STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2021-000827

Aretha Elizabeth Bennett, Appellant,

v.

Theola Pitts and Colleton County School District, Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

Appellant filed this action in the Colleton County Court of Common Pleas on February 22, 2019, against Respondents, Colleton County School District and Theola Pitts as an employee of the Colleton County School District. (R. p. 48). Plaintiff asserted claims for defamation, slander, negligent retention, and invasion of privacy. (R. pp. 51 – 54). Respondents answered the complaint denying the allegations and asserting affirmative defenses which included the running of the statute of limitations. (R. pp. 37 – 46).

Written discovery was exchanged between the parties and the deposition of Appellant was taken. Respondents moved for summary judgment arguing Appellant's claims were barred under the two-year statute of limitations established within the South Carolina Tort Claims Act. (R. pp. 34 – 40). Appellant filed a memorandum in opposition and a supplemental memorandum in opposition to Respondents' motion for summary judgment. (R. pp. 27 – 33; R. pp. 23 – 26).

The Court of Common Pleas entered an order granting Respondents' motion for summary judgment on June 16, 2021, based on the running of the two-year statute of limitations as established under the Tort Claims Act. (R. pp. 4 – 7). Appellant filed a motion to reconsider on June 24, 2021, to which Respondents filed a memorandum in opposition to the motion to

reconsider on June 28, 2021. (R. p. 20; R. 14 – 19; R. p. 8 – 13). The Court of Common Pleas entered an order denying Appellant's motion to reconsider on July 13, 2021. (R. pp. 1 – 3).

Appellant filed and served a notice of appeal on August 5, 2021.

STANDARD OF REVIEW

Summary judgment is appropriate when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRCP. When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

FACTS

This action arises out of Appellant's allegations that Respondent Theola Pitts made defamatory statements to students in her classroom while teaching at one of Respondent Colleton County School District's schools in May 2016. (R. pp. 49 – 55). Appellant asserted that she was damaged as a result of the alleged statements. Id.

Appellant contends in her brief that she sought legal counsel in February 2018. Appellant's attorney sent a letter of representation dated March 29, 2018, to Respondent Colleton County School District referencing the alleged defamatory statements by Respondent Theola Pitts "in May of 2016." (R. p. 23). The letter of representation also made a demand of

$300,000 (The same amount as the limits of liability under the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-120 (2005)) to settle Appellant's claims. Id.

Respondents' insurance carrier retained a local adjuster to investigate the matter. (R. p. 24). On April 17, 2018, the local adjuster wrote Appellant's attorney informing him that the adjuster would be investigating the claim. Id. On July 9, 2018, the local adjuster wrote Appellant's attorney acknowledging a conversation with Appellant's attorney on June 27, 2018, and providing a written offer in the amount of $15,000 to settle the matter. (R. p. 25). On August 29, 2018, the local adjuster wrote Appellant's attorney acknowledging receipt of an email demand by Appellant in the amount of $480,000, and responding with a counteroffer of $20,000 to resolve the matter. (R. p. 26).

Appellant filed this lawsuit on February 22, 2019, based on the South Carolina Tort Claims Act as referenced in Appellant's brief. (R. p. 48).

ARGUMENTS

I. BECAUSE APPELLANT FAILED TO ESTABLISH SUFFICIENT FACTS TO JUSTIFY THE USE OF EQUITABLE TOLLING, THE COURT OF COMMON PLEAS WAS CORRECT IN GRANTING SUMMARY JUDGMENT BASED ON THE RUNNING OF THE TWO-YEAR STATUTE OF LIMITATIONS.

The South Carolina Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a government entity." S.C. Code Ann. § 15-78-70 (2005). The Act states that '[t]he provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, **must be liberally construed in favor of limiting the liability of the State**." S.C. Code Ann. § 15-78-20(f) (2005)(emphasis added).

The statute of limitations for a claim under the Tort Claims Act is two years after the loss was or should have been discovered. S.C. Code Ann. § 15-78-100 (2005). The two-year statute

of limitation is conceded to by Appellant in her brief, but asserts that equitable tolling should suspend and/or extend the two-year statute of limitations.

"South Carolina has rarely applied the doctrine of equitable tolling to halt the running of the statute of limitations. Equitable tolling is reserved for extraordinary circumstances." American Legion Post 15 v. Horry County, 381 S.C. 576, 674 S.E.2d 181 (Ct. App. 2009)(quoting Hooper v. Ebenezer Sr. Services, 386 S.C. 108, 687 S.E.2d 29 (2009)). The Supreme Court in Hooper, stated that "[e]quitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it." (citing Rodriguez v. Superior Court, 176 Cal.App.4th 1461, 98 Cal.Rptr.3d 728 (2009)). The Court further noted that that "[i]t has been observed that '[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control.'" Id. (quoting Ocana v. Am. Furniture Co., 135 N.M. 539, 91 P.3d 58, 66 (2004)). The Court stated "that equitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use." Id.

The Court in Hooper noted that "[t]he party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use." Id. (citing Ocana, 91 P.3d at 65; and 54 C.J.S. Limitations of Actions § 115 ("The party who seeks to invoke equitable tolling bears the devoir of persuasion and must, therefore, establish a compelling basis for awarding such relief."). Appellant argues that she communicated with Respondents' agent from March 29, 2018 to September 2018 via emails, telephone calls and written correspondence. Appellant further argues that Respondents' agent never denied liability, made offers to settle Appellant's claim, and as a result Appellant relied on these communications and believed the claim would be resolved without litigation.

Appellant's arguments fail to establish sufficient facts to justify the application of equitable tolling of the two-year statute of limitations under the South Carolina Tort Claims Act. First of all, Appellant has not argued that she was prevented from filing suit because of an extraordinary event beyond her control which the typical situation where courts apply the doctrine as noted by the Court in Hooper, supra. Secondly, Appellant is making the argument that she relied on Respondents' communications which lead her to believe the matter would be resolved without litigation. However, this argument fails to establishing sufficient facts to justify the application of equitable tolling because of the timing of the communications and the contents of the communications.

Appellant referenced communications between Appellant and Respondents' agent "from March 29, 2018 to September 2018" as being those that Appellant relied on. The only document referenced in Appellant's Designation of Matters to be Included in the Record of Appeal which included copies of communications between the parties was Appellant's Supplemental Memorandum in Opposition to Motion for Summary Judgment. (R. pp. 21 – 26). This document had four exhibits which were the communications referenced in the above Facts section. Id. These communications included: (1) Appellant's attorney's letter of representation dated March 29, 2018; (2) Respondents' local adjuster's introduction letter dated April 17, 2018, informing Appellant's attorney the adjuster would be investigating the claim; (3) Respondents' local adjuster's letter dated July 9, 2018, where the local adjuster acknowledged a conversation on June 27, 2018 with Appellant's attorney, and provided a written offer of $15,000 to settlement matter; and (4) Respondents' local adjuster's letter dated August 29, 2018, where the local adjuster acknowledged receipt of an email demand by Appellant of $480,000, and responding with a counteroffer of $20,000 to resolve the matter. Id.

Plaintiff concedes in their brief that the alleged defamation took place in May of 2016. Under the South Carolina Tort Claims Act, the statute of limitations of two-years would have run at the end of May of 2018. Of the communications noted above, the only letter from Respondents' local adjuster that was dated prior to the running of the statute of limitations was the letter dated April 17, 2018. (R. p. 24). However, this letter made no representations to Appellant which would lead Appellant or her attorney to believe that the claim would be resolved without litigation. Id. The April 17, 2018 letter simply notified Appellant's attorney that the claim was assigned to the local adjuster and that he would conduct an investigation. Id. The letter did not suggest anything related to resolving the matter without litigation. Id.

The other two letters from Respondents' local adjuster were written more than two years after the date of the alleged loss of May 2016. (R. pp. 25 – 26). Furthermore, the demands and offers which were contained in the letters were so far apart, it would not be reasonable to believe that the matter would be resolved without litigation.

Appellant's initial letter of representation demanded $300,000 which is the exact amount of the limits of liability under the South Carolina Tort Claims Act (clearly indicating that Appellant's attorney was aware of the application of the Act). (R. p. 23). The local adjuster's letter sent after the running of the two-year statute of limitation contained an offer of $15,000. (R. p. 25). The subsequent letter from Respondents' local adjuster indicated that there was subsequent demand of $480,000 (up from $300,000) from Appellant to which Respondents' local adjuster countered with an offer of $20,000. (R. p. 26). These amounts are so far apart that no reasonable person would believe that the matter would be resolved without litigation, at least not in the amount being sought by Appellant which increased during this exchange.

Appellant failed to meet its burden of establishing sufficient facts to justify the use of equitable tolling especially in light of the fact that the doctrine should be "reserved for **extraordinary** circumstances" and "should be used **sparingly**." Hooper v. Ebenezer Sr. Services, supra. (emphasis added). Furthermore, the South Carolina Tort Claims Act's directive that the Act, including the two-year statute of limitations, "must be liberally construed **in favor of limiting the liability**" of Respondents in this matter. S.C. Code § Ann. 15-78-20(f) (2005)(emphasis added).

II. BECAUSE APPELLANT FAILED TO BOTH TIMELY FILE A CLAIM AND FILE A VERIFIED CLAIM MADE UNDER OATH, THE COURT OF COMMON PLEAS WAS CORRECT IN APPLYING THE TWO-YEAR STATUTE OF IMITATIONS UNDER THE SOUTH CAROLINA TORT CLAIMS ACT.

The South Carolina Tort Claims Act has a statute of limitations of two years. S.C. Code Ann. § 15-78-100 (2005). However, the Act also provides for a three-year statute of limitation when a claimant files a "verified" claim within one year from the date of loss setting forth specifics of the incident. S.C. Code Ann. § 15-78-80 (2005). Appellant contends that this section of the Act should apply to her claim and extend the statute of limitation to three years. However, Appellant failed to comply with the requirements of the statute because she failed to file the claim within one year after date of loss and failed to file a verified claim. Accordingly, this provision of the statute that extends the statute of limitation to three years does not apply to Appellant's claim, and the applicable statute of limitations is two years.

The Court of Appeals has specifically addressed the section of the Tort Claims Act that extends the statute of limitations and what actions are required in order to extend the statute of limitations to three years in Searcy v. South Carolina Dept. of Educ., Transp. Div., 303 S.C. 544; 402 S.E.2d 486 (Ct. App. 1991). In Searcy, the Court affirmed "[t]he trial court . . . grant[ing] SCDOE summary judgment because Searcy failed to commence [the] action within

two years after the date she discovered her loss." Id. The Court of Appeals noted that the trial court "rejected Searcy's contention that she had three years from the date of loss within which to bring [the] action because she had filed a claim pursuant to the Tort Claims Act . . ." Id.

The Court of Appeals in Searcy stated that "[t]he Tort Claims Act offers a person two methods by which the person can seek damages for a loss. Either the person can file with the State Budget and Control Board, appropriate state agency, the appropriate political subdivision, or, in some cases, the Attorney General a claim 'setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained ...' or the person '[can] institute an action against the appropriate agency or political subdivision' irrespective of '[w]hether or not [a] claim is filed....'" Id. (quoting S.C. Code Ann. §§ 15-78-80(a) and 15-78-90(b)).

The Court of Appeals in Searcy held that "[i]f a person chooses to employ the first method, Section 15-78-80 expressly requires the person to file a 'verified claim'" Id. The Court noted that a "twofold purpose is served by a requirement of this kind. First, the government entity is put on notice so that it can both conduct an investigation while the facts are fresh and preserve evidence;" and "[s]econd, a verification serves to discourage the filing of false claims because a verification permits a prosecution for perjury if the claim is fraudulent." Id.

The Court in reviewing the facts of Searcy determined that "[w]ithout an oath, neither document can be considered as having been verified." Id. (See also Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994) ("To satisfy the verification requirement, the claim must be under oath: 'Without an oath, [a] document can [not] be considered as having been verified.'").

In addition to the claim being filed "under oath," the letter must be received within one year after the date of loss. S.C. Code Section 15-78-80(d) states "[t]he verified claim may be received by the State Fiscal Accountability Authority or the appropriate agency or political subdivision. If filed, the claim **must be received within one year after the loss** was or should have been discovered." Id. (emphasis added).

Appellant argues that her attorney "submitted written correspondence to [Respondents] 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." However, this letter does not does not comply with the requirements of the Tort Claims Act under Searcy.

The March 29, 2018 correspondence was not a "verified claim" because the letter was not "under oath." (R. p. 23). Furthermore, the letter was not received within one year of the date of loss as required under Act, it was sent nearly two years after the alleged incident. Id. Appellant's argument that the March 29, 2018 correspondence extended the two-year statute of limitation in the Tort Claims Act fails because it did not comply with the Act's requirements. Accordingly, the two-year statute of limitation applies to Appellant's claim, and the claim is barred by the running of the statute of limitation.

CONCLUSION

Appellant fails to establish sufficient facts to justify the application of the doctrine of equitable tolling because she never argues that she was prevented from filing suit as a result of an extraordinary event beyond her control, and because there are no extraordinary circumstances. Furthermore, Appellant failed to comply with the Tort Claims Act's requirements in order to extend the statute of limitation to three years because she failed to file a claim within one year of

the date of loss and she failed to file a claim under oath. Therefore, the two-year statute of limitations applies to Appellant's claim.

Based on the forgoing arguments, this Court should affirm the judgment of the circuit court that Appellant's claims are barred based on the running of the two-year statute of limitations.

Respectfully submitted,

February 7, 2022

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