

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

Michael Qualls,)
)
)
Plaintiff,)
)
vs.)
)
Town of McBee,)
)
)
Defendant,)
)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO: 2020-CP-13-00672

**ORDER GRANTING
DEFENDANT TOWN OF MCBEE'S
SUMMARY JUDGMENT**

RECEIVED

Dec 13 2022

SC Court of Appeals

This matter comes before me upon the motion of Defendant Town of McBee (“Town of McBee”) for summary judgment filed on March 16, 2018. This motion was heard in the Chesterfield County Court of Common Pleas on June 7, 2018. After careful review of the brief, the law and notes from the hearing, the Court hereby grants Town of McBee’s Motion for Summary Judgment.

Statement of Facts

On July 8, 2019, as a result of a lawful traffic stop, Deputy Justin Reichard¹ (hereinafter “Dep. Reichard”) arrested Plaintiff on charges of multiple traffic violations, including driving under suspension. Plaintiff did not deny any of the charges, and the undisputed facts reflect that probable cause existed for Plaintiff’s arrest.

On July 8, 2019, Plaintiff appeared at the Town of McBee bond court before Municipal Court Judge Barbara Lisenby. Plaintiff alleges that he was never read his *Faretta* warnings or offered a public defender. (Complaint ¶¶13, 15). However, Plaintiff’s signature on the Bond Checklist proves that he received same in oral and written form. Upon receiving notice of his

¹ Dep. Reichard is Deputy Sheriff with the Chesterfield Sheriff’s Office. Dep. Reichard has never been an employee of the Town of McBee.

rights, Plaintiff had the opportunity to request a jury trial and court-appointed counsel, yet he failed to do so. Additionally, despite being provided with detailed oral and written instructions on how to obtain court-appointed counsel, Plaintiff failed to appear before the Clerk of Court for the prerequisite indigency screening.

Plaintiff asked for more time to pay his fines, reinstate his insurance, and remedy the suspension on his driver's license, so Judge Lisenby gave Plaintiff thirty days to do so. Plaintiff appeared again before Judge Lisenby on August 8, 2019. Plaintiff drove to the court appearance with a suspended license. Due to this and the fact that Plaintiff had not complied with her previous conditions, Judge Lisenby advised Plaintiff that he was to be taken to jail. It was not until after Plaintiff was advised he was going back to jail, taken into custody, and being escorted out of the courtroom that he requested an attorney and a jury trial for the first time. Plaintiff was incarcerated at Chesterfield County Detention Center on August 8, 2019 and released on August 15, 2019 when his fines were paid.

Due to the fact that Town of McBee provided evidence showing that Plaintiff was given his *Farreta* warnings and offered court-appointed counsel, Plaintiff withdrew these claims at the summary judgment hearing. Plaintiff makes multiple claims against Town of McBee regarding alleged improper actions and/or inactions taken by Judge Lisenby, all of which occurred during Plaintiff's judicial proceedings.

Applicable Standard

Under Rule 56, SCRCP, a party is entitled to a judgment as a matter of law 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. "Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and

inferences to be drawn from the facts are undisputed." McClanahan v. Richland County Council, 350 S.C. 433, 437, 567 S.E.2d 240, 242 (2002).

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). 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.'" *Id.* (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986)) (emphasis in original). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *Id.*; George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 545 S.E.2d 500 (2001).

In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). If triable issues exist, those issues must be submitted to the jury. Young v. S.C. Dept. of Corrections, 333 S.C. 714, 718, 511 S.E.2d 413, 415 (Ct. App. 1999). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

Order

I. *The Court finds that Plaintiff's claims against Defendant Town of McBee fail because Town of McBee is entitled to absolute immunity.*

Municipal courts are part of the South Carolina unified judicial system. See S.C. Code Ann. §§ 14-1-40, 14-1-70(8). Courts have absolute immunity from a claim for damages arising out of any adjudicative act within its jurisdiction. See Plyler v. Burns, 373 S.C. 637, 643 (2007) (stating that when a court undertakes any adjudicative act within its jurisdiction, regardless of allegations of malicious or corrupt motive, the act is considered a judicial function for which the court will have absolute immunity). Judges also have absolute immunity from a claim for damages arising out of their judicial actions. See Mireles v. Waco, 502 U.S. 9, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991) (stating that judges are immune from civil suit for actions taken in their judicial capacity, unless “taken in the complete absence of all jurisdiction”); Stump v. Sparkman, 435 U.S. 349, 351–64, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978) (“A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors.”); Pressly v. Gregory, 831 F.2d 514, 517 (4th Cir.1987) (dismissing a suit against two Virginia state magistrates); Chu v. Griffith, 771 F.2d 79, 81 (4th Cir.1985) (“It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions.”); see also Faile v. S.C. Dept. of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 at 540–41 (S.C.2002) (recognizing judicial and quasi-judicial immunity under the South Carolina Tort Claims Act and South Carolina common law); Thomas v. Charleston, 2017 WL 11562553 at * 4 (D.S.C. Sept. 5, 2017) (recognizing absolute judicial immunity for judicial actions). Absolute immunity is “an immunity from suit rather than a mere defense to liability.” Mitchell v. Forsyth, 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985).

A judge is not entitled to judicial immunity if: “(1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only.” Stump, 435 U.S. at 357; Faile, 566 S.E.2d at 540–41; Plyler, 373 S.C. at 645.

In this case, Plaintiff alleges that Town of McBee was grossly negligent through Judge Lisenby’s handling of Plaintiff’s judicial proceedings. Judge Lisenby is a municipal judge who was acting within the course and scope of her employment as a municipal judge, and she had jurisdiction to act. Plaintiff never alleges that any action taken by Judge Lisenby was outside the scope of her employment as a municipal court judge. Plaintiff never alleges that Judge Lisenby did not have jurisdiction to act, that any of her acts did not serve a judicial function, and the suit is not for injunctive relief. Plaintiff’s allegations against Town of McBee specifically relate to actions and/or inactions taken within the courtroom. Plaintiff admits that the acts were judicial functions in his complaint by complaining that the proceedings were an “impermissible bench trial,” and with his allegations of malicious prosecution during the legal proceedings (Complaint ¶¶ 17 and 40). These acts are precisely the type of judicial acts to which immunity applies.

Plaintiff, therefore, has failed to plead sufficient facts that Judge Lisenby acted “in the clear absence of all jurisdiction” or satisfied any recognized exception to the state’s application of judicial immunity. While Plaintiff appears to allege malice in his complaint, as the Supreme Court has noted, this is insufficient.² Accordingly, Judge Lisenby is absolutely immune from suit for monetary damages, even if her actions were done in error, maliciously, or in excess of their authority. See Stump, 435 U.S. 357 n. 7; Sibley v. Lando, 437 F.3d 1067, 1070 (11th Cir. 2005); Plyler, 373 S.C. at 646. Furthermore, Town of McBee has absolute immunity from

² “[The judge’s] errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation.” Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967).

Plaintiff's claims regarding judicial action and/or inaction. As such, the Town of McBee is entitled to summary judgment as a matter of law.

II. Plaintiff's claims for false imprisonment are subject to summary dismissal because his arrest was supported by probable cause.

Although Plaintiff submits that he did not plead false arrest, out of an abundance of caution, it is still determined that any claim for false arrest would fail as a matter of law. The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990); Thomas v. Colonial Stores, Inc., 236 S.C. 95, 113 S.E.2d 337 (1960). To prevail on a claim for false imprisonment, the Plaintiff must establish: (1) the Defendant restrained the Plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. Gist v. Berkeley County Sheriff's Dep't, 336 S.C. 611, 521 S.E.2d 163 (Ct. App. 1999); Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995); Caldwell v. K-Mart Corp., 306 S.C. 27, 410 S.E.2d 21 (Ct. App. 1991); Jones, 301 S.C. at 64, 389 S.E.2d at 663 (an action for false imprisonment cannot be maintained where one is arrested by lawful authority).

The fundamental issue in determining the lawfulness of an arrest is whether there was probable cause to make the arrest. Gist, 336 S.C. at 615, 521 S.E.2d at 165. Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise. Jones v. City of Columbia, 301 S.C. at 65, 389 S.E.2d at 663. Probable cause turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime. State v. George, 323 S.C. 496, 509, 476 S.E.2d 903, 911 (1996); Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983). Probable cause is determined as of the time of the

arrest, based on facts and circumstances--objectively measured--known to the arresting officer. Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005). The determination of probable cause is not an academic exercise in hindsight. George, 323 S.C. at 509, 476 S.E.2d at 911; Eaves v. Broad River Elec. Co-op., Inc., 277 S.C. 475, 478, 289 S.E.2d 414, 415-16 (1982); State v. Goodwin, 351 S.C. 105, 110, 567 S.E.2d 912, 914 (Ct. App. 2002); State v. Robinson, 335 S.C. 620, 634, 518 S.E.2d 269, 276-77 (Ct. App. 1999); 5 Am. Jur. 2d Arrest § 40; 6A C.J.S. Arrest § 25 (2004). "Evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." Horton v. California, 496 U.S. 128, 138, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990). Although the question of whether probable cause exists is ordinarily a jury question, it may be decided as a matter of law when the evidence yields but one conclusion. Parrott, 246 S.C. at 323, 143 S.E.2d at 609.

In this case, probable cause undeniably existed for the Plaintiff's arrest. As the record reflects, as a result of a lawful traffic stop, Dep. Reichard arrested Plaintiff on charges of multiple traffic violations. Plaintiff did not deny any of the charges, and the undisputed facts reflect that probable cause existed for Plaintiff's arrest. The undisputed evidence of record reflects that Plaintiff was restrained pursuant to lawful authority and therefore Plaintiff cannot establish that Town of McBee is liable for false imprisonment. No genuine issue of material fact exists in this regard. As such, Town of McBee is entitled to summary judgment as a matter of law.

III. The Court finds that Plaintiff's claim for negligence/gross negligence fails as a matter of law.

In a negligence action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by negligent act or omission, (3) the defendant's

breach was the actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered an injury or damages. Steinke v. S.C. Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 387, 520 S.E.2d 142, 149 (1999); Shipes v. Piggly Wiggly St. Andrews, Inc., 269 S.C. 479, 238 S.E.2d 167 (1977). "Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Clyburn v. Sumter County Sch. Dist. No. 17, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994); accord Jinks v. Richland County, 355 S.C. 341, 344, 585 S.E.2d 281, 283 (2003); Worsley Cos., Inc. v. Town of Mount Pleasant, 339 S.C. 51, 57, 528 S.E.2d 657, 661 (2000); Marietta Garage, Inc. v. S.C. Dep't of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). It is the failure to exercise even the slightest care. Faile v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 331-32, 566 S.E.2d 536, 544 (2002); Rakestraw v. S.C. Dep't of Highways and Public Transp., 323 S.C. 227, 473 S.E.2d 890 (Ct. App. 1996). "Gross negligence...means the absence of care that is necessary under the circumstances." Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000).

In this case, Plaintiff fails to demonstrate a breach of any duty occurred at Plaintiff's judicial proceedings. The sworn affidavit of Dep. Reichard reflects that neither he and/or Defendant were negligent or grossly negligent in any manner whatsoever. Judge Lisenby exercised that degree of care and skill ordinarily exercised by municipal judges under similar conditions and in similar circumstances. Judge Lisenby did not deviate from the generally accepted standards, practices, and procedures exercised by competent municipal judges in municipal court proceedings. Accordingly, Plaintiff fails to establish the breach of any duty owed to him. As such, the Town of McBee is entitled to summary judgment as a matter of law.

IV. The Court finds that the Plaintiff's Claim for Negligent Supervision is also Subject to Summary Dismissal.

Negligent supervision is a tort in which an employer may be held liable for the conduct of an employee outside the scope of employment where the employer is under a duty to exercise reasonable care to control the conduct of this employee. Degenhart v. Knights of Columbus, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992). An employer may be liable for negligent supervision if the employee intentionally harms another when the employee: (1) is upon the premises of the employer, or is using a chattel of the employer, (2) the employer knows or has reason to know that he has the ability to control his employee, and (3) the employer knows or should know of the necessity and opportunity for exercising such control. Id. at 115-17,420 S.E.2d at 496. In South Carolina, employees may bring such a claim against a former employer. Sabb v. S.C. State Univ., 350 S.C. 416, 429, 567 S.E.2d 231 (2002).

In the present case, Plaintiff fails to put forth any evidence that Defendant negligently supervised anyone. Defendant provided Plaintiff with fair judicial proceedings. Neither Defendant nor Judge Lisenby deprived Plaintiff of his right to due process. Plaintiff fails to demonstrate a breach of any duty occurred at any judicial proceeding to justify such a claim. As such, the Town of McBee is entitled to summary judgment as a matter of law.

V. *The Court finds that Plaintiff's Claim for Malicious Prosecution is Subject to Summary Dismissal.*

To establish a claim for malicious prosecution, the Plaintiff must prove the following elements by the greater weight of the evidence: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of the proceedings in Plaintiff's favor; (4) malice in instituting the proceedings; (5) lack of probable cause; and (6) resulting injury or damage. Law v. S.C. Dep't of Corr., 368 S.C. 424, 435, 629

S.E.2d 642, 648 (2006). Plaintiff has failed to do so. No genuine issue of material fact exists in this regard. For this reason, these Defendant's motion for summary judgment should be granted.

Plaintiff cannot maintain his claim for malicious prosecution because the legal proceedings upon which his claims are based were not terminated in his favor. *See eg. Campbell v. Smith*, Civil Action No. 9:08-4078-DCN-BM, 2009 U.S. Dist. LEXIS 103247 at * 18-20 (D.S.C., Oct. 1, 2009), affirmed by, summary judgment granted by, dismissed by *Campbell v. Smith*, 2009 U.S. Dist. LEXIS 103137 (D.S.C. Nov. 4, 2009) (Plaintiff's entry of a guilty plea to some charges, with the remaining charges then being dismissed or *nolle proseed*, is not a favorable disposition of the other charges, under South Carolina law); *Medows v. City of Cayce*, Civil Action No. 3:07-409-HFF-BHH, 2008 U.S. Dist. LEXIS 112487 at *9 (D.S.C. Feb. 28, 2008) adopted by, objection overruled by, summary judgment granted by *Medows v. City of Cayce*, 2008 U.S. Dist. LEXIS 52936 (D.S.C. June 24, 2008) (*nolle prosse* "with leave to re-indict" is not a circumstance which implies or is consistent with the innocence of the accused)(citing *Jackson v. Gable*, Civil Action No. 0:05-2592-HFF-BM, 2006 U.S. Dist. LEXIS 35169, 2006 WL 1487047 at *6 (D.S.C. May 25, 2006); *Hudson v. Sims*, C/A No. 3:06-2115-GRA-JRM, 2006 U.S. Dist. LEXIS 89948 at *3 (D.S.C. Sept. 25, 2006) (where Plaintiff produced no evidence that *nolle prosequi* was entered under circumstances indicative of innocence, the magistrate judge's recommendation that suit be dismissed without prejudice was adopted by this District Court); *Stokes v. Moorman*, 2010 U.S. Dist. LEXIS 101966, *23-24, 2010 WL 3862568 (D.S.C. Aug. 17, 2010).

Plaintiff has failed to prove the elements required to support his claim for malicious prosecution. Plaintiff suggests that Town of McBee engaged in a form of malicious prosecution by failing to allow subsequent filings but has failed to produce any evidence that subsequent

filings were denied. Plaintiff noted that Town of McBee did not return a filed copy of a motion to reconsider to Plaintiff, but the South Carolina Criminal Rules on motions include no requirement for the court to send back a filed copy of a motion. Plaintiff also submits that Town of McBee engaged in malicious prosecution by denying Plaintiff the opportunity to appeal his case. Town of McBee never denied Plaintiff the opportunity to appeal his case. Instead, Plaintiff failed to properly file an appeal with the circuit court as required by Magistrate Court Rule 18.

Here, as a result of a lawful traffic stop, Plaintiff was charged with multiple traffic violations. Probable cause existed for his arrest and Plaintiff did not deny any of the charges. Plaintiff was incarcerated at Chesterfield County Detention Center on August 8, 2019 and released on August 15, 2019 when his fines were paid. The payment of Plaintiff's fines indicates Plaintiff pled guilty to the crimes he was charged with. Furthermore, Plaintiff was convicted of the crimes alleged. Clearly the legal proceedings were not terminated in Plaintiff's favor.

Accordingly, Plaintiff's claim for malicious prosecution is subject to summary dismissal because the undisputed facts reflect that probable cause existed for his arrest and the termination of the proceedings was not in Plaintiff's favor.

VI. The Court finds that Plaintiff's Claims are barred by both the doctrine of sovereign immunity and the South Carolina Tort Claims Act.

"The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." Proctor v. Dep't of Health & Env'tl. Ctrl., 368 S.C. 279, 290, 628 S.E.2d 496, 502 (Ct. App. 2006) (quoting Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 280, 607 S.E.2d 711, 714 (Ct. App. 2005)). "The State, an agency, a political subdivision, and a governmental entity

are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained" within the SCTCA. S.C. Code Ann. § 15-78-40. However, the General Assembly did not intend to waive all its sovereign immunity. "The General Assembly in this chapter intends to grant 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(b). Thus, the Act waives sovereign immunity "while also providing specific, enumerated exceptions limiting the liability of the state and its political subdivisions in certain circumstances." Wells v. City of Lynchburg, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998). Relevant exceptions to the waiver of immunities are as follows:

A. The Court finds that Town of McBee is not liable for a loss resulting from legislative, judicial, or quasi-judicial action or inaction pursuant to S.C. Code Ann. § 15-78-60(1).

Plaintiff's allegations arise from complaints related to judicial action or inaction on the part of Judge Lisenby. All of her actions were taken serving a judicial function. As such, Town of McBee is immune from suit because it cannot be liable for Plaintiff's alleged loss resulting from judicial action or inaction pursuant to S.C. Code Ann. § 15-78-60(1). *See Plyler v. Burns*, 373 S.C. 637, 652 (2007). The exceptions outlined within the Act must be liberally construed in favor of limiting liability. S.C. Code Ann. § 15-78-20(f). For this reason, Town of McBee is entitled to summary judgment as a matter of law.

B. The Court finds that Town of McBee is not liable for a loss resulting from execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process pursuant to S.C. Code Ann. § 15-78-60(3).

Plaintiff's allegations arise from complaints related to Judge Lisenby's performance of her duties as a part of the judicial process. All of her actions were taken serving a judicial function. As such, Town of McBee cannot be liable for Plaintiff's alleged loss resulting from execution or lawful implementation of judicial process pursuant to S.C. Code Ann. § 15-78-60(3).

Plaintiff also alleges that Defendant violated his rights by unlawfully restraining him. However, the Defendant at all times relevant hereto was merely enforcing and implementing the order of the court. As such, Town of McBee cannot be liable for Plaintiff's alleged loss resulting from enforcing or implementing an order of the court. *See Jackson v. S.C. Dep't of Corr.*, C.A. No. 3:14-2262-MGL-SVH, 2016 WL 403588, at *2 (D.S.C. Jan. 12, 2016) (finding that the SCTCA precluded SCDC's liability on the plaintiff's claim for false imprisonment), *R&R adopted by* 2016 WL 374826 (D.S.C. Feb. 1, 2016). Again, the exceptions outlined within the Act must be liberally construed in favor of limiting liability. S.C. Code Ann. § 15-78-20(f). As such, the Town of McBee is entitled to summary judgment as a matter of law.

C. The Court finds that Town of McBee is not liable for a loss resulting from adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies pursuant to S.C. Code Ann. § 15-78-60(4).

S.C. Code Ann. § 15-78-60(4) provides that a governmental entity, such as Town of McBee, is not liable for a loss resulting from:

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.

S.C. Code Ann. § 15-78-60(4).

Likewise, when interpreting a statute, the Court's primary function is to ascertain the intention of the legislature. The words used in the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Gilstrap v. S.C. Budget and Control Bd., Op. No. 23711 (S.C. Sup. Ct. filed September 15, 1992) (Davis Adv. Sh. No. 21 at 5, 8).

This subsection provides immunity for failure to adopt or enforce written policies, which is what Plaintiff blames for his alleged injuries. Plaintiff alleges that Defendant failed to have appropriate policies in place to provide for the safety, rights, and well-being of Plaintiff and other members of the public, and if such policies exist, failed to follow the same (Complaint ¶ 24). As such, Town of McBee cannot be liable for an alleged loss resulting from the failure to adopt or enforce written policies or if such policies exist, in failing to follow the same, pursuant to S.C. Code Ann. § 15-78-60(4). *See Adkins v. Varn*, 439 S.E.2d 822, 824 (S.C. 1993) (“the provisions of Section 15-78-60(4) are clear and unambiguous on their face and are not subject to judicial interpretation. The statute clearly exempts from liability any loss resulting from the failure to enforce an ordinance.”). For this reason, Town of McBee is entitled to summary judgment as a matter of law.

D. The Court finds that Town of McBee is not liable for the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee pursuant to S.C. Code Ann. § 15-78-60(5).

Under the Tort Claims Act, sovereign immunity is abrogated, inter alia, as to ministerial acts by governmental entities. Jensen v. Anderson County Dep’t of Social Services, 304 S.C. 195, 403 S.E.2d 615 (1991). In contrast, the Tort Claims Act provides a governmental entity is not liable for a loss resulting from the exercise of discretion by the governmental entity or employee or the performance or failure to perform any act which is in the discretion or judgment

of the governmental entity or employee. S.C. Code Ann. § 15-78-60(5). To sustain immunity under section 15-78-60(5), the governmental entity must show that when faced with alternatives, it actually weighed competing considerations and made a conscious decision to act or not to act, and that it used accepted professional standards appropriate to resolve the issue before it. Strange v. South Carolina Dep't of Highways & Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994). *See also* Niver v. South Carolina Dep't of Highways & Pub. Transp., 302 S.C. 461, 395 S.E.2d 728 (Ct. App. 1990).

In this case, Judge Lisenby exercised discretion and professional judgment in conducting Plaintiff's judicial proceedings, which is precisely what Plaintiff blames for his alleged injuries. At all relevant times, Judge Lisenby was an employee of the Town of McBee. Judge Lisenby weighed competing considerations and made a conscious decision to allow Plaintiff more time to reinstate his license. She was also faced with making the judgment call regarding whether to send Plaintiff to jail after she had given him more time to rectify his license and he drove while his license was suspended. Judge Lisenby applied her training and accepted professional standards to conduct Plaintiff's court proceedings. Accordingly, Town of McBee is not liable for the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee pursuant to S.C. Code Ann. § 15-78-60(5). For this reason, Town of McBee is entitled to summary judgment as a matter of law.

E. The Court finds that Town of McBee is not liable for a loss resulting from employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude employee pursuant to S.C. Code Ann. § 15-78-60(17).

A governmental entity is not liable for a loss resulting from employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a

crime involving moral turpitude. S.C. Code Ann. § 15-78-60(17). Therefore, to the extent that the Plaintiff alleges that Judge Lisenby's conduct was outside the scope of her official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude, Town of McBee is not liable for a loss resulting from same. For this reason, Town of McBee is entitled to summary judgment as a matter of law.

F. The Court finds that the Town of McBee is not liable for a loss resulting from the institution or prosecution of any judicial or administrative proceeding pursuant to S.C. Code Ann. § 15-78-60(23).

A governmental entity is not liable for a loss resulting from the institution or prosecution of any judicial or administrative proceeding. S.C. Code Ann. § 15-78-60(23). Plaintiff alleges losses resulting from Town of McBee's performance of its duties as part of the judicial process, therefore Town of McBee is also not liable for these losses. For this reason, Town of McBee is entitled to summary judgment as a matter of law.

VII. The Court finds that Plaintiff's claims for Constitutional Violations should be dismissed.

Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. *In re Vora*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). In regard to Plaintiff's court proceedings, the undisputed facts reflect that the Plaintiff received his *Faretta* warnings and was given an opportunity request a court-appointed attorney, which he failed to do. Plaintiff was also given an opportunity to request a jury trial, which he also failed to do. Plaintiff was provided the opportunity to appear before Judge Lisenby twice, and Plaintiff was provided the opportunity to introduce evidence. During both appearances, Plaintiff informed Judge Lisenby that he needed more time to rectify his insurance and suspended license and requested more time to do so. This is sufficient to satisfy any requirement of due process.

In regard to Plaintiff's claims against Town of McBee in his opposition concerning a lack of procedures for motions to reconsider, the South Carolina Criminal Rules on motions include no requirement for the Clerk of Court to send back a filed copy of a motion or letter of representation. Plaintiff has cited no constitutional right, statute, law, or even procedure requiring the Town of McBee to provide him with a filed copy of a motion or letter of representation.

In regard to Plaintiff's claims against Town of McBee in his opposition concerning a lack of procedures for other potential appeals, these procedures are found in the South Carolina Magistrate Court Rules. Magistrate Court Rule 18 contains the requisite appeal procedures, which Plaintiff's counsel failed to follow as he failed to properly file an appeal with the circuit court. As such, Plaintiff's claims that Town of McBee denied Plaintiff the opportunity to appeal his case are simply unfounded. None of Town of McBee's actions constitute a violation of any constitutional right. For this reason, Town of McBee is entitled to summary judgment as a matter of law.

Conclusion

IT IS THEREFORE ORDERED that Defendant Town of McBee's motion for summary judgment is granted.

AND IT IS SO ORDERED.



Chesterfield Common Pleas

Case Caption: Michael Qualls VS Town Of Mcbee

Case Number: 2020CP1300672

Type: Order/Summary Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140

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