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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Judge Michael G. Nettles

Appellant Case No. 2022-001741

Michael QuallsAppellant

v.

Town of McBee..... Respondent.

APPELLANT'S ARGUMENT IN REPLY

June 5, 2023



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REPLY BRIEF

Table of Contents

TABLE OF AUTHORITIES3

ARGUMENT IN REPLY.....4

A. THE PROPOSED RECORD ON APPEAL DOES NOT SUPPORT THE PROPOSITION THAT APPELLANT DID NOT ALLEGE ACTIONS OUTSIDE THE SCOPE OF EMPLOYMENT BY JUDGE LISEBY OR THAT JUDGE LISEBY EXERCISED THE CARE AND SKILL OF AN ORDINARY MUNICIPAL JUDGE.4

B. SOVREIGN IMMUNITY DOES NOT APPLY TO THIS CLAIM.....6

CONCLUSION.....6

TABLE OF AUTHORITIES

Cases

<i>Plyer v. Burns</i> , 373 S.C. 637, 647 S.E.2d 188 (2007)	5
<i>Steinke v. S.C. Dept. of Labor, Licensing</i> , 336 S.C. 373 (1999).....	6
<i>Repko v. Cnty of Georgetown</i> , 424 S.C. 494 (2018).....	6
<i>Chakrabarti v. City of Orangeburg</i> , 403 S.C. 308 (Ct. App. 2013).....	6

Statutes

South Carolina Tort Claims Act	5
--------------------------------------	---

I. ARGUMENT IN REPLY

C. THE PROPOSED RECORD ON APPEAL DOES NOT SUPPORT THE PROPOSITION THAT APPELLANT DID NOT ALLEGE ACTIONS OUTSIDE THE SCOPE OF EMPLOYMENT BY JUDGE LISEBY OR THAT JUDGE LISEBY EXERCISED THE CARE AND SKILL OF AN ORDINARY MUNICIPAL JUDGE.

Respondent has misunderstood or misstated the record, particularly the record of the conduct of the agents of Respondent including the municipal judge and the town's clerk.

a. APPELLANT DOES ALLEGE THAT JUDGE LISEBY WAS OUTSIDE OF HER JURISDICTION.

Respondent has misstated Appellant's position greatly in submitting: "Plaintiff never alleges that any action taken by Judge Lisenby was outside the scope of her employment as a municipal judge. Plaintiff never alleges that Judge Lisenby did not have jurisdiction to act [...]." In fact, these are exactly the type of allegations that Appellant has made.

Judge Lisenby, though employed as a municipal judge, should have found that her reach repeatedly exceeded her grasp (were she using proper judgment and were she checked by proper supervision). Appellant alleged both non-judicial acts as well as actions outside of the Court's jurisdiction. While several acts by Judge Lisenby were improper, Appellant highlights two particular allegations, supported by the record, that illustrate this departure.

First, Lisenby acted as both judge and prosecutor, a dual role clearly prohibited by case law and due process as outlined in the initial brief. When the judge conducted her own research into the then-Defendant, she stepped beyond her role as an arbiter and outside of her protections as a judge. Second, in trying (or even skipping trial all-together) the Appellant after his request for a jury trial and an attorney, Judge Lisenby again stepped beyond her authority. These requests should have immediately removed the possibility of trial; Judge Lisenby's recourse at this point was limited to a

finding of contempt. The location of this conduct is not the question before the Court, it is the nature of the conduct. The Court must look to” the nature and function of the act as opposed to the title of the person committing the act.” *Plyler v. Burns*, 373 S.C. 637, 646, 647 S.E.2d 188, 193 (2007).

b. APPELLANT DOES ALLEGE THAT JUDGE LISENBY WAS NOT EXERCISING ORDINARY CARE.

Respondent has claimed that Judge Lisenby undeniably exercised that degree of care and skill ordinarily exercised by municipal judges under similar conditions and circumstances. Without an attempt to engage in hyperbole, this cannot be true. Judge Lisenby’s actions are not the type of conduct that the Courts of this State can endorse or let lie.

Judge Lisenby’s own deposition reads as a cautionary tale of what judges should not do when acting as neutral arbiters of the law and facts in a given case. Judge Lisenby did not use required Court procedures such as guilty pleas, waivers of rights, and jury trials when requested by Defendant (Appellant). The judge in this case admitted to each of these errors in her own deposition as noted in Appellant’s initial brief. Judge Lisenby engaged in improper fact finding while sitting as judge, even going so far as to call the South Carolina DMV on her own to inquire about Appellant. The judge repeatedly denied Appellant the access to obvious rights. Furthermore, agents of McBee failed to create an appropriate record and appeals process, with the support of the Town itself and its clerk. This alone is contradictory to Court administration guidance and requirements for municipal courts established in case law.

D. SOVREIGN IMMUNITY DOES NOT APPLY TO THIS CLAIM.

Respondent has claimed that Sovereign Immunity applies and that the South Carolina Tort Claims Act does not preclude this immunity. As Appellant noted initially, The South Carolina Supreme Court holds that under the SCTCA, “when an exception containing the gross negligence

standard applies, that same standard will be read into any other applicable exception. Otherwise, portions of the Act would be a nullity, which the Legislature could not have intended.” *Steinke v. S.C. Dept. of Labor, Licensing*, 336 S.C. 373, 398, 520 S.E.2d 142 (1999); see *Repko v. Cnty of Georgetown*, 424 S.C. 494,507, 818 S.E.2d 743, 750 (2018); *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 320, 743 S.E.2d 109, 115 (Ct. App. 2013). This line of cases showcases the premise that one exception that allows for suit under gross negligence opens a state entity to suit under other exceptions to immunity. In the case before the Court, there must be a consideration of S.C. Code Ann. § 15-78-60 which includes waivers of sovereign immunity. Within this statute, subsection 25 is within the realm of a jury’s consideration: [a waiver with respect to ...] “responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.” *Id.* This waiver, once in consideration, allows a “gross negligence” exception to be read into all other exceptions to the waiver of sovereign immunity.

The Appellant has argued several deviations from normal and appropriate procedures for engaging in the confinement of the Appellant. These deviations provide for a sufficient waiver of sovereign immunity for the conduct engaged in by Respondent and its agents.

CONCLUSION

The Respondent in this case seeks to rest its hat on various doctrines of immunity. This suit was not brought against Judge Lisenby or any town official personally. This suit, as required by the Tort Claims Act focuses on the negligence of the Town of McBee as a whole for the structure of its court operation, its failure to supervise its agents, and the gross negligence of those agents.



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PROOF OF SERVICE

I certify that I have served the Appellant's Argument in Reply on opposing counsel, J. Scott Kozacki Wilcox, Buyck & Williams PA, by mailing U.S. Postal Service to the address Post Office Box 1909, Florence, SC 29503.

May 10, 2023



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