

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Ronald A. Zack, as Personal )  
 Representative of the Estate of Allan L. )  
 Zack, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Greenville County and South Carolina )  
 Department of Corrections, )  
 )  
 Defendants. )  
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IN THE COURT OF COMMON PLEAS  
 C.A. No.: 2023-CP-40-03029

**ORDER**

**RECEIVED**  
 MAY 31 2024  
 SC Court of Appeals

This matter came before the Court upon Defendant South Carolina Department of Corrections' (SCDC) Motion to Dismiss; SCDC's Motion to Bifurcate; Defendant Greenville County's Motion to Bifurcate; Greenville County's Motion to Change Venue; SCDC's Motion for Protection; and Plaintiff Ronald A. Zack, as Personal Representative of the Estate of Allan L. Zack's ("Plaintiff") Motion to Compel and Amended Motion to Compel Defendants' Discovery Responses. A hearing was held before the Court on March 13, 2024, at which counsel of record for Plaintiff, SCDC, and Greenville County attended and participated. Having considered the arguments made in the parties' written submissions as well as at the March 13, 2024, hearing, for the foregoing reasons, the Court denies SCDC's Motion to Dismiss; denies SCDC's Motion to Bifurcate; denies Greenville County's Motion to Bifurcate; denies Greenville County's Motion to Change Venue; denies SCDC's Motion for Protection; and grants Plaintiff's Motion to Compel and Amended Motion to Compel Defendants' Discovery Responses.

## FINDINGS OF THE COURT

### I. SCDC's Motion to Dismiss is DENIED.

In its Motion to Dismiss, SCDC raises as its sole ground for dismissing Plaintiff's claims arising under the South Carolina Tort Claims Act (SCTCA) its contention that it is immune from suit pursuant to S.C. Code Ann. § 15-78-60(13), which states that a "governmental entity is not liable for a loss resulting from . . . 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." However, as set forth below, the Court finds that because other exemptions under the SCTCA containing a gross negligence exception apply in this case, SCDC is not entitled to dismissal, and its Motion to Dismiss is denied.

SCDC first contends that it did not raise subsection (12), (25), or any other subsections containing a gross negligence exception in its Answer. However, this is of no consequence, as 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 v. S.C. Dept. of Labor, Licensing & Reg.*, 336 S.C. 373, 398, 520 S.E.2d 142 (1999) (emphasis added). For instance, in *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000), the defendant did not raise specific subsections of the SCTCA in its Answer, but the Court cited to the above holding in *Steinke* and stated that "*Steinke* disposes of the City's argument in this case." 339 S.C. at 417. *Steinke*'s holding has subsequently been reaffirmed by both the South Carolina Supreme Court and South Carolina Court of Appeals. *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.”); *Staubes v. City of Folly Beach*, 339 S.C. 406, 417, 529 S.E.2d 543 (2000) (holding “*Steinke* disposes of the City’s argument in this case”). Thus, if any of the exemptions of the SCTCA containing a gross negligence exception *apply* in this case, then that exception is read into all other exemptions, and dismissal is improper, as Plaintiff has pled gross negligence against SCDC in this case.

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).

Despite the plain language of this exemption referring broadly to responsibilities or duties “including but not limited to supervision, protection, control, confinement, or custody of any . . . prisoner,” SCDC argues that this exemption is limited to situations when a governmental agency has actual physical custody of a prisoner and relied on the South Carolina Supreme Court’s decision in *Plyler v. Burns*, 373 S.C. 637, 647 S.E.2d 188 (2007) for this proposition. However, *Plyler* makes no such limitation. *Plyler* involved an action brought by the beneficiary of a conservatorship against the Horry County Probate Court and several other entities, alleging that

the probate court and several other entities were grossly negligent or reckless in the supervision of the conservatorship at issue in that cause, breach of fiduciary duties, and civil conspiracy, and alleging that the beneficiary never received proceeds from the conservatorship. Although, subsection (25) was not pled by the probate court in its Answer, the plaintiff argued that it applied. In holding that this subsection was inapplicable to the facts of that case, the Court held “[t]he unambiguous language of the statute clearly refers to the *protection* of the physical person. Plyler makes no claim that the probate court breached any duty to protect her from physical harm.” *Id.* (emphasis added).

## **II. SCDC’s and Greenville County’s Motions to Bifurcate are DENIED.**

The Court also denies SCDC’s and Greenville County’s Motions to Bifurcate and/or Sever the claims against each of them in this case pursuant to Rule 20, 21, and/or 42 S.C.R.C.P. Rule 20(b), S.C.R.C.P. provides that a “court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.” Rule 20(b), S.C.R.C.P. Rule 21, S.C.R.C.P. states in pertinent part that “[a]ny claim against a party may be severed and proceeded with separately.” Rule 21, S.C.R.C.P. As to severance under Rule 21, S.C.R.C.P., courts consider four factors when reaching their decision: (1) whether the issues sought to be tried separately are significantly different from one another; (2) whether the separable issues require different witnesses and different documentary proof; (3) whether the party opposing severance will be prejudiced if it is granted; and (4) whether the party requesting severance will be prejudiced if the claims are not severed. *Marlboro Elec. Coop. v. Cent. Elec. Power Coop.*, C/A No. 4:20-cv-4386-SAL (D.S.C. Dec. 7, 2022).

The Court holds that severance of Plaintiff's claims against Greenville County and SCDC is not warranted, as such an action would force there to be two trials with many of the same witnesses having to testify twice and would be inefficient, against the interests of judicial economy, and prejudicial to Plaintiff and others in forcing two separate trials against joint tortfeasors. Moreover, several issues cannot be separated into two trials, including apportionment of fault between SCDC and Greenville County. *See Creech v. South Carolina Wildlife & Marine Resources Dept.*, 328 S.C. 24, 491 S.E.2d 571, 575 n.1 (1997) (in a case with two governmental defendants holding that "if there is more than one defendant, the plaintiff's negligence shall be compared to the combined negligence of all defendants").

Defendants alternatively seek bifurcation of the trial pursuant to Rule 42(b), S.C.R.C.P. That rule states in pertinent part that the court may "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim." Rule 42(b), S.C.R.C.P. Under South Carolina law, "a trial may be bifurcated only if the issues are so distinct that a trial of each alone would not result in injustice." *Fortune v. Gibson*, 304 S.C. 279, 403 S.E.2d 674, 675 (Ct. App. 1991). In other words, "[a]lthough bifurcation may be appropriate when resolution of certain issues could be dispositive of the entire case . . . if the court orders bifurcation and certain issues are not resolved, 'the court would be forced to hold two trials,' which clearly impedes judicial economy." *Sinclair & Assocs. Of Greenville, LLC v. Crescom Bank*, No. 2:16-cv-00465-DCN (D.S.C. Jan. 2, 2018). Here, as set forth above, bifurcation of this case would indeed force there to be two trials—one against SCDC and one against Greenville County. For these reasons, the Court finds that bifurcation is not warranted and denies Defendants' motions.

### III. Greenville County's Motions to Change Venue is DENIED.

The Court denies Greenville County's Motion to Change Venue made pursuant to S.C. Code Ann. § 15-78-100(b) and S.C. Code Ann. § 15-7-100. Greenville County 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." Therefore, because several of the acts or omissions alleged against co-defendant SCDC in this case occurred in Richland County, venue is proper in Richland County under S.C. Code Ann. § 15-78-100.

This ruling does not preclude Greenville County from filing a future Motion to Change Venue for the convenience of witnesses and the ends of justice pursuant to S.C. Code Ann. § 15-7-100(A)(3) as discussed during this hearing.

**IV. SCDC's Motion for Protection is DENIED and Plaintiff's Motion to Compel and Amended Motion to Compel Defendants' Discovery Responses are GRANTED.**

Finally, Plaintiff has previously served both SCDC and Greenville County with Interrogatories and Requests for Production that to-date have not been answered. SCDC moved for a protective order and has not answered this discovery, claiming that it did not need to do so given its pending motion to dismiss. Greenville County has also not answered Plaintiff's discovery. Plaintiff has filed a motion to compel full responses to these discovery requests from SCDC and Greenville County. The Court hereby grants Plaintiff's Motion to Compel and Amended Motion to Compel and denies SCDC's Motion for Protective Order. SCDC and Greenville County are directed to provide full and complete responses to Plaintiff's discovery requests served to date within twenty-one (21) days of the date of this Order.

IT IS THEREFORE ORDERED that Defendant SCDC's Motion to Dismiss is DENIED; Defendant SCDC's Motion to Bifurcate is DENIED; Defendant Greenville County's Motion to Bifurcate is DENIED; Defendant Greenville County's Motion to Change Venue is DENIED; and Defendant SCDC's Motion for Protection is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel AND Amended Motion to Compel Defendants' Discovery Responses are GRANTED. Defendant SCDC and Defendant Greenville County are hereby ordered to provide full and complete responses to all discovery requests served by Plaintiff to date within twenty-one (21) days of the date of this Order.

IT IS SO ORDERED.

April \_\_, 2024  
Columbia, South Carolina

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Carmen T. Mullen  
Fourteenth Judicial Circuit