

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-08-1283

Jennifer D. Bowzard

Sheriff Wayne Dewitt and Berkeley County  
Sheriff's Office

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for :  Plaintiff Defendant  
 Self-Represented Litigant

2013 JUN 13 PM 4:05  
BERKELEY COUNTY  
MARY B. BERKIN  
CLERK OF COURT

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: Defendant's Motion for Summary Judgment was taken under advisement on April 16, 2013. Defendant's Motion for Summary Judgment is now granted; formal Order is attached.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

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6/19/13  
email  
JEP  
SJS  
R&J

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**  
*Mary B. ...*  
**CLERK OF COURT**

**Court Reporter:**

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Jennifer D. Bowzard,

Plaintiff,

v.

Sheriff Wayne Dewitt and Berkeley County  
Sheriff's Office,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-08-1283

ORDER

FILED  
2013 JUN 13 11:05 AM  
MARY P. BROOKH  
CLERK OF COURT  
BERKELEY COUNTY, SC

This matter came before the court on April 16, 2013, on the motion for summary judgment of the defendants Sheriff Wayne Dewitt and Berkeley County Sheriff's Office. The plaintiff was represented by Johnny Parker and the defendants were represented by Robin Jackson. The defendants moved for summary judgment on the basis of South Carolina Tort Claims Act Immunity. Counsel for both sides submitted memoranda of law, affidavits and supporting documentation for their arguments. The court has considered all of these. For the following reasons, the court grants the motion for summary judgment.

FACTS

The court finds that the following facts are undisputed:

On July 26, 2011, James Sanders was arrested for criminal domestic violence of a high and aggravated nature (hereafter "CDVHAN") as a result of assaulting the plaintiff, Jennifer Bowzard. He was then placed in the Hill-Finklea Detention Center (hereinafter "Detention Center"), which is operated by and under the jurisdiction of the Defendants, Sheriff Wayne Dewitt and the Berkeley County Sheriff's Department. On July 30, 2011, Mr. Sanders was released from the Detention

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Center under a \$40,000.00 surety bond. The conditions of the bond included requirements for Mr. Sanders to be on good behavior, to wear an ankle bracelet, and to be on house arrest. However, after his release, he continued to have contact with Ms. Bowzard.

On August 2, 2011, the Family Court of Berkeley County issued a restraining order, proscribing Mr. Sanders from having any contact with Ms. Bowzard. On August 19, 2011, Mr. Sanders was arrested for violating the August 2, court order, and returned to the Detention Center. There, he continued to violate the restraining order by contacting Ms. Bowzard by telephone. Ms. Bowzard did not seek to block her phone number or to restrict access to it by callers from the Detention Center. She did, however, report some of these contacts to the Berkeley County Sheriff's Office.

On October 13, 2011, the original surety bond for Mr. Sanders' CDVHAN charge was revoked while he was locked up at the detention center. On January 26, 2012, Mr. Sanders went before the family court and the court sentenced him to time served for violating the family court order. If that had been the only reason for his imprisonment, he would have been released on January 26, 2012. However, because the criminal bond had been revoked, Sanders was not eligible for release. Upon his return from court on the 26<sup>th</sup>, he was only being held on the criminal charges. The criminal charges were being verified when Sanders managed to slip his hand out of the handcuff holding him to the bench in the booking area. He hid the hand until an employee opened a door to the outside. Then he jumped up, followed her outside, and escaped custody. Ms. Bowzard was immediately notified of this and was promptly taken into protective custody. She was never contacted or harmed by Mr. Sanders during the time she was in protective custody, nor was she contacted or harmed by Mr. Sanders after she declined further protective custody. Mr. Sanders was captured on March 1, 2012, in Myrtle Beach, South Carolina.

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## LAW

Plaintiff alleges that Defendants were grossly negligent. Plaintiff alleges several ways in which Defendants' actions both violated a duty owed to Plaintiff and proximately caused Plaintiff's damages. (Pl. Compl., p. 3, l. 15). Defendants have raised the affirmative defense of immunity pursuant to the Tort Claims Act. It is undisputed that Defendants' actions were committed by state employees within the course and scope of their employment. Defendants are therefore immune from liability under the South Carolina Tort Claims Act, S.C. Code §§ 15-78-60(3), (4), (5), (6), (20) and (21). The South Carolina Tort Claims Act provides specific, enumerated exceptions limiting the liability of the state and its political subdivisions in certain circumstances. *See* S.C. Code § 15-78-60 et seq. (2005); *Wells v. City of Lynchburg*, 331 S.C. 296, 302, 501 S.E. 2d 746 (Ct.App.1998).

**a. Defendants are not liable for injury resulting from Mr. Sanders' phone calls from the Detention Center to Plaintiff**

The Plaintiff has alleged that, by allowing Mr. Sanders to contact her from jail, in violation of a court order, Defendants are liable for her injuries. (Pl. Compl., p. 3, l. 15(a) - (c)). Under S.C. Code § 15-78-60(3), Defendants are not liable for any loss resulting from "execution, enforcement, or implementation of the orders of any court". Defendants are also immune from liability under § 15-78-60(6), as they are not required to provide police protection to Plaintiff. Further, Defendants are not liable for the criminal acts of third persons. S.C. Code § 15-78-60(20). By violating the court order prohibiting his harassing phone calls, Mr. Sanders was engaging in a criminal act. It was this act that caused Plaintiff's injury, if she suffered one.

Moreover, Plaintiff only alleges in her complaint that she suffered her injuries after Mr.

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Sanders' escape. (Pl. Compl., p. 3, l. 12). Thus, Mr. Sanders' phone calls to her from the Detention Center, occurring before his escape, could not have been a proximate cause for this alleged injury. Further, these calls would have necessarily indicated that they were coming from an incarcerated person who therefore could not pose a physical threat. The Plaintiff had the option to refuse or to block these calls. She did neither. To the contrary, she talked to Sanders multiple times for the full 15 minutes that inmate calls were permitted and spoke with him every time he called her, in violation of her own restraining order.

**b. Defendants are not liable for injury resulting from the escape of Mr. Sanders from the Detention Center**

The Plaintiff has alleged that, by failing to comply with certain policies and procedures regarding Detention Center operation, and by allowing the escape of Mr. Sanders, Defendants have caused her injury. Defendants are immune from liability flowing from these actions for several reasons. First, Plaintiff's alleged injuries were caused by Mr. Sanders' escape. S.C. Code § 24-3-50 specifies that "the wilful failure of a prisoner to remain within the extended limits of his confinement as authorized by § 24-3-20(b), or to return within the time prescribed to the designated place of confinement, including a local facility, is an escape and is punishable as provided in § 24-13-410." Thus, by failing to remain in the Detention Center as originally ordered, Mr. Sanders committed a criminal act. See § 15-78-60(20) (granting immunity from liability arising from criminal acts of third parties). Even if Mr. Sanders' escape were not a criminal act, Defendants would still have immunity under § 15-78-60(21). This section holds that the Defendants are not liable for injury stemming from "the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient,

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or client or the escape of these persons” (emphasis added). While it was regrettable that Mr. Sanders was able to escape, Defendants immediately notified Ms. Bowzard and took her into protective custody, thereby ensuring her safety. (Pl. Compl. p. 2, l. 11). Mr. Sanders never even attempted to contact her while he was out.

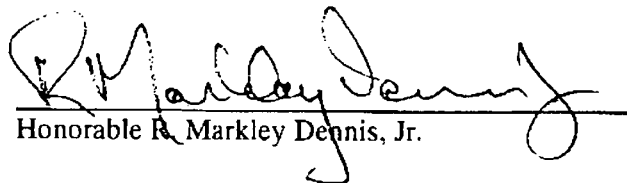
**c. Defendants are not liable for Plaintiff’s injuries allegedly arising out of violations of either § 23-15-50 or § 23-17-70**

Though Plaintiff argues that defendants are liable for the escape of an inmate being held in a civil action, it is clear from the evidence, that at the time of his escape, Sanders was only being held on criminal charges. The court therefore finds that S.C. Code § 23-15-50 or S.C. Code § 23-17-70, are not applicable to this matter. The South Carolina Supreme Court has held that S.C. Code § 23-17-70 does not create liability when the prisoner is being held on criminal charges. See *Washington v. Lexington County Jail*, 337 S.C. 400, 523 S.E.2d 204 (1999). “When read in conjunction with section 23-17-60, it is clear that recovery under section 23-17-70 is authorized for damages suffered when a prisoner escapes the sheriff’s custody after the prisoner has been committed to custody of the sheriff in a civil action and not in a criminal action.” *Id.* at 407, 523 S.E.2d at 207. As Mr. Sanders was in the Detention Center because of a criminal domestic violence charge, § 23-17-70 cannot apply to his escape and the defendants are entitled to immunity pursuant to § 15-78-60(4) and (5).

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**CONCLUSION**

The court hereby finds that the Defendants are immune from liability pursuant to the South Carolina Tort Claims Act. Therefore, the defendants are entitled to summary judgment on all causes of action.

  
Honorable R. Markley Dennis, Jr.

July 13, 2013

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