

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action Number: 10-CP-40-

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SC Court of Appeals

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James W. Trexler,
Plaintiff,

v.

ORDER

Richland County and the Sheriff of
Richland County, in his official Capacity,
a/k/a Richland County Sheriff's
Department,
Defendants.

This matter came before this Court by way of the Motion for Summary Judgment on behalf of Defendants pursuant to Rule 56, SCRCPP. A hearing on this motion was held on January 27, 2014 in Columbia, South Carolina. Present at the time and presenting oral arguments were counsel for Defendants, Robert D. Garfield and for Plaintiff, W. Westbrook Wills, III and William H. Johnson.¹

I. RELEVANT BACKGROUND

Initial HSPCA Investigation

On February 13, 2008, Michelle Hart, an investigator with the Humane Society for the Prevention of Cruelty to Animals ("HSPCA") was investigating a complaint about several neglected horses in poor condition on Zeigler Road South in Richland County. At that time, Hart was on an adjoining property in an attempt to take pictures of the horses on the adjacent location. At some point during Hart's investigation, Terry Trexler (Plaintiff's brother) and Hazelene Trexler (Plaintiff's mother) arrived on the adjacent property and started yelling and cursing at Hart. Hazelene Trexler physically stood between Hart and the horses, waved her hands in the air, and shouted profanities. These individuals accused Hart of trespassing and insisted on confiscating her camera.

¹ Following the hearing and by request of the parties, the Court permitted and considered supplemental briefing to clarify and/or expound upon arguments presented by counsel at the hearing.

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Hart explained that she was an investigator with the HSPCA and that she was on the neighboring property with the owner's consent. Due to these individuals' attempts to hinder her efforts, Hart believed that she would be unable to keep taking pictures and decided to leave. As Hart was walking through the pasture toward her truck, Terry Trexler advised that he would not permit her to leave and pulled his truck behind Hart's vehicle to block her from moving.

Richland County Sheriff's Department ("RCSD") Deputy Charley Simpson was called out to the scene by Hazelene Trexler. Simpson proceeded to speak with Terry and Hazelene Trexler. Upon inquiry, Terry Trexler falsely identified himself as "James Trexler" (Plaintiff). Terry Trexler claimed that he did not have any form of identification, but provided the false name and a date of birth to Simpson. At some point after leaving the scene, Simpson conducted an investigation and found that the given name was not on file for the birth date provided. Instead, Simpson positively identified the male as Terry Trexler, with this birth date, and further uncovered that Terry Trexler was wanted from the Sumter County Sheriff's Department for fraudulent checks and cruelty to animals.

Plaintiff Developed as Suspect

Between the dates of February 19 through February 22, 2008, HSPCA officials including Hart and RCSD Investigator Holly Wagner held a meeting to discuss obtaining a search warrant to evaluate the subject horses on Zeigler Road. At that time, Hart provided a written statement that the man who (falsely) identified himself as "James Trexler" (Plaintiff) blocked her in and physically would not let her leave.

On February 26, 2008, the HSPCA seized 23 horses and 7 dogs from the Zeigler Road property pursuant to a search warrant. After discovering additional information, the HSPCA learned that Hazelene and Terry Trexler were wanted for sixty-one (61) counts on animal cruelty in Jefferson County, Georgia. The HSPCA further believed that there were additional horses on the listed property belonging to the Trexler family. These horses were in poor condition and held in a barn. This led the HSPCA to develop Plaintiff as a suspect, as he and his property emerged as subjects in a search warrant obtained by HSPCA Inv. Hart. In an executed affidavit, Hart swore to the issuing magistrate that Plaintiff "is the brother of Terry Trexler and the son of Hazelene Trexler and the person said to be living at 412 Derby Lane (Hopkins)."

Arrest of Plaintiff and Press Release

On this same date, HSPCA executed a search warrant at Plaintiff's property. Located were one horse in a pasture and four additional horses situated in stalls in the barn. These horses were standing in mud soaked with urine and feces. Nowhere on the property was there any hay, food, or any clean water. Moreover, one of the horses was in an emaciated state with protruding ribs and hipbones, and the others showed signs of undernourishment. At that time, all horses were taken into custody by the HSPCA. Wagner obtained an arrest warrant against Terry Trexler for Kidnapping.

On February 27, 2008, the HSPCA obtained arrest warrants against all three individuals (Plaintiff as well as Hazelene and Terry Trexler) for ill treatment of these horses, now seized and under the custody of the HSPCA. Sometime during the early evening hours, these warrants were served and all three were arrested, transported to ASGDC for booking. Plaintiff was charged with five (5) counts of Ill treatment of animals; Hazelene for multiple counts of Ill treatment of animals; and Terry for multiple counts of Ill treatment of animals and Kidnapping.

RCSD Captain Chris Cowan, who was Senior Public Information Coordinator, disseminated a press release regarding the Trexler arrests. This release was sent to various statewide news and media outlets indicating that Plaintiff had been charged with kidnapping. At the time of these events, Plaintiff was a veteran employee of the South Carolina Department of Agriculture, working at that time as an Assistant Commissioner for Administration.² *See id.* at ¶ 13.

Based upon these allegations, Plaintiff brought an action for malicious prosecution against the Sheriff in his official capacity and also a defamation against both Defendants pursuant to the South Carolina Tort Claims Act. *See generally* Second Am. Comp.

II. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCRCP 56(c). It is well established that the Court, in considering a motion for summary

² By way of particulars, *The State Newspaper*, published in large headlines on the front page of the newspaper a headline stating, "Assistant Ag Chief faces kidnap charge." Following the headline, *The State* published an article in which it was reported as a fact that Plaintiff had been charged with kidnapping as a result of an incident involving the horses. This was retracted by Cowan and disseminated accordingly.

judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (S.C.App. 1994); *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C. 3111, 313, 411 S.E.2d 672, 673 (Ct.App. 1991), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993).

III. MALICIOUS PROSECUTION CLAIM

Under South Carolina law, a plaintiff must plead and prove each of the following elements to state a cause of action for malicious prosecution: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damages. *See McBride v. School District of Greenville County*, 698 S.E.2d 845, 855 (2010).

In their motion, Defendants assert that Plaintiff has failed to present evidence to sustain an action for malicious prosecution. The following discussion centers on whether these critical elements have been established when the evidence is taken in a light most favorable to Plaintiff.

Original judicial proceedings against Plaintiff

Defendants argue that the RCSD neither initiated the arrest nor instituted the prosecution of Plaintiff. To this extent, they assert that RCSD employees played no role in pursuing an arrest warrant against Plaintiff, never appeared before a magistrate as an affiant, and played no direct role in the prosecution of Plaintiff in General Sessions Court.³

Instructive in this Court's assessment is the January 17, 2012 deposition testimony of Elisabeth Perry, a HSPCA investigator. At such time, Perry testified that she was the sole affiant on all five (5) arrest warrants against Plaintiff; that she sought these warrants on her own volition based upon her personal observation of Plaintiff's horses on his own property; that her professional opinion was that probable cause existed that Plaintiff committed the crime(s) of Ill Treatment of Animals; that she personally went alone to the magistrate's office to swear out a

³ There is no dispute that the agencies of the HSPCA, the Fifth Circuit Solicitor's Office, and the Office of the South Carolina Attorney General are all separate agencies which operate mutually exclusive of each other and are not controlled by either Richland County or the Richland County Sheriff.

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warrant; and finally that she attested under oath to a magistrate judge that Plaintiff committed these criminal offenses. Except for one RCSD deputy carrying out a ministerial function (*i.e.*, effectuating service of a duly authorized and facially valid arrest warrant on February 27, 2008), RCSD employees were not involved in swearing out the warrant or prosecuting the matter.

As a result, Plaintiff has failed to demonstrate that RCSD officials initiated the arrest or instituted the prosecution against him.

Probable Cause: Arrest Warrant stage

On February 27, 2008, the Honorable Harold A. Cuff, Richland County Magistrate heard testimony from Perry with respect to several horses situated on Plaintiff's property. At that time, Perry attested under oath that she observed several horses visibly suffering from malnutrition with poor feeding conditions, including the lack of food and water buckets filled with feces. She also advised the magistrate as to the substandard living conditions, and specifically overcrowding, horses standing in several inches of feces, urine, and mud as well as wandering around on wet, muddy property. Accordingly, the magistrate found that probable cause existed for Plaintiff's arrest and issued five (5) arrest warrants for the ill treatment of horses.⁴

In *Baker v. McCollan*, 443 U.S. 137, 143 (1979), the United States Supreme Court explained that "since the probable-cause standard for pretrial detention is the same as that for arrest, a person arrested pursuant to a warrant issued by a magistrate on a showing of probable cause is not constitutionally entitled to a separate judicial determination that there is probable cause to detain him pending trial." Accordingly, the *Baker* Court affirmed the constitutionality of a plaintiff's arrest as he was arrested pursuant to a facially valid warrant.

In *Torchinsky v. Siwinski*, 942 F.2d 257 (4th Cir. 1991), the Fourth Circuit Court of Appeals explained that a probable cause determination by a magistrate provides additional support that probable cause for an arrest was present. The Court stated:

We encourage law enforcement officers to seek warrants because magistrates from their detached perspective serve as the essential "checkpoint between the Government and the citizen." When a police officer protects a suspect's rights by obtaining a warrant from a neutral magistrate, the officer should, in turn, receive some protection from suit under 42 U.S.C. § 1983. Otherwise, the threat of liability would force officers to continuously second-guess the

⁴ These constituted the following warrant numbers with respect to Plaintiff: No. I-895847 (2 year old bay female); No. I-895848 (6 year old bay stallion); No.: I-895849 (15-20 year old bay stallion); No.: I-895850 (2 year old black stallion); No.: I-895851 (20 year old bay stallion).

considered decisions of magistrates. This in turn would promote delay in the execution of warrants, and alter the proper allocation of law enforcement functions.

942 F.2d at 262. (Citations omitted).

There is no dispute that the county magistrate who issued the arrest warrants against Plaintiff was a neutral and detached from the underlying criminal investigations. Moreover, Plaintiff has not alleged in his Complaint nor has he presented any evidence to show that the arrest warrant issued by Richland County Magistrate Judge Harold Cuff was void, facially deficient, or not facially valid. Therefore, this Court holds that this determination by the Richland County magistrate is a marked demonstration of the existence of probable cause.

Probable Cause: Indictment stage

The charges against Plaintiff were presented to the Richland County Grand Jury on March 13, 2008 and four (4) indictments were returned as a 'true bill' for multiple counts of Ill Treatment of Animals. Defendants submitted that these grand jury indictments pertaining to Plaintiff on the charges of Ill Treatment of Animals demonstrates that probable cause existed for his arrest. This Court agrees.

In *Kinton v. Mobile Home Industries, Inc.*, 262 S.E.2d 727 (1980), the Supreme Court of South Carolina held, "South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution." 262 S.E.2d 727, 728 224 S.C. at 182.⁵ Similarly, in *Whitner v. Duke Power Co.*, 277 S.C. 397, 288 S.E.2d 389 (1982), the Supreme Court affirmed the dismissal of a malicious prosecution claim because "[t]here is no question that probable cause existed when the grand jury indicted him." 288 S.E.2d at 390. See also *McBride v. School District of Greenville County*, 698 S.E.2d 845, 856 (2010).

Plaintiff having been indicted on these criminal charges is prima facie evidence that probable cause existed for his arrest. Therefore, the existence of grand jury indictments serves to foreclose Plaintiff's malicious prosecution cause of action.

⁵ See also, *White v. Coleman*, 277 F. Supp. 292, 297 (D.S.C. 1967), wherein the United States District Court held, "Where the Grand Jury has returned a true bill upon the charge made, such finding amounts to a judicial recognition that probable cause does exist and infers prima facie probable cause for the prosecution."

Probable Cause: Prosecution stage

Defendants offered additional factors that probable cause existed for the arrest and prosecution of Plaintiff. First was the initial decision of the prosecuting attorney to prosecute Plaintiff for his animal abuse-related charges. Second and subsequently, was the decision to continue with the prosecution for an extended period.

The record demonstrates that prosecution of Plaintiff began in February 2008 by way of the Fifth Circuit Solicitor's Office and he was subsequently prosecuted by the South Carolina Attorney General's Office. These charges against Plaintiff were formally dismissed by the Attorney General's Office in July 2010, after having been prosecuted in General Sessions Court for roughly twenty-nine (29) months.

A police officer or criminal investigator may typically rely on the expertise of a prosecuting attorney for a determination of whether probable cause exists. "Good faith reliance upon advice of fully informed counsel may establish probable cause." *Melton v. Williams*, 281 S.C. 182, 314 S.E.2d 612 (Ct. App. 1984). *See also White, supra*. In the instant matter, to the extent HSPCA investigators were relying on the advice of the prosecuting attorney for deciding whether to procure the arrest warrant is not of legal significance as there was no requirement for which to do so. However, this Court construes that the Attorney General's Office believed that probable cause existed for Plaintiff's arrest by virtue of not only its initial assessment of the case, but continuing with prosecution for the prolonged time period.

Therefore, this Court finds that Defendants' employees played no direct role in the institution or continuing of prosecution against Plaintiff. This Court also agrees with Defendants that adequate probable cause existed at all relevant times with respect to his arrest. Accordingly, the evidence does not support a cause of action for malicious prosecution and this claim is dismissed with prejudice.

IV. DEFAMATION CLAIM

South Carolina Tort Claims Act

Prior to the decision of the South Carolina Supreme Court in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), governmental entities and their employees were protected by sovereign immunity. In *McCall*, the Supreme Court abolished sovereign immunity. However, in the following year, the South Carolina General Assembly enacted the South Carolina Tort Claims Act ("Act") "which reinstated sovereign immunity for the State and its political

subdivisions with certain exceptions." *Jinks v. Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002), reversed on other grounds, 538 U.S. 456 (2003). "The Tort Claims Act provides a limited waiver of governmental immunity and delineates the conditions upon which a claimant may pursue actions against the State and its political subdivisions." *Id.* The Tort Claims Act "removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act." *Bayle v. South Carolina Department of Transportation*, 344 S.C. 115, 542 S.E.2d 736, 739 (Ct. App. 2001).

Thus, it is well settled that in reaction to *McCall*, the General Assembly reinstated sovereign immunity subject only to the limited waiver specifically provided in the Act. As a result, the Act presently governs all tort claims against governmental entities in South Carolina and is the exclusive remedy for civil actions against governmental entities in South Carolina. *See Washington v. Lexington County Jail*, 337 S.C. 400, 403, 523 S.E.2d 204, 206, (Ct. App. 1999). The Act waives sovereign immunity for the State and the State's governmental entities. *See S.C. Code Ann. §15-78-40*. Additionally, the Act continues to list thirty-seven exceptions to the general waiver of immunity in S.C. Code Ann. §15-78-60. If an act or omission falls under one of these exceptions, then the governmental entity would enjoy absolute immunity from suit. When interpreting a statute, the Court's primary function is to ascertain the intention of the legislature. The South Carolina Supreme Court has held that words used in the statute "must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Gilstrap v. S.C. Budget and Control Bd.*, 310 S.C. 210, 423 S.E.2d 101 (1992). More recently, in *Jones v. State Farm Mut. Auto. Ins. Co.*, 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct.App. 2005), the Court of Appeals held that:

The cardinal rule of statutory interpretation is to determine the intent of the legislature. The legislature's intent should be ascertained primarily from the plain language of the statute. The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. The court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.

(Internal citations omitted)

Assessment pursuant to S.C. Code Ann. §15-78-60(17)

Plaintiff's defamation claim exclusively centers on the actions of Captain Cowan who was the Senior Public Information Coordinator for the RCSD at the relevant times in the Complaint.

S.C. Code Ann. §15-78-60(17) provides that governmental entities are not liable for a loss resulting from "employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." Defendants argue that, the determination by this Court as to any potential liability on the part of the Defendant Sheriff turns solely on this subsection of the South Carolina Tort Claims Act. Specifically, whether Cowan's conduct at the relevant times constituted actual malice or an intent to harm Plaintiff. After a close evaluation of the facts, the Court agrees that, based upon Plaintiff's allegations, Cowan's actions falls under this relevant exception prescribed by the Act.

The record in this case is undisputed that on February 27, 2008, Cowan disseminated a press release regarding the arrest of Hazelene, Terry, and Plaintiff. This release was sent by Cowan to *The State* newspaper, the Associated Press, WLTX, WACH and WOLO, among other media outlets. This press release was a public record and stated that the charges made against Plaintiff were, "5 counts of ill treatment of animals" and "1 count of kidnapping (stems from an incident where J. Trexler held a HSPCA investigator against her will/refused to allow the investigator to leave the farm on 2/13 during an evaluation of the horses)."⁶

In this action, Plaintiff alleges that, "In the type-written press release, attributing to the Plaintiff, the ill treatment of horses of which the Plaintiff had no ownership interest, and which were not under the Plaintiffs care, custody or control, and further characterizing that treatment as "severe and barbaric.'" See Second Am. Comp., ¶ 23. At the time of the publication, the statements were false. See *id.* at ¶ 24. Despite "actual knowledge that the only kidnapping charges associated with the entire series of events were charged against Plaintiff's brother," Cowan disseminated and reported that Plaintiff had been charged with kidnapping. See *id.* at ¶ 9. Plaintiff further alleges that, "at the time of the publication, the statement was false and Defendants either knew or should have known that the statement was false." See *id.* at ¶ 16. Further, publication of the statement concerning the kidnapping charge and also associating Plaintiff with the operation of

⁶ Defendants stipulated at the hearing that the content of the press release was not accurate to the extent that Plaintiff was never charged with Kidnapping.



the horse business owned and operated by his mother “created the false impression in the minds of millions of South Carolinians and others worldwide concerning the character of the Plaintiff.” *See, Id.*, ¶ 17. Accordingly, “as a result of the publication the Plaintiff has suffered serious damages, including the loss of his employment and a severe diminution of his ability to provide for his family, and extreme damage to his reputation.” *See id.* at ¶ 26.

Most critically, the record demonstrates that in his Responses to Defendants’ Request to Admit dated August 12, 2013, Plaintiff substantively admitted that at the relevant times in the Complaint, Cowan’s actions with respect to Plaintiff constituted actual malice as well as an intent to harm.⁷ Accordingly, Plaintiff clearly takes the position that Cowan’s conduct was egregious to the degree so as to constitute not only actual malice but additionally acted with intent to cause harm to him.

The evidence reflects that the sole RCSD employee whose acts or omissions with respect to the dissemination of the press release was Cowan. Yet, Cowan was never named as a party-defendant. Therefore, the Defendant Sheriff -- the only law enforcement party-defendant in this action -- is entitled to absolute sovereign immunity for any such alleged loss resulting from his employee’s conduct constituting actual fraud and/or intent to harm pursuant to §15-78-60(17).⁸

In a case involving the defamation of a public official, a plaintiff must prove the defendant acted with actual malice. *See Sanders v. Prince*, 304 S.C. 236, 403 S.E.2d 640 (1991); *see also Elder v. Gaffney Ledger*, 341 S.C. 108, 113, 533 S.E.2d 899, 901 (2000); *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319 (2001). To meet this standard, the plaintiff must show either that the defendant knew the statement was false or that the defendant made the statement with reckless disregard of its falsity. *See id.* citing *New York Times Co. v. Sullivan*, 376 U.S. 254, (1964). As stated previously, the Tort Claims Act bars a governmental entity's liability for an individual's loss stemming from an employee's conduct that constitutes actual malice. *See* S.C. Code Ann. §15-78-60(17). It is further undisputed that the Defendant Sheriff is a constitutional

⁷ The requests to admit served upon Plaintiff are respectively worded as follows: “At the relevant times in the Complaint, Chris Cowan’s actions with respect to Plaintiff **did not constitute** actual malice (and) ... **did not constitute** intent to harm” (bolded in original). Plaintiff denied both requests.

⁸ Pursuant to S.C. Code Ann §15-78-70(a) and (b), an employee who allegedly commits a tort while acting within the scope of his official duty is not liable except for actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.



officer and thereby a state agency pursuant to the South Carolina Constitution and the Laws of the State of South Carolina and is subject to the terms and conditions of the Tort Claims Act, South Carolina Code Ann. § 15-78-10, *et seq.*

In *Gause v. Doe*, 317 S.C. 39, 451 S.E.2d 408 (Ct. App. 1994), the Court of Appeals held that in a case involving the police agency official's defamation of a public official, a plaintiff would be required to prove that such conduct by the employee constituted actual malice in order to recover on his claim. To this extent, the *Gause* Court recognized the clear language of the Tort Claims Act providing that the agency was not liable for loss resulting from employee conduct constituting actual malice.


Relying upon the authority in *Gause*, Defendants argue that Plaintiff would be obliged to show that the Sheriff's employees acted with actual malice when they allegedly defamed him. Consequently, Defendants assert that since Plaintiff must specifically prove the Sheriff's employee's conduct constituted actual malice in order to recover on this claim, the Tort Claims Act bars Plaintiff's defamation claim against the Sheriff. This Court agrees that a proper application of the Tort Claims Act precludes liability with respect to the governmental entity. Therefore, the Sheriff cannot be held liable for such alleged conduct.

V. CONCLUSION

Viewing the facts and reasonable inferences therefrom in the light most favorable to Plaintiff, this Court finds that there is an absence of evidence to support Plaintiff's case and that Defendants are entitled to summary judgment.

IT IS THEREFORE ORDERED that the Motion for Summary Judgment with respect to Defendants is **GRANTED** and that the pending causes of action against Defendants are hereby dismissed with prejudice.

IT IS SO ORDERED.



The Honorable DeAndrea Gist Benjamin
Circuit Court Judge

8-20, 2014
Columbia, South Carolina