

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Steven McLemore and Bonnie Jean Eagle as
Natural Parents for the Estate of D [REDACTED]
M [REDACTED],

Plaintiffs,

vs.

Charleston County Parks and Recreation
Commission d/b/a James Island County
Park, Yearround Pool Co., Inc., SGA
Architecture, South Carolina Department
of health and Environmental Control, and
John Doe and/or John Doe Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO: 2017-CP-10-01324

ORDER GRANTING THE MOTION TO
DISMISS OF CHARLESTON COUNTY
PARKS AND RECREATION
COMMISSION D/B/A JAMES ISLAND
COUNTY PARK

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SC Court of Appeals

This matter came before the Court on 23 January 2023 for a hearing on Defendant Charleston County Parks and Recreation Commission d/b/a James Island County Park's ("CCPRC") motion to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(1), South Carolina Rules of Civil Procedure (SCRCP) for lack of subject matter jurisdiction. Present at the hearing were counsel for Plaintiffs, counsel for CCPRC, and counsel for SGA Architecture. After careful consideration of the written motion and arguments of counsel, the Court GRANTS Defendant CCPRC's Motion to Dismiss.

I. BACKGROUND

This matter arises from the drowning of 3-year-old "DM" at the James Island County Park on May 14, 2016. Plaintiffs' Complaint alleges that on the 14th of May, the McLemore family visited a spray-and-play area near a pond in the James Island County Park. While packing to leave, Ms. Eagle's nephew diverted her attention by spraying her with a bottle of water. Ms. Eagle alleges that after playfully chasing after the nephew, she noticed that DM was missing. Several hours later, Police divers found DM's body submerged in the nearby pond.

Plaintiffs' base their Complaint in causes of action arising out of Attractive Nuisance, Negligence/Gross Negligence, Wrongful Death, and Survival. All causes of action in every version of the complaints are simultaneously directed at all Defendants. Both the DHEC and CCPRC are governmental agencies, subject to suit under the South Carolina Tort Claims Act ("SCTCA").

II. PROCEDURAL HISTORY

Plaintiffs filed their initial suit on 14 March 2017 and subsequent Amended Complaints on 21 March 2018 and 16 April 2019.

On 17 March 2020, Plaintiffs confirmed settlement with the South Carolina Department of Health and Environmental Control ("DHEC") by signing a "Full, Final, and Complete Release of South Carolina Department of Health and Environmental Control" (the "Release"). Plaintiffs then filed a petition requesting approval of the settlement which this Court approved and confirmed on 31 March 2020. Plaintiffs settlement with DHEC on 17 March 2020 did not include CCPRC as a party to that settlement.

On 14 May 2021, CCPRC filed a Rule 56, SCRCF motion for summary judgment based upon SC Code Ann. §15-78-70(d). Subject matter jurisdiction was not raised by either party in the Motion for Summary Judgment. This Court heard and subsequently denied Defendant's motion on 4 January 2022, filing the formal order on 11 February 2022. On 4 April 2022, this Court denied CCPRC's Rule 59(e) Motion to Alter or Amend the Judgment.

Defendants filed the present motion on 3 November 2022 raising the issue of subject matter jurisdiction. CCPRC's 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction is properly before the Court as "[t]he question of lack of subject matter jurisdiction may be raised at any time during the action. . ." Gnoc Corp. v. Estate of Rhyme, 312 S.C. 86, 88, 439 S.E.2d 274, 275 (1994) (emphasis added).

III. STANDARD OF REVIEW

A Motion to Dismiss under Rule 12(b)(1), SCRCF for lack of subject matter jurisdiction is a question of law. Porter v. Labor Depot, 372 S.C. 560, 567, 643 S.E.2d 96, 100 (Ct. App. 2007). See also, Posey v. Proper Mold & Eng'g, Inc., 378 SC 210, 217, 661 S.E.2d 395, 399 (Ct. App. 2008) ("The proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss pursuant to Rule 12(b)(1), SCRCF..."). Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. Dema v. Tenet Physician Servs.-Hilton Head, Inc., 383 S.C. 115, 120-21, 678 S.E.2d 430, 433 (2009). The South Carolina Tort Claims Act ("SCTCA") governs subject matter jurisdiction for all cases brought under the SCTCA. "A judgment of a court without subject matter jurisdiction is void." Coon v. Coon, 364 SC 563, 566, 614 S.E.2d 616, 617 (2005); SC Dept. of Soc. Servs. v. Tran, 418 SC 308, 314, 792 S.E.2d 254, 257 (Ct. App. 2016).

Under Rule 12(b)(1), the plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. See, Lujan v. Defs. of Wildlife, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992); Shekoyan v. Sibley Int'l Corp., 217 F. Supp. 2d 59, 63 (D.D.C. 2002); Citizens for Responsibility & Ethics v. FEC, 363 F. Supp. 3d 33, 39 (D.D.C. 2018) 2d 59, 63 (D.D.C. 2002). "The question of lack of subject matter jurisdiction may be raised at any time during the action and cannot be waived or conferred by consent. . .". Gnoc Corp., at 88, 275 (emphasis added), citing Petroleum Transp., Inc. v. Public Service Comm'n, 255 S.C. 419, 179 S.E.2d 326 (1971); American Agric. Chem. Co. v. Thomas, 206 S.C. 355, 34 S.E.2d 592 (1945).

IV. DISCUSSION

This Court lost jurisdiction over the subject matter of this litigation when Plaintiffs settled their claims against the Department of Health and Environmental Control (DHEC).

"A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence."
SC Code § 15-78-70(d)

Both CCPRC and DHEC are governmental entities and, therefore, Plaintiffs' settlement with DHEC in this action constitutes a complete bar to any further action by Plaintiffs against CCPRC and any other governmental entities as defined by SC Code Ann. §15-78-30. A complete bar to further action deprives the Court of subject matter jurisdiction in any claim against an entity of the State.

A. AS TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

During oral arguments, Plaintiffs argued that since the basis of this motion was SC Code §15-78-70(d), the issues giving rise to Defendant's Motion to Dismiss this motion was a repetition of an already decided issue in this case. This Court does not agree. Defendant's Motion for Summary Judgment was decided based on Judge Burch's interpretation of Judge McCoy's Settlement Order which stated "I find the settlement described in the Petition should be approved and confirmed as provided by S.C. Code Ann. §§ 62-3-1101 et seq." The Order further provided: "The compromise as recited in the Petition and the Release is approved as fair, just, and reasonable settlement of the contest and controversy existing between the Estate, its heirs, beneficiaries and assigns and Defendant South Carolina Department of Health & Environmental Control." Judge Burch's reasoning, based on the motion in front of him, was that he did not have authority to change another circuit court judge's Order and stated:

"It is well settled in South Carolina that one circuit judge cannot overrule another circuit judge's order. In this case, the Release and the Petition were approved by this court on March 31, 2020. This court cannot overrule another circuit judge's order."

2017-CP-10-01324, Order Denying Summary Judgement, 11 Feb 2022.

Subject matter jurisdiction was not raised by either party in argument or briefs and was not addressed in the Order denying Summary Judgment or the Order denying reconsideration. This motion is ripe for consideration.

B. AS TO DEFENDANT'S 12(B)(1) MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Subject matter jurisdiction may be raised at any time during litigation. Gantt v. Selph, 423 S.C. 333, 338, 814 S.E.2d 523, 525 (2018). The issue in the present motion has not been addressed by this Court and is therefore ripe for adjudication. "When the dispute is not to the underlying facts but as to the interpretation of the law and development of the record will not aid in the resolution of the issues it is proper to decide even novel issues on a motion to dismiss." Bessinger v. BI-LO, Inc., 366 S.C. 426, 434, 622 S.E.2d 564, 568 (Ct. App. 2005).

A Motion to Dismiss under Rule 12(b)(1), SCRCF for lack of subject matter jurisdiction is a question of law. The subject matter jurisdiction of the court is derived from the authority granted to the court by the Constitution and laws of the state. Paschal v. Causey, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App. 1992). The SCTCA governs subject matter jurisdiction for those cases brought under it. "Because there is but one circuit court in South Carolina, with uniform subject matter jurisdiction throughout the state, §15-78-100(b) establishes subject matter jurisdiction for actions arising under the SCTCA in the circuit court throughout the state." Jeter v. S.C. DOT, 369 S.C. 433, 440, 633 S.E.2d 143, 147 (2006), internal citations omitted.

It is a cardinal rule of statutory interpretation to ascertain and effectuate the intention of the legislature. "A court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute and the policy of the law." Se. Toyota Distributions, LLC v. Jim Hudson Superstore, Inc., 387 S.C. 508, 514, 693 S.E.2d 33, 36 (Ct. App. 2010). The intent of the Legislature in drafting the South Carolina Tort Claims Act was that courts treat a claim against multiple agencies or political subdivisions as a single claim against the state. The legislature does not allow for repeated damages among governmental Defendants for a single occurrence – it treats recovery of damages from them as a unified block. The General Assembly has plenary powers to write the law, say what they mean, and mean what they say. It is not the

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place of the Court to write the law of South Carolina. The statute is not ambiguous, and the Court will not torture the reading of the statute to ascertain its meaning.

The SCTCA is a limited waiver of sovereign immunity. South Carolina is the ultimate defendant, not the individual governmental entities, and a settlement in an action under the SCTCA "constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence." SC Code §15-78-70(d). Section 15-78-30 defines "Governmental entity" as "the State and its political subdivisions." The plain language of the statute uses the plural form of "subdivisions," indicating all subdivisions of the State are included in the definition.

Plaintiffs claim the specific, exclusionary language of their settlement agreement with DHEC allow them to continue their case against CCPRC.¹ It does not, as subject matter jurisdiction cannot be waived or conferred by consent. *Paschal*. Plaintiffs elected a remedy with the government defendants by entering a Settlement and Release with DHEC, satisfying the State of South Carolina's role as the superordinate defendant in this litigation.

THEREFORE, the Court finds that jurisdiction of the subject matter of this litigation was lost when Plaintiffs settled with DHEC, barring Plaintiffs from any further action against CCPRC, and GRANTS CCPRC's 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction.

IT IS SO ORDERED.

Honorable R. Keith Kelly
Circuit Court Judge
Ninth Judicial Circuit

¹ Plaintiffs included the following exclusionary language within the closing paragraph of the Release:

"Notwithstanding this Release, the Plaintiffs do not hereby release any claims against Defendants Charleston County Parks & Recreation Commission ("CCPRC") d/b/a James Island County Park, Yearround Pool Co., Inc., or SGA Architecture. This Release does not release any other governmental entity, other than SCDHEC."

The exclusionary language of the Release is only effective in not expanding the terms of the release to include CCPRC and does not expand the subject matter jurisdiction of the court to that which is prohibited. Otherwise, the paragraph is then an attempt to circumvent S.C. Code Ann. §15-78-70(d) and confer subject matter jurisdiction upon the Court by consent.



Charleston Common Pleas

Case Caption: Steven Mclemore , plaintiff, et al VS Charleston County of ,
defendant, et al
Case Number: 2017CP1001324
Type: Order/Dismissal

It is so Ordered.

s/ R. Keith Kelly - 2165