

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Ward Benjamin McClain, Jr., individually,)
And as the Personal Representative Of and)
On behalf of the Estate of Ward Benjamin)
McClain, III, and Sonja Gay McClain)
Plaintiff,)
vs.)
Greenville, S.C., City Police Department,)
The City of Greenville, S.C.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2024-CP-23-00375

ORDER

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SC Court of Appeals

This matter came before me the Court on October 27, 2025. Ward Benjamin McClain, Jr. appeared on behalf of the Plaintiffs. V. Clark Price and William A. Coates appeared on behalf of the Defendants. Defendants have moved for summary judgment. After careful consideration of the materials filed and the arguments of counsel, this Court grants Defendants' motion.

This action arises out of the death of Plaintiffs' decedent Ward Benjamin McClain III on May 9, 2020. Plaintiffs allege that Plaintiffs' decedent was killed by law enforcement officers who then staged his death to look like a suicide.

By a prior order of the Court filed on March 15, 2024, the individual officers who were named as defendants in this action were granted summary judgment. The City and City Police Department are the only remaining defendants in this action.

APPLICABLE LAW OF SUMMARY JUDGMENT

The applicable law concerning summary judgment is clear. In order to survive a motion for summary judgment, the nonmoving party has to present facts that would permit a reasonable inference to be drawn from the evidence that creates an issue of fact for trial. Rule 56, South

Carolina Rules of Civil Procedure; Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs (with the exception of Plaintiff Sonja Gay McClain) originally filed suit against City Defendants on May 9, 2022 in federal court alleging federal claims plus state claims for which the federal court exercised supplemental jurisdiction. On July 24, 2023, the plaintiffs moved to abandon the federal causes of action. On December 20, 2023, the federal court granted the motion to abandon. City Defendants argue that pursuant to 28 U.S.C. §1367 (d), Plaintiffs did not timely file the remaining state court claims. In a prior order, the Honorable Alex Kinlaw denied City Defendants' motion on this ground. City Defendants have renewed this motion. This Court declines to disturb the finding of Judge Kinlaw and denies the motion for summary judgment that is based on 28 U.S.C. §1367.

City Defendants also move for summary judgment because of the immunity from suit provided by Section 15-78-60(17) of the South Carolina Tort Claims Act. Section 15-78-60 provides in pertinent part as follows: "the governmental entity is not liable for a loss resulting from ... (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or crime involving moral turpitude...." This motion, although made by City Defendants in its original motion for summary judgment, was not specifically addressed by Judge Kinlaw in his order. Furthermore, since the previous order was entered, Plaintiff Ward Benjamin McClain, Jr. was deposed. In his deposition, Plaintiff McClain acknowledged that the premise of the Plaintiffs' case is that police officers murdered Plaintiffs' decedent and staged the murder to look like suicide. (See Defendants' Exhibit 10, Deposition of Ward Benjamin McClain, Jr., p. 83, lines 13-17.) This Court therefore will consider City Defendants' position on the issue,

since an order denying summary judgment is not law of the case. See Brown v. Pearson, 326 S.C. 409, 483 S.E.2d 477 (Ct. App. 1997).

Paragraph II of the Plaintiffs' Complaint in this action alleges:

That the law enforcement Defendants came to [the] law office and began firing. That these law enforcement officers took no regard for the safety and wellbeing of [plaintiffs and plaintiffs' decedent]. That law enforcement officers fired at and through this law office, and, upon information and belief, the decedent returned fire to protect these other three individuals, as well as himself. That, upon information and belief these and other law enforcement officers killed the decedent and staged a suicide. That this was unnecessary and improper, as well as intentional and illegal.

These allegations of intentional and illegal criminal activity on the part of employees of the City Defendants are incorporated by reference into every cause of action in the Plaintiffs' complaint. Plaintiffs' attorney has conceded at his deposition that the Plaintiffs' position set forth in the complaint is unchanged—that unnamed, unknown, law enforcement officers deliberately killed Plaintiffs' decedent.

If all the facts are taken in the light most favorable to the Plaintiffs, the City Defendants are not liable as a matter of law for any injuries or damages claimed in this action which are based on the conduct alleged by the Plaintiffs. South Carolina Code Section 15-78-60 (17) constitutes an absolute defense for all causes of action stated in the complaint since they are based on the premise that City Defendant officers, acting outside the scope of employment, killed Plaintiff's decedent and staged the killing to look like suicide.

City Defendants are also entitled to summary judgment because Plaintiffs have failed to submit competent evidence contradicting the findings of two experts identified by City Defendants that Plaintiffs' decedent died by suicide, not by the hand of third parties. On the day Plaintiffs' decedent died, Greenville County Medical Examiner Dr. Grace Dukes performed an autopsy to determine the cause and manner of his death. Dr. Dukes determined to a reasonable degree of

medical certainty that the cause of death was an “intraoral gunshot wound,” and the manner of death was “suicide.” The opinions and factual basis for those opinions are set out in detail in the autopsy report. Dr. Dukes observed an intraoral gunshot wound directed front to back and upward; stretch lacerations to the right of the mouth; soot-like material on the left hand between the thumb and index finger and on the lateral posterior hand; searing, soot deposition, and focal stippling of the mucosal surfaces of the upper lip; soot-like substance within the oral cavity; and, per the investigative report of the incident, a rifle with a “dark liquid-like substance” on its stock at McClain, III’s feet. During the hearing, City Defendants produced an affidavit from a second expert, Dr. Christopher J. Gullledge, Medical Examiner for the Georgia Bureau of Investigation, in which he opined that the cause of death was intraoral gunshot wound, and the manner of death was suicide. This affidavit had been produced to Plaintiffs during the pendency of the original federal action. Plaintiffs originally filed suit in federal court on May 9, 2022. They have had over three years since then to obtain an expert on the issue of the cause and manner of Plaintiff’s decedent’s death. Plaintiffs have not offered competent evidence to rebut Defendants’ experts’ findings. I find that there is no genuine issue of material fact as to the manner of Plaintiff’s decedent’s death. The uncontroverted expert testimony presented by City Defendants establishes as a matter of law that Plaintiffs’ decedent died by suicide.

CONCLUSION

Based on the foregoing, it is, therefore, ORDERED, ADJUDGED AND DECREED that Defendants’ motion for summary judgment is granted.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW.



Greenville Common Pleas

Case Caption: Ward Benjamin McClain Jr , plaintiff, et al vs. City Police Department
Greenville SC , defendant, et al

Case Number: 2024CP2300375

Type: Order/Other

So Ordered

Jessica A. Salvini