THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Win Myat, Appellant,

v.

Tuomey Regional Medical Center, Respondent.

Appellate Case No. 2016-000774

Appeal From Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 5636
Heard February 12, 2019 – Filed April 3, 2019

AFFIRMED

William R. Padget and Francis M. Hinson, IV, of Finkel Law Firm, LLC, of Columbia, for Appellant.

David Cornwell Holler, of Lee, Erter, Wilson, Holler & Smith, LLC, of Sumter, for Respondent.

SHORT, J.: In this premises liability action resulting from injuries suffered by Dr. Win Myat while working at Tuomey Regional Medical Center (Hospital), Myat appeals, arguing the trial court erred in (1) permitting Hospital to amend its answer to assert a new affirmative defense; (2) allowing Hospital to reopen its case and offer new evidence in support of its charitable affirmative defense; and (3)

concluding Hospital was qualified to receive the protections of the South Carolina Solicitation of Charitable Funds Act (the Act)[1]. We affirm.

FACTS

On July 6, 2011, Myat fell while walking through Hospital as a result of liquid on the floor. Myat suffered a broken patella and torn tendon. Myat was employed by Hospital as the Medical Director of Infectious Disease and also worked at Hospital as a physician for his private medical practice. Myat claimed his injuries left him with severe pain, which rendered him unable to continue his medical practice.

Myat filed a personal injury action against Hospital on October 15, 2012. Myat amended his complaint on November 5, 2012. Hospital filed its answer on January 16, 2013. On August 21, 2015, Hospital moved to amend its answer to assert the protections of the Act. Myat's initial and amended complaints asserted, and Hospital's answer conceded, that Hospital was an eleemosynary corporation.[2] On August 24, 2015, the trial court granted Hospital's motion to amend its answer to assert the Act as a defense.

The case was tried before a jury August 31 to September 2, 2015. At the close of Hospital's case, Myat moved for a directed verdict on Hospital's failure to offer evidence of its Section 501(c)(3) of Title 26 of the United States Code[3] tax status and the application of the Act's limitation on liability.[4] Hospital moved to reopen its case and requested the court take judicial notice of its 501(c)(3) tax status and the Act's charitable cap. Hospital also offered to present evidence of its tax status. The court took the issue under advisement and continued with the presentation of evidence and testimony to the jury. The parties agreed Hospital's tax status and the application of the Act were not questions of fact for the jury.

Prior to receiving the jury's verdict, the trial court granted Hospital's motion to reopen its case on the issues of its 501(c)(3) tax status and the application of the

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[1] S.C. Code Ann. §§ 33-56-10 to -200 (2006 & Supp. 2018).

[2] Black's Law Dictionary defines eleemosynary as: "Of, relating to, or assisted by charity; not-for-profit." Black's Law Dictionary 538 (7th ed. 1999). The Dictionary further defines an eleemosynary corporation as: "A nonprofit corporation that is dedicated to benevolent purposes and thus entitled to special tax status under the Internal Revenue Code." Black's Law Dictionary at 341.

[3] 26 U.S.C.A. § 501(c)(3) (2011).

[4] S.C. Code Ann. § 33-56-180(A) (2006).

Act. The court also allowed Myat to conduct discovery prior to a hearing on Hospital's tax status and the Act. The jury returned a verdict for $2.5 million in actual damages for Myat.

On March 8, 2016, the trial court held a hearing on Hospital's tax status and the application of the Act. On April 7, 2016, the court filed its order reducing the verdict to $300,000 pursuant to the Act's liability cap, entering judgment, and denying Myat's outstanding motions. This appeal follows.

LAW/ANALYSIS

I. Motion to Amend

Myat argues the trial court erred in permitting Hospital to amend its answer to assert a new affirmative defense of the Act. We disagree.

Rule 15(a), SCRCP, provides:

> A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

"Motions to amend pleadings to conform to proof may be made upon motion of any party at any time, even after judgment, and are within the sound discretion of the trial judge." *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994) (citing Rule 15(b), SCRCP). "Ordinarily, amendments to conform to proof should be liberally allowed." *Id.* "However, if late amendment of the pleadings would cause prejudice to the opposing party, the court should either deny the amendment or grant a continuance reasonably necessary to allow the opposing party to meet the amendment." *Id.* "Prejudice occurs when the amendment states a new claim or defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action." *Id.* "The prejudice Rule 15 envisions is a lack of notice that the new issue is going to

be tried, and a lack of opportunity to refute it." *Pool v. Pool*, 329 S.C. 324, 328-29, 494 S.E.2d 820, 823 (1998). "It is well established that a motion to amend is addressed to the sound discretion of the trial judge, and that the party opposing the motion has the burden of establishing prejudice." *Pruitt v. Bowers*, 330 S.C. 483, 489, 499 S.E.2d 250, 253 (Ct. App. 1998). "The trial judge's finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred." *Berry v. McLeod*, 328 S.C. 435, 450, 492 S.E.2d 794, 802 (Ct. App. 1997).

The case was set for trial to begin on August 24, 2015. Hospital filed its motion to amend on August 21, 2015, and a hearing on the motion was held on August 24, 2015. Hospital filed an amended answer on August 24, 2015, asserting the Act as a defense, and specifically, the limit on recoverable damages. Myat argues the amendment prejudices him because the Act limits his damages to $300,000 for a single occurrence. S.C. Code Ann. §§ 33-56-180(A) (2006) & 15-78-120(a)(1) (2005).

Section 33-56-180(A) provides:

> A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, [willful], or grossly negligent manner, and the employee must be joined properly as a party defendant. A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, [willful], or grossly negligent manner. If the charitable organization for

> which the employee was acting cannot be determined at the time the action is instituted, the plaintiff may name as a party defendant the employee, and the entity for which the employee was acting must be added or substituted as party defendant when it reasonably can be determined.

Section 15-78-120(a)(1) provides "no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved."

In *James v. Lister*, 331 S.C. 277, 282-85, 500 S.E.2d 198, 201-03 (Ct. App. 1998), this court determined the statutory limit on recovery from charitable organizations was an affirmative defense the defendant hospital was required to plead prior to trial in a medical malpractice action because although the charitable status was not a jury issue, invocation of that protection triggered alternative remedies for the plaintiff patient. Thus, the hospital's failure to raise its charitable status as an affirmative defense affected the parties involved in the case and the way the case was tried to the jury. *Id.* at 282, 500 S.E.2d at 201. As a result, the court held the hospital was not entitled to amend its answer to assert the limit on recovery from charitable organizations because the amendment would prejudice the plaintiff patient, as he had no notice that another party was necessary and the plaintiff would be required to prove a greater degree of negligence to recover damages in excess of the statutory limit. *Id.* at 285-86, 500 S.E.2d at 203.

Myat asserts he has suffered the same prejudice as in *James* because Hospital sought to invoke the defense after discovery had closed and witnesses' memories had faded. Further, the statute of limitations had run against potential individual defendants, i.e., the employee(s) that created the dangerous condition that Myat could have pursued to avoid the statutory cap. Moreover, Myat asserts he lost the opportunity to evaluate alternative remedies, including a potential worker's compensation claim and loss of consortium claim, because Hospital did not plead the statutory cap as a defense.

Hospital argues this case is different from *James* because in *James*, the hospital did not seek to amend its answer and raise the statutory cap until its post-trial motions, giving the Jameses no opportunity to conduct additional discovery before trial. *Id.* at 281, 500 S.E.2d at 200. Here, Hospital amended its answer prior to trial, and Myat was aware of the statutory cap during discovery. Also, Myat had an opportunity to seek additional discovery but failed to make a request prior to trial.

Myat's initial and amended complaints asserted, and Hospital's answer conceded, that Hospital was an eleemosynary corporation. Additionally, at the August 24, 2015 motion to amend hearing, Hospital's counsel's affidavit on the issue of Myat's knowledge of the charitable cap was the only evidence submitted to the court. The affidavit stated counsel for both parties had numerous conversations about the $300,000 statutory cap. Counsel's affidavit stated he moved to amend Hospital's answer to assert the statutory cap as soon as he realized he had failed to assert it. No other affidavits, testimony, or evidence was offered to the trial court to refute Myat's knowledge of the statutory cap. Further, Myat did not move to amend his complaint to add a gross negligence claim or request a continuance to conduct additional discovery before trial.

The trial court held Myat had not satisfied his burden of establishing prejudice. In contrast, the court found Myat's complaints coupled with the affidavit of Hospital's counsel showed that Myat was on notice of the statutory cap and had ample opportunity to attempt to refute it.

We find the trial court did not err in allowing Hospital to amend its answer because there was no prejudice to Myat. Myat knew Hospital was a charitable entity and should have known the statutory cap would apply. He further had notice before trial that the statutory cap was pled and had an opportunity to refute it.

II. New Evidence

Myat argues the trial court erred in allowing Hospital to reopen its case and offer new evidence in support of its charitable affirmative defense. We disagree.

"The decision whether to reopen a record for additional evidence is within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion." *Brenco v. S.C. Dep't of Transp.*, 377 S.C. 124, 127, 659 S.E.2d 167, 169 (2008). "The trial judge is endowed with considerable latitude and discretion in allowing a party to reopen a case." *Id.*

Myat asserts that even after filing an amended answer, Hospital had not disclosed any evidence or witnesses in support of its defense of the Act. Further, Myat asserts Hospital did not present any evidence at trial that it qualified for the protections of the Act. After Myat moved for a directed verdict, arguing Hospital had not met its burden of proving it qualified as a tax-exempt charitable organization under South Carolina Code § 33-56-170 (2006), Hospital moved to

reopen its case to introduce new documents and a new witness. The court granted Hospital's motion and gave the parties ten days to file post-trial motions. A hearing on the motion was held on March 8, 2016, during which Tom Moran testified as Hospital's Rule 30(b)(6)[5] witness, and Myat testified on his own behalf.

Myat argues Hospital's decision to focus solely on its liability defenses was a choice of its own. He asserts allowing Hospital to reopen the case gave Hospital a "second bite at the apple" to prove its defense, which was prejudicial to Myat.

We find the trial court did not abuse its discretion in allowing Hospital to reopen its case to present additional evidence. The trial court allowed Myat to conduct discovery on the issue of Hospital's 501(c)(3) status and the charitable cap, and a hearing was held to present testimony and evidence on the issue of Hospital's charitable immunity. Therefore, Myat was not prejudiced by the new evidence.

III. Charitable Organization

Myat argues the trial court erred in concluding Hospital was qualified to receive the protections of the Act. We disagree.

"Statutes must be read as a whole and sections that are part of the same statutory scheme must be construed together." *Hughes v. W. Carolina Reg'l Sewer Auth.*, 386 S.C. 641, 647, 689 S.E.2d 638, 641 (Ct. App. 2010). "The issue of interpretation of a statute is a question of law for the court" and this court is "free to decide a question of law with no particular deference to the [trial] court." *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). The Act defines a "charitable organization" as "any organization, institution, association, society, or corporation which is exempt from taxation pursuant to Section 501(c)(3) or 501(d) of Title 26 of the United States Code, as amended." S.C. Code Ann. § 33-56-170(1) (2006).

Myat argues Hospital is not entitled to the protections of the Act because it has not conducted itself as a charitable organization. Myat references another case against Hospital, *United States ex rel. Drakeford v. Tuomey Healthcare Sys., Inc.*, in which Hospital was found to have violated the Stark Law and the False Claims Act

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[5] Rule 30(b)(6), SCRCP, provides: "A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested."

through improper and illegal contracts and arrangements with physicians employed by Hospital.[6] Myat further alleges Hospital has not been forthright in its reporting to the Internal Revenue Service (IRS) of the findings in that case. Myat states that because Hospital has not properly reported its violations of the Stark Law and False Claims Act to the IRS, the matter of whether Hospital still qualifies to receive tax-exempt status by the IRS has never been adjudicated by the IRS. Further, Myat states that because Hospital was purchased by Palmetto Health in January 2016 and the remaining entity is winding down its affairs, there is likely no forthcoming inquiry by the IRS as to Hospital's classification as a 501(c)(3) entity. Regardless, Myat asserts section 33-56-170 of the Act makes no mention of a determination by the IRS being of any importance in determining whether an organization qualifies to receive a limitation on liability. Section 33-56-20(1)(a)(i)[7] of the Act defines a "charitable organization" as one that is "determined by the [IRS] to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code," and Myat argues by using different language in the two sections, the Legislature meant that "charitable organization" under section 33-56-170 is not synonymous with the definition found in section 33-56-20. As a result, Myat maintains the court must determine whether Hospital meets the requirements of an organization that is exempt from taxation pursuant to section 501(c)(3).

Myat asserts Hospital has not shown it operates solely to provide a "community benefit" to qualify for section 501(c)(3) status. Myat further argues the trial court erred in evaluating Hospital's charitable status solely on the date of Myat's fall and injury. He asserts it should have been based on the status at the time of recovery, which he contends was the date of the entry of judgment.

Hospital asserts the *Drakeford* case does not properly address the IRS's definition of charitable entity, and the trial court properly declined to consider it in this case. Hospital argues an evidentiary hearing was not necessary, and the trial court should have taken judicial notice of Hospital's 501(c)(3) status and applied the charitable cap. Hospital states the trial court was permitted to take judicial notice of its 501(c)(3) charitable organization status under Rule 201(d), SCRE. Rule 201(d), SCRE, provides "[j]udicial notice may be taken at any stage of the proceeding." Hospital argues its 501(c)(3) status is self-authenticating under Rule 902, SCRE,

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[6] 976 F. Supp. 2d 776, 784 (D.S.C. 2013), *aff'd*, 792 F.3d 364 (4th Cir. 2015). The *Drakeford* action was filed on October 4, 2005, alleging violations by Hospital between January 1, 2005, and November 15, 2006. *Id.* at 779-81.

[7] S.C. Code Ann. § 33-56-20(1)(a)(i) (Supp. 2018).

and was public information available to the public at all times before and since Myat's date of injury. Rule 902(1) & (5), SCRE, provide that a "document bearing a seal purporting to be that of the United States, or of any State" and "[b]ooks, pamphlets, or other publications purporting to be issued by public authority" are self-authenticating. *Cf. Hughes v. United States*, 953 F.2d 531, 540 (9th Cir. 1992) (holding tax forms were admissible as self-authenticating domestic public documents under Rule 902(1) of the Federal Rules of Evidence because they were certified under seal).

The trial court agreed with Myat that if Hospital was acting in a manner inconsistent with its stated charitable purposes such as would invalidate its 501(c)(3) status, the trial court had the authority to deny Hospital the protections of the Act. However, the trial court found no evidence supported a finding that Hospital acted in a manner inconsistent with its stated charitable purpose. Further, the court found the IRS had not taken any action to revoke Hospital's 501(c)(3) status. The court noted Hospital's tax counsel testified that on the date of Myat's injury, July 6, 2011, and the date of the final hearing in the case, March 8, 2016, Hospital met the definition of a charitable organization under both sections 33-56-20 and 33-56-170. Therefore, the trial court determined Hospital was a 501(c)(3) organization exempt from taxation at the time of Myat's injury, and Hospital's 501(c)(3) status qualified it as a charitable organization under that Act to which the statutory limit applied.

We find the statute, when read as a whole, intends for any organization that is tax exempt by the IRS pursuant to Section 501(c)(3) to be a charitable organization. Further, we find the trial court properly found Hospital was a 501(c)(3) corporation exempt from taxation at the time of Myat's injury. Therefore, the trial court did not err in finding Hospital qualified for the protections of the Act.

CONCLUSION

Accordingly, the decision of the trial court is

AFFIRMED.

LOCKEMY, C.J., and MCDONALD, J., concur.