

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

D. Graig Brown, Circuit Court Judge

RECEIVED

OCT 11 2013

SC Court of Appeals

CASE NO. 2011-CP-21-2095

CARMICHAEL T. FLOWERSAppellant

vs.

WILLIAM K. BOONE, CAPTAIN J. BRONSON,
LEAH HARRIS, JOSEPH D. THOMPSON
AND ANN AND/OR JOHN DOERespondents

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

Respondents William K. Boone, Captain J. Bronson, Leah Harris, Joseph D. Thompson and Ann and/or John Doe (“Respondents”) object to Appellant Carmichael T. Flowers’ (“Appellant”) statement of issues on appeal. Significantly, Respondents assert that the sole issues presented for judicial review are best summarized as follows:

- I. DID THE TRIAL COURT ERR IN GRANTING THE RESPONDENTS’ MOTION FOR SUMMARY JUDGMENT ON THE BASIS THAT THEY WERE PERSONALLY IMMUNE FROM SUIT PURSUANT TO S.C. CODE § 15-78-70 (a) - (b)?

- II. DID THE TRIAL COURT ERR IN GRANTING THE RESPONDENTS’ MOTION FOR SUMMARY JUDGMENT ON THE BASIS THAT THE APPELLANT VOLUNTARILY WAIVED ALL CLAIMS AGAINST THEM AND WAS EQUITABLY ESTOPPED FROM ASSERTING SUCH CLAIMS?

STATEMENT OF THE CASE

The underlying action was brought by *pro se* Appellant Carmichael T. Flowers (“Appellant”), an incarcerated inmate of the South Carolina Department of Corrections (“SCDC”), on August 9, 2011, in the Florence County Court of Common Pleas (“the trial court”) (Original Complaint pp. 1-5). The Appellant filed an Amended Complaint on November 22, 2011 (Amended Complaint pp. 1-5). In his Amended Complaint, the Appellant alleged that the individual Respondents were somehow responsible for his personal property not being returned to him following his arrest and detention at the Florence County Detention Center (Amended Complaint pp.1-5). Subsequently, this case was removed to federal court by the Respondents, since the Amended Complaint appeared to allege federal causes of action. However, the Appellant thereafter filed several additional documents indicating that he did not intend to bring any federal claims in this lawsuit. Consequently, by Court Order filed July 6, 2012, United States District Court Judge Timothy M. Cain Ordered that the case be remanded back to the Florence County Court of Common Pleas for disposition (Order of Remand pp. 1-2).

On January 23, 2013, Respondents filed both a motion for summary judgment and memorandum in support thereof (Respondents’ Motion for Summary Judgement p.1; Respondents’ Memorandum in Support of Summary Judgment pp. 1-7, with Exhibits attached thereto). A hearing was held on March 21, 2013. At that time, all parties were allowed to present oral argument concerning their respective legal positions.¹ By Court Order

¹The Appellant has not ordered and filed a transcript of the underlying judicial proceeding, as required pursuant to Rule 207 SCACR. For this reason, the record in this case is incomplete, judicial review is impossible, and the instant Appeal must be dismissed.

dated April 1, 2013, the Honorable D. Craig Brown, Presiding Judge for the Twelfth Judicial Circuit, granted Respondents' motion for summary judgment and dismissed the underlying case in its entirety, with prejudice (Order filed April 1, 2013 pp. 1-5). In particular, Judge Brown held that: (1) the individual Respondents were personally immune from suit pursuant to S.C. Code § 15-78-70 (a) - (b); and (2) Appellant had voluntarily waived all claims against the Respondents and was equitably estopped from asserting such claims (Order filed April 1, 2013 pp. 1-5). The instant appeal followed.

ARGUMENT

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Id. (quoting Rule 56(c), SCRCP). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009). However, summary judgment is proper when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

I. THE TRIAL JUDGE DID NOT ERR IN GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT ON THE BASIS THAT THEY WERE PERSONALLY IMMUNE FROM SUIT IN THE MATTER PURSUANT TO S.C. CODE § 15-78-70 (a) - (b).

Initially, the trial judge did not err in granting Respondents' motion for summary judgment on the basis that they were personally immune from suit in the matter pursuant to S.C. Code § 15-78-70 (a) - (b). Indeed, the trial judge did not commit any error of law in this regard, nor did he abuse his discretion in any manner whatsoever. For this reason, the decision(s) of the lower court must be affirmed.

As correctly and properly explained by the lower court:

...the South Carolina Tort Claims Act ("SCTCA") governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 280, 607 S.E.2d 711, 714 (Ct. App. 2005) (citing Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998)); Hawkins v. City of Greenville, 358 S.C. 280, 291, 594 S.E.2d 557, 563 (Ct. App. 2004). Notwithstanding any provision of law, the SCTCA is also 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 § 15-78-200; *see also*, Olson v. Faculty House of Carolina, Inc., 344 S.C. 194, 544 S.E.2d 38 (2001) (observing that the SCTCA is the exclusive remedy for tort claims against governmental entities), *aff'd*, 354 S.C. 161, 580 S.E.2d 440 (2003). Likewise, "[a]n employee of a governmental entity who commits a tort while acting in his official duty" is not liable, unless the alleged act constituted "actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code 15-78-70(a)-(b). The provisions of the SCTCA "must be liberally construed in favor of limiting the liability of the State." S.C. Code § 15-78-20(f); *see also*, Steinke v. S.C. Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999) ("Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting liability."); Baker v. Sanders, 301 S.C. 170, 391 S.E.2d 229 (1990); Staubes v. City of Folly Beach, 331 S.C. 192, 500 S.E.2d 160 (Ct. App. 1998), *aff'd*, 339 S.C. 406, 529 S.E.2d 543 (2000); Rakestraw v. S.C. Dep't of Highways and Public

Transp., 323 S.C. 227, 473 S.E.2d 890 (Ct. App. 1996).

In this case, viewing the Plaintiffs' allegations in the light most favorable to him, as is legally required, Plaintiff alleges only that the individual defendants were employed by either the Florence County Sheriff's Office and/or at the Florence County Detention Center and that during his arrest and/or booking process certain property was wrongfully "seized" and/or taken from him. Plaintiff did not expressly allege in his Amended Complaint that the individual Defendants were acting outside the scope of their employment. As well, the Plaintiff also undeniably does not specifically allege that Defendants' alleged acts constituted actual fraud, actual malice, and/or intent to harm. *See* S.C. Code § 15-78-70(a)-(b). Accordingly, the individual Defendants are personally immune from suit in this matter and cannot be held liable. *See generally*, S.C. Code § 15-78-70(a)-(b). No genuine issue of material fact exists in this regard. For this reason, the Defendants' motion for summary judgment must be granted.

(Order filed April 1, 2013 pp. 2-4).

In so holding, no error of law and/or any abuse of his discretion was committed by the trial judge. Rather, summary judgment in favor of the individual Respondents was entirely appropriate. Appellant undeniably did not allege in his Amended Complaint, nor did he provide the lower court with any evidence upon which to conclude otherwise, that the individual Defendants were acting outside the scope of their employment. Appellant also undeniably did not specifically allege, nor did he provide the lower court with any evidence upon which to conclude otherwise, that the individual Respondents' alleged acts constituted fraud, malice, and/or intent to harm. Again, no genuine issue of material fact existed in these regards. As such, the individual Respondents were personally immune from suit pursuant to S.C. Code § 15-78-70(a)-(b). Likewise, as explained above, the provisions of the SCTCA must be liberally construed in favor of limiting the liability of the State. Thus, the decision(s) of the lower court must be affirmed.

II. *THE TRIAL JUDGE DID NOT ERR IN GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT ON THE BASIS THAT APPELLANT VOLUNTARILY WAIVED ALL CLAIMS AGAINST THE RESPONDENTS AND WAS EQUITABLY ESTOPPED FROM ASSERTING SUCH CLAIMS.*

Moreover, the trial judge did not err in granting Respondents' motion for summary judgment on the basis of waiver and equitable estoppel. Indeed, the trial judge did not commit any error of law in these regards, nor did he abuse his discretion in any manner whatsoever. For this reason, the decision(s) of the lower court must also be affirmed.

Once again, as correctly and properly explained by the lower court:

"Waiver is a voluntary and intentional abandonment or relinquishment of a known right." Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994). Stated differently, waiver requires a party to have known of a right and known he was abandoning that right. Strickland v. Strickland, 375 S.C. 76, 82, 650 S.E.2d 465, 469 (2007). "Equitable estoppel occurs where a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do." Parker, 313 S.C. at 487, 443 S.E.2d at 391. "[T]he distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations." Id. (citation omitted); Strickland, supra.

As noted above, during the Plaintiff's detention at the Florence County Detention Center, it is undisputed that he signed and executed a Property Inventory Form. That form clearly provided that:

I hereby state that the property listed above constitutes all claims to property on my person at the time of my incarceration. **Upon my release, any property left must be claimed within 10 business days...**

(emphasis added).

Without question, Plaintiff did not claim the disputed property within 10 business days. No genuine issue of material fact exists in these regards. Clearly, Plaintiff knew that he possessed the right to claim his property and that he was required to do so within 10 business days after his release from the detention center. No reasonable trier of fact could conclude otherwise. Yet, Plaintiff undeniably did not timely claim his property. Accordingly, the

Plaintiff has now waived all claims against the Defendants in this case and is equitably estopped from asserting such claims. No genuine issue of material fact exists in this regard. For this reason, the Defendants' motion for summary judgment must also be granted.

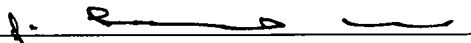
(Order filed April 1, 2013 pp. 4-5).

Again, in so holding, no error of law and/or any abuse of his discretion was committed by the trial judge. In fact, it is undisputed that the Appellant did not timely claim his property. Plaintiff also undeniably knew that he possessed the right to timely claim his property, but voluntarily chose not to. No genuine issue of material fact existed in these regards. Accordingly, the trial court correctly and properly held that the Plaintiff waived all claims against the individual Respondents and was equitably estopped from asserting such claims. For this reason, the decision(s) of the lower court must also be affirmed.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that the decision(s) of the trial court relating to the granting of summary judgment be affirmed (Order filed April 1, 2013 pp. 1-5).

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