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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Judge Diane S. Goodstein, First Judicial Circuit

Appellate Case No. 2022-001462

Daryl Parker, Appellant

v.

Orangeburg County, Respondent

FINAL BRIEF OF RESPONDENT

Ness & Jett, LLC
Norma A. T. Jett #12995
Alison Dennis Hood #77128
P.O. Box 909
Bamberg, SC 29003
(803) 245-5178
alisondhood@gmail.com

Attorneys for Respondent

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STATEMENT OF ISSUES ON APPEAL

I. Can a County Detention Center release an inmate who is being held pursuant to a valid and confirmed bench warrant?

II. Did the Orangeburg County Detention Center exercise slight care, as a matter of law, in detaining Plaintiff, pursuant to the bench warrant, until such time as the warrant was rescinded?

III. Did the lower court err in granting Respondent's motion for summary judgment?

STATEMENT OF THE CASE

Appellant filed his Complaint on February 2, 2021, concerning a period of detention beginning December 14, 2020 and ending February 2, 2021. (R. pp. 1—5). Respondent filed its Answer on February 19, 2021, denying liability and asserting immunity from suit under the South Carolina Tort Claims Act. (R. pp. 6—12). On June 7, 2022, Respondent filed for summary judgment. (R. pp. 110—114). On July 15, 2022, Respondent filed its brief in support of its motion, along with a number of exhibits. (R. pp. 115—139).

On July 19, 2022, Judge Diane S. Goodstein heard Respondent's motion for summary judgment, pursuant to Rule 56(c), SCRCP. (R. pp. 97—109).

On August 16, 2022, the lower court issued its Order granting summary judgment and dismissing the underlying complaint, in its entirety. (R. pp. 140—148). On August 23, 2022, Appellant moved for Reconsideration. (R. pp. 149—150). On September 26, 2022, that motion was denied. (R. pp. 151—153).

Appellant timely filed this appeal.

FACTS

On December 14, 2020, Plaintiff was booked into the Orangeburg County Detention

Center on three counts of violating §34-11-60, S. C. Code of Laws (fraudulent checks). (R. pp. 125—139). At that time, Appellant was served with an outstanding Bench Warrant (#2015B3800100171), in Case Number: J698100 / 2012GS3800353. (R. pp. 112—113). The Bench Warrant states that it was issued following the failure to comply with a court order / failure to pay fees in a prior case, where Appellant was charged with receiving stolen goods, value of $2,000 or less, in violation of §16-13-180, S.C. Code of Laws. The Bench Warrant was signed by the Clerk of Court for General Session. The Bench Warrant purports to have been served on Appellant by S. Livingston, Orangeburg County Sheriff's Office, on December 14, 2020. (According to the Orangeburg County Public Index, Appellant owed $347.63 in court costs.) (R. p. 154).

On January 29, 2021, Appellant's criminal defense attorney Skyler Hutto sent a letter to the jail, inquiring about Plaintiff's continued incarceration. (R. pp. 125—139). On February 1, 2021, the jail responded, notifying Mr. Hutto that the outstanding warrant was still active, according to the Office of the Clerk of Court, whom the jail consulted. (R. p. 137). On February 2, 2021, Appellant sought an Order to lift the Bench Warrant, which was granted by Judge Dickson. (R. p. 132). On February 2, 2021, Appellant was released from the jail. (R. pp. 125—139).

Appellant sued only Orangeburg County, which owns and operates the Orangeburg County Detention Center, for two causes of action: Negligence / Gross Negligence and Wrongful Imprisonment. (R. pp. 2—5). Appellant concedes the validity of the bench warrant, its service, and Appellant's detention, initially, pursuant to the bench warrant. Appellant seems to argue that the detention became unlawful at some point prior to February 2, 2021 (at which time Appellant was released, pursuant to Judge Dickson's Order). Appellant claims damages for this

period of detention, which he claims was unlawful, despite the existence and confirmation of the outstanding bench warrant.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. To determine if any genuine issue of material fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Id.

"When opposing a summary judgment motion, the nonmoving party must do more than 'simply show there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial." *Dunes West Golf Club, LLC v. Town of Mt. Pleasant,* 401 S.C. 280, 293, 737 S.E.2d 601, 607-608 (2013). *See also Russell v. Wachovia Bank. N.A.,* 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) and *Baughman v. AT&T,* 306 S.C. 101, 107, 410 S.E.2d 537, 545 (1991).

"Summary judgment should be granted only where it is perfectly clear that no genuine issue of material fact exists and inquiry into facts is not desirable to clarify application of the law." *Wortman v. Spartanburg,* 310 S.C. 1, 4, 425 S.E. 2d 18, 20 (1992). "The judgment sought shall be rendered forthwith 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 and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "[A]n adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP.

ARGUMENT

I. Respondent is required to detain individuals subject to confirmed, valid, bench warrants.

The bench warrant in this case states: "To all the Sheriffs, Deputy Sheriffs, etc...It is, therefore, ordered that you make diligent search for the above named and take him to the County jail / detention facility, where he will be safely held until he may be brought before this Court, or otherwise discharged by due course of law." (R. pp. 112-113). The bench warrant was entered by the Clerk on September 25, 2015. It was served on Appellant on December 14, 2020. At that time, Appellant was taken to the Orangeburg County Detention Center, pursuant to the bench warrant (and other outstanding warrants).

Pursuant to Rule 30(b), S. C. Rules of Criminal Procedure, bench warrants require "either the signature of the trial judge or the signature of the respective clerk of court at the direction of the trial judge." In this case, the Clerk of Court, issued the bench warrant, which directs the jail to detain Appellant "until he may be brought before this Court, or otherwise discharged by due course of law." On February 1, 2021, the jail confirmed with the Clerk of Court that the bench warrant was still valid. (R. pp. 136—137). Upon receipt of the February 2, 2021 Order, Appellant was released.

Respondent has no authority or discretion to reject an inmate presented to the jail for admission with a valid bench warrant. Pursuant to §24-5-10, S. C. Code of Laws, the Orangeburg County Detention Center is under the obligation to house any person delivered to the jail pursuant to a facially valid bench warrant and does not have discretion to refuse to accept an individual so presented. In the absence of discretion to refuse to house such individuals,

Respondent cannot be held liable for detaining an inmate pursuant to a facially valid, and in this case confirmed-active, bench warrant. In this case, the bench warrant was issued lawfully, presented to the jail at the time of Appellant's initial incarceration, confirmed on February 1, 2021, and finally rescinded on February 2, 2021, at which time the Appellant was released. Respondent acted appropriately and in compliance with the terms of the bench warrant, which directed Appellant's continued detention.

Under §15-78-60(4), S. C. Code of Laws, Respondent is immune for any losses resulting from the adoption, enforcement, or compliance with any law. (Being in derogation of sovereign immunity, the provisions of the South Carolina Tort Claims Act are to be strictly construed against liability, pursuant to §15-78-20(f), S. C. Code of Laws.) The lower court correctly ruled that Respondent cannot be held liable for abiding by the terms of the bench warrant issued in this case. In fact, Respondent is prohibited from taking any other actions, under law.

There is no viable cause of action for false imprisonment in this case: "It has long been the law that one arrested pursuant to a facially valid warrant has no cause of action for false arrest." *Bushardt v. United Inv. Co.,* 121 S.C. 324, 330, 113 S.E. 637, 639 (1922). Appellant's detention was supported by a valid bench warrant at all times. If a Plaintiff suing for false arrest "has shown that the arrest and imprisonment of which he complains was made under legal process, regular in form, and lawfully issued and executed, then he has proved himself out of court." *McConnell v. Kennedy,* 29 S.C. 180, 186-87, 7 S.E. 76, 78 (1888).

The cause of action for false imprisonment fails as a matter of law.

II. Respondent has no discretion, authority to cancel or rescind bench warrants.

If a Defendant fails to appear at a court proceeding to which he has been summoned, the Court must issue a bench warrant for the Defendant, pursuant to §38-53-70, S. C. Code of Laws. Respondent holding facility has no authority to cancel or rescind warrants issued by the Court. Under Article I, §8 of the South Carolina Constitution, legislative, executive and judicial powers of the government shall be forever separate and distinct from each other, and no person exercising the functions of one of the said departments shall assume or discharge the duties of any other. "The operational effect of this doctrine is to prevent one branch of government from usurping the power and authority of another." *Knotts v. S.C. Dep't of Natural Res.*, 348 S.C. 1, 7, 558 S.E.2d 511, 514 (2002). Respondent detention facility has no authority or discretion to rescind or cancel an Order from the Court, the judicial branch, including the bench warrant at issue in this case. The Orangeburg County Detention Center jail administrator, Vernetia Dozier, testified as much: "I don't normally get in the tendency of questioning a Judge, you know?" (R. p. 84, line 22—p. 85, line 1).

Lacking any authority to provide the relief requested by the Appellant (cancellation of the persisting bench warrant) Respondent is further entitled to dismissal as a matter of law, under the South Carolina Tort Claims Act. Pursuant to §15-78-60(20), S. C. Code of Laws, Respondent cannot be held liable for the acts or omission of those it does employ, lacking both the right to control or terminate such employees. *See Faile v. South Carolina Department of Juvenile Justice,* 350 S.C. 315, 566 S.E.2d 536, 543 (2002). *See also, for example, Poloschan v. Simon,* 2014WL1713562 (April 28, 2014). Respondent is similarly immune from suit under §15-78-60(2), S. C. Code of Laws, which provides that the Respondent is not liable for any loss resulting from administrative action or inaction of a judicial or quasi-judicial nature. Issues related to the

issuance or rescission of a bench warrant are judicial in nature and outside the control of the jail administration.

The lower court correctly ruled that Respondent cannot be held liable for respecting the integrity of the Court in honoring the bench warrant's instructions to detain Appellant.

III. Respondent used due care, as a matter of law, in regard to Appellant's detention.

Appellant argues that Respondent failed to use due care in notifying court administration of Appellants continued detention. However, Appellant has failed to produce any evidence that Respondent did not comply with South Carolina law or otherwise failed to use at least slight care.

Jail Administrator Vernetia Dozier testified that the jail provides notice daily to the public defender's office, the Clerk or Court, and the Orangeburg County Sheriff's Office of the daily roster of inmates. (R. p. 75, line 18— p. 76, line 12; R. p. 81, line 5—p. 82, line 4). This satisfies the statutory requirement under §24-5-110, S. C. Code of Laws, which requires the jail to update the Court regarding individuals detained in the jail. There is no evidence in the record to suggest this information was not so conveyed.

Additionally, on January 29, 2021, Appellant requested that the jail inquire into the continued incarceration. The jail did inquire with the Clerk of Court's Office and confirmed the warrant was still valid. Counsel for appellant was notified of the persisting warrant on February 1, 2021. (R. p. 137). On February 2, 2021, Judge Dickson rescinded the warrant and Appellant was released. The option to have the warrant lifted was available to Appellant at any time, through recourse to the judiciary, which issued the bench warrant. Absent an order from the Court, Respondent did not have any lawful authority to rescind the bench warrant.

A governmental entity is not liable for a loss resulting from the "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any inmate, except when the responsibility or duty is exercised in a grossly negligent manner." §15-78-60(25), S. C. Code of Laws. "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). "It is the failure to exercise even the slightest care." *Faile*, 350 S.C. at 331-32, 566 S.E.2d at 544 (2002). "While gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court." *Etheredge v. Richland Sch. Dist. One,* 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000).

Appellant suggests that the jail should have established a system to advocate for inmates to seek cancellation of outstanding bench warrants. Appellant cites to *Wright v. PRG Real Est. Mgmt., Inc.,* 426 S.C. 202, 219, 826 S.E.2d 285, 294 (2019) in support of the proposition that the jail has a duty to advocate for the cancellation of outstanding bench warrants. The *Wright* case concerns a resident in an apartment who was assaulted in a common parking area. There, the Court concluded that there were questions of fact in that case from which a jury might find a duty of care, to provide sufficient security measures, arose. However, in this case, arising under the South Carolina Tort Claims Act, Appellant must demonstrate that the jail failed to use slight care. Appellant cannot meet that burden, in light of the confirmed bench warrant, which justifies the detention, as a matter of law.

Further, in the *Wright* case, the landlord had the ability and authority to provide the proposed security and had undertaken to do so. In this case, the Respondent, as a matter of law,

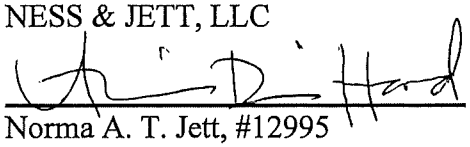
does not have the authority or ability to provide the proposed advocacy for the cancellation of bench warrants. Appellant suggests that the Respondent detention facility might have undertaken an entirely unprecedented role as advocate. However, "[t]he fact that the [governmental entity] might have done more does not negate the fact that it exercised, 'slight care.'" *See Etheredge,* 341 S.C. at 312, 534 S.E.2d at 278. It is not relevant in this action that a jury might imagine some process which may have hastened Appellant's release. In fact, Appellant did have appointed counsel assigned to him during his detention. Upon petition to the Court, Appellant was released, by Court Order, on February 2, 2021. Respondent jail is permitted to rely on the properly executed, and served, bench warrant in this case.

There is sufficient evidence in this case to demonstrate that the Respondent used at least slight care during the term of Appellant's detention, as a matter of law. There is no evidence from which a jury could conclude otherwise, and Appellant's reference to the *Wright* case is not persuasive.

CONCLUSION

The Court should dismiss the appeal, in its entirety, upholding the lower court Order granting summary judgment and dismissing the case in its entirety. Appellant fails to identify any errors of law which would require reversal of the lower court's order in this case. There are further no material questions of fact which would preclude summary judgment.

NESS & JETT, LLC

By: 

Norma A. T. Jett, #12995
Alison Dennis Hood, #77128
P.O. Box 909
Bamberg, SC 29003
T (803) 245-5178
F (803) 245-5384
ATTORNEYS FOR RESPONDENT

July 10, 2023

Bamberg, SC

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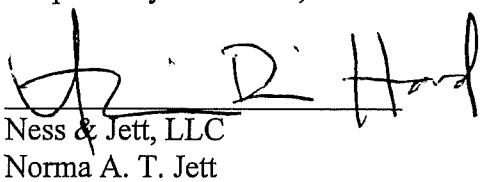
Rule 211(b) CERTIFICATION

I, Alison Dennis Hood, attorney for the Respondent, do hereby certify the foregoing Final Brief of Respondent complies with Rule 211(b), SCACR.

July 10, 2023

Bamberg, South Carolina

Respectfully submitted,



Ness & Jett, LLC
Norma A. T. Jett
Alison Dennis Hood
Ness & Jett, LLC
P.O. Box 909
Bamberg, South Carolina 29003
Phone: (803) 245-5178
Fax: (803) 245-5384