

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Orlando Ira Brown,

Plaintiff,

vs.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO: 2015-CP-40-04012

PROPOSED ORDER

2015 OCT 13 PM 2:45
JENNIFER W. JORDAN
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter came before this Court on September 30, 2015, for a hearing on Plaintiff's Amended Motion for Summary Judgment and Defendant State of South Carolina's ("State") Motion to Dismiss. Present at the hearings were pro se Plaintiff, Orlando Ira Brown, and counsel for Defendant State, Richard E. Marsh, III, Esquire.

Defendant State moves to dismiss this action against it pursuant to Rule 12(b)(6), SCRCP, on the grounds that the Plaintiff's claims fail to state a cause of action upon which relief can be granted and there is no genuine issue as to any material fact.

Having reviewed the pleadings, and the arguments of the parties, the Motion to Dismiss is granted and the Plaintiff's Amended Complaint and this action is dismissed with prejudice. Consequently, Plaintiff's Amended Motion for Summary Judgment is moot.

BACKGROUND

Plaintiff, appearing *pro se*, filed the Summons and Complaint in the above matter with the Richland County Clerk of Court on July 2, 2015. Plaintiff initially named only the Richland County Probate Court as a Defendant. Plaintiff filed an Amended Complaint on July 10, 2015. The Amended Summons and Complaint removed the Richland County Probate Court as a Defendant and added the State of South Carolina as the sole defendant in this action.

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Plaintiff's Amended Complaint alleges he faces discrimination because of a mental disability in violation of Title II of the Americans with Disabilities Act ("ADA"). Specifically, Plaintiff claims that the Richland County Probate Court ordered him to abstain from alcohol "on six occasions." Plaintiff contends that alcohol consumption alleviates the symptoms of his disability, and that without alcohol consumption he has suffered mentally, emotionally, socially and physically. Plaintiff acknowledges in his Amended Complaint that the Richland County Probate Court was informed that Plaintiff "was avoiding treatment and abusing drugs and alcohol" but argues that "abstaining from alcohol has caused undo stress and anxiety." Plaintiff's only reference to the Defendant State of South Carolina ("Defendant State") is as a geographic reference, stating the "Probate Court, in the name of care, has made it illegal for me to consume alcohol in South Carolina." There appears to be no other mention of Defendant State in Plaintiff's Amended Complaint.

RULE 12(b)(6) STANDARD

"A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed 'to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001) (citing Rule 12(b)(6), SCRCF); *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003) (citing *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999)). "The trial court's ruling on a Rule 12(b)(6) motion must be bottomed and premised solely upon the allegations set forth by the plaintiff." *Williams*, 347 S.C. at 233, 553 S.E.2d at 499. "The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." *Id.*

IMPROPER PARTY

Defendant State should be dismissed from this action due to the fact that the State of South Carolina is immune from suit for damages by virtue of its sovereign immunity. Plaintiff's exclusive remedy in tort, if any actually lies, is pursuant to the South Carolina Tort Claims Act (hereinafter "the Act"), S.C. CODE ANN. § 15-78-10, *et seq.* The Act provides, in pertinent part,

The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved. The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in Section 15-78-70(b).

S.C. CODE ANN. § 15-78-20(b). The exception detailed above is found in S.C. CODE ANN. § 15-78-70(b), which states,

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.

The Act specifically governs all tort claims against governmental entities and is the exclusive remedy available to Plaintiff against any governmental entity or its employees, assuming Plaintiff has any available remedy. *See Flateau*, 355 S.C. at 204, 584 S.E.2d at 416.

In this case, the Plaintiff must name the appropriate state agency or political subdivision as the defendant in place of the State of South Carolina pursuant to S.C. CODE ANN. § 15-78-70, which states,

On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provision of this chapter, ***shall name as a party defendant only the agency or political subdivision for which the employee was acting*** and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually

named, the agency or political subdivision for which the employee was action must be substituted as the party defendant.

S.C. CODE ANN. § 15-78-70(c) (emphasis added). The Act defines "agency" as the following:

. . . the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

S.C. CODE ANN. § 15-78-30(a). The Act further defines "political subdivision" as the following:

. . . the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of Section 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

S.C. CODE ANN. § 15-78-30(h).

Consequently, because the State of South Carolina is neither an "agency" nor a "political subdivision" as defined by the Act, Defendant State is improperly named as a party in this action and must be dismissed.

TORT CLAIMS IMMUNITIES

Even assuming Defendant State was a proper party in this action, it would be entitled to immunity under the South Carolina Tort Claims Act. The South Carolina Tort Claims Act, codified at S.C. CODE ANN. § 15-78-10 *et seq.*, is a limited waiver of governmental immunity. *Staubes v. City of Folly Beach*, 331 S.C. 192, 204, 500 S.E.2d 160, 167 (Ct. App. 1998) (internal citation omitted). S.C. CODE ANN. § 15-78-60 sets forth forty (40) exceptions to the waiver of sovereign immunity. "The exceptions under the Act must be construed liberally in favor of limiting the liability of the State and its political subdivisions." *Staubes*, 331 S.C. at 205, 500 S.E.2d at 167 (citing S.C. CODE ANN. § 15-78-20(f)).

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S.C. CODE ANN. § 15-78-60(23) provides immunity for the “institution or prosecution of any judicial or administrative proceeding.” In this case, Defendant State would be immune from liability for any damages that may have been incurred by Plaintiff from the institution or prosecution of any proceeding related to Plaintiff by the Probate Court.

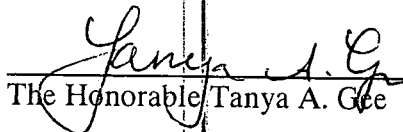
Furthermore, S.C. CODE ANN. § 15-78-60(4) provides immunity for “. . . enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation or written policies.” In this case, assuming Defendant State had any involvement in the events giving rise to this action, Defendant State was enforcing or complying with the laws and policies of the State of South Carolina relating to the judicial proceedings of Plaintiff. *See* S.C. CODE ANN. § 17-1-10 *et seq.*

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-captioned case, be, and the same is hereby **DISMISSED WITH PREJUDICE.**

AND IT IS SO ORDERED.

Columbia, South Carolina

October 13, 2015


The Honorable Tanya A. Gee

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