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Jun 04 2024

SC Court of Appeals

[ order of: 2-25-2019]  
defendants state they have not been served wherefore action should be dismissed .

[appeallant response to order: 6-4-2024]

appeallant states on order date, 2-20-2018 or order that it is in error, and not barred to the s.c statute of limitation two year claim on grounds: that he filed the complaint and summons 3/16/2018, and voluntarily dismissed it 3-18-2018 see. rule 41(j) plaintiff has the right to dissmis it and bring it back . The complaint which appeallant asks whats wrong with qualified immunity, see case john c. jefferries jr., 62 fla, l. rev 851. which case should be granted

[order dated: 7-20-2023]

This matter is before me on Defendant South Carolina Department of Corrections' (hereinafter SCDC) Motion to Dismiss. A hearing was held on this matter on July 17, 2023 at which time Steven M. Pruitt appeared on behalf of Defendant and Plaintiff appeared pro se. For the reasons discussed below, the Court grants Defendant's Motion and dismisses Plaintiff's action. Plaintiff filed this action alleging employees or agents of Defendant used excessive force against him on April 8, 2016. Plaintiff filed this action on August 28, 2018, but Defendants were not served. On February 1, 2019, the Court mailed Plaintiff a Dormant File Notice in which Plaintiff was instructed to file "an appropriate motion or Affidavit of Service" within 10 days or his action would be dismissed. There is no indication in the Court record that Plaintiff filed a motion or affidavit of service. On February 25, 2019, the Court issued an Order dismissing Plaintiff's action for failing to serve Defendants. Plaintiff then filed a letter and additional materials, including the Complaint, in April 2023. One copy of the Complaint was delivered to the SCDC General Counsel on May 25, 2023 by the Richland County Sheriff's Department.

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Defendant moved to dismiss first on the basis that Plaintiff's action was previously dismissed. The Court agrees. As stated above, an Order was issued on February 25, 2019 dismissing Plaintiff's action. As Plaintiff's action has been dismissed by prior Order of the Court. Plaintiff cannot continue to pursue this action and Defendant's Motion to Dismiss is granted. Defendant also moved to dismiss Plaintiff's action because it is barred by the two-year statute of limitations found in the South Carolina Tort Claims Act. South Carolina Code Ann. §15- 78-110 (Supp. 2021). Section 15-78-110 of the South Carolina Code states "[e]xcept as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered ... ." South Carolina Code Ann. §15-78-110 (Supp. 2021). Plaintiff in his Complaint claims that

the incident which is the subject of his claim occurred on April 8, 2016. According to Court records, Plaintiff initially filed this action on August 28, 2018, more than four months beyond the two-year statute of limitations. Therefore, Plaintiff's action is barred by the two-year statute of limitations found in the South Carolina Tort Claims Act and is dismissed.

Only Defendant SCDC has appeared in this action and this Motion was filed only on behalf of Defendant SCDC. The Court would note that there is no evidence in the record that the remaining Defendants have been served. The Court finds that the grounds for dismissal discussed above would apply to all Defendants and based on the above, Defendant's Motion to Dismiss is granted and Plaintiff's action is dismissed.

[appellant response to order :6-4-2024]

appellant states on rule 41(j) voluntarily dismissal with the appropriate matter.....

[complaint 3/16/2018]

[ The state of south carolina scdc use excessive force, with empty hand control/defensive tactics with

1hr of medical malpractice delay to treat the appellant on 4-8-2016 with no prior trial. the use of force or guard brutality was content under scdc custody, and was against any scdc policy. the scdc presented evidence that it used empty hand controll on the appellant why he was on the ground and or in handcuffs on the appellant while housed in scdc . The total amount of injurys on the appellant was three or four stitches in the face, eleven(11). behind left ear, and a brian concussion, and one right swollen eye. the defense attorney presented plenty of affidavits threw federal appeal of a grant threw reverse on charges which the appellant has already went threw with the proper courts. that freshly cuts down to the use of force, and how much was applied and, were they errored with the amount of seconds, and minutes. The trial court errored on july 17 2023 when they failed to re amend plaintiffs motion to show not barred on complaint when the appellant showed showed claim on paperwork dated back to 3/16/18 by buffy hodes courts clerk stating plaintiff(2) year inquiry to not barrer to plaintiff claim in the proper court. the courts judge mcintosh granted defendants motion to dissmis plaintiffs claim without the proper evidence , and checking. The defense attorney filed a motion to answer complaint with a 50-50 chance that excessive force did happen to the appellant . which appellant request for a new trial , and settlement to end case with \$8.0 million

defendants answer

[Defendant South Carolina Department of Corrections (SCDC), subject to and reserving  
answer dated:6-12-2023

Defendant South Carolina Department of Corrections (SCDC), subject to and reserving  
any motions to strike or to dismiss, responds to the Complaint of the Plaintiff and alleges:

#### FOR A FIRST DEFENSE

1. The Defendant incorporates the allegations of its Answer to the extent not inconsistent herewith.
2. The Defendant would show that it has not been served and Plaintiff's Complaint should, therefore, be dismissed pursuant to Rule 12(b)(5) of the South Carolina Rules of Civil Procedure.

#### FOR A SECOND DEFENSE

3. The Defendant incorporates the previous allegations of its Answer to the extent not inconsistent herewith.
4. The Defendant has not been served and the action against it should be dismissed for failure to obtain personal service.

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#### FOR A THIRD DEFENSE

5. The Defendant incorporates the previous allegations of its Answer to the extent not inconsistent herewith.
6. The Defendant has not been properly served and this Court lacks jurisdiction over the persons of the Defendant.

#### FOR A FOURTH DEFENSE

7. The Defendant incorporates the previous allegations of its Answer to the extent not inconsistent herewith.
8. The Defendant would show that the Plaintiff has failed to state a claim upon which relief may be granted and his Complaint should, therefore, be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

#### FOR A FIFTH DEFENSE

9. The Defendant incorporates the previous allegations of its Answer to the extent not inconsistent herewith.
10. Defendant denies that improper or excessive force was used against the Plaintiff or that Defendant or employees or agents of Defendant acted improperly in regards to the Plaintiff in any way. Defendant denies that Defendant has taken any improper actions in relation to the Plaintiff. Defendant is not aware of any injuries sustained by the Plaintiff as a result of any action or inaction by the Defendant or employees or agents of Defendant. Defendant denies that any action or inaction of the Defendant caused injury to the Plaintiff. Defendant would also state that Defendant through its employees and agents acted appropriately in their dealings with the Plaintiff and have not been deliberately indifferent to the Plaintiff's needs. The Defendant denies the allegations contained in Plaintiff's Complaint and demands strict proof thereof.

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11. The Defendant would specifically state that the Plaintiff is not entitled to the relief requested in his Complaint or to any relief in this matter.

FOR A SIXTH DEFENSE

12. The Defendant incorporates the previous allegations of its Answer to the extent not inconsistent herewith.

13. Defendant pleads the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq., including all of the immunities, limitations, and defenses granted or preserved by the Act, including limitations of any recovery and restrictions against recovering punitive damages and attorney's fees.

FOR A SEVENTH DEFENSE

14. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

15. Defendant affirmatively pleads and asserts any and all applicable provisions of the South Carolina Tort Claims Act set forth in §15-78-60 of the Code of Laws of South Carolina. Further, Defendant herein pleads and asserts as a complete, absolute, and affirmative defense to the Plaintiff's claims any and all conditions of recovery, statute of limitations, limitations of liability, and above listed exceptions from liability and/or immunities as are set forth in the South Carolina Tort Claims Act.

16. Defendant pleads the South Carolina Tort Claims Act as a complete and absolute bar to any recovery by the Plaintiff from Defendant.

FOR AN EIGHTH DEFENSE

17. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

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18. Any claim for punitive or exemplary damages against Defendant is barred by the South Carolina Tort Claims Act, in particular §15-78-120 of the Code of Laws of South Carolina.

FOR A NINTH DEFENSE

19. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

20. Defendant affirmatively pleads and asserts the provisions of §15-78-120 of the Code of Laws of South Carolina as a defense to the Plaintiff's claim, and further, Defendant herein pleads and asserts the limitation of liability as set forth in §15-78-120 of the Code of Laws of South Carolina as a limitation on the amount and/or type of damages recoverable in this action.

FOR A TENTH DEFENSE

21. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

22. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the

Complaint was a proximate result of one or more independent and intervening causes, which Defendant affirmatively pleads as a complete bar to this action.

FOR AN ELEVENTH DEFENSE

23. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

24. Any injury or damage sustained by the Plaintiff as a result of the matters alleged in the Complaint was caused by events over which Defendant had no control or right of control, thereby relieving Defendant from any liability or responsibility.

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FOR A TWELFTH DEFENSE

25. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

26. Defendant, at all times relevant hereto and during the performance or non performance of the acts alleged in the Complaint, did not perform any acts or fail to perform any

acts in bad faith, in a malicious manner, or with corrupt motives and the Defendant is, therefore, immune from suit.

FOR A THIRTEENTH DEFENSE

27. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

28. Defendant alleges that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the greater negligence and/or willfulness of the Plaintiff, which

exceeds the negligence and/or willfulness, if any, on the part of this Defendant, without which greater

negligence and/or willfulness on the part of the Plaintiff, said alleged injury or damage would not have occurred or been sustained and for that reason, the Plaintiff is totally barred from recovery.

FOR A FOURTEENTH DEFENSE

29. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

30. That even assuming Defendant was negligent, grossly negligent, careless, willful, wanton and reckless in any respect and that such conduct operated as a proximate cause of the accident

and the Plaintiff's resulting injuries and damages, if any, all of which is expressly denied and admitted

solely for the purpose for this defense, Defendant alleges that the Plaintiff's negligent, grossly negligent, reckless, willful, and wanton conduct in the particulars set forth herein and above

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contributed to more than 50% to cause the incident and the Plaintiff's resulting injuries and damages,  
if any. As such, the Plaintiff's cause of action is barred.

#### FOR A FIFTEENTH DEFENSE

31. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

32. Defendant alleges that even if it was careless, negligent, grossly negligent, willful, wanton, or reckless, in any respect, which is expressly denied and admitted solely for the purpose of this defense, and even if such conduct on its part operated as a greater than 50% cause of the accident and the Plaintiff's resulting injuries and damages, if any, which is also expressly denied and admitted solely for the purpose of this defense and no other, Defendant is entitled to a determination as to the percentage which Plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct contributed to this accident and to a reduction of any amount awarded to it by an amount equal to the percentage of Plaintiff's negligent, grossly negligent, reckless, willful and wanton conduct.

#### FOR A SIXTEENTH DEFENSE

33. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

34. Plaintiff has not suffered any damages caused by the actions of Defendant.

#### FOR A SEVENTEENTH DEFENSE

35. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

36. That there was no negligence, gross negligence, recklessness, and/or wantonness on behalf of Defendant which proximately caused the alleged damages referred to in the Plaintiff's  
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Complaint.

#### FOR A EIGHTEENTH DEFENSE

37. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

38. The individual Defendants are proper parties to this action pursuant to §15-78-70 of the South Carolina Tort Claims Act.

#### FOR A NINETEENTH DEFENSE

39. Defendant incorporates the previous allegations of the Answer to the extent not inconsistent herewith.

40. Plaintiff's action has been dismissed by Order of the Court and cannot be maintained.

#### FOR A TWENTIETH DEFENSE

41. The Defendants incorporate the previous allegations of their Answer to the extent not inconsistent herewith.

42. The Defendants state that the Plaintiff's claim is barred by the doctrines of res judicata and/or collateral estoppel.

FOR A TWENTY-FIRST DEFENSE

43. The Defendants incorporate the previous allegations of their Answer to the extent not inconsistent herewith.

44. Plaintiff's action is barred by applicable the statute of limitations.

FOR A TWENTY-SECOND DEFENSE

45. The Defendants incorporate the previous allegations of their Answer to the extent not inconsistent herewith.

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46. Plaintiff's action is barred by the two-year statute of limitations contained in the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq.

FOR A TWENTY-THIRD DEFENSE

47. The Defendants incorporate the previous allegations of their Answer to the extent not inconsistent herewith.

48. Defendant reserves, and specifically does not waive, any and all additional defenses which may become evident through the discovery process or otherwise in this matter; and, in addition, Defendant reserves the right to amend this answer to include additional defenses or withdraw others after the completion of discovery and at other times thereafter, up to and including, during a potential trial.

WHEREFORE, having fully answered the Complaint, Defendant prays that same be dismissed.....

appeallant response to answer:6-4-2024

Appeallant states on answer dated 6-12-2023 that it is barred due to plaintiff filed suit and summons , and complaint 3-16-2018. the statue of limitations means the time barred debt means a debt for which the complaint and summons statue expired. see court errored when they processed complaint and summons on date 8/28/2018, when the proper court document s shows 3/16/2023, incorrdance with rule 41(j) which would grant appeallant appeal of the civil see william baude,- is qualified immunity unlawful? 106 cal. rev. 45(2018), and s.c bill: 2021 -2022 bill 4406 excessive force section 23-1-250..

motion to dismiss:6-12-2023

Plaintiff filed this action alleging employees or agents of Defendant used excessive force against him on April 8, 2016.

#### ARGUMENT I.

##### PLAINTIFF'S ACTION WAS PREVIOUSLY DISMISSED AND CANNOT BE MAINTAINED.

According to Court records, Plaintiff filed this action on August 28, 2018. However, Defendant was not served. On February 1, 2019, Plaintiff was provided by the Court a Dormant File Notice. (See Exhibit 1). Plaintiff was instructed to file "an appropriate motion or Affidavit of Service" within 10 days or his action would be dismissed. There is no indication in the Court record that Plaintiff filed a motion or affidavit of service. On February 25, 2019, the Court issued an Order dismissing Plaintiff's action for failing to serve Defendants. (See Exhibit 2). The action was dismissed on February 25, 2019 and according to Court records there were no additional filings in the case until April 2023 when Plaintiff filed a letter and additional materials. One copy of the materials was delivered to the SCDC General Counsel on May 25, 2023 by the Richland ELECTRONICALLY FILED - 2023 Jun 12 3:05 PM - MCCORMICK - COMMON PLEAS - CASE#2018CP3500074

County Sheriff's Department.<sup>1</sup> Plaintiff's action has been dismissed by prior Order of the Court. As the action has been dismissed, Plaintiff cannot continue to pursue this action.

#### ARGUMENT II.

##### PLAINTIFF'S ACTION IS BARRED BY THE STATUTE OF LIMITATIONS.

Defendant maintains that Plaintiff's action has been dismissed, but regardless his action is barred by the two-year statute of limitations found in the South Carolina Tort Claims Act. South Carolina Code Ann. §15-78-110 (Supp. 2021). Section 15-78-110 of the South Carolina Code states "[e]xcept as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered ... ." South Carolina Code Ann. §15-78-110 (Supp. 2021). Plaintiff in his Complaint claims that the incident which is the subject of his claim occurred on April 8, 2016. According to Court records, Plaintiff initially filed this action on August 28, 2018. Therefore, based on Plaintiff's pleadings he filed his case more than four months beyond the two-year statute of limitations. Based on the above, Plaintiff's action is barred by the two-year statute of limitations found in the South Carolina Tort Claims Act.

#### ARGUMENT III.

##### THE INDIVIDUAL DEFENDANTS ARE NOT PROPER PARTIES AND SHOULD BE DISMISSED FROM THIS ACTION AS A MATTER OF LAW.

The undersigned does not represent the individual Defendants, but would note that they are not proper parties to this action as they were employees of Defendant. The Plaintiff has attempted to initiate this action pursuant to the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-10 et seq. (Supp. 2022). Under Section 15-78-70 of the South Carolina Tort Claims Act, an individual

1 There is no indication that this was served on the Attorney General as required by SCRPC Rule 4(d)(5).

Furthermore, there is no indication that even an attempt of service has been made on any of the individual Defendants.

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suing under this Act must name as a party defendant only the agency or political subdivision of which the employee was acting and is not required to name the employee individually. It further states that if any employee is named, the agency or subdivision for which the employee was acting must be substituted as a party defendant. Id. § 15-78-70 (emphasis added). The Plaintiff cannot maintain any action against the individual Defendants under the South Carolina Tort Claims Act as they are not proper parties to this action.

## CONCLUSION

For the arguments set forth above, the Plaintiff's actions against the Defendant should be dismissed as a matter of law.

appellant response to motion to dismiss:6-4-2024

defendants argue that plaintiff action was previously dismissed and cannot be maintained . Appellant would argue that the complaint and summons was voluntarily dismissed without prejudice which means he can bring back suit under scrcp rule 41(j). plaintiff complaint was filed 3/16/2018 two years from incident dated 4-8-2016 which would state fact that it was not barred , and would qualify plaintiff from public wrong, and private bills indemnification, and government accountability in the early, see case: james e. pfander and jonathan l. hunt , and see joanna schwarts, the case: against qualified immunity, 93 notre dame l. rev , 1799.....

[Transcript dated:7-17-2023]

1 PROCEEDING

2 THE COURT: What's our first case?

3 THE CLERK: Murray v SCDC.

4 THE COURT: Murray v SCDC.

5 MR. PRUITT: Morning, Your Honor.

6 THE COURT: Good morning. All right. This is

7 Defendant's motion to dismiss. Is that correct, Mr. Pruitt?

8 MR. PRUITT: That's correct, Your Honor.

9 THE COURT: All right. So your motion.

10 MR. PRUITT: If it please the Court, Your Honor. This

11 is -- I think it might be just a little bit of a background

12 might be helpful. This -- Plaintiff filed this action

13 against the Defendants claiming excessive force back on April

14 8th of 2016.

15 His action -- we have two grounds for dismissal. And

16 the first -- well, if you look at the background I think is

17 helpful. He filed an action, originally, in federal court on

18 this against multiple Defendants on January 23 of 2017.

19 Named several SCDC employees. I represented the Defendants

20 in that federal action.

21 I filed a motion for summary judgment, this was on May

22 4 of 2017, and Plaintiff, at that time, on May 10, again,

23 2017, filed a motion to voluntarily dismiss the case because

24 he said he wanted to file in the correct court. I think

25 that's the way it was phrased.

5

1 The district court issued an order, and I've got a copy

2 of that if you'd like, Your Honor, on July 12 of 2017,

3 dismissing the Plaintiff's federal claims, with prejudice,  
4 state claims, without prejudice. So he did have the right to  
5 refile.

6 According to court records, and I just kind of pulled  
7 up the index, he filed this action on August 28th of 2018,  
8 but did not serve the Defendant so the Defendant was not  
9 aware of the matter. On February 1 of 2019, he was provided  
10 a, what is it called --

11 THE COURT: Dormant file notice.

12 MR. PRUITT: -- a dormant file notice. That's correct,  
13 Your Honor, and Plaintiff was instructed, at that time, to  
14 file "an appropriate motion or affidavit of service within  
15 ten days or his action will be dismissed." There is no  
16 indication, in the court record, that anything was filed and  
17 on February 25, 2019, Judge Lee entered an order dismissing  
18 the case. It was a Form 4 order, Your Honor, and -- well,  
19 you have all that I'm sure, so.

20 The -- now, I did state one thing incorrectly in my  
21 memo. I stated, in my memo, that there were no additional  
22 filings until April 20th, 2023, but I was wrong. The  
23 Plaintiff did send a letter to the Court dated April 19,  
24 2021, asking about getting a copy of something.

25 But that was -- the next filing, then, was April 17 of

1 this year.

2 THE COURT: April?

3 MR. PRUITT: April 17 of this year.

4 THE COURT: No, he said 2020 --

5 MR. PRUITT: Oh, I'm sorry. April 19 of 2021. It's on

6 the index, Your Honor.

7 THE COURT: Okay. And it's a letter?

8 MR. PRUITT: It was a letter. I have it I believe,

9 Your Honor. I thought I had it. Maybe I didn't print that,

10 Your Honor, I'm sorry. But it's on the court index. It's

11 number -- well, it's not number but it's on here on the court

12 index, Your Honor. It was just a letter asking about status.

13 There was no further follow up.

14 The next thing was on April 20 -- April 17 of 2023, of

15 this year. When the Plaintiff filed a letter and additional

16 materials and then one copy of these materials were delivered

17 to the South Carolina Department of Corrections general

18 counsel on May 25, 2023, by the Richland County Sheriff's

19 Department. That's when my client, SCDC, became aware of

20 this action for the first time.

21 But here, the Plaintiff's action's been dismissed by an

22 order of the Court. I mean, it was dismissed by Judge Lee's

23 order and I don't know how he can continue the action as it

24 has been previously dismissed. I mean, that's our first

25 grounds, Your Honor.

7

1 I can go ahead, the second ground, if you'd like.

2 THE COURT: No, I'd like to hear from Mr. Murray if I

3 could.

4 Mr. Murray, when Judge Lee issued -- do you mind

5 standing up when you speak? When Judge Lee issued her order

6 saying that the case was dismissed and you needed --

7 THE DEFENDANT: Without prejudice.

8 THE COURT: Hang on. And you needed to provide

9 evidence of service, did you ever do any of that?

10 THE DEFENDANT: Well, I served -- I served the

11 voluntary dismissal before the defense could even stay a

12 counterclaim to voluntary dismiss the complaint.

13 THE COURT: Say that again, please, sir?

14 THE DEFENDANT: I served -- well, I didn't serve

15 Defendants in the beginning of the case but I did voluntary

16 dismiss the case within ten days. The complaint was filed

17 February 28th of 2018, with the statutory two-year claim

18 (indiscernible) in civil court for state court and you said,

19 at the beginning of the complaint, you said the bottom of the

20 complaint on juror forms, you said February 28th of 2018. It

21 was written wrong because on this form right here it's not

22 really properly filled out and it's not real present and the

23 bottom it says 8/18. I guess that's when the ruling with the

24 judge had 120, 140 days to look into the voluntary dismissal

25 and see whether can he serve or not. But against their

8

1 counterclaim so I voluntary dismiss within ten days. I

2 voluntary dismiss the claim on 3/8/2018. I got a copy of it

3 right here.

4 THE COURT: Yes, would you pass that forward?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Have you seen that, Mr. Pruitt?

7 Have you seen this dismissal?

8 MR. PRUITT: Yeah, I'm not sure what this says, Your

9 Honor. I don't believe I've seen this, Your Honor, but --

10 THE COURT: Assuming that it's filed and it's part of

11 the Court record, that would change the dynamics of this

12 case, would it not?

13 MR. PRUITT: I guess it might, Your Honor, but I don't

14 know that it's filed, first off, and, I mean, Judge Lee's

15 order -- I don't know if he's talking about on here. I don't

16 see anything here that says without prejudice. I'm a little

17 confused.

18 THE COURT: Well, first of all, he files of the action.

19 He has right, under 41(j), to dismiss it. I mean, if you had

20 counterclaims it wouldn't dismiss those but he has a right to

21 dismiss it, right?

22 MR. PRUITT: Well, he could voluntarily dismiss it,

23 Your Honor. I agree with that.

24 THE COURT: Sounds like what he did.

25 MR. PRUITT: But if it wasn't filed then I don't know

9

1 how that --

2 THE COURT: That's what I'm saying. If it was filed.

3 It seems --

4 MR. PRUITT: If it was filed but if it was not filed

5 then it's -- I don't see how it has any validity if it's not

6 filed.

7 But, Your Honor, I could address our second argument

8 which might help that as well.

9 THE COURT: Sure, sure, sure.

10 MR. PRUITT: The second argument, Your Honor, is it's

11 barred by the statute of limitations and on the Tort Claims

12 Act it's a two-year statute of limitations. Again, the

13 federal case is gone so that's gone. So it's under the Tort

14 Claims Act. It's going to be a two-year statute under 15-78-

15 110.

16 He filed this action -- again, he's saying in his

17 complaint and it says it in there that this involves an

18 incident which occurred April 8, 2016. All right. According

19 to his records he filed it on August 28, 2018. It's more

20 than two years later.

21 And if he voluntarily dismissed it, I didn't consent to

22 anything, the Defendants didn't consent to anything. There  
23 was no -- nothing toll the statute. So even then he's -- if  
24 he voluntarily dismissed it, he can't bring it back. The  
25 statute's run.

10

1 So I think, ever way, this case is -- has to be

2 dismissed, Your Honor.

3 THE COURT: All right. Thank you, sir.

4 MR. PRUITT: Thank you, Your Honor.

5 THE COURT: All right. Mr. Murray, let me ask you

6 this. Assuming that you dismissed the case voluntarily --

7 THE DEFENDANT: Within ten days.

8 THE COURT: Stand up.

9 THE DEFENDANT: Within ten days.

10 THE COURT: How do you get around the statute of

11 limitations running on your case?

12 THE DEFENDANT: Well, the instant happened before April

13 2016.

14 THE COURT: Right.

15 THE DEFENDANT: Two years before 2016. February 28,

16 2018, that you see -- that's in their complaint. That's two

17 years.

18 THE COURT: But if you dismissed that and then you

19 didn't file it again until 2020 --

20 THE DEFENDANT: Okay. If I filed the two --

21 THE COURT: Hey, stop. Don't interrupt, please.

22 If you dismissed it and didn't file it again until

23 2021, would the statute not have run?

24 THE DEFENDANT: Your Honor, I'm going to

25 (indiscernible). I said (indiscernible) case without

11

1 prejudice means that you can refile the case at a later date

2 as long as you still -- as long as you are within the statute

3 of limitations. The statute of limitations has been two

4 years. My case (indiscernible). So it was already on file

5 with the case docket. So I (indiscernible) for six years.

6 THE COURT: All right. Any response to that?

7 MR. PRUITT: I don't believe that's accurate, Your

8 Honor, that he could go back six years. I think it's a two-

9 year statute and I think he did not file within and he

10 voluntarily dismissed it.

11 If that was done then I think he -- and there's no

12 provision that says he -- you know, there's no 40(j) so we'd

13 say or anything of that nature tolling it then I think the

14 statute bars the case.

15 That would be our position, Your Honor.

16 THE COURT: All right. Thank you, sir.

17 All right, gentlemen, I'm going to --

18 THE DEFENDANT: I don't think it's barred. I don't

19 think it's been two years without a present state. The Court

20 (indiscernible). So I still have my civil rights and my

21 civil amendments. See what I'm saying?

22 THE COURT: I do. I do understand. I'm going to look

23 at this again and I'll issue an order by the time I leave

24 here. Okay? Thank you, sir.

25 MR. PRUITT: Thank you, Your Honor.

12

1 THE COURT: Do they have your address for Mr. Murray?

2 THE CLERK: I do.

3 THE COURT: You do? Okay, good. Thank you, sir.

4 Thank you.

5 MR. PRUITT: You can leave now. You can ask the judge.

6 I don't really --

7 THE DEFENDANT: I'm free to go?

8 MR. PRUITT: Yes, sir.

9 THE COURT: Yes, sir.

10 THE DEFENDANT: I come back later on?

11 THE COURT: Do you come back later on?

12 THE DEFENDANT: Afternoon?

13 THE COURT: It depends on what I do with the order. I

14 don't know if you have any other cases up here but so just an

15 order will come to you.

16 MR. PRUITT: I didn't want to ask (indiscernible).

17 THE DEFENDANT: (Indiscernible).

18 THE COURT: I'm not understanding what he's asking.

19 THE CLERK: He has like two more motions. The motions

20 are --

21 THE COURT: Oh, you have two other motions?

22 THE CLERK: I think he does.

23 THE COURT: Okay. I'm sorry.

24 MR. PRUITT: Oh, I didn't know we did.

25 THE CLERK: They're not on our docket is what he's

13

1 saying.

2 THE COURT: They're not? They're not --

3 MR. PRUITT: I haven't been served with them, Your

4 Honor.

5 THE COURT: Mr. Murray, they're not on the docket. Mr.

6 Pruitt didn't get notice of it, so they'll give you notice

7 later, depending on what I do. Okay?

8 Thank you.

9 THE CLERK: (Indiscernible).

10 THE COURT: Oh, okay.

11 THE DEFENDANT: You got the motion -- the motion to

12 (indiscernible)?

13 THE CLERK: (Indiscernible).

14 THE DEFENDANT: You got that one?

15 THE CLERK: Yeah, (indiscernible).

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24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED

25 AT 10:20 a.m.)