THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Appeal No: 2022-001741
Case No. 2020-CP-13-00672

Michael Qualls .....Appellant,

v.

Town of McBee .....Respondent,

FINAL BRIEF OF THE RESPONDENT

J. Scott Kozacki
SC No. 64137
PO Box 1909
Florence, SC 29503-1909
(843) 662-3258 Telephone
(843) 662-1342 Fax
Email: skozacki@WillcoxLaw.com
ATTORNEY FOR RESPONDENT

June 20, 2023
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STATEMENT OF ISSUES ON APPEAL

1. Did the lower court err as matter of law in granting summary judgment in favor of the Town of McBee and denying Michael Qualls's subsequent motion to alter or amend the resulting judgment?

STATEMENT OF THE CASE

This matter is before this Court of Appeals pursuant to Michael Qualls's appeal of the lower court's Order filed October 4, 2022, which granted the Town of McBee's motion for summary judgment, and the subsequent denial of Mr. Qualls's motion to alter or amend judgment.

STATEMENT OF THE FACTS

On July 8, 2019, Deputy Justin Reichard[1] (hereinafter "Dep. Reichard") noticed a vehicle approaching him from behind at a high rate of speed (Reichard Depo. p. 16 R 177). It was later determined that Michael Qualls (hereinafter Mr. Qualls") was driving the vehicle. Mr. Qualls does not deny that he was driving faster than the speed limit (Qualls Depo. p. 16 R 30). Dep. Reichard changed lanes to allow the vehicle to pass him (Reichard Depo. p. 16 R 177). Mr. Qualls then made a hard right turn without using a turn signal (Reichard Depo. p. 16 R 177). Mr. Qualls also does not deny that he failed to use his turn signal when he made the right turn (Qualls Depo. p. 16 R 30).

Dep. Reichard activated his blue lights to conduct a lawful traffic stop due to speeding and failure to signal (Reichard Depo. p. 16 R 177). As Dep. Reichard exited his vehicle, Mr. Qualls

[1] Dep. Reichard is Deputy Sheriff with the Chesterfield Sheriff's Office (Reichard Depo. p. 6 R 167). Dep. Reichard has never been an employee of the Town of McBee (Reichard Depo. p. 7 R 168).

jumped out of his vehicle and looked like he was going to flee (Reichard Depo. p. 17 - 18 R 178). It appeared to Dep. Reichard that Mr. Qualls was trying to get away from the vehicle and Dep. Reichard (Reichard Depo. p. 18 R 179). Dep. Reichard was unable to see Mr. Qualls's left hand, so he drew his service weapon and issued multiple verbal commands for Mr. Qualls to show his hands (Reichard Depo. p. 17 R 178. Dep. Reichard closed the gap between himself and Mr. Qualls, and after a struggle, was able to handcuff Mr. Qualls (Reichard Depo. p. 17 R 178). Mr. Qualls continued to fight with Dep. Reichard after being handcuffed. (Reichard Depo. pp. 17-18 R 178-179).

As Dep. Reichard attempted to escort Mr. Qualls to his patrol vehicle, Mr. Qualls fought with Dep. Reichard and tried to jerk away from him (Reichard Depo. p. 18 R 179). While Dep. Reichard tried to put Mr. Qualls into the back of his patrol vehicle, Mr. Qualls continued to try to escape Reichard Depo. p. 19 R 180). Even after Dep. Reichard managed to put Mr. Qualls into his patrol vehicle, Mr. Qualls continued to resist and fight, and slid to the other side of the vehicle so Dep. Reichard could not put the seatbelt on him (Reichard Depo. p. 19 R 180). Still struggling, Mr. Qualls grabbed Dep. Reichard's arm and tried to jerk him into the patrol car, attempting to use his upper body strength to throw Dep. Reichard off balance (Reichard Depo. p. 19 R 180). Deputy Reichard decided to let Mr. Qualls sit in the patrol car without a seatbelt in hopes he would cool off and calm down (Reichard Depo. p. 20 R 181). Dep. Reichard advised dispatch that Mr. Qualls was possibly trying to run, and that Mr. Qualls was detained but still fighting with him (Reichard Depo. p. 22 R 183). In fact, Mr. Qualls even stated himself that he "wouldn't doubt" that he struggled with Dep. Reichard (Qualls Depo. p. 22-23 R 183-184). Thereafter, Deputy Randall Kerns ("Dep. Kerns") arrived and Mr. Qualls continued to refuse to comply (Reichard Depo. p. 21 R 182). Dep. Reichard determined that the vehicle was uninsured, had an improper vehicle license,

that the tag was suspended, and that Mr. Qualls's license was suspended (Reichard Depo. p. 24 - 26 R 185-187).

Consequently, as a result of the July 8, 2019, lawful traffic stop, Mr. Qualls was arrested on charges of Speeding between 15 and 24 miles per hour over the speed limit, Turning Unlawfully, Operating Uninsured Vehicle, Vehicle License Improper, Suspended Tag, Driving Under Suspension, and Disobedience to Officer (Reichard Aff. ¶ 5 R 226). These violations were personally witnessed by Dep. Reichard (Reichard Depo. pp. 16 – 22 R 177-183; Reichard Aff. ¶ 6 R 226). Dep. Kerns transported Mr. Qualls to the County Jail (Reichard Depo. p. 21 R 182, Reichard Aff. ¶ 4 R 225-226). Dep. Reichard thereafter completed an Incident Report (Reichard Depo. p. 37 R 198; Reichard Aff. ¶ 4 R 225-226).

On July 8, 2019, Mr. Qualls appeared at the Town of McBee bond court before Municipal Court Judge Barbara Lisenby (Bond Form II R 244). Mr. Qualls alleged that he was never read his Faretta warnings or offered a public defender. (Complaint ¶¶13, 15 R 003). However, at this time, Mr. Qualls was undeniably informed, verbally and in writing, of his right to trial by jury, informed of the charges against him and the nature of the charges, informed of his right to counsel and right to court-appointed counsel if financially unable to employ counsel, and was informed of his right to obtain court appointed counsel if indigent (Bond Checklist for Magistrates and Municipal Judges; Lisenby Aff. ¶4 R 241). Mr. Qualls was further provided with verbal and written instructions on how to obtain court appointed counsel (Bond Form II R244, Reichard Aff. ¶13 R 226; Lisenby Aff. ¶4 R 241). Mr. Qualls's signature on the Bond Checklist acknowledges receipt of the above information in oral and written form. (Bond Form II R 244). Upon receiving notice of his rights, Mr. Qualls was given the opportunity to request a jury trial and to request court-appointed counsel, yet he failed to do so (Reichard Aff. ¶12 R 226; Lisenby Aff. ¶4 R 241).

Despite being provided with detailed oral and written instructions on how to obtain court appointed counsel, Mr. Qualls did not appear before the Clerk of Court for indigency screening. (Reichard Aff. ¶13 R 226; Lisenby Aff. ¶6 R 242).

According to Judge Lisenby, Mr. Qualls pled guilty at his July 8, 2019, appearance. (Lisenby Aff. ¶ 4 R 241). Mr. Qualls asked for more time to pay his fines, reinstate his insurance, and remedy the suspension on his driver's license, so Judge Lisenby gave Mr. Qualls 30 days to do so. (Lisenby Aff. ¶ 4 R 241). Mr. Qualls appeared again before Judge Lisenby on August 8, 2019. (Bond Form II R 244). Mr. Qualls did not have the money to pay for his tickets and had not reinstated his insurance or license (Reichard Depo. p. 32 R 193). Judge Lisenby recalls that Mr. Qualls told her he did not drive to court that day (Lisenby Aff. ¶ 5 R 241). As she recalls, she gave Mr. Qualls 30 more days to reinstate his insurance and remedy the suspension on his driver's license and Mr. Qualls left the courtroom. (Lisenby Aff. ¶ 5 R 241). Shortly thereafter, according to Judge Lisenby, Mr. Qualls was brought back into the courtroom by deputies for attempting to drive without a valid license (Lisenby Aff. ¶ 5 R 241). She recalls that even though Mr. Qualls had denied driving to court, he had in fact driven to court with a suspended license. *Id.* As such, Judge Lisenby advised Mr. Qualls that he had not complied with her previous conditions and ordered that he be taken to jail (Lisenby Aff. ¶ 5 R 241). It was not until after Mr. Qualls 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 (Reichard Depo. P. 32 R 193; Reichard Aff. ¶ 16 R 227; Lisenby Aff. ¶ 8 R242).

According to Deputy Reichard's recollection of events, when Mr. Qualls appeared before Judge Lisenby, Judge Lisenby informed Mr. Qualls of his right to trial by jury, the charges against him and the nature of the charges, his right to counsel and right to court-appointed counsel if

financially unable to employ counsel, and instructions on how to obtain court appointed counsel. (Reichard Depo. P. 33 R 194; Reichard Aff. ¶ 12 R 226). Judge Lisenby asked Mr. Qualls if he wanted a bench trial or a jury trial, and Mr. Qualls answered that he wanted a bench trial. (Reichard Depo. P. 32 R 193). After Judge Lisenby explained the process of the bench trial, she asked Mr. Qualls if he wanted to continue with a bench trial, and Mr. Qualls answered "Yes." (Reichard Depo. P. 33 R 194). Judge Lisenby listened to Mr. Qualls present his case. (Reichard Depo. P. 33 R 194). Mr. Qualls admitted to Judge Lisenby that he did not have money to pay for his tickets and had not reinstated his insurance or license (Reichard Depo. P. 32 R 193). Mr. Qualls drove to court even though his license was suspended (Reichard Depo. P. 32 R 193; Reichard Aff. ¶ 16 R 227). As such, Mr. Qualls was advised that he was sentenced to jail (Reichard Depo. P. 32 R 193). It was not until after Mr. Qualls was advised he was going back to jail, taken into custody, and was being escorted out of the courtroom that he requested an attorney and a jury trial for the first time (Reichard Depo. P. 32 R 193; Reichard Aff. ¶ 16 R 227).

Mr. Qualls was incarcerated at Chesterfield County Detention Center on August 8, 2019, and released on August 15, 2019, when Mr. Qualls's fines were paid (Lisenby Aff. ¶ 9 R 242; Chesterfield County Detention Center Release Report R 161).

Subsequently, Mr. Qualls filed the underlying lawsuit alleging a violation of his civil and/or constitutional rights in state court. Specifically, Mr. Qualls alleged that the Town of McBee: (1) was negligent/grossly negligent; (2) violated his constitutional rights; (3) falsely arrested and imprisoned him; and (4) engaged in malicious prosecution (Complaint R 002-007). The Town of McBee vehemently denied Mr. Qualls's claims and asserted numerous affirmative defenses (Answer R 008-014). Likewise, the Town of McBee also moved for summary judgment in its favor.

On June 7, 2018, a hearing was held before the Honorable Michael G. Nettles ("Judge Nettles") relative to the then pending motion for summary judgment. (Transcript of Summary Judgment Hearing R 203-224). At that hearing, all parties were represented by legal counsel and they were allowed to argue their respective positions (Transcript of Summary Judgment Hearing R 203-224). As well, Mr. Qualls, at that time, withdrew his claims that he was not given his Farreta warnings and offered court-appointed counsel (Transcript of Summary Judgment Hearing p. 12, R 214). After careful consideration, Judge Nettles granted the Town of McBee's motion for summary judgment in a detailed and comprehensive Order filed October 4 2022 (Order Granting Summary Judgment filed Oct. 4, 2022 R 260-277). Judge Nettles also denied Michael Qualls's motion to alter or amend judgment. The instant appeal followed (Transcript of Motion to Alter or Amend Judgment R 246-259; Order denying Motion to Alter or Amend R 278-280).

APPLICABLE LEGAL 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).

ARGUMENT

I. The Town of McBee is Entitled to Absolute Immunity.

Initially, the Town of McBee is entitled to Absolute Immunity. No genuine issue of material fact existed in this regard. Accordingly, the decisions of the lower court were not erroneous as a matter of law. Therefore, the decisions of the lower court should be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be

entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

Municipal courts are part of the South Carolina unified judicial system. 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."); 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). As well, 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.

Here, the lower court properly reasoned that:

> 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.
>
> (Order Granting Summary Judgment filed Oct. 4, 2022 p. 5 R 264).

No errors of law were committed in this regard.

Additionally, Mr. Qualls also failed to produce sufficient evidence that Judge Lisenby acted "in the clear absence of all jurisdiction" or satisfied any recognized exception to the state's application of judicial immunity. No genuine issue of material fact existed in this regard. Thus, Judge Lisenby was absolutely immune from suit for monetary damages, even if her actions were done in error, maliciously, or in excess of their authority. Stump, 435 U.S. 357 n. 7; Sibley v. Lando, 437 F.3d 1067, 1070 (11th Cir. 2005); Plyler, 373 S.C. at 646. Accordingly, the decisions of the lower court were not erroneous as a matter of law. Therefore, the decisions of the lower court should be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

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

Next, Mr. Qualls's claims for false imprisonment were subject to summary dismissal because his arrest was supported by probable cause. No genuine issue of material fact exists in this regard. Accordingly, the decisions of the lower court were also not erroneous as a matter of law. For this reason, the decisions of the lower court should also be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

Although Mr. Qualls submits that he did not plead false arrest, and that such claims have been withdrawn, any claim for false arrest would also 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, Mr. Qualls 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 v. Plowden Motor Co., 246 S.C. at 323, 143 S.E.2d at 609.

Again, as the undisputed record reflects, probable cause undeniably existed for Mr. Qualls's arrest. Indeed, as the undisputed record reflected:

> ....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.
>
> (Order Granting Summary Judgment filed Oct. 4, 2022 p. 5 R 265).

Accordingly, the decisions of the lower court were also not erroneous as a matter of law. For this reason, the decisions of the lower court should also be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

III. Mr. Qualls's claim for negligence/gross negligence also failed as a matter of law.

Mr. Qualls's claim for negligence/gross negligence also failed as a matter of law. No genuine issue of material fact exists in this regard. Accordingly, the decisions of the lower court were not erroneous as a matter of law. For this reason, the decisions of the lower court should also be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

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, Mr. Qualls undeniably failed to demonstrate a breach of any duty occurred at Mr. Qualls's judicial proceedings. No genuine issue of material fact exists in this regard. Indeed, as properly reasoned by Judge Nettles:

> The sworn affidavit of Dep. Reichard reflects that neither he and/or Defendant were negligent or grossly negligent in any manner whatsoever. Judge Lisenby undeniably exercised that degree of care and skill ordinarily exercised by municipal judges under similar conditions and in similar circumstances. Judge Lisenby also did not deviate from the generally accepted standards, practices, and procedures exercised by competent municipal judges in municipal court proceedings. Accordingly, Plaintiff clearly failed to establish the breach of any duty owed to him.
>
> (Order Granting Summary Judgment filed Oct. 4, 2022 p. 8 R 267).

Accordingly, the decisions of the lower court were also not erroneous as a matter of law. For this reason, the decisions of the lower court should also be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

IV. Mr. Qualls's Claim for Negligent Supervision was also Subject to Summary Dismissal.

Mr. Qualls's Claim for Negligent Supervision was also subject to summary dismissal. No genuine issue of material fact exists in this regard. Accordingly, the decisions of the lower court were not erroneous as a matter of law. For this reason, the decisions of the lower court should also

be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

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, as succinctly and properly reasoned by Judge Nettles:

> ...Plaintiff also 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.
>
> (Order Granting Summary Judgment filed Oct. 4, 2022 p. 9 R 268).

Accordingly, the decisions of the lower court were also not erroneous as a matter of law. For this reason, the decisions of the lower court should also be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

V. Mr. Qualls Claim for Malicious Prosecution was Subject to Summary Dismissal.

Mr. Qualls's claim for malicious prosecution was also subject to summary dismissal. No genuine issue of material fact exists in this regard. Accordingly, the decisions of the lower court were not erroneous as a matter of law. For this reason, the decisions of the lower court should also be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

To establish a claim for malicious prosecution, a 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). Mr. Qualls undeniably has failed to do so. No genuine issue of material fact exists in this regard. In fact, Mr. Qualls cannot maintain his claim for malicious prosecution because the legal proceedings upon which his claims are based were undeniably 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 prossed*, 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).

Indeed, as properly held by Judge Nettles:

> 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.
>
> (Order Granting Summary Judgment filed Oct. 4, 2022 p. 9 R 268).

Accordingly, the decisions of the lower court were also not erroneous as a matter of law. For this reason, the decisions of the lower court should also be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

VI. Mr. Qualls's Claims were also barred by both the doctrine of sovereign immunity and the South Carolina Tort Claims Act.

Mr. Qualls's claims were also barred by both the doctrine of sovereign immunity and the South Carolina Tort Claims Act. No genuine issue of material fact exists in this regard. Accordingly, the decisions of the lower court were not erroneous as a matter of law. For this reason, the decisions of the lower court should also be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

"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 & Envtl. 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 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).

Mr. Qualls's allegations arise from complaints related to judicial action or inaction on the part of Judge Lisenby. However, all of Judge Lisenby's actions were undeniably taken serving a judicial function. No genuine issue of material fact exists in this regard. As such, the Town of McBee is immune from suit because it cannot be liable for Mr. Qualls's alleged loss resulting from judicial action or inaction pursuant to S.C. Code Ann. § 15-78-60(1). 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, the Town of McBee was entitled to summary judgment as a matter of law.

B. The 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 also arise from complaints related to Judge Lisenby's performance of her duties as a part of the judicial process. Indeed, all of Judge Lisenby's actions were taken serving a judicial function. No genuine issue of material fact exists in this regard. As such, the

Town of McBee also cannot be liable for Mr. Qualls's alleged loss resulting from execution or lawful implementation of judicial process pursuant to S.C. Code Ann. § 15-78-60(3).

Mr. Qualls also alleges that the Town of McBee violated his rights by unlawfully restraining him. However, the Town of McBee, by and through Judge Lisenby and at all times relevant hereto, was merely enforcing and implementing the order of the court. As such, the Town of McBee also cannot be liable for Mr. Qualls's alleged loss resulting from enforcing or implementing an order of the court. 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 was entitled to summary judgment as a matter of law.

C. The Town of McBee was 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 Mr. Qualls blames for his alleged injuries. Mr. Qualls alleges that Defendant failed to have appropriate policies in place to provide for the safety, rights, and well-being of Mr. Qualls and other members of the public, and if such policies exist, failed to follow the same (Complaint ¶ 24 R 004-005). As such, the 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). 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 was entitled to summary judgment as a matter of law.

D. The 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 that 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 Mr. Qualls's judicial proceedings, which is precisely what Mr. Qualls blames for his alleged injuries. No genuine issue of material fact exists in this regard. At all relevant times, Judge Lisenby undeniably was an employee of the Town of McBee. Judge Lisenby also weighed competing considerations and made the conscious decision to allow Mr. Qualls more time to reinstate his license. She was also faced with making the judgment call regarding whether to send Mr. Qualls 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 Mr. Qualls's court proceedings. Accordingly, the Town of McBee also 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, the Town of McBee was also entitled to summary judgment as a matter of law.

E. The 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 also 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

Mr. Qualls 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, the Town of McBee is not liable for a loss resulting from same. For this reason, the Town of McBee was also entitled to summary judgment as a matter of law.

F. 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 also 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). Mr. Qualls alleges losses resulting from the Town of McBee's performance of its duties as part of the judicial process, therefore the Town of McBee is also not liable for these losses. For this reason, the Town of McBee was also entitled to summary judgment as a matter of law.

VII. Mr. Qualls's claims for any alleged constitutional violations were also properly dismissed.

Mr. Qualls's claims for any alleged constitutional violations were also properly dismissed. No genuine issue of material fact exists in this regard. Accordingly, the decisions of the lower court were not erroneous as a matter of law. For this reason, the decisions of the lower court should also be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorney's fees and costs in defense of this frivolous appeal.

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 Mr. Qualls's court proceedings, the

undisputed facts reflect that the Mr. Qualls received his Faretta warnings and was given an opportunity request a court-appointed attorney, which he failed to do. Mr. Qualls was also undeniably given an opportunity to request a jury trial, which he also failed to do. Mr. Qualls was further unquestionably provided the opportunity to appear before Judge Lisenby twice, and Mr. Qualls was provided the opportunity to introduce evidence. During both appearances, Mr. Qualls also 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. No error of law was committed in this regard.

In regard to Mr. Qualls'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. Mr. Qualls 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. No error of law was committed in this regard.

In regard to Mr. Qualls'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 Mr. Qualls's counsel failed to follow as he failed to properly file an appeal with the circuit court. As such, Mr. Qualls's claims that Town of McBee denied Mr. Qualls 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 was also entitled to summary judgment as a matter of law.

CONCLUSION

In conclusion, the lower court properly granted summary judgment in favor of the Town of McBee and denied Michael Qualls's motion for reconsideration thereof. Accordingly, the decisions of the lower court should be affirmed, this appeal should be dismissed in its entirety, judgment in favor of the Town of McBee should be entered, and the Town of McBee should be awarded attorneys' fees and costs in defense of this frivolous appeal.

J. Scott Kozacki
SC No. 64137
PO Box 1909
Florence, SC 29503-1909
(843) 662-3258 Telephone
(843) 662-1342 Fax
Email: skozacki@WillcoxLaw.com
ATTORNEY FOR RESPONDENT

June 26, 2023
Florence, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Case No. 2020-CP-13-00672

Michael Qualls ..... Appellant,

v.

Town of McBee ..... Respondent,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellant's Final Brief complies with Rule 211 SCACR.

By: _____

J. Scott Kozacki, Esq.
SC Bar No.: 64137
Willcox, Buyck & Williams, P.A.
248 West Evans Street
Florence, South Carolina 29501
Telephone: (843) 662-3258
Facsimile: (843) 662-1342
Email: skozacki@willcoxlaw.com
Attorney for Respondent

June 22, 2023