

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Larry B. Hyman, Circuit Court Judge

Case No. 09-CP-22-0325

Willie Singleton and Julia Thomas, Heirs at Law of Victoria
Gadson, deceased,

Plaintiffs,

Of whom Willie Singleton, is

Petitioner,

v.

City of Georgetown Building Official Stephen Stack, Mayor Lynn
Wood Wilson, Mayor Pro Temp Brendon M. Barber, Sr., Council
Member Peggy P. Wayne, Council Member Clarence Smalls,
Council Member Paige B. Sawyer, III, Council Member Rudolph
A. Bradley, Council Member Jack Scoville, Director of Building
Planning Sabrina Morris, Steve Thomas, City Administrator,
and The City of Georgetown,

Respondents.

RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

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Statement of the Case

On April 12, 2007, the City of Georgetown directed the demolition of a dilapidated and abandoned house at 1929 Front Street in Georgetown, South Carolina. For many months prior to the demolition of the house, the City of Georgetown had repeatedly served written notice on the property's owner advising that the structure must be immediately repaired and warning that the structure would be removed by the City if adequate repairs were not timely made. At the time of the demolition, Victoria Gadson was the owner of record; however, Ms. Gadson is now deceased.

On March 6, 2009, Willie Singleton and Julia Thomas, as "Heirs at Law of Victoria Gadson", filed suit against the City, as well as against ten individually named City employees and officials. [R. pp. 8-15.] The Complaint named the following officials and employees of the City as individual Defendants: City of Georgetown Building Official Stephen Stack; Mayor Lynn Wood Wilson; Mayor Pro Tem Brendon M. Barber, Sr.; Council Member Peggy P. Wayne; Council Member Clarence Smalls; Council Member Paige B. Sawyer, III; Council Member Rudolph A. Bradley; Council Member Jack Scoville; Director of Building Planning Sabrina Morris; and Steve Thomas, City Administrator.

The Complaint alleges that the Plaintiffs were denied access to the property and further alleges that the City had the structure demolished without following proper statutory procedures. [R. pp. 8-15.] Plaintiffs asserted causes of action for Negligence/Gross Negligence, Conversion, Improper Taking, Denial of Due Process, Waiver of Sovereign Immunity, Violation of the South Carolina Condemnation

Statute, and Violation of S.C. Code 1-23-320. Although a number of different causes of action were alleged, all of the claims essentially involve the contention that the City and its employees and officials did not follow the proper procedures in demolishing the structure. [R. pp. 8-15.] The Complaint requested actual and punitive damages, as well as attorney's fees.

Significantly, the alleged conduct of the City's employees and officials described in the Complaint involves actions that were irrefutably performed in furtherance of the City's official business, and none of the conduct described can reasonably be characterized as being outside the scope of their official duties. There are not any specific factual allegations in the Complaint that could support a viable legal theory for naming employees and officials of the City as individual defendants.

The Defendants filed an Answer on April 2, 2009, in which they denied liability and asserted the following as defenses: immunities and liability limitations of the South Carolina Tort Claims Act, the exceptions to waiver of immunity found in S.C. Code § 15-78-60, Plaintiffs' lack of standing, and equitable estoppel. [R. pp. 16-20.] The Defendants also filed Motions to Dismiss, seeking to have the individual defendants dismissed from the lawsuit pursuant to the state Tort Claims Act and seeking to have the prayer for punitive damages stricken from the Complaint. [R. pp. 21-24.]

The Motions to Dismiss were heard by Circuit Judge Larry B. Hyman, Jr., on May 21, 2009. By Order dated August 4, 2009, Judge Hyman granted the Defendants' motions and dismissed the individually named Defendants. [R. pp. 1-3.] Judge Hyman's Order states:

In the present case, viewing the allegations in this Complaint most favorable to the Plaintiff, the alleged actions on the part of the individual Defendants involved acts all of which were in furtherance of the City's 'business.' Thus, the fact that the proper procedure may or may not have been followed does not take their actions outside the scope of their official duties.

[R. p. 3.] The Order also provides that, pursuant to the South Carolina Tort Claims Act, the Plaintiffs' claim for punitive damages would be stricken.

On August 20, 2009, Plaintiffs filed a motion to alter or amend pursuant to Rule 59(e), SCRCP. [R. pp. 26-28.] A hearing on this motion was held before Judge Hyman, and by Order dated October 23, 2009, he denied the Plaintiffs' motion to alter or amend. The instant appeal was initiated when Plaintiffs filed a Notice of Appeal on November 23, 2009. Shortly thereafter, Plaintiffs' attorney was relieved as counsel, and since that time, Willie Singleton has pursued this appeal in a pro se capacity.

On February 8, 2012, the Court of Appeals issued Unpublished Opinion No. 2012-UP-061, affirming the trial court's decision.

Argument

I. The trial court and Court of Appeals properly concluded that, under the provisions of the South Carolina Tort Claims Act, the individual Defendants should be dismissed.

The South Carolina Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. See Murphy v. Richland Mem'l Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998). "[The 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) (Supp. 2006). According to the Act, “[n]otwithstanding any provision of law, this chapter, the ‘South Carolina Tort Claims Act,’ is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty.” S.C.Code Ann. § 15-78-200 (Supp. 2006).

Section 15-78-70(a) provides in part that “[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).” S.C.Code Ann. § 15-78-70(a) (Supp. 2006). Subsection (b) declares: “Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C. Code Ann. § 15-78-70(b) (Supp. 2006).

The Act's definition of an “employee” refers to “any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty.” S.C.Code Ann. § 15-78-30(c) (Supp. 2006). “‘Scope of official duty’ or ‘scope of state employment’ means (1) acting in and about the official business of a governmental entity and (2) performing official duties.” S.C.Code Ann. § 15-78-30(i) (Supp. 2006).

The Act is intended to cover those actions committed by an employee within the scope of the employee's official duty. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). “The provisions of [the Act] establishing limitations on

and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” S.C. Code Ann. § 15-78-20(f); see also Wade v. Berkeley County, 330 S.C. 311, 498 S.E.2d 684 (Ct. App. 1998) (noting that § 15-78-20(f) limits coverage to employees acting within the scope of official duty).

Although Singleton contends in his Petition that the individual Defendants acted outside the scope of their official duties, his Complaint is devoid of any specific factual allegations to support the contention that Defendants Stack, Wilson, Barber, Wayne, Smalls, Sawyer, Bradley, Scoville, Morris, or Thomas acted outside the scope of their official duties. On the contrary, the Complaint merely makes generalized declarations-- unsupported by any specific factual allegations appearing in the pleadings-- that these City of Georgetown officials acted outside the scope of their official duties.

The essence of Singleton’s Complaint is the assertion that while he was in the process of attempting to obtain the necessary permits to repair the property, officials with the City demolished the premises without providing proper notice to him or the opportunity for a hearing. His third cause of action in the Complaint, which is entitled “Waiver of Sovereign Immunity” alleges “That the Defendants who are public officials acted outside the scope of their official positions when they failed to allow Plaintiffs to repair their property.” [R. pp. 11-12; Complaint ¶ 27.]

Singleton’s alleged damages arise out of the demolition of an unsafe structure at 1929 Front Street. The demolition of unfit dwellings by a municipality is expressly permitted by statute. Under S.C. Code Ann. § 5-7-80 (1976), a municipality is

authorized to go onto property to abate a nuisance caused by a property owner's lack of upkeep.¹ Also, S.C. Code Ann. § 31-15-30 (1976) allows municipal officers to remove or demolish dwellings that are unfit for human habitation.²

It is undisputed in this case that the City of Georgetown has adopted and implemented a program whereby City officials are charged with the responsibility of removing dilapidated structures. Accordingly, the actions of the individual Defendants related to the removal of the structure at 1929 Front Street constituted conduct within the scope of their official duties.

This conclusion is supported by the decision in Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). In Flateau, the plaintiffs, who were employees of the state Commission for the Blind alleged that the Commission's governing board

¹ Section 5-7-80 states:

(1) Any municipality is authorized to provide by ordinance that the owner of any lot or property in the municipality shall keep such lot or property clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance.

(2) The municipality may provide by ordinance for notification to the owner of conditions needing correction, may require that the owner take such action as is necessary to correct the conditions, may provide the terms and conditions under which employees of the municipality or any person employed for that purpose may go upon the property to correct the conditions and may provide that the cost of such shall become a lien upon the real estate and shall be collectable in the same manner as municipal taxes.

² Section 31-15-30 provides in relevant part:

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished; and

(6) That the amount of the cost of such repairs, alterations or improvements, vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred and shall be collectible in the same manner as municipal taxes.

summoned them to the Commission's Board Room where members of the media were present and where the plaintiffs were forced to remain for hours for the purposes of awaiting an interview by the Board. Plaintiffs alleged that the Board would not allow plaintiffs to leave the room without a security escort and that they were not permitted to have unaccompanied access to their offices. After plaintiffs filed a lawsuit asserting claims against members of the Board for outrage, invasion of privacy, and civil conspiracy, the Board members filed motions to dismiss pursuant to Rule 12(b)(6), SCRPC, arguing among other things that the plaintiffs failed to assert in their pleadings that the Board's members acted outside the scope of their duties. The trial court granted the motions to dismiss, and this decision was affirmed by the Court of Appeals. The Court of Appeals noted:

The pleadings clearly and unequivocally allege that the Board members were meeting and acting together as the South Carolina Commission for the Blind, discussing matters in executive session, and voting in their capacity as Commissioners to take the actions in question- all official duties and actions that are about the official business of the Commission, which is a public body established by the General Assembly. See S.C.Code Ann. § 43-25-10 (1985) (creating the South Carolina Commission for the Blind; stating that chairman of Commission may call meeting whenever he deems it necessary); S.C.Code Ann. § 30-4-20 (1991) (defining "public body" to include state commissions). Requiring Flateau and Fielding to attend a hearing and holding them there, as Flateau and Fielding maintain in their complaints, may be argued to go beyond the *authority* of the Commission, but it does not bring the Commissioners' actions outside the scope of their official duty. See *Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 341 S.E.2d 385 (Ct.App.1986) (distinguishing scope of servant's employment from scope of servant's authority and holding acts outside servant's authority are still within his scope of duty if done in furtherance of master's business).

Id. at 204, 584 S.E.2d at 416 (emphasis in original).

Similarly, in the present case, taking all of the allegations in the Complaint as true, even if the procedures that were used in demolishing the structure at 1929 Front Street were arguably beyond the authority of the individually named government officials, that certainly would not mean that these government officials' actions were outside the scope of their official duties since they were, at all relevant times, acting in furtherance of the City's business. "If the servant is doing some act in furtherance of the master's business he will be regarded as acting within the scope of his employment, although he may exceed his authority." Crittenden v. Thompson-Walker Co., 288 S.C. 112, 115, 341 S.E.2d 385, 387 (Ct. App. 1986).

Only if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, does his conduct fall outside the scope of his employment. Id. at 116, S.E.2d at 387. Here, there were no allegations in the Complaint that the individual defendants, in removing the house in question, acted for any personal purposes or for any purposes that were unrelated to the City's business. Rather, the Complaint simply alleges that the individual Defendants did not follow the proper procedures for removing the structure.³ Moreover, there are no allegations in the Complaint that the Defendants' conduct constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. See S.C. Code Ann. § 15-78-70(b) (excluding the protections of the S.C. Tort Claims Act if "the employee's conduct was not within the scope of his official

³ Singleton also argues that an employee of the City entered into a Consent Agreement with the South Carolina Department of Labor, Licensing and Regulation, in which Singleton claims the employee acknowledged a failure to follow proper procedures in demolishing the house. Singleton contends that under something he refers to as the "purpose doctrine", the signing of the LLR Consent Agreement by the City employee means that the present case is not governed by the Tort Claims Act. This argument was never raised before and is not preserved for appeal. Moreover, there is no merit to such an argument.

duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.”)

Because the allegations in the Complaint against the individually named defendants involve conduct solely within the scope of their official duties, there can be no personal liability for these City officials.⁴ The Tort Claims Act provides that a governmental employee acting within the scope of his official duty is exempt from personal liability. Flateau, 355 S.C. at 206, 584 S.E.2d at 417. One of the purposes of the Act is to protect governmental officials acting in the scope of official duties. “The remedy mandated in the Act is legal action initiated against the governmental entity rather than the individual governmental employee.” Id.

A comparison of the instant case with various reported decisions in which our State’s courts have found that the actions of government employees were not within the scope of their official duties makes it readily apparent that the Court of Appeals properly affirmed Judge Hyman’s decision. The cases where our courts have determined that government employees or officials acted outside the scope of their duties have involved situations where the employee or official blatantly acted with

⁴ Although not all of the causes of action alleged in the Complaint were styled as tort claims, the trial court correctly dismissed all causes of action against the individual defendants. The Complaint asserts causes of action for the torts of Negligence/Gross Negligence and Conversion, and so these causes of action are clearly within the purview of the Tort Claims Act and therefore subject to dismissal as to the individual defendants. The other causes of action asserted in the Complaint are styled as Improper Taking, Denial of Due Process, Waiver of Sovereign Immunity, Violation of the South Carolina Condemnation Statute, and Violation of S.C. Code 1-23-320. Each of these causes of action is either not a cognizable claim (such as the purported claim for “Violation of S.C. Code 1-23-320”) or is a claim that must be brought against a governmental entity and simply cannot be brought against individual government employees or officials. For instance, a plaintiff may not sue an individual government employee for an alleged improper taking of property by a local government, nor may a plaintiff sue an individual government employee for alleged violations of condemnation laws. Such actions could only be brought and maintained, if at all, against a governmental entity and not against individual government employees who have acted within the scope of their official governmental duties.

improper personal motives. See, e.g., Loadholt v. South Carolina Budget & Control Bd., 339 S.C. 165, 528 S.E.2d 670 (Ct. App. 2000) (sexual misconduct of sheriff with department employees, after summoning employees into his office under pretext of discussing jail or departmental business, outside scope of official duties and not covered by IRF policy); Doe v. South Carolina Budget & Control Bd., 329 S.C. 214, 494 S.E.2d 469 (Ct. App. 1997), aff'd 337 S.C. 294, 523 S.E.2d 457 (1999) (police officer who stopped female motorists on suspicion of DUI and gave them the option of being arrested or providing sexual favors acted outside scope of official duties); Padgett v. South Carolina Ins. Reserve Fund, 340 S.C. 250, 253, 531 S.E.2d 305, 307 (Ct. App. 2000) (a professor was not acting within the scope of his employment when he sexually harassed a student).

In light of the foregoing, the decision of the trial court to dismiss the individually named Defendants was proper.

II. The trial court properly ruled that Plaintiffs' claim for punitive damages should be stricken from the Complaint.

The Tort Claims Act includes an express prohibition against punitive damages. See S.C. Code Ann. § 15-78-120(b) ("No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment."). The South Carolina Supreme Court has noted that "No punitive damages are recoverable under the State Tort Claims Act." Charleston County Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 7, 437 S.E.2d 6, 9 (1993). Because the Tort Claims Act applies to this action, the trial court correctly concluded that the Plaintiffs' request for punitive damages should be stricken.

III. The reference in the trial court's Order to S.C. Code Ann. § 15-70-70 was merely a harmless scrivener's error and has no effect on the court's ruling.

Singleton's Petition twice mentions the trial court's citation to § 15-70-70(a) as potential grounds for reversal. As an initial matter, this issue is not preserved for appeal. Plaintiffs never raised this issue to the trial judge by way of a Rule 59 or Rule 60, SCRCP, motion.

Moreover, there is no merit to Singleton's argument. Page one of Judge Hyman's Order cites to § 15-70-70(a) in connection with the court's decision to dismiss the individual Defendants. [R. p. 1.] This was a harmless typographical error. The correct citation should have been § 15-78-70(a), which provides "This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b)."

The trial judge's reference in the Order to § 15-70-70 was undoubtedly a simple typographical mistake, and it was harmless. An error not shown to be prejudicial does not constitute grounds for reversal. JKT Company, Inc. v. Hardwick, 274 S.C. 413, 265 S.E.2d 510 (1980). Singleton has shown no harm or prejudice caused by this typographical mistake. In fact, no prejudice can be shown because it is clear from reading the Order as a whole that the judge intended to cite to § 15-78-70. Throughout the trial court's Order, various citations are made to Title 15 Chapter 78 at least five (5) times. It is therefore easily discernible that the trial court intended to

cite to § 15-78-70 of the Tort Claims Act. Because the error was merely typographical and Singleton has shown no prejudice, the error was harmless.

IV. The trial court's rulings on the Defendants' Motions to Dismiss were not premature.

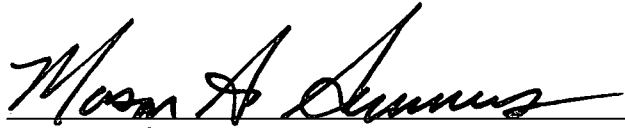
Singleton argues that the trial court's rulings on the Rule 12 (b)(6) Motions to Dismiss were premature because depositions were not yet completed. This argument is baseless in that a motion to dismiss under Rule 12(b)(6), SCRCP— such as the one ruled upon by Judge Hyman in this case— is ordinarily decided by the trial court solely based on the allegations set forth on the face of the complaint. Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003) (“Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.”)

Conclusion

The trial court properly dismissed the individual Defendants because Singleton's Complaint fails to allege any specific facts indicating that these defendants acted outside the scope of their official duties. Additionally, the trial court properly ruled that the claim for punitive damages should be stricken from the Complaint since the South Carolina Tort Claims Act expressly prohibits punitive damages awards.

For the foregoing reasons, the Respondents respectfully urge the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENTS

May 3, 2012

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Larry B. Hyman, Presiding Circuit Court Judge

Case No. 09-CP-22-0325

Willie Singleton and Julia Thomas, Heirs at Law of Victoria Gadson.....Plaintiffs,

Of whom Willie Singleton, isPetitioner,

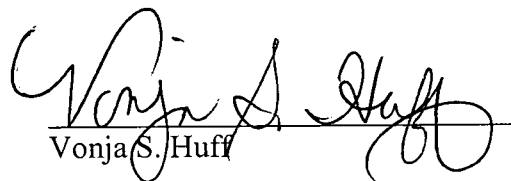
v.

City of Georgetown Building Official Stephen Stack, Mayor Lynnwood Wilson, Mayor Pro Temp Brendon M. Barber, Sr., Council Member Peggy P. Wayne, Council Member Clarence Smalls, Council Member Paige B. Sawyer, III, Council Member Rudolph A. Bradley, Council Member Jack Scoville, Director of Building Planning Sabrina Morris, Steve Thomas City Administrator, and The City of Georgetown Respondents.

PROOF OF SERVICE

I, Vonja S. Huff, the undersigned employee of Richardson, Plowden & Robinson, P.A., attorneys for Respondents, do hereby certify that I have served **the Respondents' Return To Petition for Writ of Certiorari** in the above-referenced case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the following person(s) on May 3, 2012:

Willie Singleton, Pro Se
501 North Congdon Street
Georgetown, SC 29440


Vonja S. Huff

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May 3, 2012
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S.C. SUPREME COURT

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The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
1231 Gervais Street
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**Re: Willie Singleton and Julia Thomas, Heirs at Law of Victoria Gadson, deceased v.
City of Georgetown, et al
C/A No. 09-CP-22-0325**

Our File No.: 2047-223

Dear Mr. Shearouse:

I have enclosed for filing the original and seven (7) copies of the Respondents' Return to Petition for Writ of Certiorari, along with our Proof of Service. Please return one clocked-in copy to me in the stamped envelope provided.

If you should have any questions, please do not hesitate to contact me.

Sincerely,



Mason A. Summers

cc: Willie Singleton
Douglas C. Baxter, Esq.