

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

**RECEIVED**

**Jun 04 2024**

**SC Court of Appeals**

[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 dismiss 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.

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

appeallant 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 tatics with

1hr of medical malpractice delay to treat the appeallant 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 appeallant why he was on the ground and or in handcuffs on the appeallant while housed in scdc . The total amount of injurys on the appeallant 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 appeallant has already went threw with the proper courts. that freashly cuts down to the use of force, and how muchwas 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 appeallant 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 appeallant . which appeallant 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.....

appellant response to answer:6-4-2024

Appellant 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 documents show 3/16/2023, in accordance with rule 41(j) which would grant appellant appeal of the civil case 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.1 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 SCRCP 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.

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

defendants argue that plaintiff action was previously dismissed and cannot be maintained .  
Appeallant 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.....

