

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GEORGETOWN ) CIVIL ACTION NO. 2025-CP-22-00606

Joseph N. Grate, )  
Plaintiff, )

v. )

Michael T. Benson, Linwood Jesse Rouse, )  
Sam Sullivan / Samantha Sullivan, Coastal )  
Carolina University, )

Defendants. )

ORDER

RECEIVED  
SEP 02 2025  
SC Court of Appeals

The matter before the Court is the Defendants’ motion to dismiss filed by Michael T. Benson, Linwood Jesse Rouse, Sam Sullivan / Samantha Sullivan, and Coastal Carolina University (“CCU”). A duly noticed hearing was held via WEBEX at the Georgetown County Courthouse on July 31, 2025. After careful review of the pleadings and oral arguments presented by Attorney David A. Anderson, Counsel for the Defendants and arguments by *Pro Se* Plaintiff, Joseph N. Grate, the Court hereby **GRANTS** the motion to dismiss and dismisses the Complaint filed by Plaintiff Joseph N. Grate in its entirety with prejudice.

**FACTUAL AND PROCEDURAL BACKGROUND**

*Pro Se* Plaintiff Grate has brought this civil action against the President<sup>1</sup> of CCU, (Michael T. Benson) a Professor, (Linwood Jesse Rouse), an employee in the Registrar’s Office, (Sam / Samantha Sullivan), and against CCU. *Pro Se* Grate served the Defendants with certified mail but failed to comply with the procedures as outlines in Rule 4, SCRCP for proper service. This Complaint was also filed in the wrong county and not where the allegations within the complaint

<sup>1</sup> Though Dr. Benson is no longer the current president of CCU, Dr. Benson was president of CCU at the time this suit was filed and during the times referenced in Plaintiff’s complaint.

occurred. *Pro Se* Grate is seeking damages of \$9 Million against the Professor and Registrar each, \$18 Million against the President and \$223,200.00 against CCU in damages.

### LEGAL STANDARD

“[A] trial court's findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard.” *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 294-95, 721 S.E.2d 430, 432 (2012). Rule 4(d)(5), SCRPC requires a plaintiff to serve a summons and complaint upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. Rule 5(d), SCRPC provides, “[A] summons and complaint shall be filed before service. Proof of service shall be filed within ten ... days after service of the summons and complaint.” Rule 5(d), SCRPC provides, “Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party.” *Id.* A party may assert a defense of insufficiency of service of process before filing a responsive pleading. Rule 12(b), SCRPC.

Rule 12(b)(3), SCRPC, provides a complaint may be dismissed for “improper venue.” Likewise, Rule 12(b)(6), SCRPC provides a complaint may be dismissed for “failure to state facts sufficient to constitute a cause of action.”<sup>2</sup>

This action is governed by the South Carolina Tort Claims Act (S.C. Code Ann. §15-78-10, et al. of the Code of Laws of South Carolina, as amended), and Section 15-78-120(b). Pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*, the Plaintiff cannot maintain an

---

<sup>2</sup> Though a plaintiff may be generally permitted to amend his complaint, amendment is not warranted where amendment would be “clearly futile.” *Stokes v. Oconee Cnty.*, 441 S.C. 566, 586, 895 S.E.2d 689, 700 (Ct. App. 2023) (quoting *Skydive v. Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019)) (internal quotation marks omitted).

action over the individually named defendants as employees of CCU nor has the Complaint complied with the basic fundamental requirements of Rule 8(a), SCRC.P.

### **CONCLUSIONS OF LAW**

#### **1. Improper Service**

As Plaintiff's complaint has named a state agency and officers, Rule 4(d)(5) required Plaintiff to accomplish service by "delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia." Proper service of process is critical, as Rule 4 serves two purposes: "It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996). The plaintiff has the burden to establish that the court has personal jurisdiction over the defendant. *Id.*

The Court finds Plaintiff has failed to meet this burden. His attempts to accomplish service via certified mail plainly violate Rule 4(d)(5). Moreover, Plaintiff's service via certified mail fails to comply with Rule 4(d)(8), where the certified mailing was required to be restricted to the addressee and return receipt requested. Plaintiff has failed to supply information showing Rule 4(d)(8) was complied with beyond simply providing a filing with each Defendants' name, a notation of the certified mail number, and a bold, underlined statement of "SERVED."

Plaintiff has failed to meet his burden that Rule 4 was complied with, and dismissal is therefore appropriate.

#### **2. Improper Venue**

S.C. Code Ann. § 15-7-20(2) provides that actions against a public officer must be tried in the county where the cause of action arose. Moreover, S.C. Code Ann. § 15-77-50 provides suits

against agency of the state and officials of the state shall be sued in the circuit where the cause of action arose.

Plaintiff's complaint plainly sets forth facts arising out of Horry County, South Carolina. Georgetown County is, therefore, the improper venue, and dismissal is appropriate.

### 3. Rule 12(b)(6)

The negligence claim against the individual employees should be dismissed because they are immune from suit for damages by virtue of the South Carolina Tort Claims Act ("SCTCA"), S.C. Code Ann. §§ 15-78-10 to -220. Plaintiff's exclusive remedy as pled, is governed by the SCTCA, under which "[t]he General Assembly . . . grant[s] the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter." S.C. Code Ann. § 15-78-20(b).

Furthermore, the express language of S.C. Code Ann. §15-78-70(c) provides that "a person, when bringing an action against a governmental entity shall name as a party defendant *only* the agency or political subdivision for which the employee was acting..." (emphasis added). The individual employees are not an agency or a political subdivision. Accordingly, their immunity has not been waived and this claim is barred by sovereign immunity. This application of Section 15-78-70 is consistent with Section 15-78-20(f) that expressly states that the "provisions of this chapter 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."

The President, Professor and Registrar who are named individually, are or were during the time frame noted in the Complaint employees of CCU and acting within the scope of their employer, CCU. Under the SCTCA, an employee of a governmental entity who commits a tort

while acting within the scope of his official duty is not liable and a plaintiff must sue the governmental agency itself; however, if the plaintiff proves 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, then the governmental agency is not liable, and the employee is personally liable. S.C. Code Ann. § 15-78-70(a)-(b).

Under this regime, an employee who “commits a tort while acting within the scope of his official duty is not liable, and the plaintiff must sue the governmental agency itself.” *Newkirk v. Enzor*, 240 F. Supp. 3d 426, 436 (D.S.C. 2017). Government employees are acting within the scope of their duties when they are acting “in or about the official business of the government entity” and “performing official duties.” *Id.* Furthermore, “[p]rovisions establishing limitations on liability must be liberally construed in the State's favor.” *Faile v. S.C. Dep't of Juv. Just.*, 350 S.C. 315, 324, 566 S.E.2d 536, 540 (2002). The Complaint implies that the defendants were all performing their duties with CCU.

South Carolina's exception to waiver of immunity through the SCTCA extends to “the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.” S.C. Code Ann. § 15-78-60(5). This statute applies to the State and its political subdivisions, which includes CCU. S.C. Code Ann. § 15-78-30(d), (e), & (h). Therefore, the individually named defendants are entitled to dismissal pursuant to the SCTCA.

Moreover, *Pro Se* Plaintiff's fifteen-paragraph complaint fails to meet basic Rule 8 (a) requirements of “(1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, . . . . [and] (2) a short and plain statement of the facts showing that the pleader is entitled to relief. . . .” Rule 8 (a) SCRCF. Here the *Pro Se* Plaintiff

has made “naked allegations” without the necessary facts in the Complaint to support any theory of relief. *See, e.g. Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“ To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”) “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of “entitlement to relief.””” *Id.*

Plaintiff further failed to articulate any factual allegations he would assert to justify the amendment of his complaint against any defendant, and accordingly, the Court holds amendment would be futile. *See, e.g., Spence v. Spence*, 368 S.C. 106, 131, 628 S.E.2d 869, 882 (2006) (holding the circuit court’s dismissal of a plaintiff’s complaint with prejudice pursuant to Rule 12(b)(6), SCRCP was proper where the plaintiff “failed to present any additional factual allegations or a different theory of recovery which may give rise to a cause of action upon which relief may be granted. . . .”). Therefore, Defendants’ Rule 12(b)6 motion to dismiss prevails, and dismissal of the Complaint with prejudice is warranted.

**THEREFORE, IT IS ORDERED:**

For the above mentioned reasons, this Court grants Defendants’ Motion to Dismiss in its entirety, with prejudice.

**IT IS SO ORDERED.**

---

The Honorable Benjamin H. Culbertson  
Presiding Judge in the Fifteenth Judicial Circuit