

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Ramona D. Byers, as Personal)
 Representative of the Estate of Mario Byers,)
)
 Plaintiff,)
)
 vs.)
)
 Greenville County and South Carolina)
 Department of Corrections,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 C.A. No.: 2023-CP-40-02273

ORDER

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SC Court of Appeals

This matter came before the Court upon Defendant South Carolina Department of Corrections’ (SCDC) Motion to Dismiss and Motion for Protective Order and Plaintiff Ramona D. Byers, as Personal Representative of the Estate of Mario Byers’ (hereinafter “Plaintiff”) Motion to Compel. A hearing was held before the Court on February 7, 2024, at which counsel of record for Plaintiff and SCDC attended and participated. Having considered the arguments made in the parties’ written submissions as well as at the February 7, 2024 hearing, for the foregoing reasons, the Court denies SCDC’s Motion to Dismiss and Motion for Protective Order and grants Plaintiff’s Motion to Compel.

BACKGROUND

This action arises from the death of Mario Byers at the Greenville County Detention Center (“the jail”) in June 2021. As set forth below, SCDC’s Division of Compliance, Standards and Inspections is required to inspect and ensure that all local jails in South Carolina are in compliance with Minimum Standards for Local Detention Facilities in South Carolina and other applicable codes, provide written reports to county officials, and ensure that corrective action is taken to

include any noted deficiencies, up to and including closing the jail if necessary. Plaintiff alleges the jail in this case had a long history of noncompliance with such minimum standards that SCDC knew about. Dating back to at least 2015, Plaintiff alleges that SCDC inspection reports noted gross overcrowding and understaffing at the jail, and from 2015 to 2021 there were thirteen (13) deaths at the jail, including several suicides. However, despite these noted issues, Plaintiff alleges that SCDC failed to ensure that these issues were corrected and that minimum standards were followed. As a result, Plaintiff alleges that on June 4, 2021, Plaintiff's decedent, while unattended and unsupervised, attempted suicide by hanging. On June 9, 2021, Plaintiff's decedent was transported to receive hospice care and succumbed to his injuries on June 10, 2021. Plaintiff further alleges that SCDC failed to fully comply with Plaintiff's Freedom of Information Act (FOIA) requests for all inspection reports and reports of death from the jail.

STANDARD OF REVIEW

Generally, in considering a Rule 12(b)(6), S.C.R.C.P. motion to dismiss, the court must base its ruling solely upon allegations set forth on the face of the Complaint. *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 66, 651 S.E.2d 305, 307 (2007). A motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the allegations set forth in the Complaint and must presume all well-pled facts to be true. *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 379, 635 S.E.2d 538, 538-39 (2006); *Overcash v. South Carolina Elec. and Gas Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005). If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Clearwater Tr. v. Bunting*, 367

S.C. 340, 343, 626 S.E.2d 334, 335 (2006); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

FINDINGS OF THE COURT

I. SCDC Owes a Statutory Duty to Plaintiff.

In its Motion to Dismiss, SCDC contends that it owes no legal duty to Plaintiff. “[A]n affirmative duty to act may be created by statute, contract, status, property interest, or some other special circumstance.” *Vaughan v. Town of Lyman*, 370 S.C. 436, 441, 635 S.E.2d 631 (2006). As an initial matter, the Court finds that SCDC does not owe Plaintiff a duty of care under the common law, as Plaintiff’s decedent was not in the custody and control of SCDC at the time of the incident, as those terms have been defined under South Carolina law. However, as set forth below, the Court finds that SCDC owes a statutory duty to Plaintiff based on the two-prong test described in *Denson v. Nat’l Casualty Co.*, 439 S.C. 142, 886 S.E.2d 228 (2023).

In order for there be a duty owed to a plaintiff under a statute, the plaintiff must show two things: “(1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect.” *Denson*, 439 S.C. at 152, 886 S.E.2d at 233-34 (quoting *Rayfield v. S.C. Dep’t of Corr.*, 297 S.C. 95, 103, 374 S.E.2d 910, 914 (Ct. App. 1988)).

Pursuant to S.C. Code Ann. §§24-9-10 – 30, SCDC, through its Jail and Prison Inspection Division, is required to at least annually inspect every local detention center in South Carolina. These inspections “shall include all phases of operation, fire safety, and health and sanitation conditions at the respective facilities” and are “based on standards established by the South Carolina Association of Counties and adopted by the Department of Corrections. S.C. Code Ann.

§ 24-9-20. Following each inspection, SCDC is required to “prepare a written report on the conditions of the inspected facility” and file the report “with the chairman of the governing body of the political subdivision having jurisdiction of the facility inspected, the chairman of the governing body of each political subdivision involved in a multi-jurisdictional facility, the administrator, manager, or supervisor for the political subdivision, the responsible sheriff or police chief if he has operational custody of the inspected facility, and the administrator or director of the inspected facility.” *Id.* When SCDC finds that a jail does not meet the minimum standards, the Director of SCDC “shall notify the governing body of the political subdivision responsible for the local confinement center.” S.C. Code Ann. § 24-9-30. The governing body must meet and take appropriate corrective action within ninety (90) days or may voluntarily close the jail. *Id.* If no corrective action is taken, SCDC may order the jail to be closed or stipulate other actions to be taken. *Id.*

The Court finds that this statutory scheme in S.C. Code Ann. § 24-9-10, *et seq.* establishes a duty of care owed to Plaintiff. The language of the statute itself makes clear that its essential purpose is to provide for the protection, health, and welfare of the detainees housed at the jail and places the duty on SCDC to ensure these detainees are protected, as the inspections required are to “include all phases of operation, fire safety, and health and sanitation conditions at the respective facilities” and are “based on standards established by the South Carolina Association of Counties and adopted by the Department of Corrections, and appropriate fire and health codes and regulations.” S.C. Code Ann. § 24-9-20. The class of individuals to be protected by SCDC under the statute, the detainees at the Greenville jail, were also identifiable prior to this injury. This is especially true given the allegations that hazardous conditions at the jail were reported to and

identified by SCDC well prior to this incident. *See Steinke*, 336 S.C. at 391 (“In this case, however, Department had received several credible reports indicating a particular amusement ride posed a significant safety threat. Members of the larger class of visitors and employees the Act is meant to protect—the riders and workers at a specific, reportedly hazardous amusement ride—were readily identifiable before the fact of the injury.”). Therefore, the Court finds that S.C. Code Ann. § 24-9-10, *et seq.* creates a statutory duty owed by SCDC to Plaintiff in this case. *See Myrtle Beach Hosp. of City of Myrtle Beach*, 341 S.C. 1, 6 n.4, 532 S.E.2d 868 (2000) (“This is not to suggest that the DOC could not be held to its duty to adopt standards, or to conduct inspections of local facilities pursuant to § 24-9-20; or that the City would not be subject to sanctions for failure to abide by these regulations.”).

The Court further holds that the public duty rule does not provide SCDC a defense in this case. The public duty rule “holds that public officials are generally not liable to individuals for their negligence in discharging public duties as the duty is owed to the public at large rather than anyone individually.” *Steinke v. S.C. Dept. of Labor, Licensing, & Reg.*, 336 S.C. 373, 388, 520 S.E.2d 142 (1999).

With respect to the statutory duties created and owed by SCDC under S.C. Code Ann. §§ 24-9-10 – 30, the Court holds that those duties of SCDC fall under the “special duty” exception to the public duty rule. A “plaintiff may prevail against a public duty defense if the statute not only concerns the duties of a public office, but also has the essential purpose of protecting identifiable individuals from a particular kind of harm. In such cases, the statute is said to create a ‘special duty’ or ‘special relationship’ which may give rise to a negligence suit against the officer for failure to perform his duties properly. *Rayfield v. S.C. Dept. of Corrs.*, 297 S.C. 95, 106, 374 S.E.2d 910,

916 (Ct. App. 1988). The South Carolina Supreme Court has developed the following test to determine whether a statute creates such a “special relationship” or “special duty”:

- (1) an essential purpose of the statute is to protect against a particular kind of harm;
- (2) the statute, either directly or indirectly, imposes on 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.

Steinke, 336 S.C. at 388 (quoting *Jensen v. Anderson County Dep’t of Social Services*, 304 S.C. 195, 403 S.E.2d 615 (1991)).

In *Steinke*, the South Carolina Supreme Court held that the South Carolina Amusement Rides Safety Code, S.C. Code Ann. § 41-18-10, *et seq.*, was not subject to the public duty rule and created a private cause of action. *Id.* at 390. The plaintiffs alleged in that case the South Carolina Department of Labor, Licensing, & Regulation did not adequately inspect or investigate a “crawlevator” that lifted bungee jumpers to the top of a 160-foot arch and failed to take corrective action to revoke or suspend the license that had been issued to the operator. *Id.* at 384. The cable on the “crawlevator” eventually snapped while in operation, killing two people. *Id.* In analyzing the above six elements, the Court held that “an essential purpose of the Amusement Ridges Safety Code is to protect against a particular kind of harm, i.e., harm caused by poorly designed, constructed, or maintained amusement rides;” “the Act directly imposes on Department a duty to guard against or not cause harm to amusement park visitors and workers;” “[m]embers of the larger

class of visitors and employees the Act is meant to protect—the riders and workers at a specific, reportedly hazardous amusement ride—were readily identifiable before the fact of the injury;” the plaintiffs were within the protected class as a park visitor and employee of the operation; the “Department knows or has reason to know the likelihood of harm to members of the class if it fails to do its duty;” and the “Department has sufficient authority to act in the circumstances,” as it “may revoke a permit,” “may enter unannounced and inspect amusement devices at reasonable times and in a reasonable manner,” or “may impose civil penalties when an owner fails to comply with the act.” *Id.* at 390-92.

The Court finds this case similar to *Steinke*. As set forth above, the essential purpose of S.C. Code Ann. §24-9-10, *et seq.* is to provide for the health, welfare, and protection of the detainees housed at the jail and places the duty on SCDC to ensure these detainees are protected. The class of individuals to be protected by these inspections by SCDC, the detainees at the Greenville jail, were also identifiable prior to this injury. All other elements of the above six-part test are also met, as Plaintiff’s decedent was within the protected class as a detainee at the Greenville jail, given the other deaths and suicides, and SCDC certainly had reason to know the likelihood of harm if it failed to ensure the jail met minimum standards. SCDC also had sufficient autonomy to act, as as in *Steinke*, copies of the inspection reports are required to be filed with the sheriff through the Director of the Department of Corrections, the Director is then required to notify the sheriff if the facility does not meet minimum standards, the sheriff “shall initiate appropriate corrective action within ninety days,” and if he does not, SCDC “may order that the local confinement facility, or objectionable portion therefore, be closed” or “may stipulate actions to avoid or delay closing the facility.” S.C. Code Ann. § 24-9-20 – 30. Therefore, because these

statutes create a “special duty” or “special relationship” between SCDC and the detainees at the jail, the public duty rule is inapplicable.

The Court further holds that Plaintiff’s claims, alleging gross negligence against SCDC, are not barred by the South Carolina Tort Claims Act (SCTCA). With respect to the SCTCA, the South Carolina Supreme Court has long held that “when an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception. Otherwise, portions of the Act would be a nullity, which the Legislature could not have intended.” *Steinke*, 336 S.C. at 398; *see Repko v. Cnty of Georgetown*, 424 S.C. 494,507, 818 S.E.2d 743, 750 (2018) (holding that “in order for the gross negligence standard from one immunity provision to be read into an immunity provision that does not contain a gross negligence standard, the immunity provision containing the gross negligence standard must first apply to the case”); *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 320, 743 S.E.2d 109, 115 (Ct. App. 2013) (“We hold that when an exception containing the gross negligence standard applies, that same standard will be read into any other applicable exception.”). One of the exceptions to the SCTCA applicable to SCDC here is in S.C. Code Ann. § 15-78-60(25), which reads:

The governmental entity is not liable for a loss resulting from:

(25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, **except when the responsibility or duty is exercised in a grossly negligent manner.**

S.C. Code Ann. § 15-78-60(25) (emphasis added). Thus, when this exception applies, with respect to any other possible exceptions under the SCTCA, the Court of Appeals has held:

While Atkinson’s transfer was admittedly an act requiring the discretion and judgment of the Department, Section 15-78-60(25) provides an exception to immunity where the governmental entity exercises its responsibility or duty in a

grossly negligent manner. Section 15-78-60(5) must be read in light of this exception. If discretion is exercised in a grossly negligent manner, the exception to the normal rule of immunity applies.

Jackson v. S.C.D.C., 301 S.C. 125, 128, 390 S.E.2d 467, 469 (Ct. App. 1989). Plaintiff has alleged gross negligence on the part of SCDC in the Complaint and has alleged sufficient facts in support of this claim. Therefore, because § 15-78-60(25) of the SCTCA applies in this case, any other exceptions to liability under the SCTCA alleged by SCDC have a gross negligence exception read into them, and the Court holds that SCDC is not immune from liability.

Likewise, S.C. Code Ann. § 15-78-60(12) provides:

The governmental entity is not liable for a loss resulting from:

(12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority **except when the power or function is exercised in a grossly negligent manner.**

S.C. Code Ann. § 15-78-60(12) (emphasis added). In *Steinke*, the South Carolina Supreme Court analyzed this exception along with § 15-78-60(13) dealing with inspection powers and held:

We hold the inspection powers exception must be read in conjunction with the key exception at issue in this case, Section 15-78-60(12), the licensing powers exception. Department must inspect an amusement device before deciding whether to issue, suspend, or revoke a license. S.C.Code Ann. §§ 41-18-70 and 41-18-80. Department also has an implicit duty to investigate potentially hazardous substantial modifications when it learns of them. It would make no sense to say Department may be found grossly negligent in a licensing decision, yet allow Department to escape liability because the inspection powers exception does not contain a gross negligence standard. The logical way to read these closely related provisions when both are at issue is that a governmental entity may be liable if it is grossly negligent in licensing or inspecting a particular device or activity.

Steinke, 336 S.C. at 396. Here, SCDC's requirement to ensure that each jail conforms to minimum standards and ability to close the facility or take other corrective action is akin to an approval or

licensing process under S.C. Code Ann. § 15-78-60(12). Therefore, the Court hold that the gross negligence exception from that section is also read into any other possible exceptions under the SCTCA, and SCDC is not immune from suit in this case.

II. Venue Is Proper in Richland County.

The Court further holds that venue is proper in Richland County. SCDC claims that the acts and omissions about which Plaintiff complains occurred in Greenville County, South Carolina and, pursuant to S.C. Code Ann. § 15-78-100 venue should be in Greenville County. However, Plaintiff's Complaint alleges several acts and omissions of SCDC allegedly occurring in Richland County, and venue is proper in this court.

Section 15-78-100(b) of the SCTCA provides that “[j]urisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred.” S.C. Code Ann. § 15-78-100(b). Thus, Section 15-78-100(b) “establishes venue ‘in the county in which the act or omission occurred.’” *Jeter v. S.C. Dept. of Transp.*, 369 S.C. 433, 633 S.E.2d 143, 147 (2006). Further, the South Carolina Supreme Court has held with respect to this section that “[w]here an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue.” *Jeter*, 633 S.E.2d at 148.

Here, the Complaint explicitly alleges that the “jail and prison inspections division [is] located in Richland County, South Carolina” and that “[t]he causative decisions, acts, and omissions at issue in this case were all carried out by SCDC in Richland County, South Carolina.” Further, with respect to SCDC’s failure to respond fully to the Freedom of Information Act (FOIA)

request in this case and not provide all inspection reports for the Greenville County jail, such acts or omissions also occurred in Richland County. Therefore, because several of the acts or omissions alleged against SCDC in this case occurred in Richland County, venue is proper in Richland County under S.C. Code Ann. § 15-78-100.

III. Plaintiff's FOIA Claim Against SCDC Is Not Moot.

With respect to Plaintiff's FOIA claim against SCDC, SCDC contends it has provided all documents in its possession in response to Plaintiff's FOIA request and such claim should be dismissed and/or severed from the pending action because it is not related to the pending action. Even if this conclusory statement by SCDC is true, it does not render Plaintiff's FOIA claim moot, as S.C. Code Ann. § 30-4-100(b) also provides for the recovery of attorneys' fees and costs, which have not yet been awarded. *See Sloan v. S.C. Dept. of Rev. & James F. Etter*, 409 S.C. 551, 762 S.E.2d 687, 689 (2014) ("As the prevailing party under these circumstances, the trial court erred in not awarding Sloan his reasonable attorney's fees and costs in this action."). Furthermore, in the interests of judicial economy and to have all claims tried in one action, the Court in its discretion declines to sever the FOIA claims from the other claims against SCDC in this case.

IV. Plaintiff's Motion to Compel is Granted and SCDC's Motion for Protective Order is Denied.

Finally, Plaintiff has previously served SCDC with Interrogatories and Requests for Production. SCDC moved for a protective order and has not answered this discovery. Plaintiff has filed a motion to compel full responses to these discovery requests. Given the Court's ruling denying SCDC's Motion to Dismiss, the Court hereby grants Plaintiff's Motion to Compel and denies SCDC's Motion for Protective Order. SCDC is directed to provide full responses to Plaintiff's discovery requests served to date within fifteen (15) days of the date of this Order.

IT IS THEREFORE ORDERED that Defendant South Carolina Department of Corrections' Motion to Dismiss is DENIED.

IT IS FURTHER ORDERED that Defendant South Carolina Department of Corrections' Motion for Protective Order is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel is GRANTED. Defendant South Carolina Department of Corrections is hereby ordered to provide full and complete responses to all discovery requests served by Plaintiff to date within fifteen (15) days of the date of this Order.

IT IS SO ORDERED.

(Judicial Signature Page Follows)



Richland Common Pleas

Case Caption: Ramona D Byers , plaintiff, et al vs Greenville County , defendant, et al
Case Number: 2023CP4002273
Type: Order/Other

So Ordered

s/ Daniel Coble, 2774