

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

CARMICHAEL T. FLOWERS, )  
 )  
Plaintiff, )

C/A No.: 2011-CP-21-2095

vs. )

ORDER

WILLIAM K. BOONE, )  
CAPTAIN J. BRONSON, LEAH )  
HARRIS, JOESPH D. THOMPSON )  
AND ANN AND/OR JOHN DOE, )  
 )  
Defendants. )

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This matter comes before the Court upon the Defendants' filing of a motion for summary judgment. A hearing was held before the undersigned on March 21, 2013. At that time, all parties were allowed to present oral argument concerning their respective legal positions. Appearing on behalf of the Defendants was Attorney J. Scott Kozacki of the Florence County Bar. The Plaintiff appeared *pro se*. According to the Defendants, there exists no genuine issue of material fact for trial, since (1) the individual Defendants cannot be held personally liable; and (2) the Plaintiff has waived his claims in this case and/or should be equitably estopped from asserting such claims. After carefully considering the legal argument of all parties, all memorandum in support thereof, and all pleadings/other documents of record, the undersigned agrees that summary judgment in favor of the Defendants is appropriate in this case.

As the record reflects, the *pro se* Plaintiff alleges that the Defendants were responsible for his personal property not being returned to him following his arrest and detention at the Florence County Detention Center. During the Plaintiff's incarceration at the detention center, it is undisputed

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that he signed and executed a Property Inventory form which provided that:

I hereby state that the property listed above constitutes all claims to property on my person at the time of my incarceration. **Upon my release, any property left must be claimed within 10 business days...**

(emphasis added).

No genuine issue of material fact exists in this regards.

Rule 56(c) provides that this Court must grant a motion for summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Id.* (quoting Rule 56(c), SCRPC). “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

Initially, each of the individual Defendants are immune from suit in this case. No genuine issue of material fact exists in this regard. For this reason, the Defendants’ motion for summary judgment must be granted.

As correctly noted by the Defendants, the South Carolina Tort Claims Act (“SCTCA”) governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Parker v. Spartanburg Sanitary Sewer Dist.,

362 S.C. 276, 280, 607 S.E.2d 711, 714 (Ct. App. 2005) (citing Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998)); Hawkins v. City of Greenville, 358 S.C. 280, 291, 594 S.E.2d 557, 563 (Ct. App. 2004). Notwithstanding any provision of law, the SCTCA is also the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty. S.C. Code § 15-78-200; *see also*, Olson v. Faculty House of Carolina, Inc., 344 S.C. 194, 544 S.E.2d 38 (2001) (observing that the SCTCA is the exclusive remedy for tort claims against governmental entities), *aff'd*, 354 S.C. 161, 580 S.E.2d 440 (2003). Likewise, "[a]n employee of a governmental entity who commits a tort while acting in his official duty" is not liable, unless the alleged act constituted "actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code 15-78-70(a)-(b). The provisions of the SCTCA "must be liberally construed in favor of limiting the liability of the State." S.C. Code § 15-78-20(f); *see also*, Steinke v. S.C. Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999) ("Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting liability."); Baker v. Sanders, 301 S.C. 170, 391 S.E.2d 229 (1990); Staubes v. City of Folly Beach, 331 S.C. 192, 500 S.E.2d 160 (Ct. App. 1998), *aff'd*, 339 S.C. 406, 529 S.E.2d 543 (2000); Rakestraw v. S.C. Dep't of Highways and Public Transp., 323 S.C. 227, 473 S.E.2d 890 (Ct. App. 1996).

In this case, viewing the Plaintiffs' allegations in the light most favorable to him, as is legally required, Plaintiff alleges only that the individual defendants were employed by either the Florence County Sheriff's Office and/or at the Florence County Detention Center and that during his arrest and/or booking process certain property was wrongfully "seized" and/or taken from him. Plaintiff

did not expressly allege in his Amended Complaint that the individual Defendants were acting outside the scope of their employment. As well, the Plaintiff also undeniably does not specifically allege that Defendants' alleged acts constituted actual fraud, actual malice, and/or intent to harm. *See* S.C. Code § 15-78-70(a)-(b). Accordingly, the individual Defendants are personally immune from suit in this matter and cannot be held liable. *See generally*, S.C. Code 15-78-70(a)-(b). No genuine issue of material fact exists in this regard. For this reason, the Defendants' motion for summary judgment must be granted.

Additionally, the Plaintiff has also undeniably waived all claims against the Defendants and is now equitably estopped from asserting all such claims. No genuine issue of material fact also exists in this regard. Thus, the Defendants' motion for summary judgment must also be granted on this basis.

“Waiver is a voluntary and intentional abandonment or relinquishment of a known right.” Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994). Stated differently, waiver requires a party to have known of a right and known he was abandoning that right. Strickland v. Strickland, 375 S.C. 76, 82, 650 S.E.2d 465, 469 (2007). “Equitable estoppel occurs where a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do.” Parker, 313 S.C. at 487, 443 S.E.2d at 391. “[T]he distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations.” Id. (citation omitted); Strickland, supra.

As noted above, during the Plaintiff's detention at the Florence County Detention Center, it is undisputed that he signed and executed a Property Inventory Form. That form clearly provided that:

I hereby state that the property listed above constitutes all claims to property on my person at the time of my incarceration. Upon my release, any property left must be claimed within 10 business days...

(emphasis added).

Without question, Plaintiff did not claim the disputed property within 10 business days. No genuine issue of material fact exists in these regards. Clearly, Plaintiff knew that he possessed the right to claim his property and that he was required to do so within 10 business days after his release from the detention center. No reasonable trier of fact could conclude otherwise. Yet, Plaintiff undeniably did not timely claim his property. Accordingly, the Plaintiff has now waived all claims against the Defendants in this case and is equitably estopped from asserting such claims. No genuine issue of material fact exists in this regard. For this reason, the Defendants' motion for summary judgment must also be granted.

For the reasons set forth herein, the Defendants motion for summary judgment is granted and the instant matter is hereby dismissed, with prejudice. The Clerk is further instructed to issue judgment in favor of the Defendants in this matter.

**IT IS SO ORDERED.**



D. CRAIG BROWN, PRESIDING JUDGE  
TWELFTH JUDICIAL CIRCUIT

3-27-13

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