

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Taylor Chasey Robertson,)
)
 Plaintiff,) *Civil Action No.: 2022-CP-42-01677*

-VS-

ORDER

South Carolina Department of Public)
Safety, South Carolina Highway Patrol, and)
Trooper Patrick J. Goshorn,)
)
Defendants.)

RECEIVED
Aug 25 2023
SC Court of Appeals

CASE HISTORY

This action was filed on May 9, 2022. The Plaintiff alleges claims against the South Carolina Department of Public Safety, South Carolina Highway Patrol, and Trooper Patrick J. Goshorn in connection with an incident which occurred on May 9, 2020. The Plaintiff alleges that the South Carolina Department of Public Safety and the South Carolina Highway Patrol are government agencies within the meaning of the South Carolina Tort Claims Act. The Complaint further alleges that at all times Patrick Goshorn acted within the scope and course of his employment and he is named in his individual and official capacities. The Complaint sets out seven (7) separate Causes of Action. The FIRST CAUSE OF ACTION alleges Negligence, Training and Supervision. The SECOND CAUSE OF ACTION alleges Negligence and Gross Negligence as to proper and adequate training and supervision of officers, and a failure to protect the right of the Plaintiff. The THIRD CAUSE OF ACTION alleges False Imprisonment, following an arrest for suspicion of DUI. The FOURTH CAUSE OF ACTION alleges Malicious Prosecution in connection with the charge of DUI

and a charge of failure to change an address on a driver=s license. The FIFTH CAUSE OF ACTION alleges Abuse of Process, claiming that the Defendants had an ulterior purpose in employing legal process against the Plaintiff. The SIXTH CAUSE OF ACTION alleges claims for Outrage and alleges that the Defendants are vicariously liable for actions within the scope and course of employment. The SEVENTH CAUSE OF ACTION alleges Gross Negligence/Recklessness in connection with Plaintiff=s arrest for DUI and for improperly ticketing the Plaintiff for Failure to Change Address.

The Complaint was filed on May 9, 2020. The record reflects that there are three (3) Affidavits of Service dated September 7, 2020, indicating that service was made to Candance Horton at 10311 Wilson Blvd., Blythewood, South Carolina 29016 on September 6, 2022, to effect service on the South Carolina Department of Public Safety and the South Carolina Highway Patrol. There is also an Affidavit of Service as to the South Carolina Attorney General=s office on September 6, 2022. Patrick Goshorn was served on September 6, 2022, at 304 Hampton Ridge Drive, Greer, SC by delivery of the Summons and Complaint to his wife, as appears by an Affidavit of Service filed with the Court.

The filing history shows that the Defendants filed a 12(b) Motion to Dismiss on October 6, 2022, at 2:39 p.m., a Motion to Dismiss pursuant to S.C. Code Ann. § 15-78-60 and § 15-78-70 at 4:17 p.m. on October 6, 2022, and an Answer filed October 6, 2022, at 5:05 p.m. The Answer specifically noted that it was subject to the Rule 12 Motion previously filed. Defense counsel also filed a Motion to Allow Delayed Filing on October 17, 2022, referencing an administrative error that was thought to have occurred. The Motion to allow a delayed filing notes that defense counsel as a courtesy communicated with Plaintiff=s counsel prior to the filing of the Answer to discuss the

anticipated 12(b) Motion.

These Motions came to be heard before me on February 23, 2023.

FACTUAL ALLEGATIONS

The Complaint alleges that on May 9, 2020, at approximately 2:00 a.m., Trooper Goshorn pulled the Plaintiff over for speeding, going 45 miles per hour in a 35 mph zone, following which he performed field sobriety tests and then took the Plaintiff into police custody for a breathalyzer analysis. The Complaint alleges that Ms. Robertson had a 0.01% BAC and that pursuant to S.C. Code Ann. §56-5-2950 she was conclusively presumed not under the influence of alcohol. The Complaint further alleges that the Plaintiff was also given a ticket for failure to change the address on her license. The Complaint further states that the Plaintiff was released from the Greer City Detention Center at 3:20 a.m. The Complaint further alleges that the ticket was ultimately dismissed because Patrick Goshorn was no longer with the Department of Public Safety. The claims set forth in the Complaint arise out of that incident.

DEFENDANTS= RULE 12(b) MOTION TO DISMISS

The Defendants= 12(b) Motion to Dismiss was filed October 6, 2022, at 2:39 p.m. In the 12(b) Motion, the Defendants refer to SCRCP Rule 12(b)(2)(4) and (5). Rule 12(b) allows for these defenses to be raised by answer and/or by a motion: (2) lack of jurisdiction over the person. (4) insufficiency of process (5) insufficiency of service of process. Rule 12(b)(2)(4) and (5) are also set out as defenses in the Answer filed by the Defendants.

In support of the Defendants= Motion to Dismiss pursuant to Rule 12(b), the Defendants have submitted the Affidavit of Diana Brown, who is the Human Resource Operations Manager of the South Carolina Department of Public Safety. The Affidavit of Diana Brown indicates that

Candance Horton was not an employee of either the South Carolina Department of Public Safety or the South Carolina Highway Patrol. Her affidavit further confirms that Candance Horton was never authorized to accept service on behalf of either the Department or the agency. Based on this Affidavit, the Defendants argue that there has been no proper service as to the South Carolina Department of Public Safety or the Highway Patrol.

The Defendants' Rule 12 Motion also asserts that the action has not been properly commenced and served timely pursuant to Rule 3 SCRPC and Rule 4 SCRPC. Rule 4(d) provides that when a state agency is a defendant that service is made by delivering the Summons and Complaint to the officer or agency in keeping with Rule (d)(3), which provides that the Summons and Complaint be served to an officer, a managing or general agent, or an agent authorized by appointment of law to receive service of process.

Rule 3 SCRPC addresses when an action is commenced. Rule 3(a) provides that a civil action is commenced when the Summons and Complaint are filed with the Clerk of Court, if (1) the Summons and Complaint are served within the statute of limitations in any matter prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than 120 days after filing.

The incident which is the basis of this suit occurred on May 9, 2020. S.C. Code Ann. ' 15-78-110 allows for a two year statute of limitations and, an action is barred unless it is commenced within two years from the date of loss absent the filing of a verified claim. The Complaint in this action was filed exactly two years from the date of the incident. The attempted service of the Complaint, on September 6, 2022, occurred exactly 120 days from the date the Complaint was filed.

For whatever reason, it appears that the Complaint was not filed until the last day to comply with the Statute of Limitations, and further, there was no attempt at service until the very last date allowed by Rule 3. In order to comply with Rule 3, to commence an action the Complaint must not only be filed within the statute of limitations, but it must be actually served within 120 days from the date of filing.

I find that the attempted service on the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol was not proper service pursuant to Rule 4, and accordingly, this action was not timely commenced as to the South Carolina Department of Public Safety, and/or the South Carolina Highway Patrol. I therefore must find that the Defendants' 12(b) Motion to Dismiss the South Carolina Department of Public Safety and the South Carolina Department of Highway Patrol should be granted.

**DEFENDANTS' MOTION PURSUANT TO S.C. CODE ANN. ' 15-78-60 AND
' 15-78-70**

The Defendants also move to dismiss the Complaint as to Patrick Goshorn. The Complaint alleges that at all times Patrick Goshorn acted within the scope and course of his official duties as a trooper with the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol.

S.C. Code Ann. ' 15-78-70 provides that the Tort Claims Act is the exclusive remedy of any tort committed by an employee. Section 15-78-70 provides that an employee who commits a tort while acting within the scope of his official duty is not liable except in circumstances where it is proven that an employee's conduct constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. See also ' 15-78-60(17).

Nowhere in the Plaintiff=s Complaint is there any allegation or suggestion that Patrick Goshorn acted outside the scope and course of his official duties. Further, the Complaint nowhere makes reference to any allegation that Goshorn=s actions amounted to actual fraud, actual malice, intent to harm, and/or a crime of moral turpitude.

The Plaintiff’s FIRST CAUSE OF ACTION – “Negligent Training/Supervision/Retention” is a claim that can only lie against the South Carolina Department of Public Safety had it been timely commenced. This claim is not applicable to or viable as to Patrick Goshorn.

The SECOND CAUSE OF ACTION – “State Tort Claims Act” also alleges claims that could exist against the South Carolina Department of Public Safety and/or the Highway Patrol if brought timely. This claim, however, also is directed at South Carolina Public Safety and does not apply to Patrick Goshorn.

The Plaintiff=s THIRD CAUSE OF ACTION alleging “False Imprisonment” is again another claim that could possibly exist against the South Carolina Department of Public Safety and/or the Highway Patrol if not barred by statute [§15-78-60(23)] and/or the South Carolina Rule of Civil Procedures. In this cause of action, the Plaintiff alleges that she was unlawfully restrained, but there is no allegation that Patrick Goshorn acted with actual malice, or an intent to harm. Actual malice is not an element of a False Imprisonment claim. Accordingly, I find that Patrick Goshorn is entitled to immunity pursuant to ' 15-78-70(a)(b).

As to the Plaintiff’s FOURTH CAUSE OF ACTION for “Malicious Prosecution,” such a claim could possibly lie against the Department of Public Safety if timely brought. Again, as to the FOURTH CAUSE OF ACTION, there is no allegation that Patrick Goshorn acted with actual malice and/or an intent to harm the Plaintiff, and actual malice is not an element of a malicious

prosecution claim. For Patrick Goshorn to have individual liability his actions must amount to actual malice, and here I find he is entitled to immunity in accordance with ' 15-78-70.

The Plaintiff alleges a FIFTH CAUSE OF ACTION- “Abuse of Process.” This claim was not timely commenced as to the South Carolina Department of Public Safety and/or the Highway Patrol. The elements of this claim do not involve allegations of actual fraud, actual malice, intent to harm and/or crime of moral turpitude so as to deprive Patrick Goshorn of immunity under ' 15-78-70(a) and (b).

That as to Plaintiff=s SIXTH CAUSE OF ACTION – “Outrage,” again, this claim was not timely commenced as to the South Carolina Department of Public Safety and/or the Highway Patrol. Further, as to the Plaintiff’s SIXTH CAUSE OF ACTION, referencing physical and emotional distress, S.C. Code Ann. ' 15-78-30(f), bars any claim for intentional infliction of emotion distress. Also, as to the Plaintiff’s SIXTH CAUSE OF ACTION, there is no allegation of actual fraud, actual malice, and/or intent to harm to implicate individual liability for Patrick Goshorn. I find that the Plaintiff’s SIXTH CAUSE OF ACTION should be dismissed.

The Plaintiff=s SEVENTH CAUSE OF ACTION alleges “Gross Negligence/ Recklessness.” These allegations could possibly be viable if this action was timely commenced against the South Carolina Department of Public Safety and/or the Highway Patrol but, as to this cause of action, Patrick Goshorn has immunity in his individual capacity.

CONCLUSION

All of the claims set forth in the Plaintiff’s Complaint as are directed against the South Carolina Department of Public Safety and/or the South Carolina Highway Patrol are dismissed because this action was never properly commenced as to those named defendants. This action

was filed on the last date before the statute of limitations would have run, and there was no attempt to effect service on the South Carolina Department of Public Safety and/or the Highway Patrol until the last day allowable by Rule 3 SCRCP. Because there was no proper service of the Summons and Complaint on either the South Carolina Department of Public Safety and/or the Highway Patrol to properly commence this action as to those entity defendants the Complaint is dismissed. As to the individual defendant, Patrick Goshorn, the claims as are alleged against him do not involve the elements of actual fraud, actual malice, and/or intent to harm and those claims are dismissed as to him.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that pursuant to SCRCP 12(b)(2)(4) and (5), the Complaint is dismissed as to the South Carolina Department of Public Safety and/or the Highway Patrol.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to S.C. Code Ann. ' 15-78-60 and ' 15-78-70, the Complaint of the Plaintiff is dismissed as to Patrick J. Goshorn.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion to allow for a delayed filing is granted.

IT IS SO ORDERED.

J. Derham Cole, Presiding Judge



Spartanburg Common Pleas

Case Caption: Taylor Chasey Robertson VS South Carolina Department Of Public
Safety , defendant, et al
Case Number: 2022CP4201677
Type: Order/Other

IT IS SO ORDERED!

s/J. Derham Cole 2053