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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

Roger Young, Circuit Court Judge

Small Claims Court

Martelle Morrison, Small Claims Judge

App. C/N 2021-001350
(S.C. Ct. App. filed Dec. 1, 2021)

Willie A. Key, ... Petitioner,

v.

MUSC et al. & U.S. Dept. of Veterans Affairs et al., ... Respondents.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on March 1, 2022.

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in dismissing the appeal for lack of jurisdiction?

2. Whether the Court of Common Pleas erred in dismissing the original complaint for lack of jurisdiction?

3. Whether the Small Claims Court unfairly deprived petitioner of his filing fee?

STATEMENT OF THE CASE

On August 3, 2021 petitioner filed an action alleging Negligence in the Court of Common Pleas for the 9th Judicial Circuit (Charleston County) along with a Motion and Affidavit to Proceed In Forma Pauperis. Petitioner named both Medical University of South Carolina (MUSC) and Ralph H. Johnson VA Medical Center as defendants.

On August 12, 2021 the Court of Common Pleas, Honorable Judge Roger Young, citing "lack of jurisdiction", directed petitioner to file the complaint in Small Claims court.

On August 26, 2021, as directed, appellant filed this action in Charleston City Small Claims Court. The Small Claims court required petitioner to pay ninety dollars ($90.00) filing fee. On October 29, 2021 the Small Claims court, Honorable Martelle Morrison, dismissed appellant's complaint, citing lack of jurisdiction.

On November 11, 2021 Petitioner appealed both decisions to the Court of Appeals. The Court of Appeals dismissed the appeal on the ground of lack of jurisdiction. On December 8, 2021 petitioner filed a Motion to Reinstate (Petition to Rehear the Dismissal). On March 1, 2022 the court denied the petition.

ARGUMENT

I. THE COURT OF APPEALS SHOULD HAVE HELD THAT IT HAD JURISDICTION TO HEAR PETITIONER'S APPEAL.

In its Dec. 01, 2021 Order dismissing Petitioner's appeal for lack of jurisdiction, the Court of Appeals stated that, "This appeal arises out of an order of the magistrate court." This is incorrect. Petitioner's appeal arose out of "lack of jurisdiction" orders of both the Court of Common Pleas (Common Pleas) initially and Magistrate Court (Small Claims) subsequent to that, as clearly noted and argued in Petitioner's Notice of Appeal and Brief and Motion to Reinstate. Common Pleas initially claimed lack of jurisdiction and directed the appellant to file his action in Small Claims Court.

Petitioner argues here that it would have been futile to appeal Small Claims decision to dismiss for lack of jurisdiction back to Court of Common Pleas, where it was Common Pleas who initially denied jurisdiction. Therefore, petitioner appealed to the Court of Appeals naming both courts as respondents.

Further, in prospective, the petitioner is put to the task of first, appealing the erroneous decision of the Court of Common Pleas and correct decision of the Small Claims court, where both claimed lack of jurisdiction, and now, having to appeal the Court of Appeals decision to dismiss for the same erroneous "lack of jurisdiction" reason — all without the issues raised in the original complaint ever being heard!

II. THE COURT OF APPEALS SHOULD HAVE HELD THAT THE COURT OF COMMON PLEAS HAD JURISDICTION TO HEAR PETITIONER'S COMPLAINT.

Clearly, the Court of Common Pleas had jurisdiction of this action.

S.C. Code Ann. §15-78-30(a) provides in part:

> "Agency means ... a state-supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter."

Thus, where respondent MUSC is a state-supported university, it is an agency within the meaning of §15-78-30(a).

S.C. Ann. §15-78-50(a) provides in part:

> "Any person who may suffer a loss proximately caused by a tort of the state, an agency, ... may file a claim as hereinafter provided."

Thus, persons described therein may bring a claim against respondent MUSC, a state agency.

S.C. Ann. §15-78-100(b) provides:

> "Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the action or omission occurred."

Therefore, where petitioner originally filed this action in the Court of Common Pleas (Charleston County), said court erred in dismissing the action on the ground of lack of jurisdiction and the Court of Appeals should have held accordingly. *Proveaux v. Medical University of South Carolina*, 326 S.C. 28; 482 S.E.2d 774 (1997); *Jeter v. South Carolina Dept. of Transportation*, 358 S.C. 528 (Ct.App. 2004).

III. THE COURT OF APPEALS SHOULD HAVE RULED THAT THE SMALL CLAIMS COURT UNFAIRLY DEPRIVED APPELLANT OF HIS FILING FEE.

Where the Small Claims court subsequently dismissed appellant's claim after requiring him to pay a filing fee, appellant posits that he was unfairly

deprived of his $90 filing fee.

Fairness in this regard dictates that the court, upon being offered the complaint, should have immediately viewed the *Caption* for parties. Upon noticing that the defendants were governmental agencies and, therefore, it lacked jurisdiction of the matter, the court should have declined to accept the complaint for filing and requiring payment of a filing fee.

Whether the courts acted in concert or individually, their actions, complained of herein resulted in appellant being denied access to the courts in violation of the First Amendment to the Constitution.

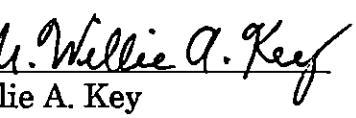
CONCLUSION

Clearly, the Court of Common Pleas' dismissal of petitioner's complaint for lack of jurisdiction goes against state statute and S.C. Supreme Court decisions.

Based on the above arguments, petitioner asks the Court to grant the petition for a writ of certiorari and (1) reverse the Court of Common Pleas' *lack of jurisdiction* order and (2) order the Small Claim Court to refund appellant's ninety dollars ($90.00) filing fee.

Respectfully submitted,

March 18 ,2022.



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PROOF OF SERVICE

I certify that I have served the Petition for Writ of Certiorari on the defendants by depositing a copy of same in the U.S. Mail, postage prepaid and addressed to Other Counsel of Record as shown below:

March 18, 2022.

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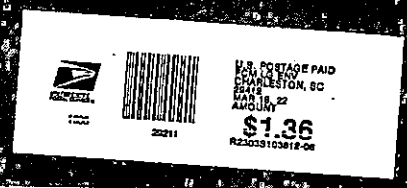

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