

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Doyet A. Early, III, Circuit Court Judge

Case No. 2014-001702

Carlton E. Cantrell,Appellant,

v.

Aiken County, Aiken County Animal Control Director, Shirley Hardin,
Aiken County Animal Control Officer, Bobby Arthurs, and Judge
Charles T. Carter,Respondents.

INITIAL BRIEF OF THE RESPONDENTS

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SC Court of Appeals



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Folkens v. Hunt,
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S.C. CODE ANN. § 15-36-10, *et seq*

STATEMENT OF THE CASE

The Appellant filed this action on April 16, 2014. In the Complaint the Appellant makes allegations relating to the seizure of a number of goats from his property by Aiken County Animal Control. The seizure in question occurred on May 19, 2005. According to the facts set forth in the Complaint, the Appellant entered into a plea agreement, which he later had overturned and set aside. Specifically, the Appellant alleges that the plea agreement was set aside on October 3, 2007. These facts are clearly stated on the face of the Complaint.

This action represents the third time the Appellant has filed a civil action, regarding these exact same claims and these exact same facts, against the Respondents. *See*, Civil Action No. 08-CP-02-887 and 11-CP-02-1480 (R.). The two earlier civil actions were dismissed by the Honorable Doyet A. Early, III. On each of those occasions the Appellant appealed the dismissals to this court. *See*, Appellate Case No. 2009-113406 and 2011-200486. For each of those appeals this court affirmed the trial court's dismissal. *See*, 2010-UP-533 and 2012-UP-662 (R.). Furthermore, the Appellant petitioned the South Carolina Supreme Court for a writ of certiorari on each of those earlier appeals. In both cases the petitions were denied.

The Respondents filed a motion to dismiss, or in the alternative for Summary Judgment, in this action on May 23, 2014. (R.). That motion was

heard by the Honorable Doyet A Early, III on July 7, 2014. Judge Early issued an order dated August 28, 2014, which dismissed the Appellant's Complaint in its entirety and awarded sanctions against the Appellant, pursuant to the South Carolina Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, *et seq.* (R.). That order was filed on September 4, 2014. (R.).

Judge Early found that the Appellant's claims were time-barred by the applicable statute of limitations as set forth under the provisions of the South Carolina Tort Claims Act; that Respondents Hardin, Arthurs and Carter were subject to dismissal pursuant to S.C. Code Ann. § 15-78-70; that Respondent Carter was entitled to judicial immunity; and that the entire action was barred by *Res Judicata* and/or the Collateral Estoppel doctrine.

The Appellant did not file a Rule 59(e) Motion. He then filed his Notice of Appeal.

STATEMENT OF THE FACTS

In this case the Appellant has sued seeking compensation relating to the seizure, and alleged loss, of a number of goats by Aiken County Animal Control. The Appellant asserts in his Complaint, that the goats in question were seized on May 19, 2005. (R. __). According to the facts set forth in the Complaint, the Appellant entered into a plea agreement, which he later had overturned and set aside. (R. __). Specifically, the Appellant alleges, in his Complaint, that the plea agreement was set aside on October 3, 2007. (R. __).

ARGUMENT

In the Appellant's Notice of Appeal and Brief, the Appellant asserts that his claims are not time-barred, that the County employees are not entitled to governmental immunity, and that Respondent Carter is not entitled to absolute judicial immunity. However, the Appellant has not appealed Judge Early's ruling that this matter is barred by *Res Judicata* and/or the Collateral Estoppel doctrine.

I. The Order dismissing the Complaint was appropriate.

The Respondents argue that the order issued by Judge Early, dismissing the Appellant's Complaint and awarding sanctions, was appropriate on all stated grounds. Judge Early found that the Complaint was time-barred, that the individual defendants were subject to dismissal under S.C. Code Ann. § 15-78-70, that defendant Carter was entitled to judicial immunity, and that this matter was barred pursuant to *Res Judicata* and/or the Collateral Estoppel doctrine.

Specifically, Judge Early found that "the doctrines of *res judicata* and/or collateral estoppel, which are also known as and referred to as issue preclusion apply in this matter." *See*, August 28, 2014 Order, pg. 4 (R. __). Judge Early's finding that this action was barred by *res judicata* and/or collateral estoppel has not been appealed. There is no mention of Judge Early's decision regarding *res judicata* and/or collateral estoppel in the Appellant's brief.

In *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986), this Court held that “[a]n alternative ruling of a lower court that is not excepted to constitutes a basis for affirming the lower court and is not reviewable on appeal.” *Folkens*, 348 S.E.2d at 845. Such a ruling becomes the law of the case. *Id.* See also, *Eagles v. South Carolina National Bank*, 301 S.C. 402, 392 S.E.2d 187 (Ct. App. 1990). Because the Appellant did not appeal from the alternative ruling by Judge Early dismissing this matter in its entirety based on the doctrines of *res judicata* and/or collateral estoppel, the dismissal must be affirmed.

Furthermore, as is correctly stated in Judge Early’s Order dismissing the Appellant’s Complaint, the Appellant filed this lawsuit outside the time allowed to do so by the applicable statute of limitations. The statute of limitations at issue in this matter is the statute of limitations set forth in the South Carolina Tort Claims Act (hereinafter the “Act”), S.C. Code Ann. §§ 15-78-10 *et seq.* The Act provides for a two-year statute of limitations. S.C. Code Ann. § 15-78-110; see also, *Flateau v. Harrelson*, 355 S.C. 197, 207, 584 S.E.2d 413, 418 (Ct. App. 2003).

In *Flateau* this Court held that the Act’s two-year statute of limitations applies, even if the claim at issue alleges that the employees at issue acted outside the scope of their official duties or that those actions “constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” *Flateau*, 355 S.C. at 208, 584 S.E.2d at 419, citing S.C. Code Ann. § 15-78-70(b). Importantly,

the decision of this Court in *Flateau* was also a review of an order granting a motion to dismiss.

The Respondents assert that it should come as no surprise to the Appellant that Judge Early ruled that this matter was time-barred pursuant to the applicable statute of limitations, as the exact same claims based on the exact same facts had been previously dismissed as time-barred. *See*, Appellate Case No. 2011-200486. Furthermore, that earlier dismissal of these exact same claims was affirmed by this very Court. *See*, 2012-UP-662.

The only argument regarding Judge Early's decision that this matter was time-barred set forth by the Appellant in his brief is that "[t]he original Complaint was filed on May 19, 2008 and has been in service from the Appeals Court in December of 2008, up till the present time, their [sic] has been no lapse in time for the statute of limitations to have been breached." *See*, Initial Brief of Appellant, pg. 25. Such an argument is clearly flawed. The Appellant seems to have a gross misconception of the litigation and appellate process. While the Appellant's first effort to litigate these claims was in fact filed in May of 2008, that case was dismissed, and the dismissal was affirmed by this very Court. *See*, Civil Action No. 08-CP-02-887 and 2010-UP-533. (R.). The Appellant then filed a second civil action, which was also dismissed, and that second dismissal was also affirmed by this very Court. *See*, Civil Action No. 11-CP-02-1480 and 2012-UP-662. (R.).

The Appellant's third civil action, which is the action that is currently on appeal, was filed with the Court of Common Pleas for the County of Aiken on April 16, 2014. (R.). As Judge Early correctly found in his August 28, 2014 Order, the current action was filed "almost six years after the events complained of [in the Complaint]." See, August 28, 2014 Order, pg. 6 (R.).

Simply put, Judge Early correctly ruled that the facts set forth on the face of the Appellant's Complaint, even taken in the light most favorable to the Appellant, clearly show that the Appellant's claims are time-barred. As such this appeal must be denied, and the August 28, 2014 Order of Judge Early must be affirmed.

The Respondents assert that this Court need go no further in its analysis of Judge Early's August 28, 2014 Order dismissing the Appellant's Complaint. However, the Respondents assert that Judge Early's alternative rulings, finding that Respondents Hardin, Arthurs and Carter were also subject to dismissal under S.C. Code Ann. 15-78-70, and that Respondent Carter was also subject to dismissal by application of absolute judicial immunity, were correct and should be affirmed.

It is clear from the face of the Appellant's Complaint that the allegations against the Respondents are for actions taken in the course of their employment. (R.). The Appellant did not allege otherwise in his Complaint. (R.). Therefore, the dismissal of these Respondents under S.C. Code Ann. § 15-78-70 was appropriate, and should be affirmed.

As for Respondent Carter, this very Court has twice found that he should be granted judicial immunity for the claims asserted by the Appellant. *See*, 2010-UP-533 and 2012-UP-662. As a result Judge Early's decision must, once again, be affirmed.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents respectfully request that this Court affirm the August 28, 2014 order of the Honorable Doyet A. Early, III, dismissing the Appellant's Complaint and awarding sanctions.

Respectfully submitted,

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February 13, 2015

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Carlton E. Cantrell, Appellant,

v.

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Charles T. Carter, Respondents.

**RESPONDENTS' DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Respondents assert that the Appellant has failed to comply with Rule 209, SCACR, in that the Appellant has not served upon them a Designation of Matter to be Included in the Record on Appeal. However, the Respondents designate the following matters should be included in the Record on Appeal.



1. Unpublished Opinion of the South Carolina Court of Appeals 2010-UP-533
2. Unpublished Opinion of the South Carolina Court of Appeals 2012-UP-662
3. Complaint from Civil Action No. 14-CP-02-879
4. Complaint from Civil Action No. 08-CP-02-887
5. Complaint from Civil Action No. 11-CP-02-1480
6. Motion to Dismiss, or in the Alternative for Summary Judgment, filed May 29, 2014, with Exhibits
7. August 28, 2014 Order of the Honorable Doyet A. Early, III

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Carlton E. Cantrell, Appellant,

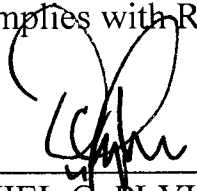
v.

Aiken County, Aiken County Animal Control Director, Shirley Hardin,
Aiken County Animal Control Officer, Bobby Arthurs, and Judge
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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the Respondents' Designation of Matter to be Included in the Record on Appeal complies with Rule 209(b).

February 13, 2015



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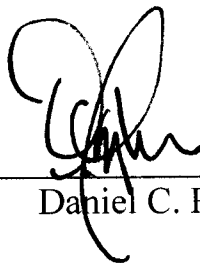
CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondents does hereby certify that service of the **Initial Brief of the Respondents** and the **Respondents' Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at



the below listed addresses clearly indicated on said envelopes this the 13th day of
February, 2015:

Mr. Carlton E. Cantrell
223 Muddy Branch Road
Aiken, South Carolina 29805

A handwritten signature in black ink, appearing to read 'Daniel C. Plyler', is written over a horizontal line. The signature is stylized with large loops and a long tail.

Daniel C. Plyler

DAVIDSON & LINDEMANN, P.A.

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February 13, 2015

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The Honorable Jenny Abbott Kitchings
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RE: Carlton E. Cantrell v. Aiken County, Aiken County Animal Control Director, Shirley Hardin, Aiken County Animal Control Officer Bobby Arthurs, and Judge Charles T. Carter
Appellate Case No. 2014-001705
Civil Action Number: 2014-CP-02-879
Date of Incident: May 19, 2005
Our File Number: 333.7805

Dear Ms. Gee:

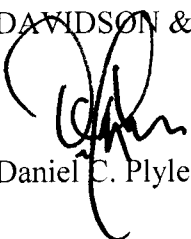
Please find enclosed for filing the originals and one copy each of the **Initial Brief of the Respondents** and the **Respondents' Designation Of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.


Daniel C. Plyler

DCP/ses
Enclosures

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
February 13, 2015
Page 2

cc: *(w/Enclosures)*

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