

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2024-CP-22-00105

Terron Dizzley,)
)
Plaintiff,)

vs.)

**ORDER GRANTING
MOTIONS TO DISMISS DEFENDANTS**

Erin Bailey, Scott Hixon, Gregory)
Hembree, Georgetown County)
Solicitor's Office, Melvin Garrett,)
Georgetown County Sheriff's Dep't,)
Elaine C. Elliott, Solicitor Jimmy)
Richardson in their individual and)
official capacity,)
)
Defendant.)

This matter came before the court on April 18, 2024 for disposition of the following motions: (1) Plaintiff's motion for permanent injunction – filed February 9, 2024; (2) Defendant Elliott's motion to dismiss – filed March 5, 2024; (3) Defendants Melvyn Garrett and Georgetown County Sheriff's Office's ("GCSO," together the "GCSO Defendants") motion to dismiss – filed March 5, 2024; and (4) motion to dismiss Defendants Erin Bailey, Scott Hixson, Gregory Hembree, Fifteenth Circuit Solicitor's Office (incorrectly identified as "Georgetown County Solicitor's Office"), and Jimmy Richardson in their individual and official capacity (collectively referred to herein as the "Solicitor Defendants") – filed March 6, 2024. Present at the hearing were Plaintiff Terron Dizzley, *pro se*, Samuel F. Arthur, III, counsel for the Solicitor Defendants, and Nelson Chandler, counsel for Defendants Elliott, Garrett, and GCSO. For the reasons set forth below, Plaintiff's motion for permanent injunction is denied, Defendant Elliott's motion to dismiss is granted, Defendants Garrett and GCSO's motion to dismiss is granted, and Defendants Bailey, Hixson, Hembree, Fifteenth Circuit Solicitor's Office, and Jimmy Richardson's motion to dismiss is granted.

PROCEDURAL POSTURE AND CLAIMS

Plaintiff's Complaint names multiple defendants and purports to allege a total of three (3) causes of action. The first cause of action appears to be alleged against Defendants Garrett, GCSO, and Magistrate Elliott only. The second and third causes of action appear to be alleged against the Solicitor Defendants. Shortly after filing his Complaint, Plaintiff filed a motion for permanent injunction. Thereafter, three motions to dismiss covering all Defendants were filed in lieu of answers.

Plaintiff's Complaint alleges he is the victim of malicious prosecution and false imprisonment and purports to allege these claims pursuant to the *South Carolina Tort Claims Act* and as violations of federal law. He further claims the Solicitor Defendants engaged in prosecutorial misconduct in connection with his two criminal trials and ultimate conviction in 2014. His motion for permanent injunction essentially argues that this court should order his immediate release from incarceration with the South Carolina Department of Corrections and compel the Solicitor Defendants to pursue Plaintiff's release because he is innocent of the charges for which he was ultimately convicted.

At the hearing, this court received arguments relating to Plaintiff's motion for permanent injunction first, followed by arguments by counsel for the Defendants related to the multiple motions to dismiss, and then Plaintiff's response arguments in opposition to the same. Accordingly, this Order will address each motion in turn below.

Motion for Permanent Injunction

Plaintiff's motion for permanent injunction asserts Plaintiff is entitled to immediate release from incarceration due to alleged violations of Rule 3.8 of the South Carolina Appellate Court Rules, Rule 407 which provides, in part, as follows:

The prosecutor in a criminal case shall:

- a. refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

g. When a prosecutor learns of credible, material evidence or information such that there is a reasonable probability a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

- (1) make reasonable efforts to promptly disclose in writing that evidence or information to the defendant or, if the defendant is represented by counsel, to the defendant's counsel, unless a court authorizes delay; and
- (2) promptly disclose in writing that evidence or information to the chief prosecutor in the jurisdiction where the conviction was obtained.

h. When a prosecutor knows of clear and convincing evidence or information establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall make reasonable efforts to seek to remedy the conviction.

Rule 3.8 SCACR, Rule 407

At the hearing, Plaintiff argued that when the first trial of his criminal charge for murder in 2012 ended in a mistrial due to a hung jury, the trial judge should have issued an order of acquittal rather than a mistrial. Plaintiff further argued that the trial judge made statements on the record to the effect that he did not believe the Solicitor's Office could carry its burden of proof beyond a reasonable doubt and that the result should be a "message" to the prosecuting agency.

Plaintiff further argues that these comments by the trial judge should have resulted in his release at that time; that trying him a second time in 2014 violated his constitutional right to be free from double jeopardy; and that the failure of the Solicitor Defendants to pursue his release constitutes a violation of the Special Responsibilities of a Prosecutor sufficient to seek injunctive relief from this court.

In response, counsel for the Solicitor Defendants argued that a discussion of the merits of Plaintiff's allegations and the legal standard applicable to a motion for permanent injunction was

not necessary because Plaintiff cannot demonstrate sufficient standing to seek injunctive relief based on an alleged violation of the SCACR rules applicable to the conduct of a prosecutor.

More specifically, the Solicitor Defendants directed this court's attention to the SCOPE section of SCACR, Rule 407 and paragraph 7 of said section, which reads as follows:

[7] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance through disciplinary agencies. **They are not designed to be a basis for civil liability.** Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. **The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule.** Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

SCACR, Rule 407 (SCOPE)

Upon consideration of the arguments presented, this court agrees with the Solicitor Defendants that an alleged violation of Rule 407 SCACR, even if true, does not give Plaintiff standing to pursue injunctive relief in this case. Furthermore, this court notes that paragraph (i) of Rule 3.8 cited by Plaintiff specifically provides a prosecutor the benefit of the doubt regarding a decision about whether the obligations of paragraphs (g) or (h) have been triggered even if the prosecutor's conclusion is later determined to have been erroneous. Rule 3.8(i), SCACR, Rule 407. Accordingly, without addressing the merits of Plaintiff's claims or this court's authority to order the relief requested, this court finds Plaintiff cannot demonstrate sufficient standing to pursue the relief requested and therefore denies Plaintiff's motion for permanent injunction.

Defendant Elliott's Motion to Dismiss

Plaintiff has sued Elliott, a former Georgetown County magistrate judge, because she issued the warrant for Plaintiff's arrest on December 11, 2008. The Court finds that Plaintiff's claims against Elliott are barred by the doctrine of judicial immunity.

The South Carolina Tort Claims Act ("SCTCA") bars tort claims arising from "legislative, judicial, or quasi-judicial action or inaction." S.C. Code Ann. § 15-78-60(1). Further, the common law doctrine of absolute judicial immunity survived the adoption of the SCTCA. *See O'Laughlin v. Windham*, 330 S.C. 379, 385, 498 S.E.2d 689, 692 (Ct. App. 1998). The *O'Laughlin* Court reiterated the strong policy reasons supporting the application of the doctrine where appropriate because "[j]udicial immunity is one of the basic common law tenets upon which the modern system of justice was built." *Id.* The doctrine of judicial immunity for state court judges applies with equal force to federal claims, including claims for alleged constitutional violations. *See Pressly v. Gregory*, 831 F.2d 514, 517 (4th Cir. 1987) ("As judicial officers, magistrates are entitled to absolute immunity for acts performed in their judicial capacity"). Further, "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority." *Holmes v. Hewitt*, 2024 WL 1251319, at *3 (D.S.C. Feb. 27, 2024), *report and recommendation adopted*, 2024 WL 1251317 (D.S.C. Mar. 22, 2024) (quoting *Stump v. Sparkman*, 435 U.S. 349, 351-64 (1978)).

Here, the doctrine of judicial immunity applies to bar all of Plaintiff's claims against Defendant Elliott. Elliott has been named as a defendant because she signed the warrant for Plaintiff's arrest on the murder charge for which he was ultimately convicted. Plaintiff's assertion that Elliott was somehow performing a "police function" or that the warrant issued "without probable cause" do not change the fact that Elliott was performing a judicial act and within her

jurisdiction when she issued the warrant at issue. Accordingly, absolute judicial immunity bars Plaintiff's claims against Defendant Elliott, under both state and federal law. *See Abijah v. Dennis et al.*, 2024 WL 1404385, at *2 (D.S.C. Apr. 2, 2024) (dismissing claims against state magistrate judge arising from the issuance of an arrest warrant); *Gittens v. Rakowsky*, 2019 WL 6359029, at *1, n. 2 (Ct. App. Nov. 27, 2019) (affirming dismissal of judge on alternate sustaining ground of judicial immunity); *Lilly v. Knox*, 2007 WL 1146344, at *3 (D.S.C. Apr. 10, 2007) (finding that a Georgetown County magistrate judge had "absolute immunity from liability under § 1983"). On this basis, the Complaint should be dismissed with prejudice against Defendant Elliott.

The Court notes that Defendant Elliott has raised additional grounds for dismissal, but the Court does not reach those grounds in light of the application of judicial immunity.

Defendant Garrett and GCSO's Motion to Dismiss

Plaintiff has sued Defendant GCSO and its officer, Defendant Garrett, for their role in obtaining the warrant that resulted in Plaintiff's arrest on December 12, 2008. The Court finds that Plaintiff's claims against the GCSO Defendants are barred by the doctrine of res judicata.

"Res judicata bars subsequent actions by the same parties [or their privies] when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Hawkins v. Hammond*, 437 S.C. 36, 41, 875 S.E.2d 60, 63 (Ct. App. 2022) (citing *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109); *see also Venture Eng'g, Inc. v. Tishman Constr. Corp. of S.C.*, 360 S.C. 156, 162, 600 S.E.2d 547, 550 (Ct. App. 2004) (explaining res judicata applies to parties or their privies). To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *See Plum Creek*, 334 S.C. at 34, 512 S.E.2d at 109; *see also Stone v. Roadway Express, Employer*, 367 S.C. 575, 580, 627 S.E.2d 695,

697 (2006) (“Res judicata requires three elements be met: 1) a final, valid judgment on the merits; 2) identity of parties; and 3) the second action must involve matters properly included in the first suit”). Importantly, “[u]nder the doctrine of res judicata, [a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011).

In his response to the motions to dismiss, Plaintiff referenced his earlier lawsuit against Defendant Garrett in federal court (the “Prior Suit”). (See *Dizzley v. Garrett*, C/A No. 1:19-cv-00530-RBH). Plaintiff filed the Prior Suit in the United States District Court for the District of South Carolina on February 21, 2019, alleging a violation of constitutional rights in connection with his arrest for murder in 2008. Plaintiff specifically complained about Defendant Garrett obtaining the arrest warrant and claimed an absence of probable cause. Plaintiff also filed the arrest warrant and the 2018 investigative report on which he attempts to rely in this case. The federal court dismissed the Prior Suit with prejudice on May 17, 2021, finding Plaintiff’s claims barred by the statute of limitations. Plaintiff appealed to the Fourth Circuit, which affirmed the district court and denied Plaintiff’s request for rehearing on May 10, 2022. The U.S. Supreme Court denied Plaintiff’s petition for a writ of certiorari on November 14, 2022.

Res judicata applies to bar Plaintiff’s case as against the GCSO Defendants. First, both Plaintiff and Defendant Garrett were parties to the Prior Suit. While GCSO was not identified as a defendant in the Prior Suit, Plaintiff sued Garrett as an investigator for GCSO in his individual and official capacities. “Under South Carolina law, a suit against an officer in his or her official capacity as a deputy sheriff is the same as a suit against the State [of which the Sheriff’s Office is an agency].” *Williams v. Pelletier*, 2024 WL 1075444, at *5 (D.S.C. Mar. 12, 2024); see also *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985) (stating that “an official-capacity suit is, in all

respects other than name, to be treated as a suit against the entity”). Thus, the suit against Garrett in his official capacity was the same thing as a suit against GCSO. Additionally, Defendant GCSO stands in privity with Defendant Garrett because GCSO’s legal interests were litigated in the Prior Suit. *See Roberts v. Recovery Bureau, Inc.*, 316 S.C. 492, 496, 450 S.E.2d 616, 619 (Ct. App. 1994) (“One in privity is one whose legal interests were litigated in the former proceeding”).

Second, this case arises out of the same “transaction or occurrence” or “subject matter” as the Prior Suit. Specifically, both suits arise out of Plaintiff’s arrest and imprisonment on the 2008 murder charge, including whatever information Plaintiff claims to have learned from his 2018 “investigative report.” Third and finally, the issues were adjudicated with finality in the Prior Suit and ended in a valid judgment of dismissal with prejudice. The Fourth Circuit upheld this judgment, and Plaintiff’s request for review by the United States Supreme Court was denied. Thus, all elements of res judicata are satisfied here.

Although the Prior Suit ended with a determination that Plaintiff’s constitutional claims were barred by the statute of limitations, the doctrine of res judicata bars Plaintiff from raising any and all claims that were raised or might have been raised in the Prior Suit. *See Plum Creek*, 334 S.C. at 34, 512 S.E.2d at 109. Each and every claim raised against the GCSO Defendants in the instant case might have been raised by Plaintiff in the Prior Suit. Accordingly, Plaintiff’s case against the GCSO Defendants is barred by res judicata and hereby dismissed, with prejudice.

The Court notes that the GCSO Defendants have raised additional grounds for dismissal, but the Court does not reach those grounds in light of its determination on the issue of res judicata.

Motion to Dismiss Solicitor Defendants

The Solicitor Defendants argue that they are entitled to dismissal of this action pursuant to the common law doctrine of *prosecutorial immunity* because all of the alleged conduct complained of by Plaintiff in his Complaint relates to conduct occurring in the course and scope of their roles as prosecuting attorneys. This court agrees.

Official Capacity Claims

S.C. Code Ann. § 15-78-60(23) prohibits suits resulting from the “institution or prosecution of any judicial or administrative proceeding.” *See, e.g., McCoy v. City of Columbia*, 929 F. Supp. 2d 541, 567 n. 10 (D.S.C. 2013). As such, any claims brought by Plaintiff against the Solicitor’s Office or any of its employees acting in their official capacities pursuant to the *South Carolina Tort Claims Act* are specifically excluded by operation of the Act.

“American courts have long recognized the existence of immunity for public officers from personal liability for tortious acts committed while serving in an official capacity.” *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (2001). “It is a common law tradition with origins that can be traced to the ancient tribunals of England.” *Id.* “The protections afforded by this doctrine extend to the prosecutors who act on behalf of the people.” *Id.*

In *Williams v. Condon*, the South Carolina Supreme Court set forth a lengthy and thorough analysis of the history of the common law doctrine of prosecutorial immunity in the United States and South Carolina in particular, including the survival of the doctrine following the enactment of the *South Carolina Tort Claims Act* and how the SCTCA actually supplements, rather than supplants, the longstanding defense of prosecutorial immunity. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (2001). The Court noted:

In 1985, our Supreme Court decided *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741. This case is significant because the *249 Court

largely abolished the doctrine of sovereign immunity. Certain exceptions to this holding, however, were carved out:

[T]he abrogation of the rule will not extend to legislative, judicial and executive acts by individuals acting in their official capacity. These discretionary activities cannot be controlled by threat of tort liability by members of the public who take issue with the decisions made by public officials. We expressly decline to allow tort liability for these discretionary acts. The exercise of discretion includes the right to be wrong. *Id.* at 246, 329 S.E.2d at 742.

When the General Assembly enacted the Tort Claims Act, it codified the *McCall* exceptions. *See* S.C.Code Ann. § 15-78-60(1)(2) (Supp.2000) (stating “The governmental entity is not liable for a loss resulting from (1) legislative, judicial, or quasi-judicial action or inaction; and (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature”).

The duties of a prosecutor fall into the exceptions enumerated by *McCall* and § 15-78-60. The case law cited throughout this opinion clearly supports the proposition that a prosecutor’s typical duties are “judicial” or “quasi-judicial” in nature. Accordingly, this Court finds a prosecutor, in his official capacity, is immune from a Tort Claims Act suit involving “judicial” or “quasi-judicial” acts, provided a defendant prosecutor raises the affirmative defense of sovereign immunity in his return. *See Tanner v. Florence City-County Bldg. Comm’n*, 333 S.C. 549, 511 S.E.2d 369 (Ct.App.1999) (holding sovereign immunity is an affirmative defense that must be pled).

Williams at 508.

Following its lengthy discussion of multiple immunities afforded prosecutors in South Carolina, the South Carolina Supreme Court in *Williams* held that “a prosecutor in the employ of this state is immune from personal liability under § 1983 or the *South Carolina Tort Claims Act* for actions relating to the prosecution of an individual as a criminal defendant—regardless of the prosecutor’s motivation—provided the actions complained of were committed while the prosecutor was acting as an ‘advocate,’ as defined by *Imbler v. Pachtman* and its progeny.” *Williams v. Condon*, 347 S.C. 227, 250, 553 S.E.2d 496, 509 (2001), *citing Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). The Court added: “the law is clear that a

prosecutor cannot be sued in his official capacity under either § 1983 for money damages or the Tort Claims Act when the acts complained of were ‘judicial’ or ‘quasi-judicial’ in nature.” *Id.*

In this case, the factual allegations set forth in the Complaint relating to actions of the Solicitor Defendants all relate to their conduct in connection with the prosecution of Plaintiff in connection with multiple trials. Importantly, Plaintiff’s Complaint contains no allegations that any of the Solicitor Defendants acted outside the scope and authority of their positions as the Solicitor and Assistant Solicitors of the Fifteenth Judicial Circuit. Therefore, inasmuch as Plaintiff’s Complaint fails to state facts sufficient to constitute claims against the Solicitor Defendants that would not be barred by the South Carolina common law doctrine of *prosecutorial immunity* or the statutory immunities enumerated in the *South Carolina Tort Claims Act*, the Solicitor Defendants are entitled to the protections afforded by same and Plaintiff’s Complaint should be dismissed to the extent it purports to allege any causes of action against them in their official capacities.

Individual Capacity Claims

To the extent Plaintiff’s Complaint may be construed to state claims against the Solicitor Defendants in their individual capacities, said claims are barred by the *South Carolina Tort Claims Act* and Plaintiff’s Complaint fails to state any allegations sufficient to trigger the limited exception to immunity.

The South Carolina Court Appeals decision in the case of *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003) discusses the exclusivity provisions of the SCTCA, the immunity afforded individual employees, the exception to the immunity provision, and the overall purpose of the SCTCA - stating:

The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. *See Murphy v. Richland Mem’l Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d

746 (Ct.App.1998). “The remedy provided by [the Tort Claims Act] is the exclusive civil remedy available *for any tort* committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b).” S.C. Code Ann. § 15-78-20(a) (Supp.2002) (emphasis added). “[The Tort Claims Act] constitutes the exclusive remedy *for any tort* committed by an employee of a governmental entity.” S.C. Code Ann. § 15-78-70(a) (Supp.2002) (emphasis added). According to the Act, “[n]otwithstanding any provision of law, this chapter, the ‘South Carolina Tort Claims Act,’ is the exclusive and sole remedy *for any tort* committed by an employee of a governmental entity while acting within the scope of the employee’s official duty.” S.C. Code Ann. § 15-78-200 (Supp.2002) (emphasis added).

Section 15-78-70(a) provides in part that “[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).” S.C. Code Ann. § 15-78-70(a) (Supp.2002). Subsection (b) declares: “Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is *204 proved 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.” S.C. Code Ann. § 15-78-70(b) (Supp.2002).

The Act defines a “[g]overnmental entity” as “the State and its political subdivisions.” S.C. Code Ann. § 15-78-30(d) (Supp.2002). The State “means the State of South Carolina” and includes its commissions. S.C. Code Ann. § 15-78-30(e) (Supp.2002). In the present case, the Act’s definition of an “employee” refers to “any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty.” S.C. Code Ann. § 15-78-30(c) (Supp.2002). “ ‘Scope of official duty’ or ‘scope of state employment’ means (1) acting in and about the official business of a governmental entity and (2) performing official duties.” S.C. Code Ann. § 15-78-30(i) (Supp.2002).

The Act is intended to cover those actions committed by an employee within the scope of the employee’s official duty. “The provisions of [the Act] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” S.C. Code Ann. § 15-78-20(f) (Supp.2002); *see also Wade v. Berkeley County*, 330 S.C. 311, 498 S.E.2d 684 (Ct.App.1998) (noting that § 15-78-20(f) **417 limits coverage to employees acting within the scope of official duty).

Flateau, at 203, 584 S.E.2d 416.

Here, as in *Flateau*, the individually named Solicitor Defendants were employees of a

“governmental entity” as defined by the SCTCA. S.C. Code Ann. § 15-78-30(d) and (h)(Supp.2002). Therefore, also like *Flateau*, the primary issue that controls the disposition of this motion as it relates to the actions of the Solicitor Defendants is a determination of whether the alleged inappropriate conduct was “outside the scope of their official duties.”

In *Flateau*, the Court of Appeals relied on the specific allegations set forth in the complaints of the plaintiffs and found that “despite the contention in the brief of Flateau and Fielding, nowhere in their complaints do Flateau and Fielding allege that the Board members’ actions were outside the scope of their official duty.” *Flateau*, at 204, 584 S.E.2d 417. The Court of Appeals further stated:

The complaints assert tort claims against Commission board members who acted on behalf of the Commission in commanding Commission employees, including Flateau and Fielding, to attend a hearing for the purpose of being interviewed by the Board. The pleadings clearly and unequivocally allege that the Board members were meeting and acting together as the South Carolina Commission for the Blind, discussing matters in executive session, and voting in their capacity as Commissioners to take the actions in question—all official duties and actions that are about the official business of the Commission, which is a public body established by the General Assembly. *See* S.C. Code Ann. § 43-25-10 (1985) (creating the South Carolina Commission for the Blind; stating that chairman of Commission may call meeting whenever he deems it necessary); S.C. Code Ann. § 30-4-20 (1991) (defining “public body” to include state commissions). Requiring Flateau and Fielding to attend a hearing and holding them there, as Flateau and Fielding maintain in their complaints, may be argued to go beyond the *authority* of the Commission, but it does not bring the Commissioners’ actions outside the scope of their official duty. *See Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 341 S.E.2d 385 (Ct.App.1986) (distinguishing scope of servant’s employment from scope of servant’s authority and holding acts outside servant’s authority are still within his scope of duty if done in furtherance of master’s business).

Flateau, at 205, 584 S.E.2d 417.

In *Flateau*, the Court of Appeals concluded that the causes of action alleged by the plaintiffs against the individually named defendants constituted conduct within the scope of the individuals’ official duties and therefore there could be no liability attached to the individuals. In so doing, the

Court of Appeals stated: “[t]he statutory dialectic reveals that a governmental employee acting within the scope of official duty is exempt from personal liability.” *Flateau*, at 206, 584 S.E.2d 417. The Court of Appeals added “that the efficacy of the Tort Claims Act is protection of governmental employees acting in the scope of official duties.” *Id.* Finally, the Court of Appeals noted: “The remedy mandated in the Act is legal action initiated against the governmental entity rather than the individual governmental employee.” *Id.*

Plaintiff’s Complaint in this case alleges two vaguely stated causes of action against the Solicitor Defendants. See Complaint, generally. In light of the clear and unambiguous language of the SCTCA, any claims against the individually named Solicitor Defendants in their official capacities are expressly prohibited and must be dismissed as a matter of law. Thereafter, Plaintiff’s ability to pursue any remaining claims against the Solicitor Defendants rests on a determination of whether the Complaint actually states individual capacity claims against them that fit within one of the exceptions to the immunity provided by the SCTCA at S.C. Code Ann. § 15-78-70(b) as follows: “Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved 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.” S.C. Code Ann. § 15-78-70(b) (Supp.2002).

As noted above, Plaintiff’s Complaint draws virtually no distinction between claims brought against the Solicitor Defendants for actions in their official capacities as compared to actions in their individual capacities. Similarly, the Complaint also draws no distinction between claims lodged against the Solicitor’s Office and claims lodged against the Solicitor Defendants individually.

As indicated above, claims against the Solicitor’s Office for actions taken by employees in

their capacities as employees must be brought against the Office and not the individual employees. Likewise, inasmuch as S.C. Code Ann. § 15-78-60(17) exempts a governmental entity from claims brought against an employee for actions taken in his or her individual capacity and outside the scope of his or her employment, such claims must be brought against the individual or individuals only and must be pleaded in such a way as to allege acts outside of official duties or actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

In this case, the Complaint (1) contains no causes of action that are directed solely to one or more of the individually named Solicitor Defendants; (2) the prayer for relief set forth in the Complaint requests judgment against the Defendants without distinction between the governmental entity and the individuals; and most importantly, (3) the entire Complaint is devoid of any allegation that any individually named Defendant acted outside the scope of his or her official duties. Therefore, Plaintiff's Complaint fails to state facts sufficient to establish any prima facie individual capacity claims against the Solicitor Defendants and any such purported claims should be dismissed pursuant to Rule 12(b)(6) SCRC.

CONCLUSION

For all the foregoing reasons, Plaintiff has failed to demonstrate sufficient standing to pursue a permanent injunction; Defendant Elliott has demonstrated sufficient grounds for dismissal; Defendants Garrett and GCSO have demonstrated sufficient grounds for dismissal; and the Solicitor Defendants have also demonstrated sufficient grounds for dismissal.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- (1) Plaintiff's Motion for Permanent Injunction is **DENIED**;
- (2) Defendant Elliott's Motion to Dismiss is **GRANTED**;
- (3) Defendants Garrett and GCSO's Motion to Dismiss is **GRANTED**;

(4) Defendants Bailey, Hixson, Hembree, 15th Circuit Solicitor's Office, and Jimmy Richardson's Motion to Dismiss is **GRANTED**; and

(5) Plaintiff's Complaint is, therefore, dismissed, **with prejudice**.

Additionally, this court notes that Plaintiff has filed multiple documents in this case that appear to have been signed by someone representing to be Plaintiff's mother and acting pursuant to a purported limited power of attorney. Inasmuch as this court has no record of Plaintiff's mother being licensed to practice law in South Carolina, Plaintiff is hereby advised by this Court that all future submissions for filing by the Georgetown County Clerk of Court must be signed by Plaintiff or an attorney licensed to practice law in South Carolina who has also filed a notice of appearance on behalf of Plaintiff and **the Georgetown County Clerk of Court is hereby instructed not to accept any pleadings or other documents from Plaintiff or anyone else on Plaintiff's behalf that are not compliant with the terms of this Order.** See S.C. Code Ann. §§ 40-5-80 and 40-5-310.

AND IT IS SO ORDERED!

THE HONORABLE BENTLEY PRICE
FIFTEENTH JUDICIAL CIRCUIT

_____, South Carolina

_____, 2024.