

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Appellate Case No. 2023-000061
Case No. 2023-CP-23-03040

Randall D. Price,

Appellant,

v.

Greenville County Sheriff's
Office and Deputy Compton,

Respondents.

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SC Court of Appeals

FINAL BRIEF OF RESPONDENTS

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COUNTERSTATEMENT OF ISSUES ON APPEAL

1. The Circuit Court correctly granted Respondents' Motion to Dismiss where Appellant failed to cure the defects identified in Judge Gravely's prior, uncontested Order, which served as the law of the case.

2. The Circuit Court correctly found that the facts alleged in Appellant's Amended Complaint failed to allege facts sufficient to state a cause of action on which relief could be granted.

STATEMENT OF THE CASE AND FACTS

Appellant appeals the Order of the Circuit Court dismissing Appellant's Amended Complaint under South Carolina Rules of Civil Procedure Rule 12(b)(6). (R. p. 1). Appellant filed his first Complaint June 9th, 2022, suing the Greenville County Sheriff's Office and Deputy Compton in connection with Appellant's criminal conviction for a hit and run causing death in Spartanburg County. (R. pp. 60-67). Appellant's Complaint alleged that, on the night of the hit and run, Deputy Compton conducted a traffic stop of Dalton Taylor, who was driving his moped at the time. Appellant alleged that Taylor did not have his wallet on him and that his headlights did not work at the time of the traffic stop. *Id.* Appellant further alleged that Deputy Compton advised Taylor it was not safe to drive to the Sphinx as Taylor had planned, and that Taylor's family was not willing to pick him up where he was. (R. pp. 63-64). Finally, Appellant alleged that Deputy Compton terminated the traffic stop, allowing Taylor to continue travelling on his moped with drugs on his person and in his system. (R. p. 64). Appellant alleged that, as a result of this, he hit and killed Taylor and subsequently pled guilty to hit and run causing death, and has suffered damages including his twelve-year prison sentence, the loss of his truck, and the loss of his yearly salary. (R. p. 65).

Respondents were served in July and filed an Answer and Motion to Dismiss in August of 2022. (R. pp. 52-59). The Honorable Judge Perry Gravely heard Respondents' Motion on August 26, 2022. (R. p. 28). On September 22nd, 2022, Judge Gravely issued an Order granting Respondents' Motion to Dismiss, finding that Appellant failed to state a claim upon which relief could be granted under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, interpreting Appellant's Complaint as bringing a claim for negligence. (R. pp. 28-35). Under that interpretation, Judge Gravely ruled that Appellant failed to allege facts supporting a claim for negligence, where Appellant failed to allege facts showing any duty owed to Appellant, any facts

showing any breach of that duty, and any facts showing that Respondents were not entitled to immunity under the South Carolina Tort Claims Act. *Id.* However, Judge Gravely allowed Appellant twenty (20) days from receipt of the Order to file an amended complaint addressing the deficiencies identified in the Order. (R. pp. 34-35). Appellant did not file a motion to reconsider Judge Gravely's Order. Appellant did not successfully file his Amended Complaint with the Greenville County Clerk of Court until November 4th, 2022, but Respondents received it prior to that time; given that Appellant was proceeding *pro se* and incarcerated, Respondents did not contest that Appellant had attempted to file his Amended Complaint within the twenty (20) days specified by Judge Gravely's Order. (R. p. 77, lines 14-16; p. 80, lines 3-24).

On October 26th, 2022, Respondents filed their Answer to Appellant's Amended Complaint and their Motion to Dismiss Appellant's Amended Complaint, again under South Carolina Rules of Civil Procedure Rule 12(b)(6) for failure to state a claim upon which relief could be granted. (R. pp. 19-27). On November 18th, 2022, the Honorable Judge Brian M. Gibbons heard Respondent's Motion to Dismiss. (R. p. 70, line 10). At the hearing, Respondents placed on the record the issues with the filing of Appellant's Amended Complaint and consented to a finding that Appellant had timely filed his Amended Complaint. (R. p. 77, lines 14-16; p. 80, lines 3-24). Respondents also provided the Court with Appellant's Amended Complaint, which was not in the possession of the Greenville County Clerk of Court. (R. p. 78, lines 20-25; p. 79, lines 1-5). At the hearing, Respondents argued that Appellant failed to cure any of the deficiencies identified in Judge Gravely's Order, but merely restated the factual allegations contained in Appellant's first Complaint, with the addition of legal conclusions and totemic invocations of legal phrases. (R. p. 81, line 13-p. 87, line 8). On November 22nd, 2022, Judge Gibbons issued an Order granting Respondents' motion, finding that Appellant's Amended Complaint failed to cure the deficiencies

identified in Judge Gravely's Order, invoking the reasoning and findings of the same. (R. pp. 6-8). On December 13th, 2022, Appellant filed a South Carolina Rules of Civil Procedure Rule 59(e) Motion to Reconsider; on December 14th, 2022, Judge Gibbons denied that motion. (R. pp. 1-5). This appeal followed.

STANDARD OF REVIEW

“Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action.” *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 395, 596 S.E.2d 42 (S.C. 2004). On an appeal from a grant of a trial court order granting a motion to dismiss, the Appellate Court, like the trial court, must consider, “whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” *Bergstrom*, 358 S.C. at 395. “On appeal from granting a Rule 12(b)(6) motion, the reviewing court may not consider matters outside the pleadings; well pleaded facts are admitted, but inferences drawn by the plaintiff from such facts and conclusions of law are not admitted.” *Jensen v. South Carolina Dep't of Social Services*, 297 S.C. 323, 326, 104 S.E. 2d 102, 104 (S.C. App. 1987). Additionally, a previous ruling, if Appellant has failed to move to alter or amend or appeal that ruling, serves as “the law of the case.” *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 659, 780 S.E. 2d 263, 276 (Ct. App. 2015) (See *Carolina Chloride, Inc. v. Richland Cty.*, 394 S.C. 154, 171-72, 714 S.E. 2d 869, 878 (S.C. 2011) (explaining that an unchallenged ruling, right or wrong, becomes the law of the case)).

Under Rule 220(b)(2) of the South Carolina Appellate Court Rules, the Court of Appeals “need not address a point that is manifestly without merit.” *SCACR 220(b)(2)* (see S.C. Code Ann. §14-8-250 (“the court need not address a point which is manifestly without merit”)).

ARGUMENT

1. The Circuit Court Correctly Applied Judge Gravely's Order as the Law of the Case in Analyzing Appellant's Amended Complaint, Finding that it Did Not Cure the Defects Identified in that Order.

This Court need not address an argument which is manifestly without merit. S.C. Code Ann. §14-8-250. This appeal represents Appellant's fourth attempt to make the argument that the facts alleged in his pleadings, under even the lenient standards of the South Carolina Rules of Civil Procedure, suffice to establish a cause of action for negligence and gross negligence. Judge Gravely, in his Order, found that Appellant's initial Complaint did not allege facts that rose to even this minimum standard, but nonetheless allowed Appellant the opportunity to amend his Complaint to allege any fact that tended to establish that Respondents had any duty to Appellant in their dealings with Dalton Taylor, that Respondents had somehow breached that duty, or that Respondents were grossly negligent or outside the course and scope of their duties such that they would not be entitled to immunity under the South Carolina Tort Claims Act. (R. p. 28-35). Appellant did not move for reconsideration of or appeal Judge Gravely's Order. Because Appellant did not contest or appeal Judge Gravely's Order, it is the law of the case that the facts alleged in Appellant's first Complaint are insufficient to allege a cause of action for negligence. *Carolina Chloride, Inc. v. Richland Cty.*, 394 S.C. 154, 171-72, 714 S.E.2d 869, 878 (S.C. 2011) (explaining that an unchallenged ruling, right or wrong, becomes the law of the case).

Appellant's Amended Complaint, though never properly filed, was provided to Judge Gibbons, whose Order is the subject of this appeal. (R. p. 78, lines 20-25; p. 79, lines 1-5). Appellant's statement of the issue on appeal is simple: that Judge Gibbons did not address Appellant's Amended Complaint in ruling that the Amended Complaint cured none of the deficiencies identified by Judge Gravely's Order. (Final Brief of Appellant, p. 3).

Respondents maintain that this Court should affirm the Circuit Court's ruling under Rule 220(b)(2) of the *South Carolina Appellate Court Rules*, where Appellant's brief identifies no specific error made by the Circuit Court that Appellant has not already waived or made previously. The record makes clear that this appeal is without merit; Judge Gibbon's Order granting Respondents' Motion to Dismiss found, specifically, that Appellant's Amended Complaint had not addressed the deficiencies identified by Judge Gravely's Order. Appellant's subsequent motion to reconsider was similarly considered and denied. (R. p. 7).

As Respondents address, *infra*, Appellant's Amended Complaint, on its face, asserts no additional, material facts that address any of the deficiencies identified in Judge Gravely's Order. Accordingly, and despite the framing of the issue in Appellant's Statement of Issue on Appeal, Appellant's actual argument asks this Court to rule not based upon Judge Gibbons' Order, but on Judge Gravely's prior, uncontested Order. Respondents maintain, then, that the present appeal is wholly without merit; the record of the case demonstrates, unambiguously, that Judge Gibbons considered Appellant's Amended Complaint. (R. p. 7). Because Appellant failed to contest Judge Gravely's Order, Appellant cannot, through this appeal, attempt to argue that the facts in his first Complaint presented a valid cause of action. Because Judge Gibbons did address Appellant's Amended Complaint and found (correctly, as argued *infra*) that it did not cure the deficiencies identified by Judge Gravely's Order, Appellant's argument is facially without merit, and Respondents ask that this Court affirm the ruling of the Circuit Court dismissing Appellant's suit with prejudice.

The Circuit Court properly found that Appellant's Amended Complaint failed to cure the deficiencies identified in Judge Gravely's Order. Because Appellant did not contest Judge Gravely's Order, it is the law of the case. *Carolina Chloride, Inc.*, 394 S.C. at 171-72. Under that

ruling the facts alleged in Appellant's first Complaint do not tend to allege any cause of action upon which relief could be granted. Accordingly, then, Judge Gibbons' Order addressed the narrow question of whether Appellant's Amended Complaint alleged additional facts curing the deficiencies identified in Judge Gravely's Order, finding that it had not. The Circuit Court was correct in so ruling.

Limiting this Court's inquiry to the four corners of Appellant's Complaint and Amended Complaint, it is clear that Appellant's Amended Complaint alleged no additional facts to those alleged in his first Complaint. Plaintiff's original Complaint alleged, in total, the following facts: that on October 2nd, 2020, Respondent Compton stopped Dalton Taylor in Greenville County for operating an unsafe moped; that Taylor did not have or could not find his wallet; that Respondent Compton informed Taylor that his moped was unsafe to operate without lights and that if he continued driving it on the road he could get hurt, which Taylor acknowledged; that Taylor stated that he was attempting to make it to the Sphinx gas station; that Respondent Compton told Taylor that the gas station was too far away and that to attempt to drive the moped there would be unsafe; that Respondent Compton called Taylor's family and asked them to come pick him up and informed them of Taylor's location; that Taylor's family told Respondent Compton that they would come pick Taylor up, but sounded hesitant; that Taylor told Respondent Compton that he would make it "there;" that Taylor had drugs on his person and in his system; and that Respondent Compton then terminated the interaction, leaving Taylor on the side of the road and thus able to continue on his way. (R. pp. 60-67).

Appellant's Amended Complaint reincorporates the facts of the first. (R. pp. 11-17). To the extent Appellant alleged any additional facts in his Amended Complaint, only one appears pertinent, and was necessarily implied in Appellant's first Complaint: that Respondent Compton

did not ticket or arrest Taylor. (R. p. 12). There is no relevance to Respondent Compton's decision not to ticket Taylor; Appellant does not allege that such a ticket would have prevented Taylor from continuing operating his moped. That Respondent Compton did not arrest Taylor forms the basis of Appellant's claims in both his first and his Amended Complaint, thus, it could not constitute an additional fact which might cure the deficiencies identified by Judge Gravely. In addition to this, Appellant adds in his Amended Complaint the "fact" that he only pled guilty due to inadequate counsel by his attorney, an issue outside the scope of the present suit. (R. pp. 14-15).

The remainder of the additional allegations or inclusions in Appellant's Amended Complaint are not factual allegations. To the extent there are any additions not necessarily implied in Appellant's first Complaint, Appellant's Amended Complaint alleges that Respondent Compton was grossly negligent in dealing with Taylor, that Respondent Compton was outside the scope of his ministerial duties, and invokes certain sections of the South Carolina State Code of Laws, including S.C. Code Ann. § 56-2-3070, § 56-1-1760, § 56-2-3000, § 56-1-1720, and §15-78-60. Such "allegations," though, constitute legal conclusions – they are not factual allegations such that would address the deficiencies identified in Judge Gravely's Order. Neither the Circuit Court nor this Court is required to give such legal conclusions the deference owed well-pleaded facts. *Jensen v. South Carolina Dep't of Social Services*, 297 S.C. 323, 326, 104 S.E.2d 102, 104 (S.C. App. 1987).

Accordingly, Respondent prays that this Court affirm the ruling of the Circuit Court, where this appeal is clearly devoid of merit; Judge Gravely's uncontested Order is the law of the case, and thus the allegations of Appellant's first Complaint are legally insufficient to state a claim on which relief may be granted. (R. pp. 28-35). In the Circuit Court's subsequent ruling, it is facially clear that Judge Gibbons considered and addressed Appellant's Amended Complaint, finding that

it failed to cure the deficiencies identified in Judge Gravely's Order, upon which grounds Appellant's Motion to Reconsider was also denied. (R. pp. 1-2, 6-8). Further, the Circuit Court was correct in that ruling: Appellant's Amended Complaint contained no additional, relevant factual allegations that would cure the deficiencies identified in Judge Gravely's Order, offering only legal conclusions and facts either duplicative of Appellant's first Complaint or irrelevant. Accordingly, this appeal is clearly without merit and Respondents pray for an Order affirming the ruling of the Circuit Court.

2. The Circuit Court Properly Ruled that Appellant Has Not Alleged Facts Sufficient to State a Claim.

Respondents maintain that Judge Gravely's Order constitutes the law of the case and that, thus, Appellant is barred from arguing that the fact contained in his first Complaint are sufficient to state a claim on which relief may be granted. As Appellant's Amended Complaint failed to make additional factual allegations curing this deficiency, Respondents pray for an Order affirming the ruling of the Circuit Court. To the extent, if any, that Appellant is permitted to contest the finding that the facts he has alleged, however functionally identical in both complaints, are insufficient to state a claim, this Court should nevertheless affirm the Circuit Court's ruling.

First, the Circuit Court properly found that Appellant has alleged no duty upon which Appellant's claims for negligence or gross negligence might be based. (R. p. 30). In *Doe v. Marion*, the South Carolina Supreme Court affirmed the common-law elements of negligence, stating, "[i]n order to prove negligence, a plaintiff must show: (1) defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages." *Doe v. Marion*, 373 S.C. 390, 400, 645 S.E. 2d 245 (2007) (citing *Steinke v. S.C. Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 387, 520 S.E. 2d 142 (1999) (stating "The court

must determine as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a directed verdict”)).

Gross negligence incorporates the elements of negligence but with an added burden on the Plaintiff. The South Carolina Supreme Court has established that, “[g]ross 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. It is the failure to exercise slight due care.” *Jinks v. Richland County*, 355 S.C. 341, 345 (2003). Still, under either negligence or gross negligence, a prerequisite duty is an essential element.

Neither Defendant Compton nor the Greenville County Sheriff’s Office owed Plaintiff a duty of care, and thus no negligence may follow. “An affirmative legal duty to act may be created by statute, contract relationship, status, property interest, or some other special circumstance.” *Arthurs v. Aiken County*, 346 S.C. 97, 103 (2001). Accordingly, “a Plaintiff alleging negligence on the part of a governmental actor or entity may rely either upon a duty created by statute or one founded on the common law.” *Arthurs*, 346 S.C. at 104. Even if such a duty can be alleged, though, the Supreme Court has stated that,

The ‘public duty rule’ presumes statutes which create or define the duties of a public office have the essential purpose of providing for the structure and operation of government or for securing the general welfare and safety of the public. Such statutes create no duty of care towards individual members of the general public.” *Summers v. Harrison Constr.*, 298 S.C. 451, 455-56, 381 S.E.2d 493, 496 (Ct. App. 1989). The public duty rule is a negative defense which denies an essential element of the plaintiffs cause of action: the existence of a duty of care to the individual plaintiff.

Id.

Here, then, Respondents owed no duty to the Appellant. There is no common law duty to arrest in South Carolina – law enforcement officers can, and do daily, exercise their own discretion in deciding to ticket, arrest, warn, or even simply assist suspect motorists. Appellant’s Amended

Complaint lists statutes related to the safe operation of mopeds and requirements therefore; none of these, however, purport to create a statutory duty between an investigating officer and a suspect operator of a moped, much less of a duty between an officer investigating the operation of a moped and all other drivers on the road. But Appellant's Complaint, even if it were based on some statutory or common law duty, is nonetheless barred by the public duty rule where Appellant cannot allege that it was the sort of special duty that is excepted by the public duty rule. South Carolina Courts have been reluctant to find such special duties under statute, and have subjected the inquiry to a six-part test which includes requirements that:

- (1) an essential purpose of the statute is to protect against a particular type of harm;
- (2) the statute, either directly or indirectly, imposes a specific public officer a duty to guard against or not cause that harm;
- (3) the class of persons the statute intends to protect is identifiable before the fact;
- (4) the plaintiff is a person within the protected class;
- (5) the public officer knows or has reason to know the likelihood of harm to members of the class if he fails to do his duty; and
- (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

Arthurs, 346 S.C. at 106. Accordingly, Respondents owed no duty to Appellant from which a claim for negligence could follow. Neither the common law nor the statutes cited by Appellant create any duty. Further, even had Appellant properly alleged some statutory or common law duty, the public duty rule requires that Appellant must show that there existed a special duty, which Appellant has not pled and indeed cannot show, where the Appellant was a member of no protected class to which the laws that that officer in this case might have applied to the deceased would have provided protection. Accordingly, no duty was owed to the Appellant.

Additionally, even could the Court find that some duty existed to the Appellant, the allegations raised by the Appellant do not tend to show that Respondents breached any duty owed to Appellant. Respondent Compton exercised his discretion in dealing with Taylor. Absent a duty to arrest, it is unclear how, in deciding not to arrest Taylor, Respondent breached any duty, much

less one owed to Appellant. Nor is Appellant's argument that Taylor had drugs on his person and in his system persuasive, where Appellant has not alleged that Respondent Compton had any reasonable suspicion, much less probable cause, that Taylor had taken or possessed drugs.

Finally, had Appellant alleged facts tending to show negligence, these facts facially fail to rise to the level of gross negligence or the absence of even slight due care, entitling Respondents to immunity under the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-20(b). According to the South Carolina Tort Claims Act, such governmental entities are not liable, "for a loss resulting from: [. . .] adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies," or from "the exercise of discretion or judgment by the 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 Ann. §15-78-60(4); S.C. Code Ann. §15-78-60(5). Additionally, the South Carolina Tort Claims Act provides Immunity for the "execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process." S.C. Code Ann. §15-78-60(3). The allegations raised by Appellant, even could they constitute negligence, clearly fall under these exceptions to the waiver of immunity under the South Carolina Tort Claims Act.

Accordingly, Respondents pray for this Court to affirm the ruling of the Circuit Court.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents Greenville County Sheriff's Office and Deputy Compton respectfully request that the Court affirm the Order of the Circuit Court Judge Brian M. Gibbons dismissing Appellant's case with prejudice.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Respondents Greenville County Sheriff's Office and Deputy Compton's Final Brief of Respondents complies with Rule 211, SCACR.

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