

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Civil Action No. 14-CP-40-2209

James Chaffin and Marietta Chaffin,)

Plaintiffs,)

v.)

Richland County Sheriff's Department,)
Deputy Brian Metz, Investigator Roy)
Livingston, Tallie and Devra Lackey,)
individually and as the Parents to Minor)
[REDACTED])

Defendants.)

ORDER

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SC Court of Appeals

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JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter is before the Court upon the motion of Defendants Richland County Sheriff's Department (hereinafter, "RCSD") and Deputy Brian Metz. On July 21, 2014, the Court heard these Defendants' Motion to Dismiss pursuant to Rule 12(b), SCRPC in the above-entitled action. Present at the time and presenting oral arguments were Aimee J. Zmroczek, Esq., counsel for Plaintiffs and Robert D. Garfield, Esq. counsel for these Defendants. Also appearing with regard to their respective motion was Derek A. Shoemake, counsel for Defendants Tallie and Devra Lackey, individually and as the Parents to minor [REDACTED] (hereinafter, "Lackey Defendants").

PLAINTIFFS' ALLEGATIONS

In their Complaint, Plaintiffs allege that on January 9, 2007, the Lackey Defendants' minor daughter revealed to a therapist that Plaintiff James Chaffin had sexually abused her. *See*, Comp., ¶ 7. After the daughter's therapist notified police, the Defendant investigators with the Richland County Sheriff's Department ("RCSD") interviewed the daughter and her mother, Devra. *Id.* at ¶¶ 8-9. In the course of the interviews, the daughter revealed the details of her sexual assault allegations. *Id.* at ¶¶ 11-15. The Defendant investigators also interviewed the daughter's therapist. *Id.* at ¶ 10.

On February 15, 2007, Defendant Metz obtained a warrant charging Plaintiff James Chaffin with Criminal Sexual Conduct with a Minor second degree in violation of South

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Carolina Statute Number 16-3-655(C). *Id.* at ¶ 16. On March 9, 2007, the Defendant Metz placed James Chaffin under arrest. *Id.* at ¶¶ 17.

James Chaffin was released from custody on March 13, 2007. *Id.* at ¶ 20. According to Plaintiffs' Complaint, the Richland County Solicitor's Office ultimately dismissed the charges against James Chaffin on September 5, 2012. *Id.* at ¶ 24.

STANDARD OF REVIEW

In ruling on a motion to dismiss, the Court must view the pleadings in the light most favorable to the nonmoving party. *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 651, 491 S.E.2d 272, 274-75 (Ct. App. 1997). A motion to dismiss must be granted if the facts and inferences reasonably deductible from them show that the plaintiff cannot prevail on any theory of the case. *Id.* In considering a motion to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Court must base its ruling solely upon the allegations set forth on the face of the plaintiff's complaint. *Doe v. Greenville County Sch. Dis.*, 375 S.C. 63, 66-67, 651 S.E.2d 305, 307 (2007). A 12(b)(6) motion will not be granted if the facts alleged and the inferences therefrom would entitle the plaintiff to any relief on any theory. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n.*, 407 S.C. 67, 753 S.E.2d 846, 850 (2014).

DISCUSSION

A. Immunity for Sheriff's employees

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). Further, an employee of a governmental entity is immune from liability for tortious acts committed within the scope of his official duties. *See, Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Such 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. *See*, S.C. Code Ann §15-78-70(a) and (b).

Plaintiffs allege that "at all times material to the allegations contained" in the Complaint, the Defendant Metz was "acting within the course of and scope of (his) employment and/or agency as (a) police officer employed by Defendant, RCSD. *See*, Comp., ¶ 9.

Thus, given Plaintiffs' averment that the Defendant Metz acted within the course and scope of his official duties as a criminal investigator with the RCSD, this Defendant in his individual capacity, is clearly entitled to employee immunity under S.C. Code Ann. § 15-78-

70(a) and (b) and Plaintiffs' claims with regard to the Defendant Metz must be dismissed as a matter of law.¹

B. Private Right of Action

In their first cause of action, Plaintiffs claim that these Defendants violated their civil rights pursuant to the South Carolina Constitution, Article 1, § 10. *See, Comp.*

In their motion to dismiss, these Defendants assert that the Plaintiffs fail to allege facts sufficient to state such a cause of action since there is not a private right of action in this state. The Defendants argued that there is no statutory scheme in South Carolina which enables a citizen to bring a private right of action for civil damages under the state constitution. This Court agrees. No viable cause of action exists where, as here, the state Constitution does not provide for a private cause of action for civil rights violations and the legislature has not enacted a statute enabling this type of action. *See, e.g., Gibbs v. S.C. Dept. of Probation, Parole, and Pardon Services, et al., 2002-UP-363 (Ct. App. 2002)(Unpublished).*

C. Statute of Limitations

In their third and eighth causes of action, the Plaintiffs allege false imprisonment/arrest and assault and battery, respectively. *See, Comp.*

Under the South Carolina Tort Claims Act, a state law claim must be brought within two years of the date of incident. *See, S.C. Code Ann. § 15-78-100(a), § 15-78-110. (See also, S.C. Code Ann. § 15-3-530, which sets forth a two year statute of limitations for false imprisonment state law actions).*

In their Complaint, Plaintiffs allege that on February 15, 2007, RCSD investigators obtained a warrant charging James Chaffin with Criminal Sexual Conduct with a Minor, and on March 9, 2007, these investigators placed him under arrest. *See, Comp., at ¶¶ 16-17.*

Hence, the two-year statute of limitations elapsed on or about March 9, 2009. This Plaintiffs' state court action, however, was not filed in this Court until April 4, 2014. Clearly, Plaintiffs have not brought this action within two years of the relevant dates asserted in their Complaint, much less the date that they knew, or should have known, that they had a cause of

¹ This Court acknowledges that the Defendant RCSD is not a legal entity and, therefore, is not amenable to suit and is not the proper party defendant in this case. Instead, the proper entity is the Sheriff of Richland County in his official capacity and that it is subject to jurisdiction under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*

action. Therefore, Plaintiffs' claims for false imprisonment/arrest and assault and battery² are time barred as a matter of law, and these Defendants are dismissed with prejudice.

D. Viability of Punitive Damages

Plaintiffs' claim for punitive damages is barred by the S.C. Tort Claims Act. "No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment." S.C. Code Ann. § 15-78-120(b).

CONCLUSION

IT IS, THEREFORE ORDERED that the Defendant Brian Metz is dismissed as a party to this action pursuant to the provisions of S.C. Code Ann. § 15-78-70(c).

IT IS, FURTHER ORDERED that the Defendant Richland County Sheriff's Department ("RCSD") is dismissed with prejudice as a party defendant from this action.

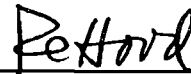
IT IS, FURTHER ORDERED that Leon Lott, in his official capacity as Sheriff of Richland County be substituted as the sole law enforcement party-Defendant in this matter.

IT IS, FURTHER ORDERED that the Plaintiffs' first cause of action for deprivation of their state civil rights is dismissed since no private cause of action for damages exists or may be inferred from the South Carolina Constitution for violations of such rights.

IT IS, FURTHER ORDERED that the Plaintiffs' third and eighth causes of action for false arrest and assault and battery, respectively, are time barred by the applicable statutes of limitation.

IT IS, FURTHER ORDERED that the Plaintiffs' claims for relief in the form of costs and/or punitive damages are dismissed pursuant to S.C. Code Ann. § 15-78-120(a).

IT IS SO ORDERED.



The Honorable Robert E. Hood
Circuit Judge, Fifth Judicial Circuit

September 8, 2014
~~August~~ 8, 2014
Columbia, South Carolina

² According to their Complaint, Plaintiffs' assault and battery claim centers on the police "placing (James Chaffin) in handcuffs, physically searching him, and escorting him through the jail, and physically detaining him." See, Comp., ¶ 65. All of these actions purportedly occurred during the course of arresting James Chaffin on March 9, 2007 and therefore this cause of action is similarly barred by the applicable statute of limitations on the foregoing bases.