January 7, 2021, asserting that Plaintiff's claims were barred by the two-year statute of limitations under the South Carolina Tort Claims Act. Plaintiff filed a Memorandum in Opposition to Defendants' Motion for Summary Judgment on January 20, 2021, and a Supplemental Memorandum on March 29, 2021. Based on its review of the pleadings, the Court issued an Order on June 16, 2021, granting Defendants' Motion for Summary Judgment.

Plaintiff filed a Motion for Reconsideration on June 24, 2021. After reviewing the parties' memorandum of law, the Court denied Plaintiff's Motion for Reconsideration and judgment was entered on July 13, 2021. Plaintiff filed her Notice of Appeal and Proof of Service on July 29, 2021.

## FACTS

This matter arose from statements made by Defendant Pitts to the students in her classroom. In May 2016, Defendant Pitts communicated to her class at Thunderbolt Career & Technology Center that Plaintiff had forced her daughter to have an abortion after she became pregnant at age eleven (11). Defendant Pitts further communicated to her class that Plaintiff's daughter became pregnant again and gave birth to a child at age twelve (12). Defendant Pitts told her class that Plaintiff raises and identifies the alleged child as her own. Defendant Pitts' statements were false.

At the time of this incident Plaintiff was employed by Defendant Colleton County School District ("CCSD"), as a teacher at Colleton High School. Plaintiff's daughter that Defendant Pitts referred to in her statement to the class was also a student at Colleton High School during the time of the incident. Defendant Pitts' statement circulated throughout the Colleton County community and left Plaintiff and her daughter in distress.

Plaintiff contacted Cliff Warren, the Assistant Superintendent of Human Resources and Operation for Defendant Colleton County School District, to report the incident. On or about June 6, 2016, Plaintiff received an apology letter from Defendant Pitts and an email from Mr. Warren, indicating that there would be no further penalties for Defendant Pitts. Plaintiff continued to suffer emotional distress, which ultimately led her to end her employment with Defendant CCSD.

Plaintiff sought legal counsel in February 2018, and a letter of representation was sent to the Defendants on March 29, 2018. The letter included a statement of the aforementioned event and demanded a settlement amount to prevent litigation. Plaintiff received a letter from an insurance adjuster regarding the claims that had been initiated by Defendant CCSD. Plaintiff

communicated with the adjuster and negotiated settlement until September 2018 but was unable to settle.

On February 22, 2019, Plaintiff filed the Summons and Complaint for this case based on the South Carolina Tort Claims Act. Parties conducted discovery and Defendants then filed a Motion for Summary Judgement alleging that the statute of limitations has expired. The Court granted Defendants' motion for summary judgment.

## STANDARD OF REVIEW

On appeal from an order granting summary judgment, the appellate court applies the same standard as the trial court under South Carolina Rules of Civil Procedure, Rule 56(c): summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003). The appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party. *Id.* The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Once the moving party meets its initial burden, the non-moving party must present specific facts, showing that there is a genuine issue for trial. The non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 443 S.E.2d 392 (1994).

## ARGUMENT

### **I. Plaintiff's statute of limitation should be extended to three (3) years since she filed a verified claim for damages prior to bringing a lawsuit and negotiated settlement.**

Pursuant to S.C. Code Ann. § 15-78-110 of the South Carolina Tort Claims Act, a three-year statute of limitation is available to parties who file a verified claim. A claim means “any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.” S.C. Code Ann. § 15-78-30(b) (Supp. 2002).

Here, Plaintiff had written communication with Defendant CCSD's employee, Cliff Warren, only weeks after the incident took place. She informed Mr. Warren, the Assistant Superintendent of Human Resources and Operation for CCSD, of her damages caused by the tortious statements made by Defendant Pitts and demanded a solution. Defendant CCSD did not initiate a claim but instead provided Plaintiff an apology letter from Defendant Pitts.

After obtaining counsel, Plaintiff submitted more written correspondence to Defendant CCSD on March 29, 2018, stating the circumstances that caused her loss, the time and place the loss occurred, name of all parties involved, and the amount of loss sustained, as required by statute. *Searcy v. SC Dept. of Education*, 303 S.C. at 546, 402 S.E.2d at 487, (1991) *citing* S.C. Code Ann. §§ 15-78-80(a) and 15-78-90(b) (Supp. 2002); (See R. p. 23). In response, Defendant CCSD initiated a claim with its insurance agency on Plaintiff's behalf (See R. pp. 24-26). The letter sent to Defendant CCSD, along with the insurance claim, satisfy the aforementioned requirements of a verified claim.

Thus, Plaintiff's statute of limitations under the South Carolina Tort Claims Act should be extended to three (3) years. With the one year extension, Plaintiff's civil action was filed in a

timely manner, and hence Defendants' motion granted for summary judgment should be reversed.

**II. Because Plaintiff made diligent efforts to resolve this matter outside of Court, the doctrine of equitable tolling should suspend and/or extend the statute of limitations.**

Pursuant to S.C. Code Ann. § 15-78-110 of the South Carolina Tort Claims Act, the statute of limitations for actions brought is “within two years after the date the loss was or should have been discovered.” South Carolina also recognizes the doctrine of equitable tolling. In *Hooper v. Ebenezer Senior Services & Rehabilitation Center*, the Court concluded, “[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations.” 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009). When “a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.” *Hooper citing Rodriguez v. Superior Court*, 176 Cal. App. 4th 1461, 98 Cal. Rptr. 3d 728 (Ct. App. 2009). “The doctrine of equitable tolling, unlike equitable estoppel, does not require deception or misrepresentation by the defendant; rather, it serves to ameliorate the harsh results that sometimes flow from a strict, literalistic application of administrative time limits” *Shanbhag v. Dupont*, Civil Action No. 7:20-cv-00120-BHH, 6 (D.S.C. Nov. 12, 2020). A court’s equitable power “is not bound by cast-iron rules but exists to do fairness . . . [and] may be applied where it is justified under all the circumstances.” *Hooper* at 116-17.

Furthermore, “a defendant will be estopped to assert the statute of limitations in bar of a plaintiff’s claim when the delay that otherwise would give operation to the statute has been induced by the defendant’s conduct.” *Dillon Co. Sch. Dist. Two v. Lewis Sheet Metal*, 286 S.C. 207, 218, 332 S.E.2d 555, 561 (Ct.App. 1985), cert. dismissed, 288 S.C. 468, 343 S.E.2d 613 (1986).

Appellant presented equitable tolling in her Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment. Nevertheless, the court failed to consider equitable tolling in its Order granting summary judgment to Respondents.

As shown in *Scanwell Logistics v. VIS, LLC*, courts have the discretion to apply equitable tolling in order to promote fairness and the interests of justice. The plaintiff in *Scanwell* informed the defendant about their claim for payment of invoices owed to them. *Scanwell Logistics v. VIS, LLC*, No. 2018-CP-2304175, 270098\79725478.v2, SC 13th Cir., (Nov. 30. 2018). The plaintiff communicated with various agents of the defendant in attempts to arrange for payment of the past due invoices. *Id.* Defendant VIS's agent assured plaintiff that settlement would be forthcoming. *Id.* Plaintiff was later told that the payment issue would be placed on hold unless the parties could reach a settlement. *Id.* The plaintiff claimed to have relied on the attempted settlement communications with the defendant, which caused the delay in filing her claim after the statute of limitations had expired. *Id.* The court in *Scanwell* held, "Pursuant to the principles of equity and in the interest of fairness, the court is disinclined to punish Plaintiff for attempting to resolve this dispute before resorting to litigation and subsequently pursuing its rights diligently throughout the alleged limitations period." *Id.* Defendant VIS, LLC was estopped from asserting the defense of statute of limitations.

Similar to the plaintiff in *Scanwell*, Appellant communicated with the Respondent's agent from March 29, 2018 to September 2018 via emails, telephone calls, and written correspondence. Respondents forwarded Plaintiff's claim to their insurance agency for investigation. Respondent's insurance agent never denied liability and made offers to settle Appellant's claim. Appellant relied on these communications and believed that her claim would be settled without

litigation. Unfortunately, the parties did not reach a mutual agreement during settlement negotiations. Respondents' actions and attempts to settle caused Plaintiff to delay the filing of her Complaint.

“The interests of justice and fairness, as well as the purpose of the statute of limitations itself, favor allowing Appellant’s claim to proceed at this stage of the litigation.” *Scanwell*, 2018-CP-2304175. Respondents were very much aware of Appellant’s ongoing damages caused by this incident. Respondent CCSD granted Appellant’s request for medical leave, due to issues with her emotional health caused by the incident addressed herein. Respondent CCSD never informed Plaintiff of her right to take legal action, and she did not become aware until meeting with counsel in February 2018. As shown in the depositions and documents gathered during discovery, no evidence has been lost and all witnesses are available. There will be no disadvantage to either party if this case proceeds to trial. Thus, the best interest of justice will be in favor of reversing Respondents’ grant of Summary Judgment and the Respondents being estopped from asserting the statute of limitations affirmative defense.

## **CONCLUSION**

For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial court's granting of summary judgment for the Respondents.

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Appellant's Final Brief complies with Rule 211(b), SCACR.

January 26, 2022

/s/William L. Pyatt

William L. Pyatt, SC Bar No. 4599

Post Office Box 12041

Columbia, South Carolina 29210

[pyattlawfirm@gmail.com](mailto:pyattlawfirm@gmail.com)

(803) 750-5929

Attorney for Appellant