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Mar 24 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No.: 2021-001398

Paulette Lawrence,

Appellant,

V.

City of North Charleston,

Respondent.

APPELLANT'S INITIAL REPLY BRIEF

March 24, 2022

/s Ashley B. Cornwell

Ashley B. Cornwell

Cornwell Law Firm, LLC

1470 Ben Sawyer Blvd., Suite 14

Mount Pleasant, SC 29464

843-595-6003

acornwell@cornwellfirm.com

Attorney for Appellant

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REPLY ARGUMENT

The Original Complaint filed by Lawrence was a claim extending the statute of limitations in this matter to three years and the grossly negligent acts perpetuated by the City of North Charleston against Lawrence bar them from claiming immunity or asserting any exemption to liability under the Tort Claims Act. Furthermore, the exemptions asserted by the City of North Charleston are not applicable in this matter.

I. The extent and amount of loss suffered by Lawrence is detailed throughout the Original Complaint.

In its initial brief, the Respondent's only argument against the statute of limitations extending to three years is that the original complaint does not set out the extent of loss or the amount of loss suffered by Lawrence and therefore does not strictly comply with the requirements of a verified claim. This argument is without merit. The original complaint clearly identifies the losses suffered by Lawrence as a result of the North Charleston Police Department's grossly negligent acts. Furthermore, the fact that the original complaint was defective has no effect on whether or not it meets the requirements of a claim, thus extending the statute of limitations to three years. Accordingly, the trial court erred in finding that the statute of limitations had expired and its ruling granting summary judgement should be reversed.

§15-78-30(f) of the South Carolina Code of Laws defines a "loss" as bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence. In the original complaint, Lawrence clearly sets out the extent and amount of loss she suffered as a result of her false arrest including stress, headaches, insomnia, and other physical symptoms due to her false arrest and imprisonment

(Original Complaint ¶19); humiliation, embarrassment, and fear (Original Complaint ¶20); missing work while incarcerated, to attend hearings, and to meet with and hire an attorney (Original Complaint ¶37); injury and damages including but not limited to present and future anxiety, fear, loss of quality of life, loss of wages, loss of freedom, pain, suffering, mental anguish, mental pain, deprivation and shame (Original Complaint ¶52); actual, compensatory and punitive damages for pain and suffering, lost wages and more (Original Complaint ¶71); actual and punitive damages, costs and expenses, attorney's fees (Original Complaint pg. 11). These are all verified statements setting out the extent of loss and amount of loss, as defined in §15-78-30(f) and required for a verified claim pursuant to §15-78-80. The original complaint meets the statutorily defined elements of a claim under §15-78-30(b) and strictly complies with the requirements of a verified claim under §15-78-80. Furthermore, the claims filed in this action arise out of the same conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings and therefore this claim should relate back to the date of the original pleading. *See Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E.2d 296 (S.C. 2004).

The case at hand is similar to *Braudie v. Richland County*, 219 S.C. 130, 64 S.E.2d 248 (S.C. 1951)(overturned in *Searcy v. South Carolina Dept. of Educ., Transp. Div.*, 303 S.C. 544, 402 S.E.2d 486 (S.C. App. 1991) in that Lawrence's Original Complaint gave more detail to the City of North Charleston than what is required, but distinguishable in accordance with *Searcy* because the Original Complaint was verified, thus extending the statute of limitations to three years. In *Braudie* our Supreme Court determined that while the Braudie's claim was not verified, the letter written by Braudie's attorney to the county attorney gave full detail with reference to the facts giving rise to Braudie's cause of actions, giving more information than required by the amendment, thus substantially complying with the statute and finding that Braudie should be

allowed to go forward with trial on the merits of her claims. *Id.* In determining strict compliance as opposed to the substantial compliance found in *Braudie*, our courts have clearly set forth the intent and purpose the filing of a verified claim serves as stated in *Joubert v. South Carolina DSS*

“As the Court of Appeals noted in *Searcy* §15-78-80 expressly requires the person to file a verified claim in order to benefit from the three-year limitations period: A twofold purpose is served by a requirement of this kind. First, the governmental entity is put on notice so that it can both conduct and investigation while the facts are fresh and preserve evidence. Second a verification serves to discourage the filing of false claims because a verification permits a prosecution for perjury if the claim is fraudulent.”

Joubert v. South Carolina DSS, 341 S.C. 176, 534 S.E.2d 1 (S.C. App. 2000)(internal citations omitted). Here, the Original Complaint was verified by Lawrence on April 4, 2019, filed on June 18, 2019, and served upon the North Charleston Police Department within approximately ten months from the date of her arrest. Accordingly, Lawrence’s Original Complaint serves the Court’s interpretation of legislative intent by putting the City of North Charleston on notice of Lawrence’s claims and providing verification of those claims. Furthermore, the Original Complaint gave the City of North Charleston full detail of the facts giving rise to Lawrence’s claims, giving all if not more information than required; the City of North Charleston benefitted by this filing because they were able to conduct discovery with counsel prior to the Original Complaint being dismissed. As a result, Lawrence should be allowed to move forward with a trial on the merits of her claim and the trial court’s decision granting summary judgement should be reversed.

II. The City of North Charleston should not have been granted immunity pursuant to any exemption from liability, including their asserted exemptions under 15-78-60(20) and 15-78-60(23), because their grossly negligent acts bar them from immunity.

The Tort Claims Act waives immunity for torts committed by the State, its political subdivisions, and governmental employees acting within the scope of their official duties. There are several exceptions to this waiver of immunity, including discretionary immunity and the

exemptions from liability detailed in the enumerated paragraphs of §15-78-60 of the Act. The burden of establishing a limitation on liability or an exception to the waiver of immunity is upon the governmental entity asserting it as a defense. *See Pike v. South Carolina Dept. of Transp.*, 343 S.C. 224, 540 S.E.2d 87 (S.C. 2000). The City of North Charleston claims that because neither of their asserted exemptions under the Act contain a gross negligence standard, their grossly negligent acts do not bar them from immunity. This argument is without merit and contradictory to well-established case law.

In the case at hand, when law enforcement identified Lawrence as a potential suspect for an alleged crime committed in their jurisdiction, the City of North Charleston bestowed upon itself a responsibility or duty to Lawrence pursuant to that investigation. §15-78-60(25) states a governmental entity is not liable for a loss resulting from a “responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, ***except when the responsibility or duty is exercised in a grossly negligent manner.***” §15-78-60(25) S.C. Code Ann. (emphasis added). Given that Lawrence was identified as a suspect by agents for the City of North Charleston, investigated, and ultimately taken into custody by those same agents, §15-78-60(25) is also an applicable exception in this case therefore the gross negligence standard must be applied to all other asserted exceptions under the Act. *See Steinke v. SC Dept. of Labor, Licensing and Regulation*, 336 S.C. 373, 396, 520 S.E.2d 142 (S.C. 1999). In *Steinke* our Supreme Court found that it would not make sense to say a governmental entity may be found grossly negligent in one applicable exception, yet still allow them to escape liability because they have asserted a different exception that does not contain the gross negligence standard. Instead, the Court determined that the legislative intent of providing ample defenses and limiting liability to governmental entities

does not mean that they intended to allow those entities to eviscerate the impact of one applicable exception by simply asserting a different exception. *Id.* Accordingly, the Court held that when an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception. Otherwise, portions of the Act would be a nullity, which the Legislature could not have intended. *Id.*

Here, the City of North Charleston states they are entitled to immunity under 15-78-60(20) by claiming their actions against Lawrence were based upon the act or omission of a third party. The City of North Charleston also claims they are entitled to immunity under 15-78-60(23) because their act of obtaining an arrest warrant instituted a judicial or administrative proceeding - regardless of the false and unlawful means used to obtain that warrant. Neither of the two exemptions claimed by the City of North Charleston contain a gross negligence standard, which is why they are seeking immunity under those exemptions and not asserting the applicable exemption under 15-78-60(25) that does contain the gross negligence exception. However, when applying the gross negligence standard to both 15-78-60(20) and 15-78-60(23) as required under *Steinke*, it is clear the City of North Charleston failed to exercise even the slightest care in investigating and arresting Lawrence. The City of North Charleston failed to verify the evidence they initially received from Danny Conyers matched the evidence they allegedly requested¹; failed to corroborate their identification of Lawrence as a suspect with the victim and other witnesses; failed to investigate Lawrence's whereabouts and financial transactions during the time of the alleged incidents; failed to review exculpatory evidence provided by the same third party they are claiming the exemption from; obtained an arrest warrant based solely upon their assertions and no one

¹ There is nothing in the record detailing what specific information was requested from Wells Fargo by the North Charleston Police Department or how the information requested by the North Charleston Police Department differed from what was actually sent by Danny Conyers.

else's; submitted an arrest warrant affidavit that was knowingly and intentionally false or presented to the court with a complete disregard for the truth; failed to follow-up with their investigation after an arrest was made; failed to review the case file and evidence prior to the preliminary hearing; and gave false testimony under oath during the preliminary hearing. As such, even if the asserted exemptions were applicable to this case, which they aren't, they would not serve as an exemption from liability based upon the City of North Charleston's grossly negligent acts.

If the courts were allowed to only consider the asserted exemptions by a governmental entity in claims against law enforcement and not the unasserted applicable exemption containing the gross negligence standard, no citizen would ever be able to file suit against law enforcement for making a false or grossly negligent seizure or arrest. This is clearly not what the legislature intended and is the reason our courts have continuously ruled that the gross negligence standard must be applied to all exemptions when found in any applicable exemption. Accordingly, the trial court's failure to apply the gross negligence standard to the exemptions asserted by the City of North Charleston is an error of law and it's finding that the City of North Charleston is entitled to summary judgement should be reversed.

III. The exemptions claimed by the City of North Charleston are not applicable.

The City of North Charleston's assertion that the acts or omission of a third party exempt them from liability pursuant to 15-78-60(20) is not supported by the facts of this case. The only party to make any allegation against Lawrence, false or otherwise, were the grossly negligent and false allegations made by Detective Bousquet in her sworn arrest warrant affidavit and subsequent testimony given to the court. The City of North Charleston's claim that the acts or omissions of Danny Conyers was the basis for Lawrence's arrest is a gross misrepresentation of the facts in this case. This investigation began when Hazel Pinckney's family made a complaint to law

enforcement about fraudulent banking activity being conducted on Ms. Pinckney's account. Law enforcement requested video evidence from Wells Fargo Bank, which was provided to law enforcement by Danny Conyers through screenshots of the ATM surveillance camera. Lawrence was never named or identified by Danny Conyers as committing any crimes on Ms. Pinckney's account. Lawrence was not named or identified as committing any crimes on Ms. Pinckney's account by the victim, the victim's family, or any other witnesses in this investigation. The only person that alleged Lawrence committed a crime on Ms. Pinckney's account was Detective Bousquet. Wells Fargo also sent Detective Bousquet banking records from Ms. Pinckney's account at her request, prior to the arrest warrant being sworn out against Lawrence, that prove Lawrence was not the person committing crimes on Ms. Pinckney's account. The only party who made any acts or omissions against Lawrence in this case is Detective Bousquet, acting as an agent for the City of North Charleston. Accordingly, the asserted exemption claimed by the City of North Charleston pursuant to 15-78-60(20) is not applicable in this case and, even if it were applicable, the City of North Charleston would still be barred from immunity as a result of their grossly negligent acts against Lawrence.

The City of North Charleston is also not entitled to the asserted exemption to liability pursuant to 15-78-60(23) for instituting judicial proceeding, because the judicial proceedings instituted by the City of North Charleston in this case were unlawful. The intent of the exemption identified in 15-78-60(23) exempts a governmental entity from liability for lawfully instituting judicial proceedings. Here, the proceedings against Lawrence were unlawfully instituted based upon an arrest warrant that lacked probable cause, rendering the arrest warrant invalid and the institution of judicial proceedings unlawful. In determining the lawfulness of an arrest, the court must determine whether or not probable cause existed to make the arrest. Probable cause is defined

as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. *Horton v. City of Columbia*, 408 S.C. 27, 757 S.E.2d 537 (S.C.App. 2014). **A warrant issued without probable cause violates the Fourth Amendment of the United States Constitution and Article 1, section 10 of the South Carolina Constitution and makes any seizure based solely on the warrant unlawful.** *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523 (S.C. App. 2020) (citing *Manueal v. City of Joliet, Ill.*, ---U.S.---, 137 S. Ct. 911, 919, 197 L.Ed.2d 312 (2017))(emphasis added). The question of whether probable cause exists is ordinarily a jury question unless the evidence yields but one conclusion as a matter of law. *Horton* at 27, 757 S.E.2d at 541. Our courts have repeatedly ruled when a sworn affidavit contains false or unreliable statements, those statements must be removed and the court must determine whether or not probable cause would still exist, even without the false or unreliable statements, in order for the warrant to be valid. *See State v. Robinson*, 415 S.C. 600, 785 S.E.2d 355 (S.C. 2016). *See also Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L.E.2d 667 (1978). According to the affidavit sworn by Detective Bousquet and presented to Judge Coleman, the forgery occurred on January 29, 2018 when Plaintiff is captured on surveillance video depositing check #115 made out to “Joseph” with an illegible last name in the amount of \$723 into the victim’s account, which was later returned as fraudulent. These statements are all false. Based on the incident reports and evidence obtained by Detective Bousquet prior to her swearing out this affidavit, including bank records and screenshots of surveillance video from the bank, the forgery did not occur on January 29, 2018, and Plaintiff is not the person that deposited fraudulent check #115 into the victim’s account. Once the court removes the false statements from the warrant affidavit, no probable cause exists for a valid warrant to be issued. Consequently, the arrest warrant in this case was invalid

and the judicial proceedings instituted against Lawrence by the City of North Charleston were unlawful. Accordingly, the City of North Charleston's asserted exemption to liability pursuant to 15-78-60(23) is not applicable and even if it were applicable their grossly negligent acts against Lawrence are an exception to the exemption therefore immunity should not have been granted.

CONCLUSION

The Original Complaint filed by Lawrence was a claim extending the statute of limitations in this matter to three years and the grossly negligent acts perpetuated by the City of North Charleston against Lawrence bar them from claiming immunity or asserting any exemption to liability under the Tort Claims Act. Furthermore, the exemptions asserted by the City of North Charleston are not applicable in this matter. As such, the trial court erred in granting summary judgement and should be reversed.

Respectfully Submitted,

/s Ashley B. Cornwell

Ashley B. Cornwell, SC Bar No. 76577
Cornwell Law Firm, LLC
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, South Carolina 29464
(843) 595-6003
acornwell@cornwellfirm.com
Attorney for Appellant

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PROOF OF SERVICE

I certify that I have served Appellant's Initial Reply Brief on Robin Jackson, Counsel for the Respondent, via email on March 24, 2022.

March 24, 2022

/s Ashley B. Cornwell

Ashley B. Cornwell
Cornwell Law Firm, LLC
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, SC 29464
843-595-6003

acornwell@cornwellfirm.com

Attorney for Appellant

Other Counsel of Record:

Robin Jackson
Senn Legal, LLC
3 Wesley Drive
Charleston, SC 29407
843-556-4045

robin@sennlegal.com

Attorney for Respondent