

January 24, 2023

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SC Court of Appeals

Via Email Only: ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

Re: Latrell Wingard v. Aiken County Sheriff's Department
Appellate Case No. 2023-000094

Dear Ms. Kitchings:

In response to the deficiency letter received this morning, please find enclosed a copy of the Notice of Appeal that was filed with the Aiken County Clerk of Court today.

By copy of this letter, I am serving all counsel of record with a copy of the same.

With kind regards, I am

Sincerely,



Austin H. Crosby

AHC/cmng
Attachment

cc (via email only): Clyde Dean
Robert D. Garfield

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Jan 19 2023
SC Court of Appeals

ELECTRONICALLY FILED - 2023 Jan 24 10:43 AM - AIKEN - COMMON PLEAS - CASE#2022CP0200325

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Civil Action No.: 2022-CP-02-00325

Latrell Wingard and James Edwards as
Co-Personal Representatives of the Estate of J.E.,.....Appellants,

-v-

Aiken County Sheriff's Department and
Aiken County Sheriff Michael E. Hunt,.....Respondents.

NOTICE OF APPEAL

PLEASE take notice that Latrell Wingard and James Edwards, as Personal Representatives of the Estate of J.E., a minor, ("Appellants"), pursuant to Rule 203, SCACR, appeal the following Order of Walton J. McLeod signed and filed on December 21, 2022, denying Plaintiffs' Motion for Reconsideration of the Court's Order Granting Defendants' Motion for Judgment on the Pleadings (Exhibit A).

Appellants received notice of entry of the Order denying Plaintiffs' Motion for Reconsideration on December 21, 2022. This Notice is timely filed. A copy of the Order appealed is attached to this Notice.

~SIGNATURE PAGE TO FOLLOW~

Respectfully submitted,

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-and-

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Attorney for Appellants

Other Counsel of Record:

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robert@crowelafave.com

Attorney for Respondents

January 19, 2022
Hampton, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Latrell Wingard and James Edwards, as)
Co-Personal Representative of the Estate)
of J.E., a minor,)
)
Plaintiffs,)
)
vs.)
)
Aiken County Sheriff’s Department and)
Aiken County Sheriff Michael E. Hunt,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 2022-CP-02-00325

**ORDER DENYING PLAINTIFFS’ MOTION
FOR RECONSIDERATION**

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This matter is before the Court on Plaintiffs’ Motion for Reconsideration (“the Motion), which was timely filed on December 1, 2022. The Motion is made under Rule 59(e) pursuant to this Court’s Order Granting Defendants’ Motion for Judgment on the Pleadings, issued November 21, 2022. For the reasons set forth below, the Court hereby **DENIES** the Motion.

ANALYSIS

In the Motion, Plaintiffs argue “[t]his Court’s Order [G]ranteeing [] Defendants’ Motion for [J]udgment on the [P]leadings erroneously concludes that Defendants’ actions and/or inactions fall squarely within the purview of the [exceptions to the] waiver of immunity provided under S.C. Code Ann. §15-78-60(6).” Plaintiff’s Motion at 2. Further, Plaintiffs contend their “allegations are focused on the misconduct of the 911 dispatch center, not the fire department or any of its employees . . .” and that “[t]hese conclusions constitute errors of law, necessitating reconsideration of the Court’s Order” Granting Defendants’ Motion for Judgment on the Pleadings. *Id.* The Court respectfully disagrees.

In support of their position, Plaintiffs claim “[t]he fire department has no control over the dispatch center and how it operates. Rather, the fire department relies on 911 dispatch to properly



dispatch them, which Plaintiffs contend they failed to properly do in this case.” *Id.* at 3. On this point, however, the Court and Plaintiffs find common ground.

The Court, in its Order Granting Defendants’ Motion for Judgment on the Pleadings, relied on *Wells v. City of Lynchburg*, holding that “[t]he function at issue in this case (*i.e.*[,] Defendants’ 911 dispatch system) is part and parcel of the fire protection network, just like the water lines and fire hydrants in *Wells*.” *See* 331 S.C. 296, 305, 501 S.E.2d 746, 751 (Ct. App. 1998) (holding that “[t]he maintenance of fire hydrants and the supply of water for fighting fires clearly is included in the exceptions from liability in [S]ection 15-78-60 for the method of providing fire protection . . .”). The Court maintains its reasoning that the case at bar is analogous to *Wells*.

A fire department cannot adequately fight fires without being dispatched to a location where a fire needs to be fought. Put differently, and as stated by Plaintiffs in the Motion, “the fire department relies on 911 dispatch to properly dispatch them[.]” Plaintiff’s Motion at 3. Similarly, a fire department cannot adequately fight fires without having access to water via fire hydrants and water lines, and the fire department relies on the city in which it is located or dispatched to properly maintain those sources of water, as discussed in *Wells*. As such, the Court concludes that reconsideration of its prior Order Granting Defendants’ Motion for Judgment on the Pleadings is unwarranted.

CONCLUSION

After reviewing the applicable law and considering the arguments of counsel, the Court hereby **DENIES** Plaintiffs’ Motion for Reconsideration for the reasons set for above. Further, the Court, pursuant to the discretion afforded by Rule 59 and *Pollard v. County of Florence*, concludes that a hearing is not necessary before ruling on Plaintiff’s Motion for Reconsideration. *See* Rule 59(f), SCRCF (stating a Rule 59(e) motion “may in the discretion of the court be determined on

the briefs filed by the parties without oral argument”); *see also Pollard*, 314 S.C. 397, 401–02, 444 S.E.2d 534, 536 (Ct. App. 1994) (holding there was “no merit in Pollard's assertion that the circuit court committed reversible error in denying her motion to alter or amend the judgment under Rule 59(e) SCRPC, without first conducting a hearing or allowing [the parties] ‘to fully brief’ the issues raised in [the] motion”).

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]



Aiken Common Pleas

Case Caption: Latrell Wingard , plaintiff, et al VS Aiken County Sheriffs
Department , defendant, et al

Case Number: 2022CP0200325

Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod

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-v-

Aiken County Sheriff's Department and
Aiken County Sheriff Michael E. Hunt,.....Respondents.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Appeal has been served upon the following counsel of record by emailing a copy of the same, this 19th day of January, 2023.

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~SIGNATURE PAGE TO FOLLOW~

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Attorney for Appellants

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Re: Latrell Wingard and James Edwards as Co-Personal Representatives of the Estate of J.E., a minor v. Aiken County Sheriff's Department and Aiken County Sheriff Michael E. Hunt
Civil Action No.: 2022-CP-02-00325

Dear Ms. Kitchings:

Enclosed for filing, please find the original Notice of Appeal in the above-referenced case. We are e-mailing the Notice of Appeal for filing, and no additional copies are being provided. If additional copies are requested, please let us know. Also, our check in the amount of \$250.00 will go out in tomorrow's mail for the filing fee.

By copy of this letter, I am serving all counsel of record with a copy of the same.

If you have any questions, please let us know.

With kind regards, I am

Sincerely,



Austin H. Crosby

AHC/cmng
Attachments

cc (via email only): Clyde Dean
Robert D. Garfield