

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )  
) )  
Marcus A. Joseph, )  
) )  
Plaintiff, )  
) )  
vs. )  
) )  
Annelle G. Powell, H.M. Turbeville, Gary )  
Martin Wades, Kolb Municipality of )  
Manning, Clarendon County Sheriff's )  
Department, SLED, South Carolina )  
Department of Corrections, Solicitor's )  
Office of Clarendon County, and the )  
State of South Carolina, )  
) )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
IN THE THIRD JUDICIAL CIRCUIT

Civil Action No. 2021-CP-14-00347

**ORDER OF DISMISSAL REGARDING  
THE STATE OF SOUTH CAROLINA**

**RECEIVED**  
JUL 14 2022  
SC Court of Appeals

This matter is before the Court pursuant to the State of South Carolina's Motion to Dismiss and Plaintiffs' Motions to Strike and for Sanctions, for Judgment by Default, and for Judicial Estoppel.

Plaintiff filed this action on August 2, 2021. The State moved to dismiss Plaintiff's Complaint on September 21, 2021. On September 27, 2021, Plaintiff opposed the State's Motion. Plaintiff then filed a "Motion to Strike, Sanctions, and Judgment as a Matter of Law" opposing the State's Motion to Dismiss on October 14, 2021. Plaintiff also filed a "Motion to Judicially Estopp the Defendants" on October 29, 2021. Finally, on November 2, 2021, Plaintiff filed an "Objection to States Memorandum and Memorandum in Support of Judgment by Default Pursuant to Rule 55(A) 12(A)."

A hearing on these motions was held on May 20, 2022. Assistant Attorney General David Leggett represented the State, and Mr. Joseph attended on his behalf. For the reasons contained herein, the State's Motion to Dismiss is granted, and the Plaintiff's Motions are denied as moot.

## I. Standard of Review

As a threshold matter, the South Carolina Rules of Civil Procedure require parties to be properly served in order for a lawsuit to be commenced. *See* SCRCP 3(a) (“Commencement of civil action. A civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.”). When the State is a party, proper service is made “by delivering a copy of the summons and complaint to the Attorney General . . . .” SCRCP 4(d)(4)(A). “Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court’s own initiative or upon application of any party.” SCRCP 5(d).

A defense based upon the insufficiency of service of process may be made by motion. SCRCP 12(b)(5). “Any motion must assert the defects in the purported service. A party must challenge the sufficiency of service of process at the outset of litigation, either by Motion to Dismiss or by challenging the sufficiency of service of process in its responsive pleading.” *James v. Oconee County*, No. 2012-CP-37-0319, 2013 WL 6650840, at \*1 (S.C. Com. Pl. Apr. 05, 2013) (citing Rule 12(h), SCRCP). “The plaintiff need only show compliance with the rules. When the civil rules on service are followed, there is a presumption of proper service.” *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996) (citing *Roche v. Young Bros., Inc., of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995)).

A court acquires personal jurisdiction over a defendant through the issuance and service of a summons. *Roche v. Young Bros. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (S.C. 1995) (“Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action.”) A court’s exercise of personal

jurisdiction over a defendant is coextensive with proper service. *See, e.g., Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 562–63, 683 S.E.2d 486, 490 (2009) (“A court generally obtains personal jurisdiction by the service of a summons.”). Rule 12(b)(2) allows for dismissal of a complaint for lack of personal jurisdiction because “[a] judgment is void if a court acts without personal jurisdiction.” *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006).

Furthermore, “[u]nder Rule 12(b)(6), SCRCP, a party may move to dismiss a complaint against him based on a failure to state facts sufficient to constitute a cause of action.” *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 148, 714 S.E.2d 537, 539 (2011) (citing *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006)). “In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the complaint.” *Id.* (citing *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007)). “Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Id.* at 148–49. “The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* at 149.

## II. Analysis

The State should be dismissed as a party to this action because Plaintiff failed to properly serve the State. As a result, the court lacks personal jurisdiction over the State. Additionally, the Complaint fails to state sufficient grounds for relief.

### A. Plaintiff Failed to Properly Serve the State

When the State is a party, proper service is made “by delivering a copy of the summons and complaint to the Attorney General . . . .” SCRCP 4(d)(4)(A). “Service of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age,

not an attorney in or a party to the action.” SCRCP 4(c). Rule 4 goes on to allow service via certified mail or a commercial delivery service for certain defendants but the Rule does not allow for service on the State via either of these methods. *See* SCRCP 4(d)(8), (9). The Office of the Attorney General received the Summons and Complaint in this case via certified mail on August 24, September 7, and September 27, 2021.<sup>1</sup> Delivery via certified mail is not sufficient against the State. “Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court’s own initiative or upon application of any party.” SCRCP 5(d). Therefore, the State motion to dismiss the Complaint for lack of proper service pursuant to Rule 12(b)(5) is granted.

**B. The Court Lack Personal Jurisdiction Over the State**

As described above, the State has not been properly served with a summons. Because the State has not been properly served with a lawful summons, the court has not acquired personal jurisdiction over the State. *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 562–63, 683 S.E.2d 486, 490 (2009) (“A court generally obtains personal jurisdiction by the service of a summons.” (quoting *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006))). Therefore, the State motion to dismiss the Complaint for lack of personal jurisdiction pursuant to Rule 12(b)(2) is granted.

**C. The Complaint Fails to State Grounds Sufficient to Constitute a Cause of Action**

The State of South Carolina is immune from suit for damages by virtue of sovereign immunity, and such immunity has not been waived. The Plaintiff’s exclusive remedy is governed by the South Carolina Tort Claims Act, under which “[t]he General Assembly . . .

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<sup>1</sup> In his response, Mr. Joseph points out that the summons and complaint was signed for by Justin Williams. The State does not contest that the mail was delivered to the Attorney General’s Office. Justin Williams is an employee of the Attorney General’s Office and signs for its certified mail.

grant[s] the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter.” S.C. Code Ann. § 15-78-20.

Furthermore, the express language of S.C. Code Ann. §15-78-70(c) provides that “a person, when bringing an action against a governmental entity shall name as a party defendant *only* the agency or political subdivision for which the employee was acting...” (emphasis added). The State is not an agency or a political subdivision. Accordingly, the immunity of the State as an entity has not been waived and these claims are barred by sovereign immunity. This application of §15-78-70 is consistent with §15-78-20(f) that expressly states that the “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.”

The late Circuit Court Judge, the Honorable Tanya Gee explained that:

[T]he Plaintiff must name the appropriate state agency or political subdivision as the defendant in place of the State of South Carolina pursuant to S.C. Code Ann. § 15-78- 70 . . . .

The [Tort Claims Act] defines “agency” as the following:

the individual office, agency... which employs the employee whose act or omission gives rise to a claim under this chapter.

S.C. Code Ann. § 15-78-30(a). The Act further defines “political subdivision” as the following:

the counties... or subdivision thereof.

S.C. Code Ann. § 15-78-30(h).

*Consequently, because the State of South Carolina is neither an “agency” nor a “political subdivision” as defined by the [Tort Claims Act], Defendant State is improperly named as a party in this action and must be dismissed. (emphasis added)*

*Brown v State*, No. 2015-CP-40-4012, 2015 WL 10574321, at \*2-3 (S.C.Comm.Pl. Oct. 13, 2015). *See also Thomas v State*, No. 2015-CP-40-07269, at 9-10.

Therefore, the motion to dismiss for failure to state claim pursuant to Rule 12(b)(6) is granted.

#### D. Plaintiff's Motions

Plaintiff filed a "Motion to Strike, Sanctions, and Judgment as a Matter of Law" opposing the State's Motion to Dismiss, a "Motion to Judicially Estopp [sic] the Defendants," and an "Objection to States Memorandum and Memorandum in Support of Judgment by Default Pursuant to Rule 55(A) 12(A)." His motions are based on his assertion that service upon the State was proper and that the Motion to Dismiss should be denied. As described above, these arguments are not persuasive.

Because the State's Motion to Dismiss has been granted these Motions are moot and therefore denied.

### III. Conclusion

For the aforementioned reasons, the State of South Carolina shall be dismissed with prejudice pursuant to Rule 12(b)(2),(5), and (6). Additionally, the Plaintiff's "Motion to Strike, Sanctions, and Judgment as a Matter of Law", "Motion to Judicially Estopp the Defendants," and "Objection to States Memorandum and Memorandum in Support of Judgment by Default Pursuant to Rule 55(A) 12(A)" are denied as moot.

IT IS SO ORDERED.

By: Kristi Curtis  
CIRCUIT COURT JUDGE KRISTI CURTIS

May 24, 2022  
DATE

Manning, SOUTH CAROLINA.



ALAN WILSON  
ATTORNEY GENERAL

May 31, 2022

The Honorable Beulah G. Roberts  
Clerk of Court  
PO Box 136  
Manning, SC 29102-0136


Re: *Marcus A. Joseph v. Annelle G. Powell, H.M. Turbeville, Gary Martin Wades, Kolb Municipality of Manning, Clarendon County Sheriff's Department, SLED, South Carolina Department of Corrections, Solicitor's Office of Clarendon County, and the State of South Carolina*  
C/A No.: 2021-CP-14-00347

Dear Mr. Roberts:

Enclosed for filing please find the original and one (1) copy of an **Order of Dismissal Regarding the State of South Carolina** in the above-referenced matter. I would appreciate your acknowledging receipt by date-stamping the extra copy enclosed and returning it to me via the enclosed return envelope.

By copy of this letter and enclosures, I am also serving the Plaintiff with the same. If you have any questions or if you need any additional information, please do not hesitate to contact me.

Regards,



L. David Leggett  
Assistant Attorney General

cc: Mr. Marcus A. Joseph