

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM FLORENCE COUNTY
COURT OF COMMON PLEAS
D. CRAIG BROWN, CIRUCIT COURT JUDGE

CASE NO. 2020-CP-21-01272
APPELLATE CASE NO. 2020-001750

Dominique Williams.....Appellant,

v.

South Carolina Department of Corrections and Florence
County Sheriff's Department.....Respondents,

INITIAL BRIEF OF RESPONDENTS

AIKEN, BRIDGES, ELLIOTT, TYLER
& SALEEBY, P.A.

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STATEMENT OF ISSUES ON APPEAL

- I. **DID THE TRIAL COURT ERR IN GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO THE STATUTE OF LIMITATIONS SET FORTH IN THE SOUTH CAROLINA TORT CLAIMS ACT?**

STATEMENT OF THE CASE

This is a civil action filed by a *pro se* Plaintiff claiming he was improperly enrolled on the South Carolina Sex Offender Registry (“SOR”). (Complaint and Amended Complaint) Plaintiff filed an Amended Complaint on December 1, 2020. Thereafter, Defendants are now seeking summary judgment as to all of Plaintiff’s claims and submit this memorandum in support of their motion for summary judgment filed simultaneously herewith.

Appellant Dominique Williams (“Appellant”) filed his Complaint in Florence County Circuit Court on May 18, 2020, alleging he was improperly placed on the South Carolina Sex Offender Registry (“SOR”). (Complaint) Appellant later filed an Amended Complaint on December 1, 2020. (Amended Complaint) Respondents filed an Answer to the Amended Complaint on December 7, 2020.

Respondents filed a Motion for Summary Judgment on March 25, 2022. The stated grounds for said motion were that Plaintiff’s claims were time barred by the applicable two (2) year statute of limitations set forth in the South Carolina Tort Claims Act and the neither of the Respondents were responsible for information entered on the SOR. (Motion for Summary Judgment) On March 28, 2022, Respondents submitted a Memorandum in Support of Motion for Summary Judgment. (Memorandum in Support) The motion was argued before the Hon. D. Craig Brown on September 15, 2022, via WebEx. Following that hearing, Judge Brown requested the submission of proposed Orders and ultimately issued an Order dated October 26, 2022, granting Respondents’ Motion for Summary Judgment pursuant to Rule 56, S.C.R.C.P. (Order Granting Motion for Summary Judgement).

Appellant filed his Notice of Appeal on December 1, 2022 with the Florence County Court of Common Pleas. Appellant mailed to counsel for Respondents a document identified as his Initial Brief on or about June 10, 2023.

STATEMENT OF FACTS

On June 12, 2008, Plaintiff was committed to the custody of the South Carolina Department of Juvenile Justice in connection with pleading guilty to the “crime of Armed Robbery Kidnapping Assault and Battery with Intent to Kill Grand Larceny Greater Than Five Thousand Dollars Possession of a Weapon During the Commission of a Violent Crime Conspiracy.” (Commitment Order attached to Complaint)

Plaintiff’s Complaint alleges that on June 12, 2018, he was wrongly registered as a sex offender for his juvenile record. (Amended Complaint) Plaintiff further alleges he was 25 years old at that time and did not understand why he was being registered at 25 years old. (Amended Complaint) Plaintiff alleges he informed both defendants that he “was DJJ and they could not punish me after my 21st birthday.” (Amended Complaint)

Plaintiff claims both Respondents showed gross negligence by “not looking into” this wrongdoing. (Amended Complaint) While Respondents concede that the Commitment Order relied on by Plaintiff to establish that he was not supposed to be required to register as a sex offender as part of his guilty plea to Kidnapping in 2008, Respondents argued at summary judgment that further investigation resulted in the discovery of documentation that Plaintiff was actually initially placed on the Sex Offender Registry (“SOR”) on or about December 9, 2012. (Affidavit of Lt. Chad Collins and attached records maintained by FCSO) More importantly, records provided by Respondent SCDC document that Plaintiff completed paperwork on

December 9, 2012 acknowledging that he was being placed on the SOR at that time. (Affidavit of SCDC Records Custodian Vicky Lindler and attached records numbered SCDC Documents 000058 – 000064)

STANDARD OF REVIEW

Summary judgment will be granted when a moving party demonstrates that no genuine issues of material fact exist and that party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any genuine issues of fact exist, the court must view both the evidence and all reasonable inferences able to be drawn from the evidence in the light most favorable to the non-moving party. *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 39, 533 S.E.2d 312, 316 (2000). Nonetheless, the court must search the proof to ascertain whether it discloses a real issue, rather than a formal, perfunctory, or shadowy one. *Saluda Motor Lines v. Crouch*, 300 S.C. 43, 46, 386 S.E.2d 290, 292 (Ct.App.1989). The presence of a factual dispute is not enough to preclude summary judgment; the issue must be one which a party is entitled to litigate. *Id.* “In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial.” *Nationsbank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct.App.1995).

“The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder.” *Englert, Inc. v. LeafGuard USA, Inc.*, 337 S.C. 129, 134, 659 S.E.2d 496, 498 (2008) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 858, 874 (2001)). “When reviewing a grant of summary judgment, the appellate court applies the same standard applied by the [circuit] court. . . .” *Id.* At 133-34, 659 S.E.2d at 498. “Summary judgment is appropriate when ‘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.” Id. At 134, 659 S.E.2d at 498 (quoting Rule 56(c), SCRCP). “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” Id. In reviewing a motion to dismiss, appellate courts apply the same standard of review as the trial court. *Carolina Park Associates, LLC v. Marino*, 732 S.E.2d 876, 878 (2012), citing *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). “Questions of law may be decided with no particular deference to the trial court.” Id. (citation omitted).

ARGUMENT

I. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT PURSUANT TO THE SOUTH CAROLINA TORT CLAIMS ACT.

Appellant’s Claims Are Time Barred

The *South Carolina Tort Claims Act* (“SCTCA”) S.C. Code Ann. § 15-78-10 et seq. (Supp. 2006) governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See *Murphy v. Richland Mem’l Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998).

South Carolina Code § 15-78-110 provides that an action brought pursuant to the South Carolina Tort Claims Act “is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered...” S.C. Code Ann. § 15-78-110 (1976 & Supp.).

In this case, the record is clear from the documents provided by Respondents that Plaintiff knew on December 9, 2012 that he was being placed on the SOR. Accordingly, to the extent

Plaintiff may have had a claim that his placement on the SOR was inconsistent with the terms of the Commitment Order related to his 2008 conviction, the two-year clock started running on said claim on December 9, 2012 and expired on December 9, 2014. As such, Plaintiff's initial filing of a complaint on May 18, 2020, alleging erroneous placement on the SOR, is clearly time barred and Defendants are entitled to summary judgment as to same.

Additional Sustaining Grounds

Pursuant to S.C. Code Ann. Section 23-3-420 (2007 & Supp. 2020), the South Carolina Law Enforcement Division ("SLED") is responsible for establishing the methods and manner of entry and storage of SOR information. *See* S.C. Code Ann. Section 23-3-420 (2007 & Supp. 2020); *see also Powell v. Keel, SLED, and The State of South Carolina*, 433 S.C. 457, 860 S.E.2d 344. Furthermore, SLED is charged with the creation of regulations for the implementation of the provisions of the South Carolina Sex Offender Registry Act ("SORA"), S.C. Code Ann. §§ 23-3-400 to -555 (2007 & Supp. 2020), including the development and operation of the SOR. *Id.*

In this case, Plaintiff claims his information was placed on the SOR because of his kidnapping conviction without regard for, and in violation of, the commitment order relating to said conviction that included a provision indicating Plaintiff would not be required to register as a sex offender. While SCDC records appear to indicate Plaintiff completed paperwork related to SOR registration in 2012, there is no evidence that anyone at SCDC was actually responsible for verifying that Plaintiff was indeed required to register for the SOR or actually responsible for placing Plaintiff's information on the SOR, much less that he or she was grossly negligent in discharging any such responsibility.

Furthermore, regardless of any actions of SCDC employees with respect to gathering Plaintiff's information and providing same to SLED, the law is clear that SLED is ultimately responsible for ensuring that the information placed on the SOR is accurate and verifying that individuals registering for the SOR are indeed required to do so. Thus, Plaintiff in this case is not able to establish that any SCDC employee was grossly negligent simply by gathering information from Plaintiff and providing same to SLED for review, verification, and possible entry upon the SOR.

Similarly, Plaintiff has not established that any FCSO employee was grossly negligent in connection with the entry of his information upon the SOR. At best, Plaintiff's allegations, if true, establish that an FCSO employee or employees were instrumental in the process of Plaintiff being removed from the SOR and there is simply no evidence that anyone at FCSO was involved in the gathering of information from Plaintiff related to his initial registration in 2012 or that anyone at FCSO had anything to do with Plaintiff's information initially being placed on the SOR.

While Plaintiff's allegations, if true, are indeed unfortunate, there is simply no evidence that any employee of SCDC or FCDC was responsible for the improper entry of Plaintiff's information on the SOR, much less that any employee of either entity knew or should have known of the exemption provision in the Commitment Order at the time of Plaintiff's initial registration in 2012. Furthermore, the statutory scheme that created the SOR verifies that neither SCDC nor FCDC are responsible for the development and operation of the SOR. Therefore, SCDC and FCSO are not the proper entities to be named as defendants for the claims brought by

Plaintiff in this case and they are both entitled to summary judgment and dismissal of Plaintiff's Complaint.

Simply put, while Plaintiff's allegations, if true, are indeed unfortunate, there is simply no evidence that any employee of SCDC or FCDC was responsible for the improper entry of Plaintiff's information on the SOR, much less that any employee of either entity knew or should have known of the exemption provision in the Commitment Order at the time of Plaintiff's initial registration in 2012. Furthermore, the statutory scheme that created the SOR verifies that SCDC or FCDC are not responsible for the development and operation of the SOR. Therefore, SCDC and FCSO are not the proper entities to be named as defendants for the claims brought by Plaintiff in this case and they are both entitled to summary judgment and dismissal of Plaintiff's Complaint.

In its Initial Brief, Appellant asserts that the date used for the start of the limitations clock was a Sunday and that somehow makes it impossible for the statute of limitations to have started running on said date. Such an argument, while creative, does not change the fact that Appellant clearly signed documents many years earlier than the filing of his original Complaint. This is a fact Appellant cannot change and is fatal to the civil action he filed in 2020.

CONCLUSION

For the reasons set forth more fully above, this court should find that the circuit court properly dismissed Plaintiff's claims against the Defendants pursuant to Rule 56, SCRCP and affirm the circuit court's Order granting Respondents' motion for summary judgment in this matter.

Respectfully submitted.

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July 10, 2023.

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APPEAL FROM FLORENCE COUNTY
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Dominique Williams.....Appellant,

v.

South Carolina Department of Corrections and Florence
County Sheriff's Department.....Respondents,

CERTIFICATE OF SERVICE

I hereby certify that I have served the document listed below in the above entitled action to the addressees below via U.S. mail on July 10, 2023 and proper postage was attached thereto.

DOCUMENTS: INITIAL BRIEF OF RESPONDENT

ADDRESSEES: THE HONORABLE JENNY ABBOTT KITCHINGS
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SC Court of Appeals

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+Also Admitted District of Columbia

The Honorable Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Dominique Williams vs. South Carolina Department of Corrections and Florence County
Sheriff's Department
C/A No.: 2022-001750
AB File No.: 34715

Dear Ms. Kitchings:

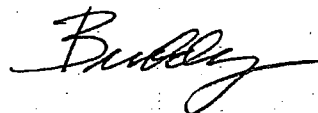
In connection with the above-referenced matter, please find enclosed with this letter **INITIAL BRIEF OF RESPONDENTS**.

By copy of this correspondence to Plaintiff, I am advising him of this contact with the court and providing him with a copy of the enclosed Initial Brief of Respondents.

Should you have any questions or require anything further, please do not hesitate to contact me.

With kind regards,

Yours very truly,



SAMUEL F. ARTHUR, III

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