

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Ryan Harp,

Plaintiff,

v.

South Carolina Law Enforcement
Division, Richland County Sheriff's
Department, Leon Lott, in his individual
and official capacity as Sheriff of
Richland County, Mark Keel, in his
individual and official capacity as Chief
of South Carolina Law Enforcement
Division, David Mattox, in his individual
and official capacity as an Officer of
South Carolina Law Enforcement
Division,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A No.: 2023-CP-40-04075

**ORDER GRANTING THE MOTION FOR JUDGMENT
ON THE PLEADINGS OF DEFENDANTS SOUTH
CAROLINA LAW ENFORCEMENT DIVISION,
MARK KEEL, AND DAVID MATTOX UNDER RULE
12(c), SCRCP**

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SC Court of Appeals

THIS MATTER came before this Court on the Motion for Judgment on the Pleadings, pursuant to Rule 12(c), SCRCP, of Defendants South Carolina Law Enforcement Division, Mark Keel, and David Mattox (hereinafter "SLED Defendants"), by and through their undersigned counsel. The SLED Defendants seek an Order dismissing the claims stated in the Amended Complaint of Plaintiff Ryan Harp (hereinafter "Plaintiff").

Having reviewed the pleadings, the arguments of counsel, and the applicable law pertaining to this matter, this Court hereby GRANTS the motion of the SLED Defendants, and DISMISSES the case with prejudice, with each side to bear its own costs and fees.

PLAINTIFF'S ALLEGATIONS

Plaintiff is a former employee of SLED who was fired on August 24, 2021, for failure to provide truthful information and/or unbecoming conduct. Specifically, SLED fired Plaintiff

following its investigation into his conduct related to a separate investigation of the Richland County Sheriff's Department. SLED found that Plaintiff's "dishonesty and lack of candor...has brought this Division into disrepute and has negatively affected [Plaintiff's] credibility as a law enforcement officer."

Plaintiff acknowledged receiving the termination letter on August 26, 2021. The letter specifically informed Plaintiff that his termination was "a grievable adverse employment action under the State Employee Grievance Procedure Act," and included a copy of the agency's grievance procedure.

Pursuant to this procedure, Plaintiff filed an internal grievance with SLED on September 3, 2021. SLED and Plaintiff did not schedule a hearing on the internal grievance. On November 3, 2021, Plaintiff attempted to initiate a grievance appeal with the State Human Resources Director (SHRD) and later submitted an appeal form to the SHRD on November 5, 2021. Pertinent to an appeal to the SHRD, the State Employee Grievance Procedure Act states as follows:

Failure by the agency to make a final decision on the grievance within forty-five calendar days after the filing of the grievance is considered an adverse decision, and the covered employee may appeal thereafter to the State Human Resources Director. The internal time periods of the agency grievance procedure may be waived upon the mutual written agreement of both parties. The forty-five-calendar-day period for action by the agency may not be waived except by mutual written agreement of both parties. The time periods for appeal to the State Human Resources Director may not be waived.

A covered employee who wishes to appeal the decision of the agency grievance procedure to the State Human Resources Director shall file an appeal within ten calendar days of receipt of the decision from the agency head or his designee or within fifty-five calendar days after the employee files the grievance with the agency, whichever occurs later. The covered employee or the employee's representative shall file the request in writing with the State Human Resources Director. **Failure to file an appeal with the State Human Resources Director within ten calendar days of the agency's final decision or fifty-five calendar days from the initial grievance, whichever occurs later, constitutes a waiver of the right to appeal.**

S.C. Code Ann. § 8-17-330 (emphasis added).

After reviewing Plaintiff's submission, the SHRD found that Plaintiff initiated his appeal on the 61st calendar day from the date he initiated his grievance with SLED. As a consequence, Plaintiff's appeal to the SHRD was untimely under S.C. Code Ann. § 8-17-330, and was dismissed. Plaintiff did not appeal the decision of the SHRD to the S.C. Administrative Law Court.

Thereafter, Plaintiff sought work at another state law enforcement agency, the S.C. Department of Probation, Parole and Pardon Services (SCDPPPS), but claims that the SLED Defendants "defamed" him to SCDPPPS for "stating that Harp committed misconduct, as specified in S.C. Code Ann § 23-23-150."¹ He further alleges that "[b]etween February and April 2023, SLED defamed Harp to SCDPPPS," and "[i]n or around April 2023, SLED defamed Harp to the Chief Pilot of the Savannah River site nuclear complex aviation unit, Herbert Craven." Based on similar allegations, Plaintiff also claims that the SLED Defendants interfered with prospective contractual relationship for employment with the Savannah River site and/or with SCDPPPS.

LEGAL ARGUMENT

Rule 12(c), SCRCP, provides that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor." *Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cnty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013); *Tegeler v. Collier*, 2023 WL 6460423, at *2 (S.C. App. Oct. 4, 2023). In ruling on a motion under Rule 12(c), SCRCP, the court may consider documents and exhibits attached to the complaint or answer filed with the court. Rule 10(c), SCRCP ("A copy of any plat, photograph, diagram, document, or other paper

¹ S.C. Code Ann § 23-23-150 describes the adjudication process for allegations of misconduct before the Law Enforcement Training Council, including the report that a law enforcement agency or department must make to the SCCJA in cases of alleged misconduct.

which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading.”); *Efland v. Mills*, 2019 WL 2880950, at *1 (S.C. App. July 3, 2019)

DECISION

I. PLAINTIFF’S WRONGFUL DISCHARGE CLAIM IS BARRED BY HIS FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

Plaintiff claims that SLED’s termination of his employment violated clear mandates of public policy, including “mandates of S.C. Code Ann § 16-17-722,” which states that it is “unlawful for a person to knowingly file a false police report.” Specifically, Plaintiff alleged that “SLED unlawfully terminated Harp because (1) he reported that [Gary] White, his contractor, had made a false report against him, (2) that White engaged in unlawful and tortious conduct, and (3) Harp complained that RCSD had failed to adequately investigate White’s false allegations against Harp.”

Plaintiff’s claim must be dismissed with prejudice because he failed to exhaust administrative remedies regarding his termination. As set forth above, the SHRD dismissed Plaintiff’s grievance appeal, and Plaintiff did not appeal the decision of the SHRD. As a consequence, Plaintiff failed to exhaust administrative remedies regarding his termination from SLED. For this reason, Plaintiff’s wrongful discharge claim must be dismissed with prejudice. *Graves v. Horry-Georgetown Tech. Coll.*, 391 S.C. 1, 14, 704 S.E.2d 350, 358 (S.C. App. 2010) (“Consequently, the record supports a finding that Graves failed to pursue her grievance rights prior to filing suit, and the trial court did not err in directing a verdict in the College’s favor.”); *Law v. S.C. Dep’t of Corr.*, 368 S.C. 424, 440, 629 S.E.2d 642, 651 (2006) (“The trial judge correctly determined their wrongful termination claims were foreclosed under the State Employee Grievance Procedure Act because they did not exhaust their administrative remedies.”).

Plaintiff has argued that he should be excused from exhausting his administrative remedies because “SLED has never issued a final agency decision” regarding Plaintiff’s grievance, essentially depriving him of the ability to exhaust his administrative remedies. Under S.C. Code Ann. § 8-17-330, Plaintiff is mistaken. The statute clearly sets forth that the “[f]ailure by the agency to make a final decision on the grievance within forty-five calendar days after the filing of the grievance is considered an adverse decision, and the covered employee may appeal thereafter to the State Human Resources Director.” In fact, the SHRD explicitly rejected Plaintiff’s grievance appeal because he did not file his appeal with 55 calendar days of the filing of his initial agency grievance. In this set of circumstances, Plaintiff was not “deprived” of an opportunity to exhaust his administrative remedies. Rather, he simply failed to take advantage of the opportunity to do so.

For this reason, Plaintiff’s claim for wrongful discharge in violation of public policy must be dismissed.

II. PLAINTIFF’S DEFAMATION CLAIM IS BARRED BY S.C. CODE ANN. § 23-23-90.

Plaintiff claims that each of the SLED Defendants defamed him for “stating that Harp committed misconduct, as specified in S.C. Code Ann § 23-23-150.” This defamation allegedly occurred during a time period “after Harp’s termination [in August 2021] and before his hire by SCDPPPS [in April 2023].” He further alleges that “[b]etween February and April 2023, SLED defamed Harp to SCDPPPS,” and “[i]n or around April 2023, SLED defamed Harp to the Chief Pilot of the Savannah River site nuclear complex aviation unit, Herbert Craven.”

Plaintiff’s claim for defamation is barred because it is based upon a communication protected by S.C. Code Ann. § 23-23-90, which states that:

An oral or written report, document, statement, or other communication that is written, made, or delivered concerning the requirements or administration of this

chapter or regulations promulgated pursuant to it must not be the subject of or basis for an action at law or in equity in any court of the State if the communication is between:

- (1) law enforcement agencies, their agents, employees, or representatives; or
- (2) law enforcement agencies, their agents, employees, or representatives and the academy or the council.

Under S.C. Code Ann. § 23-23-90, the communications that Plaintiff claims are defamatory cannot serve as the basis for a lawsuit.²

First, the communications at issue are “written, made, or delivered concerning the requirements or administration of this chapter or regulations promulgated pursuant to it,” as indicated by Plaintiff’s allegation that the SLED Defendants defamed him for “stating that Harp committed misconduct, as specified in S.C. Code Ann § 23-23-150.” These communications are clearly those protected by S.C. Code Ann. § 23-23-90.

Second, the communications are between law enforcement agencies, their agents, employees, or representatives. These communications are also those protected by S.C. Code Ann. § 23-23-90.

For these reasons, Plaintiff’s defamation claim must be dismissed with prejudice.

III. PLAINTIFF’S CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIP IS BARRED BY S.C. CODE ANN. § 23-23-90.

Finally, Plaintiff claims that the SLED Defendants interfered with Plaintiff’s prospective contractual relationship for employment with the Savannah River site and/or with SCDPPPS. As with Plaintiff’s defamation claim, the communications that Plaintiff claims are the basis for this claim cannot serve as the basis for a lawsuit under S.C. Code Ann. § 23-23-90. The only

² Plaintiff has argued that S.C. Code Ann. § 23-23-90 applies only to the “adjudication of misconduct reports and allegations.” There is no such limitation in the text of the statute.

statements identified in the Amended Complaint were those that related to Plaintiff's allegations that the SLED Defendants "alleged Harp willfully made false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency." Because these communications relate to Plaintiff's misconduct and are between law enforcement agencies, their agents, employees, or representatives, they cannot "be the subject of or basis for an action at law or in equity in any court of the State."

For this reason alone, Plaintiff's claim for "Tortious Interference with Contractual Relationship" must be dismissed with prejudice.

CONCLUSION

For the reasons set forth above, I hereby grant the Defendant's Motion for Summary Judgment, and Dismiss Plaintiff's claims with prejudice, with each side to bear its own costs and fees.

AND IT IS SO ORDERED.

The Honorable Jocelyn Newman
Presiding Judge
Fifth Judicial Circuit

_____, 2025
Richland, South Carolina.



Richland Common Pleas

Case Caption: Ryan Harp vs South Carolina Law Enforcement Division , defendant,
et al
Case Number: 2023CP4004075
Type: Order/Dismissal

So Ordered

Jocelyn Newman