

STATE OF SOUTH CAROLINA)
PLEAS)
COUNTY OF LEXINGTON)

Andra Jamison, #337461,)

Plaintiff,)

vs.)

James Metts, Sheriff of Lexington County)
Sheriff's Department, Major Quig, of the)
Lexington County Detention Center,)
Kristian Marzol, the Clinical Coordinator)
of Correct Care Solutions,)

Defendants.)

IN THE COURT OF COMMON)
ELEVANTH JUDICIAL CIRCUIT)

CASE NO. 2011-CP-32-01245)

RECEIVED
CLERK OF COURT
LEXINGTON, SC


RECEIVED

FEB 28 2014

SC Court of Appeals

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiff's Motion to Alter/Amend Judgment Pursuant to Rules 52(b) & 59(e), SCRCP submitted on or about November 25, 2013. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

December 30, 2013
~~January 2014~~
Columbia, South Carolina

ORIGINAL

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP3201245

Andra Jamison #337461

James Mets Sheriff
 Lexington County
 Kristian Marzol Clinical
 Coordinator Correct
 Caresolutions

Quig Major Lexington
 County Detention Center

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
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 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

ORDER DENYING PLAINTIFFS MOTION TO ALTER/AMEND JUDGMENT

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

1/10/2014

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **10TH OF JANUARY 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **10TH OF JANUARY 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Andra Jamison #337461
Broad River Corr Inst
4460 Broad River Road
Columbia, SC 29210

Roy Pearce Maybank PO Box 12579 Charleston, SC 29422
Daniel Clifton Plyler
PO Box 8568 Columbia, SC 292028568

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

DLSCN-01/16/14

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Andra Jamison, #337461,

CASE NO. 2011-CP-32-01245

Plaintiff,

vs.

James Metts, Sheriff of Lexington County
Sheriff's Department, Major Quig, of the
Lexington County Detention Center,
Kristian Marzol, the Clinical Coordinator
of Correct Care Solutions,

Defendants.

FILED } 2 P 4 04
BEECHER }
CLERK OF COURT }
LEXINGTON, SC }

ORDER

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FEB 28 2014

SC Court of Appeals

This matter came before the Court on March 11, 2013 at a hearing on Defendants Metts's and Quig's Motion to Dismiss and Defendant Marzol's Motion for Summary Judgment. Present at the hearing were Andra Jamison, pro se; Jason Daigle, Esquire, counsel for Defendant Marzol; and Daniel Plyler, Esquire, counsel for Defendants Metts and Quig. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, the Motion to Dismiss as to Defendants James Metts and Major Quig, individually, is **GRANTED**. The Motion for Summary Judgment as to Kristian Marzol is also **GRANTED**.

FACTS

This matter arises from Plaintiff's arrest on July 31, 2008 for a felony DUI. Upon arrest, Plaintiff refused to take a breath analyzer test. He was then transported to Lexington Medical Center for a blood draw to determine his blood alcohol content. At the blood draw, two vials of blood were drawn. One was retained for testing, and another was given to Plaintiff. Plaintiff was then transported to Lexington County Detention Center and processed into the facility on August 1, 2008. Plaintiff turned over all belongings, including the vial, upon intake to the facility. Defendant Kristian Marzol, Clinical Coordinator of Correct Care Solutions, a contractor of Lexington County, was the employee who supervised the nurse who handled Plaintiff's vial of blood at Lexington County Detention Center. Plaintiff was released on August 4, 2008. Upon release, Plaintiff requested his vial of blood and was told the facility did not have it. Plaintiff therefore could not have it independently tested for his blood alcohol content, which he claims he

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would have presented as evidence at his criminal trial. On October 12-15, 2009, Plaintiff was tried and sentenced to eighteen years in prison for the felony DUI.

On March 29, 2011, Plaintiff filed a complaint against Metts, Quig, and Marzol. Plaintiff contends that he is the rightful owner of the blood, and that the loss of his blood constitutes negligence. Plaintiff also contends that the loss of his blood violated his due process rights under the United States and South Carolina Constitutions because he could not have his blood independently tested for his criminal trial. Defendant Marzol removed the case to federal court on the basis that the allegations made in the Complaint involved a federal question. An Order was issued on August 21, 2012 by the federal district court of South Carolina dismissing all federal claims and remanding the state claims to the Court of Common Pleas. Defendants Metts and Quig filed a Motion to Dismiss on November 1, 2012. Defendant Marzol filed a Motion for Summary Judgment on November 21, 2012.

STANDARD OF REVIEW

When deciding a motion to dismiss, the question to be considered is whether, in a light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007); *Overcash v. South Carolina Elec. & Gas Co.*, 364 S.C. 569, 614 S.E.2d 619 (2005). "A motion to dismiss should not be granted if facts alleged and inferences reasonably deductible therefrom would entitle the plaintiff to any relief on any theory of the case." *Slack v. James*, 356 S.C. 479, 483 589 S.E.2d 772, 773-774 (Ct. App. 2003). Where allegations of the complaint give rise to competing inferences on a question of material fact, dismissal under Rule 12(b)(6) is not appropriate. *Camp v. Springs Mortgage Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 306 (1993).

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), SCRCP; *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005). In determining whether any triable issue of fact exists, the evidence and inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *McNair v. Rainsford*, 330 S.C. 332, 341, 499 S.E.2d 488, 493 (Ct. App. 1998). "[I]n cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Carolina Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

DISCUSSION

I. Defendants Metts and Quig

Defendants Metts and Quig allege that their Motion to Dismiss should be granted because Plaintiff fails to allege facts sufficient to state a cause of action; they are entitled to absolute immunity under the South Carolina Tort Claims Act ("Tort Claims Act"), S.C. Code Ann. § 15-78-10 et seq.; they are not proper parties to the suit pursuant to the Tort Claims Act; Plaintiff's claim for relief is invalid pursuant to the Tort Claims Act; the Summons and Complaint were improperly served upon them; and Plaintiff's claims are time-barred by the applicable statute of limitations in the Tort Claims Act. Plaintiff alleges that the Tort Claims Act does not bar Metts's and Quig's liability. Plaintiff also alleges that Defendants' other reasons for granting summary judgment are for a jury to decide and service was proper because Defendants voluntarily appeared.

The South Carolina Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). An employee of a governmental entity is immune from liability for tortious acts committed within the scope of his or her official duties. *See id.*; *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Plaintiff argues that an exception to the rule applies. Section 15-78-70(b) provides that a governmental employee does not have immunity if the employee's conduct was not within the scope of his official duties or if it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

Based upon the documentation provided, evidence presented, and oral argument, it is clear that Defendants Metts and Quig had no involvement personally with the blood. Any role they might have had in Plaintiff's arrest and detainment was within the scope of their duties as employees of Lexington County. Additionally, there is no evidence that any actions constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. Plaintiff incorrectly named Defendants Metts and Quig instead of the Lexington County Sheriff's Department or Lexington County Detention Center. Defendants Metts and Quig must be dismissed from the present suit. Because the Defendants must be dismissed based upon being immune from liability under the Tort Claims Act, Defendants' other arguments were not considered.

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II. Kristian Marzol

In his Complaint, Plaintiff claims that Defendants' negligence in losing his blood sample taken pursuant to S.C. Code Ann. § 56-5-2950 injured him by denying him lawful possession of his property. He also claims that Defendants' negligence caused his property to be potentially obtained by unauthorized persons, thereby compromising his right to medical privacy and exposing him to additional harm from the unauthorized use of his DNA. Plaintiff further alleges that Defendants violated his due process rights by losing his blood sample, resulting in his felony DUI conviction without adequate opportunity to present his own evidence concerning his blood alcohol level. Defendant Marzol argues that summary judgment should be granted because Section 56-5-2950 does not entitle Plaintiff to personally possess or have any property interest in the blood; Plaintiff has not asserted any injury related to the loss of the blood to support a negligence claim; and should any of Plaintiff's due process claims be considered state claims under the South Carolina Constitution, they should be dismissed, as they are analogous to the federal due process claims previously dismissed.

This Court agrees that any claims that the loss of the vial of blood subjected Plaintiff to the deprivation of his due process rights under the South Carolina Constitution are analogous to any federal claims he made under the United States Constitution that were dismissed in federal district court, and summary judgment for Marzol as to these claims is granted on the same basis cited in the federal court order. Briefly, the federal district court, relying on *Heck v. Humphrey*, 512 U.S. 477 (1994), dismissed Plaintiff's due process claim because the Plaintiff made no factual allegations to support a finding that his conviction or sentence had been reversed on appeal, expunged, declared invalid by a state court, or called into question by a federal court's issuance of a writ of habeas corpus, which is required for a plaintiff to recover relief arising from the alleged denial of his due process rights.

Regarding Plaintiff's argument that he has been unlawfully denied his property, Section 56-5-2946 of the S.C. Code of Laws provides that "[a] person who is tested or gives samples for testing [for alcohol or drugs] may have a qualified person of his choice conduct additional tests at his expense and must be notified of that right." Section 56-5-2950(D) states that "[t]he person tested or giving samples for testing may have a qualified person of his own choosing conduct additional tests at his expense and must be notified in writing of that right." Nowhere in the statutes is it stated that the individual tested has a right to possess the vial of blood or a property

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interest in the blood. Additionally, South Carolina statutes have shown a trend in limiting an individual's property interests in human specimens. For example, S.C. Code Ann. § 4-43-10 limits a person's property interest in blood by prohibiting sale of blood, blood products, and blood derivatives. The Revised Anatomical Gift Act, S.C. Code Ann. § 44-43-300 et seq., provides explicit direction and restrictions as to the donation of human tissues and organs. These statutes illustrate the differences between human blood and other personal property that is not a human specimen and the limitation of a property interest in the vial of blood under South Carolina law.

Plaintiff also cannot sustain a cause of action for negligence. In order to prevail in a cause of action for negligence, Plaintiff must prove: (1) a duty of care owed by the defendant; (2) a breach of that duty by a negligent act or omission; (3) the breach was the actual and proximate cause of the injury; and (4) plaintiff suffered damages or an injury. *See Madison ex rel. Bryant v. Babcock Center, Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006). Plaintiff claims his injury is that he would have been able to use the vial of blood for independent testing of his blood alcohol content, and the results could have been used in his favor at his criminal trial. However, Plaintiff's claims are without any evidentiary support. Plaintiff presents no evidence that Marzol, the supervisor, had a duty with respect to the blood or breached a duty. Even if such a duty existed, Plaintiff has not asserted any compensable injury. Plaintiff claims his injuries are that he was unable to offer in his defense an independent test of his blood and a potential injury from the possible unlawful use of his blood or exposure of his "confidential 'DNA' information." As for his injury regarding his ability to present a full defense, this Court explained above that such a due process argument was already made and dismissed in federal court. Regarding possible unlawful use or exposure of his blood, such an injury is purely speculative because Plaintiff has not presented any evidence that anyone has used his blood or even located it, he only alleges that someone might do so in the future, and damages cannot be awarded for a speculative injury. *See Sapp v. Ford Motor Co.*, 386 S.C. 143, 149, 687 S.E.2d 47, 50 (2009) ("Imposing liability merely for the creation of risk when there are no actual damages drastically changes the fundamental elements of a tort action, mak[ing] any amount of damages entirely speculative."). Therefore, the elements of a cause of action for negligence are not met.

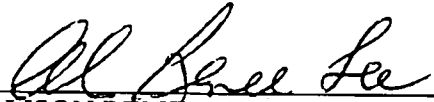
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ORDER

For the reasons stated above, it is therefore **ORDERED** that the Motion to Dismiss as to Defendants James Metts and Major Quig, individually, is **GRANTED**. The Motion for Summary Judgment as to Kristian Marzol is also **GRANTED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
November 6, 2013

FILED
2013 NOV 12 P 1:01
BETH A. DARRING
CLERK OF COURT
LEXINGTON, SC

ap #6

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP3201245

Andra Jamison #337461

James Mets Sheriff
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 Caresolutions

Quig Major Lexington
 County Detention Center

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

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11/12/2013

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 13th of November 2013, and a copy mailed first class or placed in the appropriate attorney's box on 13th of November 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Andra Jamison #337461
Broad River Corr Inst
4460 Broad River Road
Columbia, SC 29210

Roy Pearce Maybank
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Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

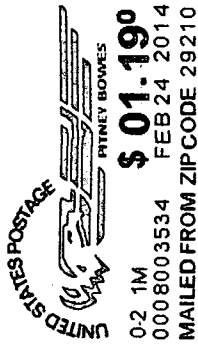
Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

DLSCN 11/25/13

A. Jamison #337461
BRCI Murky #278
4460 Broad River
Cola S.C. 29210



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FEB 28 2014

SC Court of Appeals

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FEB 24 2014

BRCI
MAILROOM

DANIEL E. SHEARSON, CLERK
S.C. SUPREME COURT
P.O. Box 11330
Columbia, S.C. 29211