

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

**RECEIVED**  
**Jun 09 2023**

S.C. SUPREME COURT

Candise Gore, )  
Plaintiff, )  
 )  
vs. )  
 )  
Dorchester County Sheriff’s Office; )  
Dorchester County; Carol Brown; )  
Kiesha Baldwin; Sheriff L.C. Knight; )  
Richard Darling; Sharon Branch; Wanda )  
Taylor; and Willis Beatty, )  
 )  
Defendants. )  
\_\_\_\_\_ )

C.A. No. 22-2322

**CERTIFICATION OF QUESTION  
TO THE SUPREME COURT OF  
SOUTH CAROLINA**

The Court has before it two motions to dismiss a state cause of action for reckless infliction of emotional distress. (Dkt. Nos. 42, 47). The Court has determined that the motion presents a substantial question of law of the State of South Carolina which may be determinative of the claim. Further, there appears to be no controlling precedent in the decisions of the South Carolina Supreme Court on the issue presented. Therefore, pursuant to South Carolina Appellate Court Rule 244, the United States District Court for the District of South Carolina certifies the question of law set forth below.

**I. Certified Question of Law**

Does the bar under the South Carolina Tort Claims Act of claims of “intentional infliction of emotional harm,” S.C. Code § 15-78-30(f), apply to claims of reckless infliction of emotional distress?

## II. Relevant Facts

Plaintiff alleges in her Second Amended Complaint (Dkt. No. 40) that she was subjected to a full strip search at the Dorchester County Detention Center after an arrest for domestic violence, which included a requirement that she remove her tampon in the presence of Detention Center staff and to spread her vaginal body cavity. (*Id.* ¶ 35). Plaintiff alleges that under Detention Center policy only arrestees who are to be placed into the general prison population must undergo a strip search, and a body cavity search can only be conducted on probable cause with a search warrant by certified medical personnel. (*Id.* ¶ 20). Plaintiff further alleges she was not placed into the general prison population, and there was no reasonable basis to conduct a full strip search or to require that she remove her tampon in the presence of Detention Center personnel. (*Id.* ¶ 33-34). Plaintiff asserts that because of defendants' conduct, she suffered shock, humiliation, shame and anxiety. (*Id.* ¶ 38). Plaintiff asserts various state and federal causes of action, including a claim under the South Carolina Tort Claims Act for reckless infliction of emotional distress. (*Id.* ¶¶ 69-81). Since the motions before the Court are at the motion to dismiss stage, the Court must presume the facts set forth in the complaint are true and view them in a light most favorable to the non-moving party. *Mylan Laboratories, Inc. v. Mataki*, 7 F.3d 1130, 1134 (4th Cir. 1993).

## III. Nature of the Controversy

The South Carolina Tort Claims Act defines a recoverable loss under the statute as any loss “recoverable in actions for negligence,” and explicitly excludes losses from “the intentional infliction of emotional harm.” S.C. Code § 15-78-30(f). The question of whether the bar to claims of “intentional infliction of emotional harm” includes claims of reckless infliction of emotional distress has been the subject of some uncertainty in recent years.

When the South Carolina Supreme Court first recognized the tort of outrage, otherwise known as intentional infliction of emotional distress, it relied upon Section 46 of the Restatement (Second) of Torts. *Ford v. Hutson*, 276 S.E.2d 776, 778 (S.C. 1981). The Restatement (Second) of Torts defines the tort of outrage as applying to “one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress . . . .” The comment section of Section 46 distinguishes between “intention and recklessness,” noting that the tort applies where the tortfeasor “acts recklessly . . . in deliberate disregard of the high degree of probability that the emotional distress will follow.” Rest. (2d) of Torts, § 46, comment (i).

In *Bass v. South Carolina Department of Social Services*, 780 S.E.2d 252, 260-61 (S.C. 2015), the South Carolina Supreme Court appears to have implicitly recognized the viability of a reckless infliction of emotional distress claim under the South Carolina Tort Claims Act, although ultimately ruling that the record evidence was not sufficient to constitute the tort of outrage.

In a recent report and recommendation of a federal magistrate judge, it was recommended that a motion to dismiss a claim for reckless infliction of emotional distress under the South Carolina Tort Claims Act be denied because the bar under the South Carolina Tort Claims Act applied only to intentional and not reckless conduct. *Munday v. Beaufort County*, C.A. No. 9:20-02144-DCN-MHC, 2022 WL 19404621 at \*14-15 (D.S.C. Oct. 28, 2022), *report and recommendation adopted in part and rejected in part*, C.A. No. 9:20-02144-DCN, 2023 WL 2643792 at \*9-10 (D.S.C. March 27, 2023). The District Court declined to adopt that portion of the magistrate judge’s report and recommendation, finding that, although the Court was “confronted with a question of ambiguity” regarding the scope of the term “intentional infliction of emotional harm,” a claim of reckless infliction of emotional distress was barred by the Tort

Claims Act. *Munday*, 2023 WL 2643792 at \*8-9 (D.S.C. 2023). Other South Carolina District Court decisions have similarly interpreted the South Carolina Tort Claims Act to bar claims of reckless infliction of emotional distress. *See, Faulkner v. York County School District*, C.A. No. 0:21-cv-02090-JMC, 2022 WL 673684, at \*9 (D.S.C. March 7, 2022); *Anderson v. Dorchester County*, C.A. No. 2:20-02084-DCN, 2021 WL 1186637, at \*15 (D.S.C. March 30, 2021).

In light of the ambiguity existing in the current case law, the Court respectfully requests that the South Carolina Supreme Court accept this certified question and determine whether causes of action for reckless infliction of emotional distress are barred by the South Carolina Tort Claims Act.

**IV. Conclusion**

In sum, the Court concludes that the answer to the certified question herein may be determinative of a cause of action in this case, and there is no controlling precedent in the decisions of the Supreme Court of South Carolina. Accordingly, pursuant to South Carolina Appellate Court Rule 244, the Court respectfully:

**CERTIFIES** the question set forth in Part I of this Order to the South Carolina Supreme Court; and

**ORDERS** the Clerk of this Court to forward to the Supreme Court of South Carolina under the official seal of this Court, a copy of this Certification Order together with copies of the record before this Court.

**AND IT IS SO ORDERED.**

s/ Richard Mark Gergel  
Richard Mark Gergel  
United States District Court

June 6, 2023  
Charleston, South Carolina