

heard the arguments of Plaintiff and the moving defendants, the Court grants the Motions to Dismiss, with prejudice, for the reasons set forth herein.

City of Barnwell

As to the City of Barnwell, Plaintiff's Complaint contains no allegation of fact which would support any cause of action. The City of Barnwell is listed among the captioned defendants and listed in the prayer of the Complaint (Paragraph 91). The only other mention of City of Barnwell in the Complaint is in a conclusory statement, in the First Cause of Action, for Negligence, that a list of defendants "have failed through a pattern and practice to exercise reasonable care 'in hiring, training, or supervising facility personnel or in staffing or operating a facility, and this failure results in the commission of abuse, neglect, exploitation, or any other crime against a vulnerable adult in a facility,' under S. C. Code 43-35-80(A)." This allegation is not a statement of fact sufficient to constitute a cause of action, and would not apply to the City of Barnwell. The cited statute authorizes the Attorney General of South Carolina to bring action, under certain circumstances, against a facility, defined in *S. C. Code §43-35-10(4)*, as "a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs."

As the plaintiff has not stated a cause of action against City of Barnwell in his Complaint, this action is dismissed as against City of Barnwell, with prejudice.

Magistrate Susan Anderson

As against Magistrate Susan Anderson, the only allegations in the Complaint involve her conduct as a judicial officer in judicial proceedings, serving a judicial function within her jurisdiction, specifically: (a) issuing an arrest warrant for assault and battery third degree, which she later dismissed in Plaintiff's favor when the prosecution witness did not appear (Paragraph 19

of the Complaint); and, (b) presiding over a civil eviction action which she very shortly dismissed in Plaintiff's favor (Paragraph 41 of the Complaint), after finding he was an owner of the property. The activities as alleged in the Complaint are within the jurisdiction of Judge Anderson and within the function of her office as a Magistrate Judge. It is within the jurisdiction of a Magistrate to issue a warrant for arrest after receiving information under oath. *S. C. Code §22-3-710*. This is so even if the accused is later acquitted at trial. For an eviction action, in which one party claims to be a landlord or property owner requesting ejection of a tenant, the matter is within the jurisdiction of the Magistrate's Court, pursuant to *S. C. Code §22-3-10(10)*. This is so, even if the party seeking eviction makes a false assertion, as alleged by Plaintiff.

For conduct as a judicial officer in judicial proceedings, Judge Anderson is immune from suit under the common law of South Carolina, and, further, under the South Carolina Tort Claims Act. The South Carolina Tort Claims Act specifically provides for immunity from suit in the following matters: *S. C. Code §15-78-60(1)*, loss resulting from judicial or quasi-judicial action or inaction; *S. C. Code §15-78-60(2)*, administrative action or inaction of a legislative, judicial, or quasi-judicial nature; *S. C. Code §15-78-60(3)*, execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process; *S. C. Code §15-78-60(4)*, adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid; *S. C. Code §15-78-60(5)*, the exercise of discretion or judgment by a 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; *S. C. Code §15-78-60(20)*, an act or omission of a person other than an employee including but not limited to the criminal actions of third persons; *S. C. Code §15-78-60(21)*, the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity;

and, *S. C. Code §15-78-60(23)*, institution or prosecution of any judicial or administrative proceeding.

The immunities provided by the Tort Claims Act are in addition to the common law doctrine of judicial immunity, which shields judges from liability for judicial actions. *See Plyer v. Burns*, 373 S.C. 637, 647 S.E.2d 188 (2007); *O'Laughlin v. Windham*, 330 S.C. 379, 385, 498 S.E.2d 689, 692 (Ct. App. 1998); *McEachern v. Black*, 329 S.C. 642, 647, 406 S.E.2d 659, 661 (Ct. App. 1998). Judicial immunity applies even if a judge's exercise of authority is flawed by procedural error. *Stump v. Sparkman*, 435 U.S. 349, 359 (1978); *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.").

The Court further finds Plaintiff's claims for false arrest/false imprisonment and malicious prosecution against Judge Anderson for his arrest in July 2020, for a charge which was dismissed in August 2020, is barred by the elapse of the statute of limitations applicable to actions against a governmental entity, found in *S. C. Code §§15-78-100 and 110* and *S. C. Code §15-3-550(1)*.

Plaintiff has not stated a cause of action for injunctive relief against a sitting judge, and is not entitled to such relief to prevent future judicial action. Therefore, the claim to injunctive relief should be dismissed with prejudice.

For these reasons, this action is dismissed as against Defendant Magistrate Susan Anderson, with prejudice.

Probate Judge Myrna Still Dill

Like Defendant Magistrate Susan Anderson, Defendant Probate Judge Myrna Still Dill is also entitled to the common law doctrine of judicial immunity¹ established in *O'Laughlin v.*

¹ Defendant Dill is also entitled to immunity pursuant to *S.C. Code Ann. §15-78-60 (1), (2), and (3)*.

Windham, 330 S.C. 379, 385, 498 S.E.2d 689, 692 (Ct. App. 1998). As the Probate Court Judge for Barnwell County, Defendant Dill was acting within her official capacity when issuing involuntary orders of commitment for Plaintiff as alleged in the Complaint. There can be no doubt that Defendant Dill had jurisdiction to issue those orders of involuntary commitment and the issuance of those involuntary orders served a judicial function. As such, any claims against Defendant Dill are dismissed with prejudice.

Even if Defendant Dill was not entitled to common law judicial immunity, Plaintiff's claims against Defendant Dill are also barred pursuant to S.C. Code Ann. § 44-17-620. Plaintiff did not allege in his Complaint or argue at the hearing that he challenged his involuntary commitment proceedings within the statutorily mandated fifteen-day period. Therefore, any claims related to his involuntary commitment proceedings are barred. *Mims v. Alston*, 312 S.C. 311, 440 S.E.2d 357 (1994). While not argued at the hearing, Plaintiff alleges in his Complaint that he was "falsely imprisoned" by Defendant Dill. There is no evidence before the Court that any of the involuntary orders were not facially valid, as such Plaintiff cannot maintain a false imprisonment claim against Defendant Dill. *Manley v. Manley*, 291 S.C. 325, 353 S.E.2d 312 (Ct.App.1987). Additionally, any claims of defamation against Defendant Dill also fail because the evidence shows that any statements made by Defendant Dill during the course of the involuntary commitment proceedings are entitled to an absolute privilege. *Crowell v. Herring*, 392 S.E.2d 464, 466-67 (Ct. App. 1990).

As with Defendant Magistrate Judge Anderson, Plaintiff has not stated a cause of action for injunctive relief against a sitting judge, and is not entitled to such relief to prevent future judicial action. Therefore, the claim to injunctive relief should be dismissed with prejudice.

For these reasons, this action is dismissed as against Defendant Probate Judge Myrna Still Dill, with prejudice.

South Carolina Department of Social Services

This action was filed June 26, 2023. The Complaint contains no allegations against the South Carolina Department of Social Services (SCDSS) of any action, inaction, or interaction with Plaintiff which occurred later than June 25, 2021. Therefore, as against SCDSS, this action is barred by the elapse of the statute of limitations applicable to actions against a governmental entity, found in *S. C. Code §§15-78-100 and 110*, and SCDSS is entitled to dismissal of this action with prejudice.

Aiken-Barnwell Mental Health Center/South Carolina Department of Mental Health

The South Carolina Department of Mental Health (SCDMH) asserts Aiken-Barnwell Mental Health Center (ABMHC) is a facility of SCDMH and not an entity capable of being sued. SCDMH moved for dismissal on behalf of ABMHC. Whether this entity should be captioned Aiken-Barnwell Mental Health Center, as in the Complaint, or South Carolina Department of Mental Health, as urged by the defendant, the Complaint filed June 26, 2021, alleges no date of wrongful action, inaction, or interaction with Plaintiff which occurred later than June 25, 2021. Therefore, as against ABMHC or SCDMH, this action is barred by the elapse of the statute of limitations applicable to actions against a governmental entity, found in *S. C. Code §§15-78-100 and 110*, and should be dismissed with prejudice as to Aiken-Barnwell Mental Health Center and SCDMH.

Barnwell County Sheriff's Department

As against the Barnwell County Sheriff's Department, all allegations in the Complaint, with the exception of service of judicial process, concern interactions of law enforcement with Plaintiff predating June 26, 2021. This action, filed June 26, 2021, is barred by the South Carolina Tort Claims Act as to all interactions on June 25, 2021, and earlier dates, pursuant to *S. C. Code §§15-78-100 and 110* and *S. C. Code §15-3-550(1)*. The only other allegations in the Complaint against the Barnwell County Sheriff's Department concern service of process, specifically, service in December 2021 of a

"Rule to Vacate or Show Cause (Eviction)" issued by a sitting Magistrate Judge. Sheriffs, and, by extension, the deputies under their command, are required by law to execute judicial process, including arrest warrants and service of judicial process, pursuant to *S. C. Code §23-15-40*, may not refuse to serve judicial process, may be held in contempt of court for failure to do so, and, therefore, may not be sued for exercising that ministerial function. *S. C. Op. Atty. Gen.* (July 18, 2001), 2001 WL 957761; *see also Rogers v. Marlboro County*, 32 S.C. 555, 558, 11 S.E.383 (1890). Additionally, the South Carolina Tort Claims Act preserves immunity to governmental entities and their employees, under *S. C. Code §15-78-60(3)*, in the execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process.

To the extent the Barnwell County Sheriff's Department is specifically sued for its conduct while complying with Probate Court Orders, including pickup orders, law enforcement officers are required to do so pursuant to *S. C. Code §14-23-440*. The Barnwell County Sheriff's Department and its officers are immune from suit for those actions under such statute, as well as *S. C. Code §§44-13-05* and *44-17-440*.

Based on these authorities, the Court finds and concludes this action should be dismissed with prejudice as against the Barnwell County Sheriff's Department.

All government defendants

Additionally, all the governmental defendants are immune from suit and liability under the South Carolina Tort Claims Act for intentional infliction of emotional distress, also known as outrage, pursuant to *S. C. Code §15-78-30(f)* and *S. C. Code §15-78-60(17)*. To the extent the plaintiff has asserted such a cause of action against the governmental defendants, such claim is dismissed with prejudice.

Aiken Regional Medical Center d/b/a Aurora Pavilion Behavioral Health

Plaintiff's Complaint asserts four (4) causes of action against Aiken Regional Medical Center d/b/a Aurora Pavilion Behavioral Health ("Aiken Regional"). In the Complaint, Plaintiff alleges Negligence (First Cause of Action), Malicious Prosecution/Civil Conspiracy (Seventh and Eighth Causes of Action), Slander/Defamation/Libel (Tenth Cause of Action), and Civil Conspiracy by Force of Numbers/Economic Boycott (Eleventh Cause of Action).

The Complaint provides significant detail of alleged facts involving Plaintiff, his deceased mother, and a female relative. However, the Complaint fails to provide facts, context, or dates pertaining to the alleged negligence, slander/defamation/libel, and civil conspiracy against Aiken Regional. The Complaint does not enough information and does not state any allegations of fact that would support any cause of action against Aiken Regional.

Further, during oral arguments in this matter, Plaintiff made references to a potential medical negligence against Aiken Regional, which is not specifically stated in the Complaint. In medical malpractice actions, expert testimony is required to establish both the duty owed to the patient and the breach of that duty. *See David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 248, 626 S.E.2d 1, 4 (S.C. 2006)). "Pursuant to section 15-79-125 a plaintiff is required, prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, to 'contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100, in a county in which venue would be proper for filing or initiating the civil action.'" *Ranucci v. Crain*, 409 S.C. 493, 502, 763 S.E.2d 189, 193 (S.C. 2014). Since the Complaint failed to state facts sufficient to constitute any cause of action and Plaintiff failed to file a Notice of Intent to File Suit and/or an affidavit of an expert witness Plaintiff's First, Seventh, Eighth, and Tenth Causes of Action in the Complaint fail to state facts sufficient to constitute causes of action and therefore must be dismissed as to Aiken Regional.

Civil Conspiracy by Force of Numbers/Economic Boycott

Plaintiff alleged against all defendants herein a cause of action for "Civil Conspiracy by Force of Numbers/Economic Boycott." This cause of action is not recognized in South Carolina. *Paradis v. Charleston County School Dist.*, 433 S.C. 562, 576, 861 S.E.2d 774, 781 (2021). Therefore, the Court finds and concludes no such cause of action can be brought against the defendants, and the cause of action is dismissed with prejudice.

Additional grounds not addressed

All defendants raised in their motions, fully argued, and did not waive, additional grounds for dismissal. Having determined, on the grounds set forth above, that the defendants are entitled to dismissal, the Court need not reach, and does not reach, the other grounds asserted in the separate motions for dismissal filed by each defendant.

Plaintiff's Response

The Court has heard the arguments of Plaintiff and reviewed his memorandum in opposition. Plaintiff has asserted the motions to dismiss have been converted to motions for summary judgment by consideration of matters outside the Complaint. This is incorrect. Dismissal under Rule 12(b)(6) is appropriate where the allegations stated in the Complaint do not operate to state a cause of action under the laws of South Carolina.

The Court takes note that Plaintiff has revealed during the hearing that he has filed a Motion to Amend with a proposed Amended Complaint, and defense counsel for the governmental defendants professed no knowledge of the filing. Defense counsel for Aiken Regional has also not been served with the Motion to Amend and proposed Amended Complaint, but did state in oral arguments that it was viewed prior to the hearing on the SC Courts public website. As to those claims dismissed herein with prejudice, on grounds of judicial immunity, statutory immunity, statute of limitations, and causes of action not recognized by South Carolina, the Court notes an

amendment would not salvage those claims, and they are dismissed with prejudice. The Court does not rule herein on any other aspect of the Motion to Amend, which was not timely filed and served for hearing on August 21, 2023.

Therefore, it is hereby ordered, for the reasons set forth above, this action is dismissed with prejudice.

AND IT IS SO ORDERED.

_____, 2023

_____, SC

Daniel Coble
Presiding Circuit Judge



Barnwell Common Pleas

Case Caption: Eric Alan Sanders VS Barnwell County Sheriff's Department:etal

Case Number: 2023CP0600172

Type: Order/Dismissal

So Ordered

s/ Daniel Coble, 2774