

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHESTER )  
 )  
 )  
 Heidi Gersten, Ivanka Ayoub, Daniel )  
 Hubbard, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 Kevin Carter, Richard Davis, Joseph )  
 Tirbovich, Nationwide Insurance )  
 Company, Interinsurance Exchange of the )  
 Automobile Club, John Ammendola, )  
 Trustguard Insurance Company, South )  
 Carolina Department of Public Safety, )  
 Blackwell, Chevrolet, GMC, Unknown )  
 John Does, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS

Civil Action No. 18-CP-12-117

ORDER

**RECEIVED**  
 SEP 19 2022  
 SC Court of Appeals

This matter came before the Court on a Motion to Dismiss filed by the South Carolina Department of Public Safety and Trooper Herbert Blackwell. Present at the hearing was Heidi Gersten and Ivanka Ayoub (mother of Ms. Gersten). Daniel Hubbard was not present at the hearing.

After hearing argument from the attorney for the Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell, and hearing the Plaintiffs' positions, the Court hereby grants South Carolina Department of Public Safety and Trooper Herbert Blackwell's Motion to Dismiss.

The Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell have moved to dismiss the Complaint on various grounds and between the time the Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell moved

to dismiss the Complaint, Plaintiffs' filed an Amended Complaint. In regard to these Defendants, South Carolina Department of Public Safety and Trooper Herbert Blackwell, the Amended Complaint was filed timely; however, as was explained by the attorney for Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell, the motion to dismiss is applicable not only to the original Complaint, but also the Amended Complaint. From a review of both the Complaint and Amended Complaint, it appears that the Plaintiffs are alleging that there were some irregularities in the investigation and preparation of the accident report surrounding the accident involving the Plaintiffs and Kevin Carter on March 19, 2015.

The Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell have moved to dismiss Trooper Blackwell from the Complaint pursuant to the South Carolina Tort Claims Act, §15-78-30.

The Court finds that Trooper Blackwell was acting as a South Carolina Department of Public Safety Officer in regard to his investigation of the accident involving the Plaintiffs and Kevin Carter. For this reason, Trooper Blackwell is dismissed from this case. See §15-78-30, of the Code of Laws of the State of South Carolina, 1976 as amended.

As to the remaining grounds raised by Defendants South Carolina Department of Public Safety and Trooper Herbert Blackwell, it is clear from allegations in the Complaints, that the Plaintiffs have alleged that the South Carolina Department of Public Safety through Trooper Blackwell issued a Traffic Accident Report which was later amended by the South Carolina Multi-Disciplinary Accident Reconstruction Team (MAIT).

From a review of the Complaint and Amended Complaint, Plaintiffs have failed to establish any private right of action against the Defendant South Carolina Department of Public Safety for "an improper investigation". Generally, there is no common law duty to act; however,

an affirmative legal duty may arise by statute, contractual relationship, status, property interest, or some other special circumstance. *See, Rayfield v. South Carolina Dep't of Corrections*, 297 S.C. 95, 105-06, 374 S.E.2d 910, 916 (Ct. App. 1998); *see also, Jensen v. Anderson Cnty. Dep't of Soc. Servs.*, 304 S.C. 195, 199 403 S.E.2d 615, 617 (1991). While a duty may arise by virtue of statutory law, courts in South Carolina recognize what is known as the "public duty" rule. *Rayfield*, 297 S.C. 95, 104, 374 S.E.2d 910, 915; *see also, Parker v. Brown*, 195 S.C. 35, 10 S.E.2d 625 (1940) (Supreme Court adopting the public duty rule as the law in South Carolina). A statute establishing the specific "duties of a public office does not, without more, impose on the person holding that office a duty of care towards individual members of the public in the performance of those duties." *Rayfield*, 297 S.C. 95, 105, 374 S.E.2d at 915-16; *see-also, Jensen v. Anderson Cnty. Dep't of Soc. Servs.*, 304 S.C. 195, 403 S.E.2d 615 (1991) (Under the rule, public officials are not liable to individuals in negligence as a result of discharging duties as owed to the public at large rather than to anyone individually). In this case the Department, through its officers, are required to investigate and report on motor vehicle accidents involving serious injuries. See, South Carolina Code Ann. §56-5-1270, 1976 as amended. For this reason any duty imposed on these Defendants would be a public duty and not give rise to a private right of action.

Further any injuries received by the Plaintiffs arose out of the automobile accident and are not the proximate cause of any action undertaken by the South Carolina Department of Public Safety in the investigation of the accident and the issuance of the Uniform Traffic Report in this matter.

Finally, any claims that the Uniform Traffic Report could or would be evidence in this case fails to recognize that under §56-5-1290, accident reports are not evidence to establish due or lack of due care.

For these reasons, the Complaints (original and amended) failed to set forth a viable private right of action against Defendant South Carolina Department of Public Safety and therefore the Complaints are dismissed with prejudice.

IT IS THEREFORE ORDERED, that the action brought by the Plaintiffs is dismissed with prejudice.

IT IS FURTHER ORDERED, that the action brought by Michael Hubbard is dismissed as a result of the Plaintiff failing to appear at the hearing and therefore failed to prosecute the claim.

AND IT IS SO ORDERED.

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The Honorable J.C. Hayes

SEPTEMBER \_\_, 2018

CHESTER, SOUTH CAROLINA



Chester Common Pleas

**Case Caption:** Heidi Gersten , plaintiff, et al VS Kevin Carter , defendant, et al

**Case Number:** 2018CP1200117

**Type:** Order/Dismissal

So Ordered

s/John C. Hayes III 2049

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