

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Clifton Newman, Circuit Court Judge

Case No. 2012-CP-43-1463

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SEP 08 2015
SC Court of Appeals

Brandon W. Hodge, Appellant,

v.

Sumter County, Respondent.

**RESPONDENT'S RETURN TO
PETITION FOR REHEARING**

On August 12, 2015, this Court issued an unpublished decision affirming the Circuit Court's grant of summary judgment in favor of the Respondent Sumter County. This Court specifically affirmed the ruling that employees of the Sumter County Sheriff's Office are not county employees as a matter of state law and thus Sumter County cannot be liable for the alleged negligence of a deputy sheriff.

The Appellant Brandon W. Hodge has now filed a petition for rehearing. In response, the Respondent Sumter County submits that this Court correctly and appropriately addressed each of the issues raised by the Appellant on appeal and that the arguments now asserted in the petition for rehearing lack merit for the following reasons:

In his first ground for rehearing, the Appellant continues to urge this Court to conclude as a matter of law that an sheriff deputy should be considered a county employee under South Carolina law. However, that issue has been conclusively decided by the Supreme Court over the course of several decisions. To review, in *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992), the Supreme Court examined and found persuasive prior federal court case law which had concluded that "in South Carolina sheriffs and deputies are state, not county, officials." 417 S.E.2d at 525, *citing Gullede v. Smart*, 691 F. Supp. 947 (D.S.C. 1988), *aff'd* 878 F.2d 379 (4th Cir. 1989). As the *Cone* Court recognized, the federal district court in *Gullede* had specifically found that "(1) the South Carolina constitution establishes the office of sheriff and the term of office, S.C. Const. art. V, § 24; (2) the duties and compensation of sheriffs and deputies are set forth by the General Assembly; (3) their arrest powers are related to state offenses; and (4) the Governor of South Carolina has the authority to remove a sheriff for misconduct and fill the vacancy." 417 S.E.2d at 525. Based upon those factors, the Supreme

Court agreed with the conclusion reached by the court in *Gulledge* that a sheriff and his deputies are state, not county, officials.

The Supreme Court in *Cone* also looked at prior state court precedent including *Heath v. County of Aiken*, 295 S.C. 416, 368 S.E.2d 904 (1988), where the Supreme Court held that deputy sheriffs are not county employees and thus are not covered by county personnel policies.

Since *Cone* was decided in 1992, it has been cited favorably in several state appellate cases. Most recently, in *Edwards v. Lexington County Sheriff's Department*, 386 S.C. 285, 688 S.E.2d 125 (2010), the Supreme Court, citing *Cone*, reaffirmed that "under South Carolina law, the sheriff and sheriff's deputies are State, not county, employees." 688 S.E.2d at 127, n.1. The Supreme Court described this principle as "settled law" and declined to address what the Court described as "the legally settled distinction between a county government and a sheriff's office for liability purposes." *Id.* See also, *Henry v. Horry County*, 334 S.C. 461, 514 S.E. 122, 123 (1999) (explaining that "[s]ince the 1800s, the Sheriff has been a constitutional officer in South Carolina").

Despite this conclusive authority from the Supreme Court, the Appellant continues to rely on two statutes, neither of which in actuality support his position. He cites to Section 23-13-20, which sets forth an oath for a deputy sheriff that describes the officer as a "county deputy." That oath, however, does not make the deputy a county employee rather than a state employee as a matter of law. At

most, that term "county deputy" is intended to describe the deputy's scope of jurisdiction. Similarly, the Appellant cites to Section 23-13-70 which is a statute that describes the deputy's duties to patrol the entire county. It is one of several statutes by which the General Assembly has established the duties of the sheriff and his deputies, which is precisely one of the factors cited by the Supreme Court in *Cone* in support of its finding that a sheriff and his deputies are state rather than county employees. *See, Cone*, 417 S.E.2d at 525. In sharp contrast, the Appellant does not cite any statute that gives a county or its governing board the authority to establish the duties of a deputy sheriff.

In sum, the Appellant has not presented a viable argument to reverse such cases as *Cone*, *Heath*, *Henry*, and *Edwards*. Moreover, the Appellant has not demonstrated that this Court even has the authority to overrule controlling and "settled" case law issued by the Supreme Court on this issue. Thus, there is no basis for a rehearing.

As an additional ground for rehearing, the Appellant continues to argue the employment status of a deputy sheriff is a factual question that should not have been decided on a Rule 12 motion. This Court correctly addressed that issue. This Court cited to the case of *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 699 S.E.2d 699 (Ct. App. 2010), wherein this Court ruled that "on a Rule 12(b)(6) motion, the court is required to presume all well pled *facts*, not propositions of law, to be true." 699 S.E.2d at 705. (Emphasis in original). This Court further

explained that a plaintiff "cannot transform an unsupported proposition of law into a statement of fact merely by stating that they are informed and believe it to be so." *Id.* In the present case, it is immaterial whether the Appellant pled that Deputy Horton was an employee of Sumter County. The employment status of a deputy sheriff is an issue of law, and as this Court has correctly explained, issues of law are not "well pled facts" that must be accepted as true. Instead, the employment status of Deputy Horton was an issue of law that is governed by such cases as *Cone*, *Heath*, and *Edwards*, and thus, the Appellant's allegations contrary to law do not control and do not prevent the dismissal of this case on a Rule 12 motion.

Based on the foregoing discussion, the Respondent Sumter County respectfully request that this Court deny the petition for rehearing.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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September 8, 2015

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CERTIFICATE OF SERVICE

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SC Court of Appeals

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent Sumter County, does hereby certify that service of the **Respondent's Return to Petition for Rehearing** was made upon all counsel of record by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 8th day of September 2015:

Gary L. Cartee, Esquire
3251 Landmark Drive - Suite 136
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September 8, 2015

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SC Court of Appeals

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

RE: Brandon W. Hodge v. Sumter County
Appellate Case Tracking Number: 2013-01845
Civil Action Number: 2012-CP-43-1463
Claim Number: 5187
Our File Number: 290.9100

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Respondent's Return to Petition for Rehearing** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier.

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.



Andrew F. Lindemann

AFL/
Enclosures

cc: Gary L. Cartee, Esquire (w/ Enclosure)