

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )  
 )  
 Michael Wayne Gault and Hard Rock )  
 Investments, LLC, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 Sheriff Steve Mueller and Cherokee )  
 County, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS

C.A. No.: 2021-CP-11-00448

ORDER GRANTING SUMMARY  
JUDGMENT FOR DEFENDANT  
SHERIFF STEVER MUELLER AND  
CHEROKEE COUNTY

This matter was before the Court as the Defendants’ Motion for Summary Judgement. Present at the hearing was counsel for Plaintiff, N. Douglas Brannon. Present at the hearing for Defendants was counsel, Chad M. Graham. After reviewing the documents submitted and hearing argument from counsel, this Court grants Defendants’ Motion for Summary Judgment as it relates to the naming of Sheriff Mueller and on the theory of negligence against Defendant Cherokee County.<sup>1</sup>

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show that there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Turner v. Milliman*, 392 S.C. 116, 122 (2011). As noted in the South Carolina Supreme Court decision in *Kitchen Planners, LLC v. Friedman*, “the proper standard is the “genuine issue of material fact” standard set forth in the text of the Rule.” *Kitchen Planners v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). Summary Judgment is a drastic remedy and should be cautiously invoked so that a litigant will not be improperly deprived

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<sup>1</sup> This Court’s ruling does not address whether Plaintiff may bring forward actions against Defendant Cherokee County concerning a theory of negligence that does not include civil damages.

of trial on disputed factual issues. *Conner v. City of Forest Acres*, 348 S.C. 454; *Englert, Inc. v. Leaf Guard USA, Inc.*, 377 S.C. 129.

The South Carolina Tort Claims Act (“SCTCA”) governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. *Parker v. Spartanburg Sanitary Sewer Dist.* 362 S.C. 276, 280, 607 S.E.2d 711, 714 (Ct. App. 2005).

#### **Summary Judgment as to Sheriff Steve Muller**

Sheriff Mueller should not have been a named party to the litigation. Under the South Carolina Tort Claims Act (SCTCA), an employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable and a plaintiff must sue the governmental agency itself; however, if the plaintiff proves that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude, then the governmental agency is not liable, and the employee is personally liable. *Newkirk v. Enzor*, 2017, 240 F.Supp.3d 426. This Court finds no genuine issue of material fact that Sheriff Mueller was acting within the course and scope of his employment with Cherokee County. Therefore, Defendant’s Motion for Summary Judgment is granted as it relates to Sheriff Mueller being a named party to this action.

#### **Summary Judgment as to Cherokee County**

Subsection 15-78-20(a) provides in part, “The General Assembly recognizes the potential problems and hardships each governmental entity may face being subjected to unlimited and unqualified liability for its actions.” Subsection 15-78-20(f) provides, “The provisions of [the TCA] establishing limitations on and exemptions to the liability of the [governmental entity or

political subdivision], while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the [governmental entity or political subdivision].”

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

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature
- (4) 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;
- (5) 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;
- (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;
- (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety.” S.C. Code Ann. § 15-78-60.

Based on the record before the Court and the analysis contained above, the South Carolina Torts Claims Act provisions do not allow for a recovery for civil monetary damages under a theory of negligence in the present case. Therefore, to the extent the present lawsuit seeks civil monetary damages based on the theory of negligence, summary judgment is granted.

IT IS SO ORDERED.

\_\_\_\_\_, 2024

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Judge J. Mark Hayes, Jr.  
Seventh Judicial Circuit



Cherokee Common Pleas

**Case Caption:** Michael Wayne Gault , plaintiff, et al VS Sheriff Steve Mueller ,  
defendant, et al  
**Case Number:** 2021CP1100448  
**Type:** Order/Summary Judgment

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132