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THE STATE OF SOUTH CAROLINA **Sep 16 2022**
IN THE COURT OF APPEALS

SC Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS
THE HONORABLE BENJAMIN H. CULBERTSON
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2022-000948
CIVIL ACTION NO. 2021-CP-22-00158

Carlos Dennison,

APPELLANT,

versus

Georgetown City Police Department,
Officers Shephard Ban, Steven Church,
John Gregory, Judge Robert O'Donnell, and
Mayor Brendon Barbor,

RESPONDENTS.

INITIAL BRIEF OF RESPONDENTS

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COUNTERSTATEMENT OF ISSUES ON APPEAL

- I. The Trial Court's grant of summary judgment to the Respondents should be affirmed because Appellant Dennison produced no evidence that the signatures on the arrest warrants were defective and instead improperly relied merely upon pure speculation.
- II. Appellant Dennison's claims against the Respondents in their individual capacities are further barred as a matter of law under the provisions of the South Carolina Tort Claims Act.
- III. Appellant Dennison's claims for punitive damages are prohibited under the South Carolina Tort Claims Act.
- IV. The Uniform Post-Conviction Procedure Act provides the exclusive remedy for a challenge to a conviction and sentence; therefore, Appellant Dennison may not seek such relief in this civil action against the Respondents.
- V. The Trial Court's denial of Appellant Dennison's Motion for Summary Judgment cannot be considered on appeal by this Court because the denial of a motion for summary judgment is not appealable.

COUNTERSTATEMENT OF THE CASE

On or about March 8, 2021, Appellant Carlos Dennison (“Dennison”) filed a complaint in the Court of Common Pleas for Georgetown County against the Georgetown City Police Department; Georgetown Police Officers Shephard Ban, Steven Church, and John Gregory; Georgetown Municipal Judge Robert O’Donnell; and Georgetown Mayor Brendon Barbor (collectively, the “Respondents”). [R.pp. ___; Compl.] Dennison alleged that he was falsely accused, arrested, and imprisoned because of a purported defect in certain arrest warrants. More particularly, Dennison claimed that the warrants revealed a “characteristic of forgery.” [R.pp. ___; *Id.* at ¶¶ 2-8, 11.]

In his “Prayer for Relief,” Dennison requested (1) a declaration that his civil rights were violated under the Constitution of the United States; (2) a permanent injunction and suspension of the officers involved; (3) reform of supervision of officers by the Mayor; (4) monetary compensation of \$1 million dollars against each defendant; (5) \$1 million dollars in punitive damages against each defendant; (6) the costs of the matter; and (7) that his sentence of imprisonment be vacated. [R.pp. ___; *Id.* at ¶¶ 13-21.]

The Respondents filed their answer on May 21, 2021, admitting that each individual defendant was acting in the course and scope of their official duties with the City of Georgetown at all relevant times, but denying all other material allegations of the Complaint. [R.pp. ___; Answer.] The Respondents specifically denied the existence of any forgery in the arrest warrants or that the warrants did not meet the relevant statutory requirements. [R.p. ___; *Id.* at ¶ 10.] Finally, the Respondents also asserted as an affirmative defense, among others, the applicable provisions, immunities, and limitations

on recovery as set forth in the South Carolina Tort Claims Act, S.C. CODE ANN. § 15-78-10, *et seq.* [R.pp. ___; Id. at ¶¶ 16-23.]

On July 26, 2021, Dennison moved for summary judgment on his claims to which the Respondents opposed. [R.pp. ___; ___; Dennison Mtn. for Summary Judgment; Memo. in Opp.] Dennison also moved to amend his Complaint to add a claim for malicious prosecution. [R.pp. ___; Mtn. to Amend.] On September 9, 2021, the Trial Court issued a Form 4 Order denying Dennison’s Motion for Summary Judgment and granting his Motion to Amend the Complaint. [R.pp. ___; Form 4 Order.] The Trial Court ordered Dennison to file and serve any Amended Summons and Complaint within thirty (30) days. [R.p. ___; Id.] Dennison did not file and serve an Amended Summons and Complaint.

On May 2, 2022, the Respondents filed a Motion for Summary Judgment and Memorandum in Support on the claims raised in Dennison’s Complaint. [R.pp. ___; Respondents’ Mtn. for Summary Judgment.] A hearing on the Respondents’ Motion for Summary Judgment was held before The Honorable Benjamin H. Culbertson on June 23, 2022. [R.pp. ___; Hearing Tr.]

On June 24, 2022, the Trial Court granted summary judgment to the Respondents on all claims asserted in Dennison’s Complaint, ruling that Dennison had “produced no evidence, expert or otherwise, that the warrants involved in his arrest, detention and ultimate conviction were defective due to forgery.” [R.pp. ___; Order.] Dennison appealed the Trial Court’s Order Granting Summary Judgment to this Court on or about June 29, 2022.

COUNTERSTATEMENT OF FACTS

The Georgetown Police Department used a confidential informant to make several controlled buys of what was believed to be heroin from Dennison on March 1, 2018 and March 8, 2018. Arrests warrants numbers 2018A2220200120 and 2018A2220200133 were therefore obtained against Dennison for the distribution of heroin charges which were signed by Judge O'Donnell on March 6, 2018 and March 9, 2018 respectively. [R.pp. ___; ___; ___; July 8-10, 2019 Trial Tr. Excerpts, pp. 5, l. 14 – 6, l. 2; Arrest Warrants 120 and 133.] Reports for the controlled substances sold by Dennison came back as fentanyl instead of heroin; therefore Dennison was indicted for distribution of fentanyl on these two arrest charges. [R.p. ___; July 8-10, 2019 Trial Tr. p. 5, ll. 16-25.]

Dennison was not located until June 20, 2018, and at that time he was served with the two above-mentioned arrest warrants for distribution of fentanyl, as well as three other outstanding arrest warrants for false information to police (2018A2220200078), hindering police/resisting arrest (2018A2220200079), and shoplifting (2018A2220200080) which were each signed by Judge O'Donnell on February 9, 2018. [R.pp. ___; ___; ___; ___; July 8-10, 2019 Trial Tr. p. 6, ll. 2-4; Arrest Warrants 78, 79, and 80.]

When he was served with the arrest warrants for distribution of fentanyl, Dennison was searched subsequent to his arrest where officers located multiple baggies of what was believed to be heroin as well as cocaine on his person. Dennison was then indicted on charges related to the possession of the heroin (Indictment No. 2019-GS-22-00262) and cocaine (Indictment No. 2019-GS-22-00263) found on his person. [R.pp. ___; July 8-10, 2019 Trial Tr., p. 5, ll. 1-5; 6, ll. 2-9.] All other pending charges referenced above were either subsequently Nolle Prossed or dismissed.

Dennison was ultimately tried on July 8-10, 2019 before The Honorable J. Mark Hayes and a jury on Indictment Numbers 2019-GS-22-00262 and 2019-GS-22-00263 for possession with intent to distribute heroin and possession of cocaine. [R.pp. ___; July 8-10 Trial Tr.] A jury found Dennison guilty on both charges, and he was sentenced by Judge Hayes to serve concurrent terms of ten years' incarceration on each charge [R.pp. ___; ___; ___; Id. at pp. 289, ll. 9-12; 292, ll. 4-8; 301, ll. 17-23.]

During his criminal trial, Dennison argued that the warrants which led to his June 20, 2018 arrest and subsequent discovery of heroin and cocaine on his person for which he was convicted were defective because the signature of Judge O'Donnell on each warrant was allegedly forged. Officer John Gregory, Officer Noel Smith, and Judge O'Donnell all testified.

Officer Gregory confirmed and authenticated his own signature and also testified that the warrants contained the signatures of Judge O'Donnell and Officer Steven Church. [R.pp. ___; ___; Id. at pp. 83, l. 18 – 84, l. 4; 85, ll. 4-7.] Officer Gregory testified as to the process for presenting an arrest warrant to the judge and explained that he hands the warrant to the judge after which the judge will ask him to swear and affirm the facts therein. After the officer affirms, the judge will sign the warrant in front of the officer and the officer then takes the warrant. [R.pp. ___; ___; Id. at pp. 85, ll. 10-15; 89, ll. 1-7.] Officer Gregory also testified that he had taken arrest warrants for signature to Judge O'Donnell for approximately nine years and recognized Judge O'Donnell's signature on the warrants at issue. [R.pp. ___; Id. at pp. 86, ll. 11-18; 94, ll. 15-25.] Officer Gregory also explained that the officers and the judge will sign both the original arrest warrant and the defendant's copy of the warrant. [R.pp. ___; pp. 89, l. 11 – 91, l. 15.]

Officer Smith also confirmed at the criminal trial that he was familiar with Judge O'Donnell's signature and that it appeared to be Judge O'Donnell's signature on the warrants. [R.pp. ___; Id. at pp. 127, l. 3 – 128, l. 23.]

Finally, Judge O'Donnell confirmed that it was his signature on the original and defendant copies of the arrest warrants, and that while his signature may fluctuate, the signatures on the warrants were his. [R.pp. ___; ___; Id. at pp. 135, l. 5 – 136, l. 15; 147, ll. 6-23.] Judge O'Donnell also testified as to the authenticity of his signature stamp used on several of the bond documents in the matter. [R.pp. ___; Id. at pp. 140, l. 24 – 142, l. 23.]

Judge Hayes did not find that any of the warrants leading to Dennison's ultimate arrest and charges for possession of heroin and cocaine were defective or invalid and did not suppress the heroin and cocaine evidence found on Dennison's person when served with the arrest warrants. Therefore, the case proceeded to a jury where Dennison was convicted on the two charges for possession with intent to distribute heroin and possession of cocaine. [R.pp. ___; Id. at pp. 289, ll. 9-12; 292, ll. 4-8.]

Dennison appealed his conviction to the South Carolina Court of Appeals where the only issue he raised was whether the trial court abused its discretion by failing to grant a mistrial after twice erroneously instructing the jury that the inference weight for possession with intent to distribute heroin was two grams rather than two grains. The Court of Appeals affirmed his conviction. See State v. Dennison, No. 2019-001161, 2021 WL 4197722 (S.C. Ct. App. Sept. 15, 2021).

In his current lawsuit, Dennison raises the same exact issue which he raised in his criminal trial – whether the arrest warrants were invalid due to forgery. The Trial Court

granted summary judgment to the Respondents on all claims raised in Dennison's Complaint because he had presented absolutely no evidence of forgery. For the reasons set forth below, this Court should affirm.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c) of the South Carolina Rules of Civil Procedure. Ellis v. Davidson, 358 S.C. 509, 517, 595 S.E.2d 817, 821 (Ct. App. 2004). Rule 56(c) provides a motion for summary judgment shall be granted 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 judgment as a matter of law." See Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181 (2013). "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." Id. at 42, 747 S.E.2d at 181-82; Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citations omitted). The party seeking summary judgment under Rule 56(c) has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis, 358 S.C. at 518, 595 S.E.2d at 822. "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained

in the pleadings. . . . Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” Id. at 518-19, 595 S.E.2d at 822. “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Id. at 518, 595 S.E.2d at 822.

ARGUMENT

I. The Trial Court’s grant of summary judgment to the Respondents should be affirmed because Appellant Dennison produced no evidence that the signatures on the arrest warrants were defective and instead improperly relied merely upon pure speculation.

This Court should affirm the Trial Court’s grant of summary judgment to the Respondents on all claims raised by Dennison in his Complaint because Dennison has produced no evidence that the warrants involved in his arrest, detention, and ultimate conviction were defective due to forgery. The only evidence in the record is that the arrest warrants were valid. Judge O’Donnell, Officer Gregory, and Officer Smith all testified under oath at the criminal trial which led to Dennison’s conviction that the warrants contained proper signatures and were not forged. They authenticated their signatures and the signatures of each other in their sworn testimony.

Officer Gregory confirmed and authenticated his own signature, Officer Steven Church’s signature, and the signature of Judge O’Donnell’s on the arrest warrants. [R.pp. ___; July 8-10, 2019 Trial Tr. pp. 83, l. 18 - 84, l. 6; 85, ll. 4-15; 86, ll. 9-18; 89, l. 11 - 91, l. 15; 94, ll. 14-25.] Officer Smith testified as to the authenticity of Judge O’Donnell’s signature on the warrants at issue. [R.pp. ___; Id. at pp. 127, l. 3- 128, l. 25.] Finally, Judge O’Donnell himself testified to the authenticity of his signature on the warrants at issue. [R.pp. ___; ___; Id. at pp. 134, l. 7 - 136, l. 18; 147, ll. 6-23.] Judge O’Donnell also testified

to the authenticity of his signature stamp used on several of the bond documents in the matter. [R.pp. ___; Id. at pp. 140, l. 24 - 142, l. 23.]

Dennison further raised this issue of the validity of the warrants due to alleged forgery to the judge presiding over his criminal trial and did not appeal his conviction on that basis. Dennison is therefore collaterally estopped from raising this issue again in this civil lawsuit. See Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.”).

Finally, Dennison cannot rest his case on speculation or his mere allegations, but must produce actual evidence of forgery. “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. . . . Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” Ellis v. Davidson, 358 S.C. 509, 518-19, 595 S.E.2d 817, 822 (Ct. App. 2004).; see also Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (“Once [the] moving party carries its initial burden, [the] opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial. . . . Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings.”) (internal citations omitted).

Rather than coming forward with any evidence that the arrest warrants were forged, Dennison has only presented mere speculation that the arrest warrants were not properly signed. It is well-established law in this State that a non-moving party may not rely upon speculation to defeat a motion for summary judgment. Nelson v. Piggly Wiggly Cent., Inc., 390 S.C. 382, 390, 701 S.E.2d 776, 780 (Ct. App. 2010); see also Garrard v. Charleston Cnty. Sch. Dist., 429 S.C. 170, 189, 838 S.E.2d 698, 708 (Ct. App. 2019) (observing “speculative, theoretical, and hypothetical views” may not be submitted to a jury); In re Eleanor McCarthy Lenahan Tr. under agreement Dated July 12, 2001, 428 S.C. 598, 605, 836 S.E.2d 793, 797 (Ct. App. 2019) (“A party may not create a genuine issue of material fact through speculation or guesswork.”)

Dennison presented no evidence that would create a genuine issue of material fact necessary to survive a motion for summary judgment. “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Ellis, 358 S.C. at 518, 595 S.E.2d at 822. Accordingly, the Trial Court’s grant of summary judgment in the Respondents’ favor on all claims asserted in Dennison’s Complaint should be affirmed.¹

II. Appellant Dennison’s claims against the Respondents in their individual capacities are further barred as a matter of law under the provisions of the South Carolina Tort Claims Act.

As set forth above in Section I of the Argument, all Respondents are entitled to the grant of summary judgment on the claims asserted in Dennison’s Complaint because he

¹ Dennison also argues in his Appellant’s Brief that the Respondents and the Trial Court purportedly “filed and allowed a frivolous motion to abuse legal procedure.” Because the Trial Court’s grant of summary judgment to the Respondents was proper, this argument has no merit.

produced no evidence that the arrest warrants were defective due to any forgery. In addition, summary judgment is also proper as to the individual Respondents because Dennison's claims against them in their individual capacities are barred pursuant to the South Carolina Tort Claims Act.

The Tort Claims Act constitutes the exclusive remedy for torts committed by a government employee acting within the scope of his official duties. S.C. CODE ANN. § 15-78-70(a). In such a case, the agency or political subdivision for which the employee was acting is the proper party defendant. § 15-78-70(c). Under the Act, an employee of a governmental entity who commits a tort while acting within the scope of his official duty is immune from liability for that tort unless it is proven that the employee's conduct was not within the scope of his official duties or if it constituted "actual malice" or "intent to harm." See § 15-78-70(b).

Dennison sued Respondents Ban, Church, Gregory, Judge O'Donnell, and Mayor Barbor in their individual capacities, but he has presented no evidence that any of these individuals were acting outside the scope of their official duties or acted with actual malice or intent to harm in connection with the issuance and execution of the arrest warrants. The testimony at Dennison's July 8-10, 2019 criminal trial shows that these Respondents were acting within the proper scope of their official duties and undertook no acts which rendered the arrest warrants defective or improper. [R.pp. ___; July 8-10, 2019 Trial Tr.]

The Tort Claims Act is clear that individual government employees are not proper parties in their individual capacities when acting in the course and scope of their official

duties. As a result, the Trial Court's grant of summary judgment to the individual Respondents should be affirmed upon this ground as well.²

III. Appellant Dennison's claims for punitive damages are prohibited under the South Carolina Tort Claims Act.

The Trial Court's grant of summary judgment to the Respondents must also be affirmed on Dennison's claims for punitive damages. Punitive damages are not provided for under the South Carolina Tort Claims Act. No award of damages under the Act shall include "punitive or exemplary damages or interest prior to judgment" See S.C. CODE ANN. §15-78-120(b); see also Charleston Cnty. Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 7, 437 S.E.2d 6, 9 (1993) (confirming no punitive damages are recoverable under the Tort Claims Act). Therefore, the Trial Court's Order Granting Summary Judgment to the Respondents should further be affirmed to the extent Dennison seeks punitive damages.

IV. The Uniform Post-Conviction Procedure Act provides the exclusive remedy for a challenge to a conviction and sentence; therefore, Appellant Dennison may not seek such relief in this civil action against the Respondents.

In his Complaint and in his request for relief to this Court, Dennison demands to have his conviction and sentence vacated and to be released from prison. [R.p. ___; Compl., ¶ 21.] Dennison cannot seek such relief in this civil lawsuit against the Respondents. Instead, South Carolina's Uniform Post-Conviction Procedure Act provides the exclusive remedy for a challenge to the validity of a conviction or sentence: "[The Act] comprehends and takes the

² While the Trial Court did not rule upon this ground in granting the Respondents' Motion for Summary Judgment, "[t]he appellate court may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR; see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 527 S.E.2d 716, 723 (2000) (holding "respondent. . . may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court").

place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence.” S.C. CODE ANN. § 17-27-20(B); see also State v. Hall, 876 S.E.2d 328, 336 (S.C. Ct. App. 2022) (“A PCR application is the exclusive method for collateral attack upon a conviction.”); Carpenter v. S.C. Dep't of Corr., 431 S.C. 512, 523, 848 S.E.2d 346, 351-52 (Ct. App. 2020) (holding plaintiff could not circumvent the procedures designated in the Post-Conviction Procedure Act by filing a civil complaint for a declaratory judgment).

Accordingly, because Dennison seeks relief only available under the Uniform Post-Conviction Procedure Act, the Trial Court’s Order Granting Summary Judgment to the Respondents should be affirmed on this ground as well.

V. The Trial Court’s denial of Appellant Dennison’s Motion for Summary Judgment cannot be considered on appeal by this Court because the denial of a motion for summary judgment is not appealable.

In his Appellant’s Brief to this Court, Dennison also requests this Court to grant his Motion for Summary Judgment which the Trial Court denied on September 9, 2021 in a Form 4 Order. [R.pp. ___; Form 4 Order.] The denial of a motion for summary judgment, however, is not appealable. See Ballenger v. Bowen, 313 S.C. 476, 476, 443 S.E.2d 379, 380 (1994) (“This [c]ourt has repeatedly held that the denial of summary judgment is not directly appealable.”); Watson v. Underwood, 407 S.C. 443, 459 n.12, 756 S.E.2d 155, 164 n.12 (Ct. App. 2014) (“The denial of summary judgment is never appealable, even after final judgment.”); id. at 457, 756 S.E.2d at 163 (“Because the denial of a motion for summary judgment cannot be appealed, [the court] cannot consider this issue.”). As such, this Court cannot review Dennison’s Motion for Summary Judgment which was denied by the Trial Court. In any event, the Respondents have shown both to the Trial Court and this

Court that they were properly entitled to the grant of summary judgment on each of Dennison's claims in his Complaint. Therefore, Dennison is not entitled to the grant of his Motion for Summary Judgment.

CONCLUSION

For the reasons set forth herein, the Respondents respectfully request this Court to affirm the Trial Court's grant of summary judgment on each of the claims asserted in Appellant Dennison's Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Respondents, do hereby certify that I have this date served the foregoing Initial Respondents' Brief, dated September 16, 2022, by causing the same to be deposited in a United States Postal Service mailbox, postage prepaid, addressed to the party as indicated below:

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