

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
Dennis Temple, SCDC# 274802,)
Plaintiff,)
v.)
State of South Carolina, et al,)
Defendants,)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

ORDER

Civil Action Number:
2022-CP-37-00276

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SC Court of Appeals

This matter came before the Court on Tuesday, November 15, 2022¹, at 11:00 a.m. upon the Plaintiff's Motion to Amend, Plaintiff's Second Motion to Amend, Plaintiff's Motion for Default Judgment, Plaintiff's Motion to Alter or Amend Judgment, and Defendant State of South Carolina's Motion to Dismiss. The hearing took place virtually with The Honorable Debra R. McCaslin presiding. Plaintiff appeared *pro se* and was present at the hearing. Assistant Attorney General Carly H. Davis appeared on behalf of the State of South Carolina. Also present were Oconee County Attorney Jim Logan, as well as Keith Denny, and R. Mills Ariail, Jr., Esquires, who joined in the Defendant's motion and relief requested.

After consideration of the record, arguments presented, and the applicable law, the Court denies Plaintiff's Motion to Amend, Plaintiff's Second Motion to Amend, and Plaintiff's Motion for Default Judgment, and grants Defendant's Motion to Dismiss pursuant to Rule 12(b)(6). Therefore, Mr. Temple's complaint is dismissed in its entirety with prejudice as to all defendants.

¹ This matter was originally heard on July 7, 2022, but due to technical difficulties, the hearing was not recorded. The Court scheduled this rehearing to clarify and preserve the record.

BACKGROUND

In December of 2010, Mr. Temple was convicted of Grand Larceny, Kidnapping, and Criminal Sexual Conduct First Degree, and sentenced to 100 years. On April 20, 2022, plaintiff filed a complaint against the defendants pursuant to Rule 60(b) alleging fraud on the Court. In his complaint, Plaintiff makes multiple allegations regarding his arrest, the representation provided by his attorneys, the actions of the prosecutors, the actions of the judges, and his convictions and his sentences. Ultimately, Plaintiff is seeking to have his criminal convictions and sentences vacated and/or set aside.

STANDARD OF REVIEW

“Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint.” *Bergstrom v. Palmetto Health All.*, 358 S.C. 388, 395, 596 S.E.2d 42, 45 (2004). The trial court should view the facts and any inferences drawn from the facts in the light most favorable to the plaintiff. *Id.* (citing *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999)). “A 12(b)(6) motion should not be granted if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004) (citing *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)).

ANALYSIS

I. Defendant's Motion to Dismiss

The State of South Carolina filed a Motion to Dismiss pursuant to SCRCP 12(b)(6) on June 10, 2022, and a memorandum of law in support on July 1, 2022. For the reasons discussed below, the Defendant's Motion to Dismiss is GRANTED and Mr. Temple's complaint is dismissed.

A. Statute of Limitations

SCRCP 60(b) provides that a motion for relief from Judgment or Order "shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken."

The South Carolina Tort Claims Act provides that "any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered." S.C. Code Ann. §15-78-110.

Furthermore, S.C. Code §17-27-45 governing post-conviction relief applications provides "[a]n application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later."

Plaintiff was convicted and sentenced in December, 2010. He subsequently appealed his conviction, which was upheld. It was remitted to the lower court on September 27, 2013. Plaintiff filed this action on April 20, 2022, well beyond the statute of limitations for a Rule 60(b) motion, tort claim, or a post-conviction relief action; therefore, plaintiff's claims are untimely and barred by the statute of limitations.

B. The Uniform Post Conviction Procedures Act (S.C. Code Ann. §17-27-10 et seq.) Is Plaintiff's Exclusive Remedy.

Plaintiff seeks to have his criminal conviction and sentence vacated and/or set aside. In South Carolina, the Uniform Post-Conviction Procedure Act takes the place of all other remedies to challenge the validity of a conviction or sentence. S.C. Code Ann. §17-27-20(B) ("Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them."). Therefore, an action pursuant to the Uniform Post Conviction Procedures Act is plaintiff's exclusive remedy for the requested relief. This action was not brought pursuant to the Uniform Post Conviction Procedures Act, so Mr. Temple's complaint is dismissed pursuant to Rule 12(b)(6).

C. Plaintiff's Claims Are Barred By Collateral Estoppel and *Res Judicata*.

Collateral estopped bars a party from relitigating an issue which was decided in a previous action. *S.C. Prop. & Cas. Ins. Guaranty Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991) (adopting the general rule set forth in the Restatement (Second) of Judgments § 27 (1982), which "provides that when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim").

Furthermore, *res judicata* "is the branch of the law that defines the effect a valid judgment may have on subsequent litigation between the same parties . . ." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 108 (1999) (quoting J. Flanagan, South Carolina Civil Procedure p. 642 (1996)). Under the doctrine of *res judicata*, a final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Cas.*

Ins. Co., 311 S.C. 189, 190-91, 427 S.E.2d 918, 919 (Ct. App. 1993); see *Bell v. Bennett*, 307 S.C. 286, 292, 414 S.E.2d 786, 789 (Ct. App. 1992) (noting that res judicata prohibits subsequent actions by the same parties on the same issues). Res judicata also bars any issues that could have been raised in the former action. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415.

Plaintiff has previously filed an appeal, two actions for Post-Conviction Relief, and two Habeas Corpus actions. See, *State v. Temple*, Appellate Case Number 2011-182806; *Dennis M. Temple, SCDC No. 274802 v. State of South Carolina*, Civil Action Number 2013-CP-37-0729; *Dennis Maurice Temple, #274802 v. Warden Joseph McFadden*, Civil Action Number 8:14-cv-3499-JFA-JDA; *Dennis Temple v. State*, Appellate Case No. 2016-002254; *Dennis Maurice Temple v. Warden Scott Lewis*, Civil Action Number 8:18-cv-03258-JFA-JDA; *Dennis Maurice Temple v. State of South Carolina*, Civil Action Number 2020-CP-37-0695. The allegations set forth in Plaintiff's Complaint have been or should have been raised previously in his prior actions; therefore, his claims are barred by the doctrines of collateral estoppel and *res judicata*.

D. Plaintiff Has Failed To State A Cause Of Action For Fraud On The Court.

In order to state a cause of action for Fraud on the Court under Rule 60(b) the plaintiff must plead particularized allegations. *Chewing v. Ford Motor Co.*, 35 F. Supp. 2d 487, 492 (D.S.C. 1998). Fraud on the Court requires a showing that one has acted with an intent to deceive or defraud the court. *Id.* When there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself sufficient to set aside a judgment for fraud on the court. *Id.* Extrinsic fraud is required to vacate a judgment. *Id.* Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." *Id.* The Court must balance the need for finality versus the need to cure inequitable conduct. *Id.*

Plaintiff has not provided particularized allegations of fraud, nor has he provided any evidence of extrinsic fraud or any misrepresentations to support a cause of action for fraud on the

court. He has fully set forth his case in his criminal appeal, his two PCR actions, and two habeas actions; therefore, he has not been deprived of any opportunity to be heard, and Mr. Temple's complaint is dismissed.

E. Plaintiff Fails To State A Cause Of Action For Fraud Against The Defendants.

To the extent Mr. Temple's complaint can be construed as a case of action for the tort of fraud, it must be dismissed for failure to state a claim. A cause of action for fraud requires: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of the falsity of the representation or reckless disregard of its truth or falsity; (5) the intent that the representation be acted on; (6) the hearer's ignorance of the falsity of the representation; (7) the hearer's reliance on the truth of the representation; (8) the hearer's right to rely on the representation; and (9) the hearer's consequent and proximate injury. *Hollman v. Woolfson*, 384 S.C. 571, 579– 80, 683 S.E.2d 495, 499 (2009) (citing *Schnellmann v. Roettger*, 373 S.C. 379, 645 S.E.2d 239 (2007)).

The plaintiff has failed to set forth any credible facts necessary to support a cause of action of fraud. The plaintiff has failed to set forth any representation of fact that is false, much less one that would be deemed material. Rather, the majority of Plaintiff's Complaint is a recitation of various alleged events that occurred throughout his prosecution, none of which give rise to fraud. Therefore, plaintiff's causes of action for fraud is dismissed.

F. Plaintiff's Claims, Even If True, Do Not Give Rise To A Cognizable Cause Of Action Against The State of South Carolina.

Pursuant to S.C. Code Ann. §15-78-20(b) and 15-78-70, the State of South Carolina is immune from suit for damages in this action, and the State of South Carolina is not a proper party to this 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 . . . 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 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.

Accordingly, the State of South Carolina is not a proper party to this action and Mr. Temple's complaint is dismissed pursuant to Rule 12(b)(6).

G. Pursuant To S.C. Code Ann. §15-78-30(f), Plaintiff Has Failed To Plead A "Loss" For Which He Can Recover From The Defendants.

Pursuant to S.C. Code Ann. §15-78-30(f) an actionable "loss" is "bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm."

Plaintiff's alleged "loss" is that he "is still being imprisoned in the State of South Carolina most violent prisons," (Plaintiff's Complaint, pp. 23-26) which is not a "loss" for which he can recover. Therefore, his Complaint is dismissed in its entirety as to all defendants pursuant to Rule 12(b)(6), and Defendant's Motion to Dismiss is GRANTED.

II. Plaintiff's Motions to Amend

Plaintiff filed two motions to amend his complaint in order to correct scriveners' errors. Specifically, plaintiff requested to amend the section of Rule 60(b) and the constitutional amendments on which his claims arise. The amendments have no bearing on the Court's holding, and even if the Amended Complaints were allowed to be filed, the case would still be dismissed for the same reasons discussed above. Accordingly, Mr. Temple's complaint is dismissed and the Plaintiff's Motions to Amend are DENIED.

III. Plaintiff's Motion for Default Judgment

Plaintiff filed a Motion for Default Judgment alleging that the State did not file an Answer. Contrary to plaintiff's allegations, the defendant timely filed a motion pursuant to Rule 12(b)(6) in lieu of an Answer; therefore, Plaintiff's Motion for Default Judgment is DENIED.

IV. Plaintiff's Motion to Alter or Amend Judgment

Plaintiff filed a Motion to Alter or Amend Judgment on August 1, 2022. This was in response to a statement made during the initial hearing in July that the State's motion would be granted. However, at the time of filing, no judgment had been filed which could be altered or amended. Therefore, this motion is moot.

IT IS SO ORDERED.

[Electronic signature of Debra R. McCaslin, Circuit Court Judge follows, next page]

DATE DEBRA R. MCCASLIN
PRESIDING JUDGE
_____, South Carolina



Oconee Common Pleas

Case Caption: Dennis M Temple VS South Carolina State of ; defendant, et al

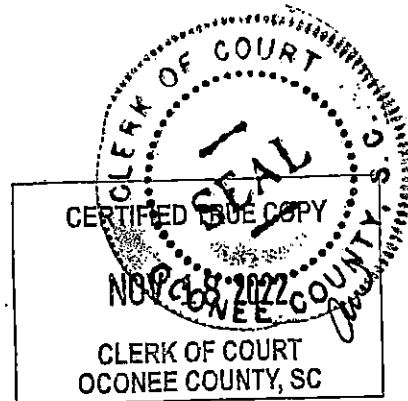
Case Number: 2022CP3700276

Type: Order/Dismissal

So Ordered

Debra R. McCaslin

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