

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

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Case No. 2012-CP-43-1463

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Brandon W. Hodge. . . . . Appellant,

v.

Sumter County. . . . . Respondent.

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RECORD ON APPEAL

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December 10, 2014

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RECORDED  
 IN THE COURT OF COMMON PLEAS.  
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STATE OF SOUTH CAROLINA )  
 COUNTY OF SUMTER )  
 )  
 Brandon W. Hodge, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Sumter County, )  
 )  
 Defendant. )

Civil Action No. 2012-CP-43-1463

**ORDER GRANTING DEFENDANT  
 SUMTER COUNTY'S MOTION TO  
 DISMISS**

CERTIFIED TRUE COPY  
 OF ORIGINAL FILED  
 DEPUTY CLERK OF COURT  
 SUMTER COUNTY  
 SOUTH CAROLINA

THIS MATTER CAME BEFORE THE COURT pursuant to Defendant Sumter County's Motion to Dismiss, which was heard on June 17, 2013. After hearing arguments of counsel, and reviewing the entire file and the applicable law, the Court grants Defendant Sumter County's Motion to Dismiss.

STATEMENT OF FACTS

The underlying dispute arises out of injuries sustained by the Plaintiff Brandon W. Hodge who was injured while he was a minor passenger in a vehicle driven by his father. At the time of the incident Brandon Hodge's father, Harmon Hodge, was driving a vehicle in Sumter County and fleeing from Sumter County Sherriff's deputy Anthony Horton. As the vehicles approached a curve in the road, Deputy Horton's patrol vehicle collided with Harmon Hodge's vehicle. Brandon Hodge claims he was injured due to alleged acts of negligence committed by Deputy Horton. Brandon Hodge instituted this action against Defendant Sumter County for the alleged negligent acts of Deputy Horton, who is employed by the Sheriff of Sumter County. It is

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undisputed that Deputy Horton was employed by the Sheriff of Sumter County, and in the course and scope of his employment at the time of the allegations in the Plaintiff's Complaint.

### CONCLUSIONS OF LAW

The Defendant filed this motion pursuant to Rule 12(b)(6), SCRPC, and pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70, and asserted that Deputy Horton is not an employee of Sumter County as a matter of law, and therefore, this Defendant is not a proper party and must be dismissed. The South Carolina Tort Claims Act provides the "exclusive civil remedy available for any tort committed by a governmental entity, its employees or its agents." S.C. Code Ann. § 15-78-20(b) (emphasis added). The Defendant is a governmental entity and thus is entitled to the privileges and immunities provided in the Act.

In South Carolina, it is clearly established that deputies are State and not County officials. See *Cone v. Nettles*, 308 S.C. 109, 112, 417 S.E.2d 523, 524-525 (S.C. 1992). The *Cone* court based this in part on the decision in *Gulledge v. Smart*, 691 F.Supp. 947 (D.S.C. 1988), where the District Court concluded that deputies are state officials instead of county officials because "(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." *Id.* at 525. Since a deputy is more closely connected to the State than the County, a deputy sheriff is a state official. *Id.* The South Carolina Supreme Court also considered this issue prior to the *Gulledge* decision in the case of *Heath v. County of Aiken*, 295 S.C. 416, 368 S.E.2d 904 (1988). The *Heath* Court considered the question of whether policies regulating County employees applied to deputy Sheriffs, and found that deputy Sheriffs should not be considered County

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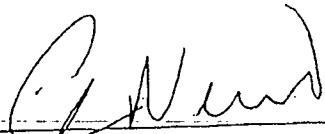
employees. The *Gulledge* court then referred to *Heath* and explained that counties had no measurable control over sheriffs and deputies, and thus, deputies were acting as agents of the State rather than the County. *Gulledge*, 691 F.Supp. at 955. It is therefore clear that Sheriff's deputies are not employees of the County, but are considered employees of the Sheriff, who is a State constitutional officer. The District Court has also ruled that the office or department is required to be named under the South Carolina Tort Claims Act when a deputy is named. *Carroll v. Greenville County Sheriff's Dep't*, 871 F. Supp. 844, 845, (D.S.C. 1994).

More recently, both the District Court in South Carolina, as well as the South Carolina Supreme Court, have had an opportunity to affirm this position. In a footnote citing *Cone v. Nettles* and *Heath v. Aiken County*, the South Carolina Supreme Court noted in a case brought pursuant to the South Carolina Tort Claims Act that "under South Carolina law, the sheriff and sheriff's deputies are State, not county, employees." *Edwards v. Lexington County Sheriff's Department and County of Lexington*, 386 S.C. 285, 688 S.E.2d 125 (2010)(fn 1). Even though the Defendants in *Edwards* did not raise this issue, the Court noted "the legally settled distinction between a county government and a sheriff's office for liability purposes." *Id.* Finally, the District Court recently found that "it is clear that under South Carolina law the Sheriff is an arm of the State and is separate and apart from the County." *Ramos v. Berkeley County*, 2012 WL 5292899 (D.S.C. 2012)(citations omitted).

Based on the Plaintiff's Complaint, Plaintiff was injured in an accident involving his father's car, and a car driven by a deputy employed by the Sheriff of Sumter County. Because the Sheriff and his deputies are considered agents of the State, separate from the County, an action will not stand against Defendant Sumter County.

I find that Defendant Sumter County is not a proper party to this action, and that the Defendant's Motion to Dismiss should be granted and this Defendant should be dismissed from the action. IT IS THEREFORE ORDERED that the Defendant's Motion to Dismiss is granted.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Clinton Newman  
Presiding Judge

July 2, 2013

Cowley, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMTER ) JUDICIAL CIRCUIT

RECORDED  
2012 JUL 24 AM 9:13  
CASE NO.: 2012-CP-43-\_\_\_\_\_

Brandon W. Hodge,  
Plaintiff,

JAMES C. CAMPBELL  
CLERK OF COURTS  
SUMTER COUNTY, S.C.

vs.

COMPLAINT  
(Jury Trial)  
Negligence

Sumter County,  
Defendant.

The Plaintiff, complaining of the Defendant, alleges and says as follows:

1. The Plaintiff is a resident and citizen of Sumter County, South Carolina.
2. The Defendant is a county organized and existing under the laws of the State of South Carolina.
3. On February 27, 1999, the Plaintiff was a small child, and he was a passenger in a 1985 four door Ford automobile which was being operated by his father, Harmon P. Hodge, Jr., in a northerly direction on Highway 131, in Sumter County, South Carolina.
4. At the same time the Defendant's 1995 four door Ford Sheriff's vehicle was being operated by Sumter County Sheriff's Deputy Anthony L. Horton, in the same direction and on the same road.
5. At all times pertinent to this action, all employees of the Sumter County Sheriff's Department, including but not limited to Deputy Anthony L. Horton, were acting within the course and scope of their authority and duties as employees, officers, and or servants of the Defendant, and at all times pertinent to this action,

Handwritten initials and date: JCH 12/4

the Sumter County Sheriff's vehicle was being operated pursuant to the purposes and business of the Defendant.

6. The Defendant was engaged in a high speed chase of Harmon Hodge for a considerable distance.

7. The Defendant's vehicle failed to keep a safe distance from the Hodge vehicle.

8. The Defendant's vehicle was being operated in an unsafe manner.

9. The Defendant's vehicle did not slow to a safe speed even as it approached a curve in the road.

10. The Defendant's vehicle collided at a high rate of speed with the right side of the Hodge vehicle.

11. Deputy Horton lost control of the Defendant's vehicle.

12. The Plaintiff, a small child, was a passenger in the Hodge vehicle.

13. Deputy Horton was in contact or should have been in contact with headquarters as the chase proceeded.

14. Massive damage was done to the right side of the Hodge vehicle by the collision with the Defendant's vehicle.

15. Both vehicles left the road at the same place in a curve in the roadway.

16. The Defendant's vehicle was driven too close to the Hodge vehicle.

17. The Defendant's vehicle did not slow appropriately as it approached the curve.

18. Deputy Horton failed to slow the vehicle appropriately to avoid colliding with the Hodge vehicle.

19. Deputy Horton was not properly trained for dealing with a pursuit.

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20. Headquarters did not maintain proper control over Deputy Horton.
21. Headquarters failed to properly communicate with Deputy Horton.
22. The wreck caused serious injuries to the Plaintiff.
23. The Defendant was negligent, reckless, willful, and wanton in one or more of the following particulars:

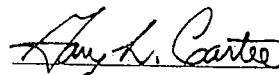
- a. In following too closely;
- b. In failing to maintain proper control of the vehicle;
- c. In travelling too fast for conditions;
- d. In failing to maintain a safe distance from the Hodge vehicle;
- e. In failing to slow appropriately in the approach to the curve;
- f. In failing to avoid colliding with the Hodge vehicle;
- g. In failing to appropriately use brakes;
- f. In failing to follow reasonable procedures in a pursuit;
- h. In failing to stay in the proper lane of travel;
- i. In driving the vehicle off the roadway;
- j. In failing to exercise proper command and control over Deputy Horton;
- k. In taking unreasonable action in trying to stop the Hodge vehicle;
- l. In driving the vehicle into the side of the Hodge vehicle;
- m. In failing to establish reasonable and proper procedures for pursuits;
- n. In failing to properly follow reasonable and proper procedures in this pursuit;
- o. In failing to properly train Deputy Hodges; and,

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p. In failing to exercise the degree of care and caution necessary and reasonable under the circumstances.

24. As the direct and proximate result of the negligence, recklessness, willfulness, and wantonness of the Defendant, the Plaintiff was seriously injured, he suffered permanent impairment and disability, he has endured pain and suffering and he will endure pain and suffering in the future, he has incurred medical expenses and he will incur medical expenses in the future, he has otherwise suffered economic loss and he will suffer economic loss in the future, he has incurred incidental damages and he will incur incidental damages in the future, he has endured mental and emotional distress and he will endure mental and emotional distress in the future, he has been permanently impaired in his ability to earn wages, he has lost enjoyment of life and he will lose enjoyment of life in the future, and he has otherwise been injured and damaged.

WHEREFORE the Plaintiff prays for actual damages, for the costs and disbursements of this action, and for such other and further damages and relief as is just and proper.



\_\_\_\_\_  
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ATTORNEY FOR THE PLAINTIFF

N. Charleston, South Carolina  
July 23, 2012.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SUMTER )

IN THE COURT OF COMMON PLEAS

Brandon W. Hodge, )

Civil Action No. 2012-CP-43-1463

Plaintiff, )

ANSWER ON BEHALF OF DEFENDANT

v. )

SUMTER COUNTY

Sumter County, )

(Jury Trial Demanded)

Defendant. )  
\_\_\_\_\_ )

The Defendant, Sumter County, not waiving but expressly reserving all rights including the Notice of Motion and Motion to Dismiss served contemporaneously herewith, answers the Complaint of the Plaintiff as follows:

**FOR A FIRST DEFENSE**

1. The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against this Defendant, and therefore, this Defendant must be dismissed.

**FOR A SECOND DEFENSE**

2. This Defendant is not a proper party pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70, and therefore, this Defendant must be dismissed.

**FOR A THIRD DEFENSE**

3. The Plaintiff did not properly serve this Complaint in accordance with Rule 4, SCRCF, and therefore, this action must be dismissed pursuant to Rule 12(b)(2), (4) and (5), SCRCF.

*[Handwritten signature]*

FOR A FOURTH DEFENSE

4. The Court lacks subject matter jurisdiction of the Plaintiff's Complaint over this Defendant, and therefore, this Defendant must be dismissed.

FOR A FIFTH DEFENSE

5. This Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained.

6. As to paragraph 1 of the Plaintiff's Complaint, this Defendant lacks information upon which to form a belief as to the truth and veracity of these allegations.

7. As to paragraph 2 of the Plaintiff's Complaint, this Defendant would crave reference to the South Carolina Tort Claims Act, and denies all parts of this paragraph inconsistent with that Act.

8. As to paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of the Plaintiff's Complaint, this Defendant lacks information upon which to form a belief as to the truth and veracity of these allegations, and therefore, denies these allegations. Further answering, this Defendant specifically denies any allegations to the extent they assert any actions, inactions, wrongdoing, liability, or involvement by this Defendant.

9. This Defendant denies the Plaintiff is entitled to the relief requested in the Complaint, or any other relief against this Defendant.

FOR A SIXTH DEFENSE

10. This Defendant is merely the alter ego of the State of South Carolina, and therefore, is entitled to sovereign immunity from suit, including but not limited to the statutory caps on damages pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-120(a).

**FOR A SEVENTH DEFENSE**

11. This Defendant alleges, upon information and belief, that any injuries or damages allegedly suffered by the Plaintiff, without admitting same to be true, were due to and caused entirely by the negligence of the Plaintiff or the Plaintiff's negligence which is more than this Defendant's negligence, and that such is a complete bar to the Plaintiff's recovery herein. Further, this Defendant alleges, upon information and belief, that if the Plaintiff's negligence was less than this Defendant's negligence, that such negligence should be compared to that negligence of this Defendant, so as to apportion the relative fault as to each party.

**FOR AN EIGHTH DEFENSE**

12. This Defendant alleges, upon information and belief, that any injuries or damages allegedly suffered by the Plaintiff, without admitting same to be true, were due to and caused by the sole negligence, recklessness, willfulness, wantonness, carelessness, and gross negligence of the Plaintiff and were not caused by this Defendant, which sole negligence of the Plaintiff is a complete bar to the Plaintiff's attempt to recover from this Defendant.

**FOR A NINTH DEFENSE**

13. This Defendant would allege, upon information and belief, that any injury or damages alleged in the Plaintiff's Complaint were due to, occasioned by, or caused by intervening acts of omission or commission on the part of someone other than this Defendant, without which acts and/or omissions the Plaintiff would not have sustained any injuries or damages as are set forth in the Plaintiff's Complaint, all of which this Defendant pleads as a bar to this action.

**FOR A TENTH DEFENSE**

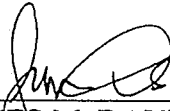
14. This Defendant would allege, upon information and belief, that any damages

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alleged to have been caused by this Defendant, which are specifically denied, must be apportioned between this Defendant and other tortfeasors pursuant to S.C. Code Ann. § 15-78-100(c).

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A.



---

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*Attorneys for Defendant Sumter County*

Columbia, South Carolina

January 18, 2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SUMTER )

IN THE COURT OF COMMON PLEAS

Brandon W. Hodge, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Sumter County, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 2012-CP-43-1463

**NOTICE OF MOTION AND  
MOTION TO DISMISS ON BEHALF OF  
DEFENDANT SUMTER COUNTY**

TO: GARY L. CARTEE, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendant, Sumter County, will move before the Presiding Judge of the Third Judicial Circuit at the Sumter County Courthouse, Sumter, South Carolina, at such time and place as may be set by the Court, for an Order granting this Defendant's Motion to Dismiss based on the following grounds:

- 1.) The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against this Defendant, and therefore, this Defendant must be dismissed.
- 2.) This Defendant is not a proper party pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70, and therefore, this Defendant must be dismissed.
- 3.) The Plaintiff did not properly serve this Complaint in accordance with Rule 4, SCRCF, and therefore, this action must be dismissed pursuant to Rule 12(b)(2), (4) and (5), SCRCF.
- 4.) The Court lacks subject matter jurisdiction of the Plaintiff's Complaint over this Defendant, and therefore, this Defendant must be dismissed.

Said Motion is based upon the pleadings filed in this case, Rules of Court, and such other matters as may be properly presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.



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*Attorneys for Defendant Sumter County*

Columbia, South Carolina

January 18, 2013

STATE OF SOUTH CAROLINA)  
COUNTY OF SUMTER )  
Brandon W. Hodge, )  
Plaintiff, )  
vs. )  
Sumter County, )  
Defendant. )

---

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT  
CASE NO.: 2012-CP-43-1463

MEMORANDUM OF PLAINTIFF  
OPPOSING DEFENDANT'S  
MOTION TO DISMISS

The Plaintiff respectfully submits that the Defendant's Motion to Dismiss should be denied for the following reasons:

A. FACTS.

The Plaintiff was injured when a vehicle owned by the Defendant and driven by a deputy sheriff collided with a vehicle in which the Plaintiff was a passenger as a child. The Plaintiff was seriously injured.

Only the pleadings are before the Court, and the Plaintiff has plead that all employees of the Sumter County Sheriff's Department were acting within the course and scope of duties as employees, officers, and or servants of the Defendant at all times pertinent to this action and the Sumter County vehicle was being operated pursuant to the purposes and business of the Defendant. Complaint, Paragraph 5.

The Defendant has answered that it "lacks information upon which to form a belief as to the truth and veracity of these allegations" and therefore they were denied. Answer, Paragraph 8.

Therefore, for purposes of this Motion, the collision was caused by employees

of the Defendant.

B. TORT CLAIMS ACT.

The South Carolina Tort Claims Act requires that an action be brought only against a political subdivision or agency. The Tort Claims act provides “for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty....” Section 15-78-20 S.C. Code of Laws (1976 as amended). The employee is not required to be named, and if he is named, the agency or subdivision must be substituted as the party defendant. Section 15-78-70 S.C. Code of Laws (1976 as amended).

Under the Tort Claims act a “political subdivision” is subject to liability for torts, subject to liability limits. Section 15-78-40 S.C. Code of Laws (1976 as amended).

Counties are defined as a “political subdivision” under the Tort Claims Act. Section 15-78-30 (h) S.C. Code of Laws (1976 as amended).

For purposes of the Tort Claims Act “employee” is defined as “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 of or in service of a governmental entity in the scope of official duty, whether with or without compensation....” Section 15-78-30 (c) S.C. Code of Laws (1976 as amended).

The Plaintiff's Complaint in all respects includes the proper allegations for an action against the Defendant under the South Carolina Tort Claims Act.

C. THE COMPLAINT PROPERLY ALLEGES A CAUSE OF ACTION AGAINST THE DEFENDANT, AND THEREFORE PARAGRAPH (1) OF THE DEFENDANT'S MOTION TO DISMISS SHOULD BE DENIED.

Paragraph (1) of the Defendant's Motion to Dismiss must be taken as a Rule 12 (b) (6) motion to dismiss for failure to state facts sufficient to constitute a cause of action or a Rule 12 (c) motion for Judgment on the Pleadings. All well pleaded allegations are taken as true. Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E. 2d 897 (Ct. App. 1988). The pleading must be construed in the light most favorable to the non-moving party. Woodell, Allen v. Marion Sch. Dist. One, 307 S.c. 297, 414 S.E. 2d 794 (Ct. App. 1992).

It has been held that cases should not be decided on 12(b)(6) motions or even motions for summary judgment where additional facts would be useful. It has also been held in South Carolina that novel issues should not be decided on 12(b)(6) motions. Keiger v. Citgo, Coastal Petroleum, Inc., 326 S.C. 369, 482 S.E.2d 792 (Ct. App. 1997) at 373.

Under procedure prior to the enactment of the Tort Claims Act a sheriff could be held liable for the actions of his deputy. Section 23-13-10 S.C. Code of Laws (1976 as amended), stated, "The sheriff shall in all cases be answerable for neglect of duty or misconduct in office of any deputy." In Robinson v. Metts, 86 F. Supp. 2d 557 (D.C.S.C. 1997), it was held that Section 23-13-10 was repealed by implication. The Tort Claims Act was explicitly stated to be the exclusive remedy available and it explicitly applied to sheriffs and deputies (elected officials and law enforcement) who were all defined as "employees." Suits against individuals, including sheriffs, were no longer allowed. "It is well settled that if two statutes conflict, the statute

most recently passed should prevail so as to repeal the earlier statute to the extent of the repugnancy.” Robinson v. Metts, at 564, citing Hair v. State, 305 S.C. 77, 406 S.E. 2d 332, 334 (1991).

In Pelfrey v. Oconee County, 207 S.C. 433, 36 S.E.2d 297 (1945), the South Carolina Supreme Court held that a sheriff’s clerk who was injured in a wreck while acting as a deputy was an employee of Oconee County for purposes of workers’ compensation. Likewise, in Willis v. Aiken County, 203 S.C. 96, 26 S.E. 2d 313 (1943), a sheriff’s deputy who died as the result of breaking up a liquor still was found to be an employee of Aiken County for purposes of workers’ compensation.

In Trammell v. Fidelity & Casualty Co. of New York, 45 F. Supp. 366 (D.C.S.C. 1942), applying South Carolina law, it was stated that, “The sheriff of a county is the chief law enforcement officer of that county....”

No case has been found under the Tort Claims Act which deals with the issues of this case, and so it is a novel issue which should not be dealt with in a 12(b)(6) motion.

The case of Heath v. County of Aiken, 295 S.C. 416, 368 S.E.2d 904 (1988), dealt with Section 4-9-30(7) S.C. Code of Laws (1976 as amended). The declaratory judgment trial resulted in a ruling in favor of Aiken County. The Supreme Court held that deputies are not “employees” for purposes of personnel policies and grievance procedure. However, the Supreme Court ruled that others under the sheriff are covered by certain county procedures. The Court ruled that the legislature could grant powers as it wished for the purposes of the statute.

However, this case had nothing to do with the application of the Tort Claims Act.

Other cases have held that a sheriff or his deputy cannot be held liable under Federal Civil Rights lawsuits pursuant to 42 U.S.C. Section 1983. These cases have nothing to do with liability under the South Carolina Tort Claims Act. They are concerned with the U.S. Constitutional requirement under the Eleventh Amendment to the U.S. Constitution. For purposes of Section 1983 cases it has been held that a sheriff and his deputy are more like a state official than a county official. These cases have nothing to do with liability under the South Carolina Tort Claims Act. It is explicitly stated in the Tort Claims Act that "Nothing in this chapter is construed as a waiver of the state's or political subdivision's immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina." Section 15-78-20 S.C. Code of Laws (1976 as amended).

Section 1983 is completely different from the South Carolina Tort Claims Act. Section 1983 actions can only be brought against a "person" under the statute and is constitutionally prohibited from being brought against a state or state official. Section 1983 actions feature unlimited liability. The S.C. Tort Claims Act, on the other hand limits liability to \$250,000.00 in the case at bar, it prohibits cases against "persons," and it provides liability not only for permanent employees but for anyone acting on "behalf" of a political subdivision.

An example of a Section 1983 case, is the case of Cone v. Nettles, 308 S.C. 109, 417 S.E. 2d 523 (1992) where it was held that a sheriff's deputy could not be held liable purposes of that statute. This ruling has nothing whatsoever to do with

liability under the South Carolina Tort Claims Act which was not even an issue in the case. In finding that a sheriff was a state official for purposes of Section 1983, the Court pointed out that the state had the "potential power of control" over the sheriff. That was all that was required to qualify the sheriff as a "state official" for purposes of Section 1983. As to the deputy, the court found that he was "more closely connected to the state than to the county." That was all that was required to find the deputy a state official for purposes of Section 1983. The language makes it clear that for purposes other than Section 1983, the deputy is a county official. Cone v. Nettles, at 525. Any inference beyond purposes of Section 1983 liability is dicta not necessary for the ruling.

There is no doubt that sheriffs and sheriff's deputies are in large part county officials. For example, sheriffs are required by statute to submit strict monthly accounts of all funds received to the county auditor and the county treasurer. Section 23-15-130 S.C. Code of Laws (1976 as amended). A sheriff upon taking office is required to take not only the oath of office in Article 3, section 26 of the S.C. Constitution, but he is required to take the oath as a county officer of Section 8-3-20 S.C. Code of Laws (1976 as amended). Section 23-11-20 S.C. Code of Laws (1976 as amended). Deputies are required to take an oath as a "county deputy," and they are required to file a bond approved by the county attorney and filed with the county clerk of court. Section 23-13-20 S.C. Code of Laws (1976 as amended). Deputies are required by statute to patrol the entire county. Section 23-13-70 S.C. Code of Laws (1976 as amended). The funding of sheriffs by the counties is in part controlled by Section 4-9-30(5). And there are many more county duties regarding

sheriffs and deputies.

D. THE DEFENDANT IS A PROPER PARTY AND THEREFORE PARAGRAPH 2 OF THE DEFENDANT'S MOTION TO DISMISS SHOULD BE DENIED.

As set forth above, the S.C. Tort Claims Act provides that counties are "political subdivisions" which are subject to suit.

E. THE COMPLAINT WAS PROPERLY SERVED UPON THE DEFENDANT AND THEREFORE PARAGRAPH 3 OF THE DEFENDANT'S MOTION TO DISMISS SHOULD BE DENIED.

Personal service was made upon the appropriate officer of the Defendant, the County Administrator, and an affidavit of service was made by the process server; and the County Administrator signed an acknowledgement of service. Therefore Paragraph 3 of the Defendant's Motion to Dismiss should be denied.

F. THE COURT HAS SUBJECT MATTER JURISDICTION DUE TO THE TORT CLAIMS ACT AND THEREFORE PARAGRAPH 4 OF THE DEFENDANT'S MOTION TO DISMISS SHOULD BE DENIED.

As set forth above, counties are "political subdivisions" subject to suit under the S.C. Tort Claims Act. The Tort Claims Act permits actions for motor vehicle collisions. Therefore Paragraph 4 of the Defendant's Motion to Dismiss should be denied.

G. CONCLUSION.

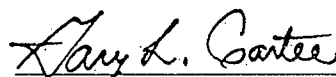
The Complaint states a cause of action for a tort under the S.C. Tort Claims act. The allegations of the Complaint for purposes of this Motion must be taken as true and viewed in the light most favorable to the Plaintiff.

There is no case which deals with the issues of this case pursuant to the Tort Claims Act. Novel issues should not be decided on a Rule 12(b)(6) motion.

The elucidation and development of additional facts are necessary and desirable for the proper adjudication of this action. For example, facts such as the ownership of the car (it was owned by Sumter County); the precise way in which the accident occurred and in which the deputy lost control of the Sumter County Car; the provider of insurance on the car (undoubtedly Sumter County); the provider of maintenance on the Sumter County car; and the condition of the car; and admissions against interest of the Defendant; the testimony of the witnesses and participants concerning all aspects of liability.

For purposes of this Motion, the allegations of the Complaint must be considered true and in the light most favorable to the Plaintiff. This means that for purposes of this motion the deputy was acting on behalf of the County and he caused the accident which injured the Plaintiff.

Respectfully submitted,



\_\_\_\_\_  
Gary L. Cartee  
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North Charleston, S.C. 29418  
(843) 767-1800

ATTORNEY FOR THE PLAINTIFF

N. Charleston, South Carolina  
June 17, 2013.



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I N D E X

WITNESS/DESCRIPTION

PAGE NO.

Motion Hearing

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter ..... 23

1 THE COURT: Motion to Dismiss. All right.

2 Yes, sir.

3 MR. DAVIS: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. DAVIS: Thank Your Honor. I'm Jim Davis and I'm  
6 here on behalf of Sumter County.

7 THE COURT: Mr. Davis. Yes, sir.

8 MR. DAVIS: Your Honor, the plaintiff filed a complaint  
9 and basically I'll give you a very brief recitation of the  
10 fact.

11 The plaintiff was a passenger in a car driven by his  
12 father and his father was being pursued by a Sumter  
13 sheriff's deputy. During the course of the pursuit a  
14 collision occurred and as a result of that collision the  
15 plaintiff has claimed he was injured.

16 There is no dispute that the pursuing person was a  
17 sheriff's deputy employed by the Sheriff of Sumter County  
18 and that's what the plaintiff was alleging in his complaint.  
19 He has alleged, as a result of the sheriff's deputy's  
20 actions he has been injured. So really from a factual  
21 perspective there is no dispute as far as who was involved.

22 The defendant, Sumter County, filed a Motion to Dismiss  
23 basically asserting that we are not a proper defendant. The  
24 Court as far back as 1988 in Gullede verses Smart, which is  
25 691 F. Supp. 947 District of South Carolina case, basically

1 addressed or considered the issue of whether a Sumter or a  
2 sheriff's deputy was employed by the county or by the state,  
3 was a state official. The Court basically determined that  
4 because the sheriff is a state official his employees, the  
5 deputies, are also considered state officials and not county  
6 officials.

7 There was also a South Carolina case, Heath verses  
8 Aiken County, which was 368 S.E. 2d 904, which was also  
9 decided that same year in a different context, but there was  
10 again a dispute about whether deputies were considered  
11 county employees. In the Heath case also found that deputies  
12 are not county employees, they are considered state  
13 officials.

14 A little bit after the Cone verses Nettles case, which  
15 was 417 S.E. 2d 523, a 1992 case actually dealt with a  
16 pursuit. It was a pursuit case and again the decision was  
17 whether the deputy was a state official or a county official  
18 and the Cone case also found that the deputy was a state  
19 official because he was employed by the sheriff.

20 That decision has been recently affirmed in 2012 in the  
21 case of Ramos verse Berkeley County 2012 Westlaw 529 2899.  
22 That's a District of South Carolina case. Again, the Court  
23 found that a sheriff and his deputies are state officials  
24 and not county officials.

25 Because of that, because it has been clearly

1 established law our Motion to Dismiss basically has set  
2 forth that a county is not a proper party in this lawsuit  
3 and therefore it has to be dismissed.

4 THE COURT: All right.

5 Mr. Cartee.

6 MR. CARTEE: Yes, Your Honor. May I approach. I have a  
7 memorandum.

8 THE COURT: Yes, sir.

9 MR. CARTEE: Your Honor, the plaintiff was injured when  
10 a vehicle owned by the defendant and being driven by deputy  
11 sheriff collided with the vehicle in which the plaintiff was  
12 a passenger, a child. The plaintiff was seriously injured.

13 The only thing that's before the Court, Your Honor, is  
14 the plaintiff's Motion to Dismiss, a 12(b)(6) Motion,  
15 possibly a 12© Motion. It didn't specify, but it's based  
16 upon the pleadings and the pleadings before Your Honor state  
17 that the Sumter County Sheriff's Department employees,  
18 including the deputy were at all times pertinent to this  
19 action being operated pursuant to purposes and business of  
20 the defendant and that they were acting within the course  
21 and scope of their duties as employees, officers and/or  
22 servants of the defendant.

23 The defendant responded by saying we don't have  
24 sufficient information to answer that. So on this 12(b)(6)  
25 Motion the only thing that's before the Court is the

1 allegation that yes, they were employees for the purpose of  
2 this action and the defendant -- for seven months say they  
3 don't have sufficient information to say whether or not they  
4 were employees.

5 The Tort Claims Act requires that the action be brought  
6 against the political subdivision or an agency. The Tort  
7 Claims Act provides for liability on the part of the state,  
8 it's political subdivisions and employees acting within the  
9 scope of their official duties.

10 An employee is not required to be named and if he is  
11 named then the agency or political subdivision must be  
12 substituted as a party defendant. Under the Tort Claims Act  
13 the political subdivision is subject to liability for torts  
14 and is subject to liability limits. Counties are defined as  
15 a political subdivision under the Tort Claims Act. That's  
16 Section 15-78-30(h). For purposes of the Tort Claims Act an  
17 employee is defined -- this is the crucial thing here,  
18 because these other cases he's referring to have to do with  
19 1983 actions which has to do with an entirely kind of  
20 situation here. The Heath case has to do with grievance  
21 procedures and that type of thing, but this has to do with  
22 the Tort Claims Act. There is no case that I can find that  
23 deals with the Tort Claims Act in this context and for the  
24 purposes of the Tort Claims Act an employee as defined as  
25 any officer, employee or agent of the state or its political

1 subdivisions including elected officials and law enforcement  
2 officers.

3 So they are clearly even say a mayor or a governor or  
4 anyone like that, they cannot be named individually. It  
5 must -- the political subdivision involved must be named.  
6 And it's clear that law enforcement officers and elected  
7 officials are employees under the statute, and what's before  
8 the Court is the allegation, which must be taken as true for  
9 the purposes of a 12(b)(6) Motion that in this context that  
10 the employees of the sheriff's department, including the  
11 deputies, were acting as employees of the county.

12 There are a number of cases. I sited a case, Carolina  
13 Winds Owners' Association verses Joe Harden Builder that all  
14 -- allegations must be taken as true. And, also, the  
15 pleading must be construed in the light most favorable to  
16 the non-moving party, which in this case is the plaintiff.

17 It's also been held in the case of Kiger verses Citgo,  
18 which is cited in the memorandum and many other cases that  
19 where additional facts would be useful, a 12(b)(6) Motion  
20 should not be granted and a novel issue should not be  
21 decided under a 12(b)(6) Motion, and, again, I'm not aware  
22 of a case under the Tort Claims Act that deals with the  
23 factual scenario we have in this case. In fact, we don't  
24 have the factual scenario yet because theirs is nothing,  
25 there is no affidavit.

1           Your Honor, I submit that if an affidavit were filed  
2 from any official, whether it's a sheriff or a deputy or  
3 official of the county that states the sheriff is in no way  
4 a county official that would be false, because in many ways  
5 a sheriff is a county official as well as a state official  
6 for other matters.

7           Under the old procedure prior to Tort Claims Act, the  
8 case against a deputy was brought by individually, mainly  
9 the sheriff, and that was under old section -- well, the  
10 section is still there, Section 23-13-10 of the South  
11 Carolina Code of Laws which states the sheriff shall in all  
12 cases be answerable for neglect of duty or misconduct in  
13 office of any deputy. However, in the case of Robinson  
14 verses Metts, that's found at 87 F. Supp. 557, it's a  
15 District of South Carolina case for 1997. It was held that  
16 Section 23-13-10 was repealed by implication when the Tort  
17 Claims Act was enacted. This case of Robinson verses Metts  
18 says that the Tort Claims Act explicitly is the exclusive  
19 remedy applied to sheriffs and deputies.

20           And, again, as I referred to earlier that case says  
21 that elected officials and law enforcement are all defined  
22 as employees.

23           Suits against individuals including sheriffs are no  
24 longer allowed. It's well settled -- in that case it says  
25 that it is well settled that if two statutes conflict the

1 statute most recently passed should prevail so as to repeal  
2 the earlier statute to the extend of the repugnancy.

3 That's no longer possible to sue the sheriff directly  
4 for the actions of a deputy. And, also, Your Honor, in  
5 different context our Court, our Supreme Court has held  
6 different finding and different holdings depending on the  
7 context of the statute that's involved. For example: In  
8 Pelfrey verses Oconee County, which is cited in the memo, a  
9 sheriff's clerk, who was acting as a deputy, was found to be  
10 an employee of Oconee County for purposes of the Workers'  
11 Compensation Statute.

12 And, also, in the case of Willis verses Aiken County,  
13 another South Carolina Supreme Court case, a sheriff's  
14 deputy who died as a result of breaking up a liquor still  
15 was held to be an employee of purposes of Workers'  
16 Compensation.

17 In the case of Trammel verses Fidelity and Casualty of  
18 New York, which is found at 45 F. Supp. 366, is a South  
19 Carolina District Court case, it was stated: The Sheriff of  
20 a county is the chief law enforcement officer of that  
21 county.

22 Again, there's no case that I'm aware of that applies  
23 the Tort Claims Act in this context.

24 The case of Health verses the County of Aiken was  
25 mentioned, but that was a declaratory judgment action in

1 which it was held that deputies are not employees for  
2 purposes personnel policies and grievance procedures. And  
3 in that case other employees were held to be -- other  
4 sheriff employees were held to be county employees for the  
5 purpose of grievance procedures and for other personnel  
6 policies, but that has nothing with the Tort Claims Act.  
7 That's something to do with a separate statute, which is 4-  
8 9-37, which deals with personnel policies and grievance  
9 procedures. It doesn't have to do with liability under the  
10 Tort Claims Act.

11 Now there are other cases, a number of cases which have  
12 held that a sheriff or his deputies can't be held liable  
13 under federal civil rights lawsuits pursuant to 42 USC  
14 Section 1983. But those cases, again, have nothing to do  
15 with liability under the Tort Claims Act. They're concerned  
16 primarily with the US Constitutional requirement under the  
17 Eleventh Amendment of the Constitution. And for purposes of  
18 Section 1983 cases, it's been held there are more like a  
19 state official than a county official, but it's not saying  
20 they're saying they are exclusively a state official,  
21 although some of the cases in dicta seem to go that far, but  
22 in other cases, these federal cases, they'll say they're  
23 more a state official than a county official.

24 And the Torts Claims Act specifically states that in  
25 subsection (e) of 15-78-20 that by enacting this statute the

1 -- there is no intention of the legislature to waive any  
2 immunities under the Eleventh Amendment.

3 Section 1983 is a totally different animal from the  
4 Tort Claims Act. A Section 1983 action can only be brought  
5 against a person. The Tort Claims Act can only be brought  
6 against a political subdivision or an agency.

7 The Section 1983 actions feature unlimited liability.  
8 The Tort Claims Act has limited liability, \$250,000 in this  
9 case which injury occurred in 1999. And, also, the test in  
10 the Tort Claims Act is not a simple respondeat superior  
11 test, but was the person acting on behalf of that entity,  
12 that governmental entity at the time this happened. That's  
13 all it says. That the person was acting on behalf of or in  
14 service of that entity at the time.

15 An example of the 1983 case in South Carolina is Cone  
16 verses Nettles. And, in that case, again, the ruling is  
17 purely under 1983, it has nothing to do with the Tort Claims  
18 Act, and there the sheriff was found to be a state employee  
19 for purposes of Section 1983.

20 That's one of the cases I handed up to Your Honor is a  
21 copy of that -- no, I'm sorry. I didn't hand that one up. I  
22 apologize. I've got a copy of it here, if you need it, Your  
23 Honor.

24 But all that was required to qualify the sheriff as a  
25 state official was there was the potential control of the

1 state over the sheriff. That was it, and, also, all that  
2 was required to find the deputy a state official was that he  
3 was -- and this is a quote from that case: The Court found,  
4 and it was referring to -- probably to the Dodds (verbatim)  
5 case -- more closely connected to the state than to the  
6 county. It's only saying more connected to the state than  
7 to the county in order to make this finding. That's what's  
8 required under Section 1983, which it is prohibited to bring  
9 a 1983 action against any state official. That's an issue  
10 in those cases. It has nothing to do with whether or not the  
11 Tort Claims Act applies.

12 Again, I have not found a case that deals with the Tort  
13 Claims Act in this context. There's no doubt that sheriffs  
14 and sheriff's deputies are a large part county officials.  
15 For example: Sheriffs are required by statute to submit  
16 strict monthly accounts of all funds received to the county  
17 auditor and the county treasure. That's in Section 23-15-  
18 130 of the Code of Laws.

19 A sheriff, also, when he takes office, under Section  
20 23-11-20 sets out the oaths that he must take. Now, there's  
21 an oath that's required by the Constitution, but a sheriff  
22 is required to take another oath, which is found at Section  
23 8-3-20, which is required of county officers. So he's taken  
24 an oath as a county officer before he can take office.

25 Deputies are required to take an oath in Section 23-13-

1 20, that they will take the oath as a quote county deputy,  
2 and they are required to file a bond approved by the county  
3 attorney and filed with the county clerk of court. Deputies  
4 are required by statute to patrol the entire county. That's  
5 23-13-70. Now, the funding of sheriffs by the counties is  
6 also clear. There are many more county duties that regard  
7 sheriffs and deputies.

8 Your Honor, the complaint states a cause of action  
9 under the Tort Claims Act and the allegation for purposes of  
10 this motion must be taken as true in the light most  
11 favorable to the plaintiff.

12 There's no case pursuant to the Tort Claims Act that  
13 deals with this situation. The elucidation and the  
14 development of additional facts are both necessary and  
15 desirable for proper adjudication of this action. For  
16 example, facts such as the ownership of the car. It's owned  
17 by Sumter County. The precise way in which the accident  
18 occurred in which the deputy lost control of the Sumter  
19 County car. Who's the provider of the insurance? More than  
20 likely it's going to be found to be Sumter County. Who is  
21 the provider of maintenance? Again, it's more than likely  
22 to be found to be Sumter County, and the condition of the  
23 car.

24 Again, the person responsible for that is Sumter  
25 County, and there'd be admissions against interest of the

1 defendant and there would be testimony of the witnesses and  
2 the participants concerning all aspects of liability. There  
3 should be further elucidation and for purposes of this  
4 motion the allegation the complaint must be construed in the  
5 light most favorable to the plaintiff.

6 This means that for purposes of this motion the deputy  
7 was acting on behalf of the county and caused the accident  
8 which the plaintiff. That is what pled and also after seven  
9 months the defendant has not denied that. They just said  
10 they don't have information.

11 So what's before this Court on this 12(b)(6) Motion,  
12 Your Honor, is that these -- that this was an employee  
13 acting for the county, the purpose of this case.

14 We don't have all of the details of how the collision  
15 took place and how he lost control because the case hasn't  
16 gotten into the discovery phase as of yet.

17 Thank Your Honor.

18 THE COURT: All right.

19 Yes, sir.

20 MR. DAVIS: Thank Your Honor.

21 First off, to -- the plaintiff's assertion that we did  
22 not deny the facts. Basically, what we put in our answer  
23 was we lack information because the county doesn't have  
24 anything to do with this accident. We don't know -- the  
25 county doesn't know how the accident occurred, doesn't know,

1 except what the plaintiff has alleged, and so the plaintiff  
2 is bound by his allegations which are that it was a Sumter  
3 County sheriff's deputy that was involved in this accident.

4 The plaintiff said that under the Tort Claims Act --

5 THE COURT: Your position is that the sheriff's deputy  
6 is not a county employee?

7 MR. DAVIS: That's correct. And that's clearly  
8 established laws. The law clearly established -- the cases  
9 I cited clearly said that a Sumter -- not a Sumter deputy,  
10 any deputy sheriff is not considered a county employee, they  
11 are considered a state official.

12 THE COURT: So officers -- any law suit involving  
13 deputies must be filed against the state and not the county?

14 MR. DAVIS: Well, they have to be filed against the  
15 sheriff. The sheriff -- that's what I was saying. The  
16 plaintiff is saying under the Tort Claims Act the entity has  
17 to be named. That is true. The entity in this case is the  
18 Sheriff of Sumter County.

19 THE COURT: Not Sumter County?

20 MR. DAVIS: That's correct, and those are very distinct  
21 -- because a sheriff is a state official. He is an elected  
22 official. And so -- and that's what all the cases that I  
23 had cited earlier, the Gullege case, the Cone case, the  
24 Heath case and the Ramos case, all say that a deputy sheriff  
25 and a sheriff are not considered county employees. They are

1 considered state officials because the sheriff is a  
2 constitutional officer.

3 THE COURT: But the deputy sheriff and the sheriff are  
4 state officials?

5 MR. DAVIS: Correct. The deputy, by virtue of the fact  
6 he's employed by the sheriff is considered a state official  
7 rather than a county official.

8 THE COURT: The proper party to be sued, according to  
9 your view of things --

10 MR. DAVIS: Is the sheriff.

11 THE COURT: -- is the sheriff and not the county.

12 MR. DAVIS: Correct. And, Judge, real briefly.

13 The Heath case, specifically said the Court held that  
14 deputies are not employees of the county. That's what Heath  
15 said and then there was one other case that I didn't cite  
16 earlier, Edwards verses Lexington County Sheriff's  
17 Department, and the cite on that is 688 S.E. 2d 125, and  
18 it's a 2010 case. In that case, the county and the sheriff  
19 were sued. Well, the defense attorney didn't take the  
20 position that those were separate entities. He answered on  
21 behalf of both of them.

22 The Court, in its decision said that because the  
23 defense didn't raise it they weren't going to consider it.  
24 They said: We do not, we therefore do not address the  
25 legally subtle distinction between a county government and a

1 sheriff's office for liability purposes.

2 So this case, the Edwards case is, again, referred to  
3 all the prior cases that have said there is a distinction.  
4 You cannot sue the county for a sheriff or his deputy.  
5 They are not county employees. You have a party to sue,  
6 it's the sheriff. That is the entity of the Tort Claims  
7 Act, 15-78-70, you have to sue the entity and in this case  
8 the entity is the sheriff.

9 THE COURT: This entire issue with regards to this case  
10 is it based on the it's now too late to sue the other party  
11 or -- is that why y'all are arguing this issue. Is it too  
12 late for him to change it?

13 MR. DAVIS: I don't know that, Judge, because I know at  
14 the time of the accident the plaintiff was a minor. I don't  
15 really know how old he is now.

16 THE COURT: Okay. Well, typically where I see these  
17 matters where an individual is sued and then the state is  
18 substituted --

19 MR. DAVIS: Correct.

20 THE COURT: -- but here the county is sued and you're  
21 saying there's no substitution because --

22 MR. DAVIS: It's the wrong entity.

23 THE COURT: -- it's the wrong entity.

24 MR. DAVIS: Correct.

25 THE COURT: Do you have copies of any of those cases

1 you're --

2 MR. DAVIS: I've written on them. I can -- I don't mind  
3 giving you my copies, but I do apologize that I have been --  
4 May I approach, Your Honor?

5 THE COURT: Sure.

6 So where Mr. Cartee says this is a novel issue and not  
7 a well-settled issue and all that, you're --

8 MR. DAVIS: It's --

9 THE COURT: -- you're saying he's blowing smoke from  
10 that?

11 MR. DAVIS: It's not a novel issue.

12 THE COURT: It's well settled --

13 MR. DAVIS: It's been around since 1988, at least.

14 THE COURT: Okay.

15 And further he says a Rule 12 motion is not the proper  
16 motion to address this issue.

17 MR. DAVIS: I think it's exactly the proper motion  
18 because, like I said, we are basing it on his pleadings. It  
19 is not disputed that he is alleging that it was a sheriff's  
20 deputy that was involved in this accident. That's all he  
21 had to allege for the proper party to be a sheriff. And so  
22 -- I also asserted in addition to 12(b)(6), I asserted 15-  
23 78-70 as a -- as another ground for the Motion to Dismiss,  
24 because under 15-58-70 you have to sue the proper entity.  
25 Well, in this case the proper entity is the sheriff, it's

1 not the county. And so I -- while Mr. Cartee says that we  
2 need to file an affidavit, there is no affidavit that needs  
3 to be filed. This is a legal matter. This is a matter that  
4 is established by the courts, by the case law.

5 THE COURT: So in this Teresa Edwards verses Lexington  
6 County Sheriff's Department in Lexington County, where the  
7 court, the Supreme Court has in bold: Sheriff or sheriff  
8 deputies are state not county employees, county comma  
9 employees comma and thus comma -- and comma, thus comma  
10 sheriff's department and county -- and county are not the  
11 same entity for liability purposes. (Verbatim.)

12 MR. DAVIS: Correct.

13 THE COURT: So what does that tell us?

14 MR. DAVIS: That's telling us that the county is not  
15 responsible for the sheriff. The sheriff's deputy is not a  
16 county employee. That there is a well-settled legal  
17 distinction that you can't sue a county for the sheriff or  
18 for a sheriff's deputies actions. You have to sue the  
19 sheriff.

20 THE COURT: I think I remember --

21 MR. DAVIS: In that case --

22 THE COURT: -- I think I remember -- there was a bond  
23 hearing or something and a boyfriend --

24 MR. DAVIS: Right.

25 THE COURT: -- the boyfriend attacked the --

1 MR. DAVIS: That's right. It was a domestic violence  
2 issue.

3 THE COURT: And she sued, claiming they didn't give her  
4 enough security and all that?

5 MR. DAVIS: And it's my understanding that was a Tort  
6 Claims Act. Now, the Court decided that case under the  
7 Public Duty Rule. They said there wasn't a duty, but the  
8 attorney in that case did not raise -- he just didn't raise  
9 that there was a distinction between the county and the  
10 sheriff, but the court did it for him. I mean, well, they  
11 just said, he didn't raise it so we're not going to address  
12 it. But it's clearly a well-settled distinction.

13 THE COURT: All right.

14 How about that, Mr. Cartee?

15 MR. CARTEE: Well, again, that's directly addressing --  
16 that's dicta as far as that case is concerned. They were  
17 not faced with the issue that we have in this case, but the  
18 accident, the case that I cited to you, Pelfrey verses  
19 Oconee County, there was a sheriff's clerk who was injured  
20 in a wreck while acting as a deputy and was an employee of  
21 Oconee County, and he was found to be an employee by the  
22 Supreme Court in that case.

23 THE COURT: What year was that?

24 MR. CARTEE: That was in 1943.

25 THE COURT: 1943?

1 MR. CARTEE: Excuse me, 1945.

2 THE COURT: '45?

3 MR. CARTEE: Yes. The other case, Willis verses Aiken  
4 County, the sheriff's deputy died as a result of breaking up  
5 a liquor still was found to be an employee of Aiken County  
6 for the purposes of that case.

7 THE COURT: What year was that?

8 MR. CARTEE: That was in 1943.

9 THE COURT: Oh.

10 MR. CARTEE: These cases depend on the context and the  
11 context of this case where there's a county vehicle, he's  
12 going to take him to a county lockup, his county provided  
13 offices, his county provided financing and there are all  
14 sorts of county duties associated with this county vehicle  
15 that owned by the county, but there has been no case saying  
16 that under those circumstances under the Tort Claims Act it  
17 would apply. There is no direct authority on that that I'm  
18 aware of, Your Honor.

19 THE COURT: Well, I mean, municipalities and county  
20 governments and state -- state and -- people are being sued  
21 left and right. So it's -- it would appear that this should  
22 not be a novel issue, but I will research it and take it  
23 under advisement as a novel issue for me, and I'm happy to  
24 -- I'd be happy to receive any supplemental memorandum cases  
25 or whatever. I can't pull up my cases on my computer today.

1 Normally, I'd have these cases right before me as you all  
2 are talking about them, but I don't have them today so I  
3 can't see them while you're talking about them. So I have  
4 to review them after I leave her, and I'll be happy to  
5 review anything else you want to submit to me.

6 MR. CARTEE: Do you want to give us a deadline.

7 THE COURT: Proposed order within 10 days will be good.  
8 Each party can submit a proposed order and serve the other  
9 party. The other party will have five days after the  
10 proposed orders are submitted, by email is my preference, to  
11 respond and comment on what the other says in any way you  
12 want to.

13 MR. DAVIS: Thank Your Honor.

14 THE COURT: In Word format. [cnewmanj@sccourts.org](mailto:cnewmanj@sccourts.org) with a  
15 copy to my law clerk at [cnewmanlc@sccourts.org](mailto:cnewmanlc@sccourts.org)

16 Thank you all.

17 (This proceeding was concluded.)  
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Charleston County Bar, and the Defendant was represented by James M. Davis, Jr., of the Richland County Bar. The Defendant's Motion to Dismiss was "based upon the pleadings filed in this case, Rules of Court, and such other matters as may be properly presented to the Court at the time of the hearing." The Plaintiff filed with the Court a Memorandum in Opposition to the Motion to Dismiss.

The oral arguments presented in Court were primarily directed at Part (1) of the Motion to Dismiss which stated that "The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against this Defendant, and therefore, this Defendant must be dismissed."

The Plaintiff's Complaint alleges that all employees of the Sumter County Sheriff's Department were acting within the course and scope of duties as employees, officers, and or servants of the Defendant at all times pertinent to this action and the car which was involved in the accident was being operated pursuant to the purposes and business of the Defendant. See Complaint, Paragraph 5. The Defendant answered that it "lacks information upon which to form a belief as to the truth and veracity of these allegations" and therefore they were denied. See Answer, Paragraph 8.

The Defendant's primary argument was that the Sumter County Sheriff and the deputy were as a matter of law state officials and therefore the action must be dismissed.

The Plaintiff's primary argument was that a cause of action has been stated under the South Carolina Tort Claims Act. The Tort Claims Act has a specific definition as to "employee" for purposes of Tort Claims. Specifically, the statute

states that an "employee" is defined as "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 of or in service of a governmental entity in the scope of official duty, whether with or without compensation...." Section 15-78-30 (c) S.C. Code of Laws (1976 as amended).

All that is required to be an "employee" under the above definition is that a person was "acting on behalf of or in service of a governmental entity in the scope of official duty...." at the time of the tort. The person does not even have to have been receiving compensation from the governmental entity in order to be an "employee" for purposes of the Tort Claims Act.

The Motion to Dismiss must be taken as a Rule 12 (b)(6) or a Rule 12 (c) motion. All well pleaded allegations must be taken as true. See Carolina Winds Owners' Ass'n. v. Joe Harden Builder Inc., 297 S.C. 74, 374 S.E. 2d 897 (Ct. App. 1988). The pleading must be construed in the light most favorable to the non-moving party. Woodell, Allen v. Marion Sch. Dist. One, 307 S.C. 297, 414 S.E. 2d 794 (Ct. App. 1992).

It has been alleged in this case that at the time of the tort complained of the deputy and other Sumter County Sheriff's Department employees were acting as "employees" of the Defendant. The Defendant has alleged that it lacks sufficient information to contradict that allegation and therefore denies the same. Taking the allegations in the light most favorable to the Plaintiff, it cannot be held as a matter of law that the deputy and other Sumter County Sheriff's Department employees

were not acting "on behalf of or in service to" the Defendant at the time of the collision.

The cases which have been cited to the Court do not directly deal with the issue at bar. It has been held in a number of cases that a sheriff or his deputy may not be held liable in Federal Civil Rights Lawsuits pursuant to 42 U.S.C. Section 1983. For example, Cone v. Nettles, 308 S.C. 109, 417 S.E. 2d 523 (1992) held that a sheriff's deputy could not be held liable under Section 1983. The Court in that case found that the deputy was "more closely connected to the state than to the county." That case does not deal with liability under the S.C. Tort Claims Act. It only dealt with the issue of Section 1983 liability. That case does not explore the deputy's connections to the county for purposes of the S.C. Tort Claims Act.

The case of Heath v. County of Aiken, 295 S.C. 416, 368 S.E. 2d. 904 (1988), deals with a declaratory judgment trial dealing with the duties of a sheriff's employees for purposes of personnel policies and grievance procedures. It does not deal with the issue of liability under the S.C. Tort Claims Act.

The case of Pelfrey v. Oconee County, 207 S.C. 433, 36 S.E. 2d 297 (1945), held that a sheriff's clerk who was injured in a wreck while acting as a deputy was an employee of Oconee County for purposes of workers' compensation. The case of Willis v. Aiken County, held that a sheriff's deputy breaking up a liquor still was acting as an employee of Aiken County for purposes of workers' compensation.

In the case of Edwards v. Lexington County Sheriff's Department, 386 S.C. 285, 688 S.E.2d 125 (2010), a footnote states that "the sheriff and sheriff's deputies are State, not county, employees." P. 288, FN1. The Court there cites the Cone and

Heath cases cited hereinabove. The footnote goes on to observe that the sheriff's department and the county were under the law of the case, one entity. Therefore the Court specifically stated in the same footnote that they did not address the issue. In other words, the Court specifically did not address the issue because of the content of the pleadings before the Court.

The Plaintiff has brought to the Court's attention a number of statutes which are alleged to make the sheriff and his deputies in large part county officials. It is not necessary to address these statutes and arguments in order to deny the Defendant's Motion to Dismiss.

Under the pleadings before the Court, the Sumter County Sheriff's employees, including the deputy driving the car are alleged to be employees of the Defendant by the Plaintiff, and the Defendant has plead that it "lacks sufficient information" to contradict those allegations. These allegations must be taken as true for the purposes of a Rule 12 (b) (6) or Rule 12 (c) motion, and the facts must be construed in the light most favorable to the Plaintiff. Therefore, under the pleadings, the Court must deny the Defendant's Motion to Dismiss for failure to state a claim. This does not in any way prejudice the Defendant's ability to present a similar defense under a Summary Judgment Motion or other appropriate motion, properly supported.

The only other part of the Defendant's Motion to Dismiss which was addressed at oral argument was Part (2) which stated that "This Defendant is not a proper party pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. Section 15-78-70, and, therefore, this Defendant must be dismissed." The Court

denies this portion of the motion as well for the same reasons as stated above, and pursuant to Section 15-78-30 (h) S.C. Code of Laws (1976 as amended), which states that counties are defined as a "political subdivision," and therefore, subject to suit under the S.C. Tort Claims Act.

The Plaintiff argued in his Memorandum in Opposition to the Motion to Dismiss against both Part (3) and Part (4) of the Defendant's Motion to Dismiss. Part (3) of the Motion to Dismiss is denied as there was proper service of the administrator of the Defendant, supported by the affidavit of service and the acceptance of service by the administrator, which was not contradicted by the Defendant at oral argument. Likewise, Part (4) of the Motion to Dismiss is denied as the S.C. Tort Claims Act provides jurisdiction over counties for tort claim actions, and this was not denied by the Defendant at oral argument.

The Court hereby denies the Defendant's Motion to Dismiss.

IT IS SO ORDERED.

---

Honorable Clifton Newman  
Presiding Judge, Third Judicial Circuit

June \_\_\_\_, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	
Brandon W. Hodge,	)	Civil Action No. 2012-CP-43-1463
	)	
Plaintiff,	)	
	)	<b>RESPONSE TO PLAINTIFF'S PROPOSED</b>
v.	)	<b>ORDER DENYING DEFENDANT SUMTER</b>
	)	<b>COUNTY'S MOTION TO DISMISS</b>
Sumter County,	)	
	)	
Defendant.	)	
_____	)	

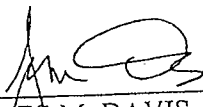
In his proposed order, the counsel for the Plaintiff claims that Sheriff's deputies can be considered employees of a County because they are providing a service to the County. However, if this analysis, which has no support in caselaw, were true, a City police officer could be found to be an employee of a County, as he is also performing service to the County. This is clearly an argument without merit. The Plaintiff misconstrues the phrase "acting on behalf of or in service of" contained within the SCTCA definition of employee, and as a result, interprets the deputies to be employees of Sumter County when they are not, and the clearly established law confirms they are not employees of the County.

The Plaintiff also asserts that the cases cited by the Defendant are not applicable as they involved 1983 claims. While most of the cases did involve 1983 claims, the propositions of law are exactly on point in this case. Moreover, the case of *Edwards v. Lexington County Sheriff's Department and County of Lexington*, 386 S.C. 285, 688 S.E.2d 125 (2010), was brought pursuant to the South Carolina Tort Claims Act, and contains the same findings as the others. The caselaw is clear and the Plaintiff's workers compensation cases do not overcome the established law that a Sheriff's Deputy is an employee of the Sheriff and not the County.

The Plaintiff also argues that the Defendant's motion to dismiss is not proper as it is brought pursuant to Rule 12(b)(6), SCRCPP, and the Defendant is denying a "fact" in the Plaintiff's Complaint. However, the "fact," whether or not deputies are employees of the state or the county in which they work, is actually a legal conclusion, and it is clear that statutory interpretation is a question of law. *City of Newberry v. Newberry Elec. Co-op., Inc.*, 387 S.C. 254, 256, 692 S.E.2d 510, 512 (2010). "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, (U.S. 2009). Legal conclusions within a complaint are not entitled to an assumption of the truth for purposes of a motion to dismiss for failure to state a claim. *Id.* The Plaintiff has not offered any facts supporting his legal conclusion that the deputies were employees of the defendant, and therefore, a motion to dismiss for failure to state a claim is appropriate. Moreover, the Defendant's motion is also based on the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70.

Based on the entire record, and the clearly established law, the Defendant, Sumter County, is not a proper party and must be dismissed.

DAVIDSON & LINDEMANN, P.A.

  
\_\_\_\_\_  
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*Attorneys for Defendant Sumter County*

Columbia, South Carolina  
July 2, 2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SUMTER )

IN THE COURT OF COMMON PLEAS

Brandon W. Hodge, )  
 )  
Plaintiff, )

Civil Action No. 2012-CP-43-1463

v. )

**ORDER GRANTING DEFENDANT  
SUMTER COUNTY'S MOTION TO  
DISMISS**

Sumter County, )  
 )  
Defendant. )  
\_\_\_\_\_ )

THIS MATTER CAME BEFORE THE COURT pursuant to Defendant, Sumter County's, Motion to Dismiss, which was set for a hearing on June 17, 2013. After hearing arguments of counsel, and reviewing the entire file and the applicable law, the Court grants Defendant Sumter County's Motion to Dismiss.

**STATEMENT OF FACTS**

The underlying dispute arises out of injuries sustained by the Plaintiff, Brandon W. Hodge, who was injured while he was a minor passenger in a vehicle driven by his father. At the time of the incident Brandon Hodge's father, Harmon Hodge, was driving a vehicle in Sumter County and fleeing from Sumter County Sherriff's deputy Anthony Horton. As the vehicles approached a curve in the road, Deputy Horton's patrol vehicle collided with Hodge's vehicle. Brandon Hodge claims he was injured due to alleged acts of negligence committed by Deputy Horton. Brandon Hodge instituted this action against Defendant, Sumter County, for the alleged negligent acts of Deputy Horton, who is employed by the Sheriff of Sumter County. It is

undisputed that Deputy Horton was employed by the Sheriff of Sumter County, and in the course and scope of his employment at the time of the allegations in the Plaintiff's Complaint.

### CONCLUSIONS OF LAW

The Defendant, Sumter County, filed this motion pursuant to Rule 12(b)(6), SCRPC, and pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-70, and asserted that Deputy Horton is not an employee of Sumter County as a matter of law, and therefore, this Defendant is not a proper party and must be dismissed. The South Carolina Tort Claims Act provides the "exclusive civil remedy available for any tort committed by a governmental entity, its employees or its agents." S.C. Code Ann. § 15-78-20(b) (emphasis added). The Defendant, Sumter County, is clearly a governmental entity and thus is entitled to the privileges and immunities provided in the Act.

In South Carolina, it is clearly established that deputies are State and not County officials. See *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523, 524-525 (S.C. 1992). The *Cone* court based this in part on the decision in *Gulledge v. Smart*, 691 F.Supp. 947 (D.S.C. 1988), where the District Court concluded that deputies are state officials instead of county officials because "(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." *Id.* at 525. Since a deputy is more closely connected to the State than the County, a deputy sheriff is clearly a state official. *Id.* The South Carolina Supreme Court also considered this issue prior to the *Gulledge* decision in the case of *Heath v. County of Aiken*, 295 S.C. 416, 368 S.E.2d 904 (1988). The *Heath* Court considered the question of whether policies regulating County

employees applied to deputy Sheriffs, and found that deputy Sheriffs should not be considered County employees. The *Gulledge* court then referred to *Heath* and explained that counties had no measurable control over sheriffs and deputies, and thus, deputies were acting as agents of the State rather than the County. *Gulledge*, 691 F.Supp. at 955. It is therefore clear that Sheriff's deputies are not employees of the County, but are considered employees of the Sheriff, who is a State constitutional officer. The South Carolina Supreme Court has also ruled that the office or department is required to be named under the South Carolina Tort Claims Act when a deputy is named. *Carroll v. Greenville County Sheriff's Dep't*, 871 F. Supp. 844, 845, (D.S.C. 1994).

More recently, both the District Court in South Carolina, as well as the South Carolina Supreme Court, have had an opportunity to affirm this position. In a footnote citing *Cone v. Nettles* and *Heath v. Aiken County*, the South Carolina Supreme Court noted in a case brought pursuant to the South Carolina Tort Claims Act that "under South Carolina law, the sheriff and sheriff's deputies are State, not county, employees." *Edwards v. Lexington County Sheriff's Department and County of Lexington*, 386 S.C. 285, 688 S.E.2d 125 (2010)(fn 1). Even though the Defendants in *Edwards* did not raise this issue, the Court noted "the legally settled distinction between a county government and a sheriff's office for liability purposes." *Id.* Finally, the District Court recently found that "it is clear that under South Carolina law the Sheriff is an arm of the State and is separate and apart from the County." *Ramos v. Berkeley County*, 2012 WL 5292899 (D.S.C. 2012)(citations omitted).

Based on the Plaintiff's Complaint, the Plaintiff was injured in an accident involving his father's car, and a car driven by a deputy employed by the Sheriff of Sumter County. Because the Sheriff and his deputies are considered agents of the State, separate from the County, an action will not stand against the Defendant Sumter County.

IT IS THEREFORE ORDERED that Defendant Sumter County is not a proper party to this action, and this Defendant's Motion to Dismiss must be granted and this Defendant is dismissed with prejudice.

IT IS SO ORDERED.

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The Honorable Clifton Newman  
Circuit Court Judge

Sumter, South Carolina

\_\_\_\_\_, 2013

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER )	THIRD JUDICIAL CIRCUIT
Brandon W. Hodge, )	CASE NO.: 2012-CP-43-1463
Plaintiff, )	
vs. )	PLAINTIFF'S SUPPLEMENTAL
Sumter County, )	MEMORANDUM OPPOSING
Defendant. )	DEFENDANT'S MOTION
_____ )	TO DISMISS

The Plaintiff respectfully submits the following as a supplement to the previous memorandum opposing the Defendant's Motion to Dismiss:

The Defendant stated in its Motion to Dismiss that the motion is based upon the pleadings. The Complaint states that the deputy and other employees of the Sumter County Sheriff's Department were acting as employees of the Defendant. The Defendant's Answer states that the Defendant lacks information to form a belief as to the truth or falsity of those allegations. In over seven months the Defendant has not sought to amend the Answer. So all that is before the Court is the Plaintiff's allegations and the Defendant's statement that it lacks sufficient information to form a belief as to the allegations.

In the Defendant's proposed order granting its Motion to Dismiss, the Defendant relies heavily upon the case of Edwards v. Lexington County Sheriff's Department and County of Lexington, 386 S.C. 285, 688 S.E.2d 125 (2010). In that case the Supreme Court refused to address the issue of whether Lexington County

was a proper party because of the pleadings of Lexington County. The statements relied upon by the Defendant were from a footnote which explicitly stated that the Court was not addressing the issue. The Edwards case does not rule upon the procedural issue as it relates to the S.C. Tort Claims Act. The Court in Edwards respected the content of the pleadings, and it did not seek to change the pleadings before the Court. The footnote relied upon by the Defendant had no bearing on the ruling in the case.

In the case of Cone v. Nettles, 308 S.C. 109, 417 S.E. 2d 523 (1992), also relied upon heavily by the Defendant in its proposed order granting its Motion to Dismiss, the Court specifically stated that the deputy was "more closely connected to the state than to the county." Cone v. Nettles, at 525. The Court did not rule that the deputy had no connection to the county sufficient to support an action pursuant to the S.C. Tort Claims Act. The Court was concerned only with Section 1983, the case did not involve the S.C. Tort Claims Act, and no decision was made as to the S.C. Tort Claims Act.

No case has been found by counsel for the Plaintiff, and no case has been cited by the Defendant which directly rules upon the issue before this Court concerning the S.C. Tort Claims Act. Counsel for the Defendant has presented cases (such as Cone) finding that a sheriff and his deputy are state officials for purposes of Section 1983 actions and the 11<sup>th</sup> Amendment to the U.S. Constitution. But no case has been cited which deals with the procedural and substantive issues raised by the South Carolina Tort Claims Act.

Under the explicit provisions of the S.C. Tort Claims Act a person "acting behalf of or in service to" a governmental entity is defined as an employee, even if he or she is acting without compensation." Section 15-78-30 (c) S.C. Code of Laws (1976 as amended).

While the Defendant has relied upon cases indicating that the Sheriff is a state official for Section 1983 actions, the Defendant denied at the hearing that it is proper to bring an action under the S.C. Tort Claims Act against the State of South Carolina for a sheriff's actions. Rather the Defendant stated at the hearing of its Motion to Dismiss that the action must be brought against the sheriff's office or department. The Plaintiff is requesting that the Court take judicial notice that the Plaintiff is filing by mail, this day, a motion to substitute the Sumter County Sheriff's Office for the Defendant. A copy of the motion is enclosed herewith.

The Plaintiff believes that this action is properly brought, but if the Defendant prefers that one of its Departments be the party Defendant, then surely there would be no objection to the substitution.

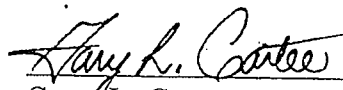
Finally, it is important that parties receive a full consideration of their cases before the Courts of this State. This performs an important public purpose. Under the record before this Court, the allegations have been properly made that the deputy and other employees of the sheriff's office were employees pursuant to the S.C. Tort Claims Act, and the Defendant's pleadings state that it lacks sufficient information to form a belief as to the truth or falsity of the allegations. The Defendant has not sought to amend its pleadings or to file an affidavit denying the

Plaintiff's allegations. It is requesting this Court to dismiss the Plaintiff's action without an Answer controverting the facts alleged by the Plaintiff, without an affidavit or deposition controverting the facts alleged by the Plaintiff, and without a citation of a case which has ruled upon the issue of the procedure and substance of the S/C/ Tort Claims Act as it relates to this case. It was the Defendant who stated in its motion that the motion is based upon the pleadings.

It is respectfully submitted that under the pleadings before the Court the Motion to Dismiss should be denied. There is absolutely no prejudice to the Defendant in denying the motion. If the Defendant believes it is factually correct then it should be a simple matter to support a motion for summary judgment or a later motion with an affidavit or a deposition.

The Plaintiff respectfully requests that the Defendant's Motion to Dismiss be denied.

Respectfully submitted.



---

Gary L. Cartee  
Attorney at Law  
3251 Landmark Dr., Suite 136  
N. Charleston, SC 29418  
(803) 767-1800

N. Charleston, S.C.  
July 2, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER )

Brandon W. Hodge, )

Plaintiff, )

vs. )

Sumter County, )

Defendant. )

IN THE COURT OF COMMON PLEAS  
THIRD JUDICIAL CIRCUIT  
CASE NO.: 2012-CP-43-1463

ORDER DENYING MOTION TO DISMISS

This matter is before the Court pursuant to the Defendant's Motion to Dismiss. For reasons which are set forth below, the Defendant's Motion to Dismiss is denied. The South Carolina Rules of Civil Procedure and the applicable law require that the Defendant's Motion to Dismiss be denied under the record which is before the Court. This ruling in no way prejudices the position of the Defendant which may be taken under a Motion for Summary Judgment, adequately supported by affidavit or deposition. All that is before the Court is the allegation of the Plaintiff that all employees of the Sumter County Sheriff's Department, including the deputy who was driving the car involved in the collision, were employees of the Defendant at the time of the collision, and the Defendant's allegation that it "lacks sufficient information to form a belief as to the truth and veracity of these allegations" and therefore they are denied. There is nothing to prohibit the Defendant from moving for Summary Judgment with a proper factual foundation.

This matter was heard before me at the Sumter County Courthouse on June 17, 2013. The Plaintiff was represented by Gary L. Cartee, Esquire, of the

Charleston County Bar, and the Defendant was represented by James M. Davis, Jr., of the Richland County Bar. The Defendant's Motion to Dismiss was "based upon the pleadings filed in this case, Rules of Court, and such other matters as may be properly presented to the Court at the time of the hearing." The Plaintiff filed with the Court a Memorandum in Opposition to the Motion to Dismiss.

The Motion to Dismiss must be taken as a Rule 12 (c) motion for judgment on the pleadings. All well pleaded allegations must be taken as true. See Carolina Winds Owners' Ass'n. v. Joe Harden Builder Inc., 297 S.C. 74, 374 S.E. 2d 897 (Ct. App. 1988). The pleading must be construed in the light most favorable to the non-moving party. See Woodell, Allen v. Marion Sch. Dist. One, 307 S.C. 297, 414 S.E. 2d 794 (Ct. App. 1992).

The Plaintiff has stated a cause of action pursuant to the S.C. Tort Claims Act. The Defendant has not contradicted the allegations as to tortfeasors being employed by the Defendant at all times material to the Complaint. In fact, the Defendant has stated that it "lacks sufficient information to form a belief as to the truth and veracity of these allegations," it has not sought to amend its pleadings in over seven months, and it has not filed an affidavit or deposition contradicting the allegations of the Complaint at issue. Therefore, upon the record before the Court, the Defendant's Motion must be denied.

The Court hereby denies the Defendant's Motion to Dismiss.

IT IS SO ORDERED.

---

Honorable Clifton Newman  
Presiding Judge, Third Judicial Circuit

July \_\_\_\_, 2013.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER )

THIRD JUDICIAL CIRCUIT

CASE NO.: 2012-CP-43-1463

Brandon W. Hodge, )

Plaintiff, )

vs. )

Sumter County, )

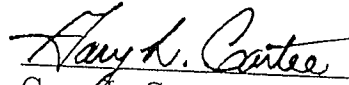
Defendant. )

MOTION TO SUBSTITUTE PARTY

TO DEFENDANT, COUNSEL FOR DEFENDANT AND SUMTER COUNTY SHERIFF'S OFFICE:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves for the substitution of the Sumter County Sheriff's Office as the party Defendant in this action. This motion is made pursuant to the applicable law, including the South Carolina Tort Claims Act, and on the grounds that the Sumter County Sheriff's Office is a Department of Sumter County, and for the furtherance of the ends of justice. This motion is made on the further ground that the Defendant holds out to the public that the Sumter County Sheriff's Office is a Department of Sumter County. Further, at the hearing of the Motion to Dismiss of the Defendant, counsel for the Defendant stated that the Sheriff's Office is the proper party defendant. Further, the Defendant should be estopped from denying that the Sumter County Sheriff's Office is a Department of Sumter County due to its representations and the Sumter County Sheriff's Office's acquiescence in the representations.

This motion will be supported by affidavit, other evidence, and a memorandum of law and fact to be filed with the Court at or before the hearing of this motion.



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N. Charleston, S.C.  
July 2, 2013.

GARY L. CARTEE  
ATTORNEY AT LAW  
3251 Landmark Dr., Suite 136  
N. Charleston, S.C. 29418  
(843) 767-1800  
FAX 767-3451

June 27, 2013

VIA: FAX AND MAIL

The Honorable Clifton Newman  
Judge, S.C. Circuit Court  
PO Box 516  
Kingstree, SC 29556-0516

Re: *Brandon Hodge vs. Sumter County*  
Case No.: 2012-CP-43-1463

Dear Judge Newman:

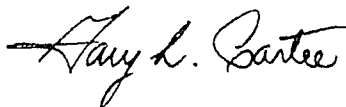
Enclosed herewith please find a proposed Order Denying Motion to Dismiss in the above referenced matter.

Thank you for allowing the parties 10 days to submit proposed orders and an additional five days to submit additional materials in response to the other party's submitted order.

I plan to submit additional material in response within 5 days.

A self-addressed envelope with postage pre-paid is enclosed for your convenience.

Respectfully submitted,



Gary L. Cartee

Enclosures.

cc: James M. Davis, Jr., Esq. (fax and mail)

# DAVIDSON & LINDEMANN, P.A.

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June 27, 2013

Writer's Email: [jdavis@dml-law.com](mailto:jdavis@dml-law.com)

Sent Via Email & U.S. Mail

The Honorable Clifton Newman  
Circuit Court Judge  
Post Office Box 516  
Kingstree, South Carolina 29556-0516

RE: Brandon W. Hodge v. Sumter County  
Civil Action Number: 2012-CP-43-1463  
Claim Number: 5187  
Date of Incident: 02/27/1999  
Our File Number: 290.9100

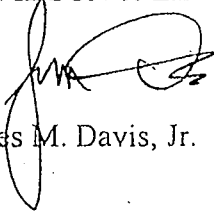
Dear Judge Newman:

Please find enclosed herewith a proposed **Order granting Defendant Sumter County's Motion to Dismiss** in regards to the above-referenced matter. If this Order meets with your approval, please sign the same and return it to me in the envelope provided.

By copy of this letter, I am herewith informing the Plaintiff's attorney of this communication. If you have any questions, please do not hesitate to give me a call.

Very truly yours,

DAVIDSON & LINDEMANN, P.A.

  
James M. Davis, Jr.

JMD/mss  
Enclosure

cc: Gary L. Cartee, Esquire (*Sent Via Email & U.S. Mail*)

GARY L. CARTEE  
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(843) 767-1800  
FAX 767-3451

July 2, 2013

VIA: FAX AND MAIL

The Honorable Clifton Newman  
Judge, S.C. Circuit Court  
PO Box 516  
Kingstree, SC 29556-0516

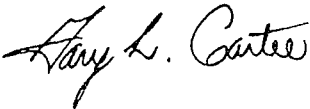
Re: *Brandon Hodge vs. Sumter County*  
Case No.: 2012-CP-43-1463

Dear Judge Newman:

Enclosed please find a Supplemental Memorandum Opposing Defendant's Motion to Dismiss. Also enclosed please find, as an alternative to the longer proposed order previously submitted, a much shorter proposed Order Denying Motion to Dismiss.

The Plaintiff is filing a Motion to Substitute Parties, a copy is enclosed, and the Plaintiff respectfully requests that the Court take judicial notice of the filing of this motion.

Respectfully submitted,



Gary L. Cartee

Enclosures.

cc: James M. Davis, Jr., Esq. (fax and mail)

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

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Robert D. Garfield  
Michael B. Wren

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Sent Via Email & U.S. Mail

The Honorable Clifton Newman  
Circuit Court Judge  
Post Office Box 516  
Kingstree, South Carolina 29556-0516

RE: Brandon W. Hodge v. Sumter County  
Civil Action Number: 2012-CP-43-1463  
Claim Number: 5187  
Date of Incident: 02/27/1999  
Our File Number: 290.9100

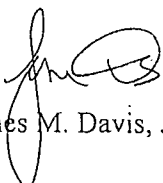
Dear Judge Newman:

Please find enclosed herewith a **Response to Plaintiff's Proposed Order Denying Defendant Sumter County's Motion to Dismiss** in regards to the above-referenced matter.

By copy of this letter, I am herewith serving a copy of the same on the Plaintiff's attorney. If you have any questions, please do not hesitate to give me a call.

Very truly yours,

DAVIDSON & LINDEMANN, P.A.

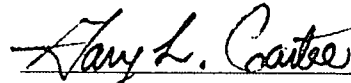
  
James M. Davis, Jr.

JMD/mss  
Enclosure

cc: Gary L. Cartee, Esquire (*Sent Via Email & U.S. Mail*)

CERTIFICATE OF COUNSEL

The undersigned Counsel for Appellants hereby certifies that to the best of his ability the foregoing Record on Appeal contains all of the material proposed to be included by both parties, with the exception of the Collision Report, which request was withdrawn, upon objection of the Defendant.



---

Gary L. Cartee

Attorney at Law

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December 10, 2014.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

---

Appellate Case No.: 2013-001845  
Case No. 2012-CP-43-1463

---

Brandon W. Hodge. . . . . Appellant,

v.

Sumter County. . . . . Respondent.

---

FINAL BRIEF OF APPELLANT

---

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STATEMENT OF ISSUES ON APPEAL

- A. DID THE CIRCUIT COURT ERR IN DISMISSING THE CASE PURSUANT TO RULE 12(b)(6) ON THE RECORD BEFORE THE COURT, WITHOUT ADDITIONAL DEVELOPMENT OF FACTS?
- B. DID THE CIRCUIT COURT ERR IN HOLDING THAT SOUTH CAROLINA HAS "CLEARLY ESTABLISHED THAT DEPUTIES ARE STATE AND NOT COUNTY OFFICIALS" EXCLUSIVELY AND UNDER ALL CIRCUMSTANCES FOR PURPOSES OF LIABILITY UNDER THE S.C. TORT CLAIMS ACT?
- C. DID THE CIRCUIT COURT ERR IN RULING ON THE RESPONDENT'S 12(b)(6) MOTION WITHOUT FIRST HEARING AND RULING UPON THE APPELLANT'S MOTION TO SUBSTITUTE PARTY?

## STATEMENT OF THE CASE ON APPEAL

This action was commenced by the filing of a Summons and Complaint seeking damages pursuant to the South Carolina Tort Claims Act on July 24, 2012. The Respondent responded with an Answer containing a qualified general denial and with a Motion to Dismiss pursuant to Rule 12(b)(6). The Respondent also stated a lack of information to form a belief as to the truth and veracity to respond to many of the allegations of the Complaint, including paragraphs 5 and 23. The Defendant's Motion to Dismiss was heard on June 17, 2013, the matter was taken under advisement, and the Court granted the Motion to Dismiss by Order dated July 2, 2013, and filed July 16, 2013. Appellant received written notice of the entry of the Order on Saturday, July 26, 2013. The Notice of Appeal was filed on August 26, 2013.

## ARGUMENT

### INTRODUCTION

The Plaintiff was injured as a minor when a car owned by the Respondent, Sumter County, and driven by Sumter County Sheriff's Deputy, Anthony L. Horton, collided with a vehicle in which the Plaintiff was a passenger. The Plaintiff brought suit against the Respondent alleging negligence, recklessness, willfulness, and wantonness in the operation of the vehicle, in creating and following practices and procedures, and in the training of the deputy.

The Plaintiff alleged that, "At all times pertinent to this action, all employees of the Sumter County Sheriff's Department, including but not limited to Deputy Anthony L. Horton, were acting within the course and scope of their authority and duties as employees, officers, and or servants of the Defendant, and at all times pertinent to this action, the Sumter County Sheriff's vehicle was being operated pursuant to the purposes and business of the Defendant." Complaint, Paragraph 5; R. pp.5-6. In Paragraph 23 of the Complaint, the Plaintiff alleged a number of specifications of negligence involving operation of the motor vehicle; involving establishment and following of reasonable and proper procedures for pursuits; and, involving training of Deputy Hodges. Paragraph 23 also included a general allegation of negligence, "In failing to exercise the degree of care and caution necessary and reasonable under the circumstances." Complaint, Paragraph 23 (p); R. pp. 7-8.

The Defendant responded in its Answer, in part, that, "As to paragraphs ...5...23... of the Plaintiff's Complaint, this Defendant lacks information upon which to form a belief as to the truth and veracity of these allegations, and therefore, denies these allegations." See Answer, Paragraph 8; R. p. 10.

The Summons and Complaint were served upon the Defendant on November 20, 2012, the Answer stating a lack of information was filed on January 18, 2013, and the hearing on the Respondent's Motion to Dismiss was June 17, 2013. But the Respondent never sought to amend its Answer, and never filed an affidavit changing its allegation that it lacked information to form a belief as to the allegations of Paragraphs 5 and 23.

For a Rule (12)(b)(6) motion a plaintiff's allegations must be taken as true. (The Respondent's Motion in this case is actually a 12(c) motion for judgment on the pleadings, since the motion states that it is based upon the pleadings). Motion to Dismiss, p. 2; R. P. 14. In this case, the record contains a statement by the Respondent in its Answer that it does not know whether the allegations of Paragraph 5 and 23 are true.

Since the case was decided on a Rule 12(b)(6) motion, the facts of the Respondent's involvement are not known. Did the Defendant own the Sumter County Sheriff's vehicle? The accident report is not part of the record, but Appellant's Counsel certifies that it states that the Respondent Sumter County was the owner. Was the pertinent insurance policy owned and provided by the Respondent Sumter County? This is a fact beyond the scope of the pleadings and is not known by the Court or Appellant's Counsel. Was the Respondent otherwise involved? This is unknown by the Court or Appellant's Counsel. Were other employees of the Sheriff's Department involved in causation of the accident? This is unknown by the Court or by Appellant's Counsel. Are there other negligent actions pursuant to the general allegation of negligence, in addition to the specifications of negligence? This is unknown by the

Court or by Appellant's Counsel. These and other relevant and material facts are unknown because the case has been cut short by dismissal pursuant to Rule 12(b)(6).

If the Respondent has obtained information to oppose the allegations of Paragraphs 5 and 23 of the Complaint, it should at the least be required to file an affidavit setting forth its position. Not only has the Respondent not filed an affidavit, but it has not even made an effort to amend the Answer to take out the admission that it does not know the truth and veracity of Paragraphs 5 and 23 of the Complaint.

A. DID THE CIRCUIT COURT ERR IN DISMISSING THE CASE PURSUANT TO RULE 12(b)(6) ON THE RECORD BEFORE THE COURT, WITHOUT ADDITIONAL DEVELOPMENT OF FACTS?

1. Applicable standard.

There are many appellate cases of this Court, the South Carolina Supreme Court, many federal courts, and many appellate courts of other states which strictly limit the application of Rule 12(b)(6) motions. There is good reason for these strict rules. A Rule 12(b)(6) dismissal deprives the plaintiff of his cause of action without any development of the facts of the case.

The Motion to Dismiss in this case is actually a motion for judgment on the pleadings pursuant to Rule 12(c) since it says it "is based upon the pleadings filed in this case...." In such motions, all of the plaintiff's well pleaded allegations are taken as true. Carolina Winds Owners' As'n v. Joe Harden Builder, Inc., 297 S.C. 74, 374 S.E. 2d 897 (Ct. App. 1988). Also, the pleading must be construed in the light most favorable to the non-moving party. Woodell Allen v. Marion Shc. Dist. One, 307 S.C. 297, 414 S.E. 2d 794 (Ct. App. 1992).

Where the development of facts in addition to the pleadings would be useful,

cases should not be decided on 12(b)(6) motions or 12(c) motions. Where a more full development of the facts would be useful, even summary judgment motions should not determine cases. Where an issue is novel, it should not be decided on a Rule 12(b)(6) or a Rule 12(c) motion. See Keiger v. Citgo v. Coastal Petroleum, Inc., 326 S.C. 369, 482 S.E. 2d 792 (Ct. App. 1997) at 373.

There are important policy reasons for courts to be required to develop adequate facts before deciding a case. Where there are complex, new or novel issues, and where there are procedural issues involving the application of law to fact, the quality of justice is diminished when the record is inadequate.

Under the S.C. Tort Claims Act a person "acting on behalf of or in service to a governmental entity" is defined as an employee. S.C. Code Ann. Section 15-78-30 (c).

2. There is a novel issue for the South Carolina Appellate Courts in this case.

In its Order the Circuit Court relies upon cases decided pursuant to 42 U.S.C. Section 1983. These cases do not apply to the S.C. Tort Claims Act.

The Court's Order states that "In South Carolina, it is clearly established that deputies are State and not County officials. See Cone v. Nettles, 308 S.C. 109, 112, 417 S.E. 2d 523, 524-525 (S.C. 1992). This case dealt not with the South Carolina Tort Claims Act, but with 42 U.S.C. Section 1983. The analysis in Section 1983 cases is for the purpose of determining whether there is individual liability for certain defined claims under federal law. If a person is determined to be predominantly a State official, then that person is exempt under the 11<sup>th</sup> Amendment to the U.S. Constitution. Virtually all of the Section 1983 cases in South Carolina, whether federal or state cases, hold that sheriffs and their deputies are partly state and partly county officials.

If the Section 1983 cases referred to by the Respondent and the Circuit Court

applied to the S.C. Tort Claims Act, then cases against sheriffs or deputies would be filed against the State of South Carolina or the County where they serve. If the Circuit Court is correct in the Order in this case that it "is clearly established that deputies are State not County officials," then an action against a sheriff or deputy would be properly filed against the State of South Carolina.

The Court also relies upon Edwards v. Lexington County Sheriff's Department and County of Lexington, 386 S.C. 285, 688 S.E. 2d 125 (2010), footnote 1. In that case the Supreme Court in a footnote indicated that the sheriff and his deputies are State employees and distinct for liability purposes. However, the same footnote states that the Court is not ruling upon the issue as it relates to the Tort Claims Act. The Defendant did not raise the issue and it was not briefed. The S.C. Supreme Court did not decide the issue.

The South Carolina Appellate Courts have not ruled directly that a sheriff's deputy can never be sued under the S.C. Tort Claims Act, and this is a novel issue which should not be dealt with in a Rule 12(b)(6) motion.

3. Application of law to facts.

In this case all that is before the Court are the pleadings. All of the pleaded facts must be taken as true, and all inferences must be considered in the light most favorable to the Appellant. It is undisputed that the Appellant alleged that "all employees of the Sumter County Sheriff's Department, including but not limited to Deputy Anthony L. Horton, were acting within the course and scope of their authority and duties as employees, officers, and or servants of the Defendant, and at all times pertinent to this action, the Sumter County Sheriff's vehicle was being operated pursuant to the

purposes and business of the Defendant." Complaint, Paragraph 5; R. pp. 5-6. In Paragraph 23 of the Complaint, allegations were made of negligence in the operation of the vehicle, in establishment and following of practices and procedures, and in training of the deputy. Paragraph 23(p) also states general allegations of negligence.

It is undisputed that the Respondent expressly stated that it "lacks information upon which to form a belief as to the truth and veracity" of the allegations of Paragraph 5 and of Paragraph 23. Answer, Paragraph 8; R. p. 10. The Respondent's Motion to Dismiss expressly stated that it relied upon the "pleadings filed in this case." Motion to Dismiss, p. 2; R. p. 14. Therefore the admission of a lack of knowledge of truth and veracity of the allegation of the Complaint's Paragraphs 5 and 23, including 23(p) are before the Court.

So the record before the Court is that the deputy and other employees of the sheriff's department were acting as employees for the Respondent while engaging in negligent activities. Some of the negligent activities alleged involve the operation of the vehicle, some involve development and application of policies and procedures, and some involve training of the deputy. The Respondent has admitted ignorance as to these allegations.

Because the matter is being decided solely on the pleadings, the Court does not have the benefit of other information. Was the Sumter County Sheriff's Car owned by the Respondent? The accident report says that it was. It is unknown whether the Respondent provided the liability insurance, the maintenance, and other factors. It is unknown which employees established policies and procedures for pursuits, who provided funding for the policies and procedures, who provided training and funding for training and many other issues.

Further, the South Carolina Appellate Courts have not dealt directly with the issue of the application of the Tort Claims Act as it applies to this case. It has not been decided whether liability is exclusive to one entity under the S.C. Tort Claims Act, S.C. Code Ann. Section 15-78-10.

It is respectfully submitted that this case should be reversed and remanded for the development of additional facts.

B. DID THE CIRCUIT COURT ERR IN HOLDING THAT SOUTH CAROLINA HAS "CLEARLY ESTABLISHED THAT DEPUTIES ARE STATE AND NOT COUNTY OFFICIALS" EXCLUSIVELY AND UNDER ALL CIRCUMSTANCES FOR PURPOSES OF LIABILITY UNDER THE S.C. TORT CLAIMS ACT?

By dismissing the Summons and Complaint in this action pursuant to Rule 12(b)(6), the Circuit Court ruled that it is clearly established under existing law that conduct by deputy sheriffs cannot ever result in liability to a county.

Under the South Carolina Tort Claims Act, S.C. Code Ann. Section 15-78-10, actions may be brought only against a political subdivision or agency. The act provides "for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty..." S.C. Code Ann. Section 15-78-20.

For purposes of the Tort Claims Act an employee is defined as "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 of or in service of a governmental entity in the scope of official duty..." S.C. Code Ann. Section 15-78-30(c).

Under procedure prior to the Tort Claims Act, a sheriff could be held liable for the actions of his deputy. S.C. Code Ann. Section 23-13-10. The Tort Claims Act is now

the exclusive remedy available. Suits against individuals, including sheriffs, are no longer allowed. See Robinson v. Metts, 86 F. Supp. 2d 557 (D.C.S.C. 1997).

In Pelfrey v. Oconee County, 207 S.C. 433, 36 S.E. 2d 297 (1945), it was held that a sheriff's clerk who was injured in a wreck while acting as a deputy was an employee of Oconee County for purposes of workers' compensation. In Willis v. Aiken County, 203 S.C. 96, 26 S.E. 2d 313 (1943), a sheriff's deputy who died as the result of breaking up a liquor still was found to be an employee of Aiken County for purposes of workers' compensation.

In Trammell v. Fidelity & Casualty Co. of New York, 45 F. Supp. 366 (D.C.S.C. 1942), applying South Carolina law, it was stated that, "the Sheriff of a county is the chief law enforcement officer of that county..."

The case of Heath v. County of Aiken, 295 S.C. 416, 368 S.E. 2d 904 (1988), dealt with S.C. Code Ann. Section 4-9-30(7). In that case the Supreme Court ruled that deputies are not "employees" under that Code section for purposes of personnel policies and grievance procedure. However, the Supreme Court ruled that other employees working for the Sheriff were covered by certain county procedures. The Court ruled that the legislature could grant powers as it wished for the purposes of the statute. This case did not deal with the Tort Claims Act.

There have been many cases involving federal civil rights lawsuits pursuant to 42 U.S.C. Section 1983. These cases deal with whether there is immunity under the 11<sup>th</sup> Amendment to the U.S. Constitution. For purposes of Section 1983 it has been held that a sheriff and his deputy are more like a state official than a county official. These cases are distinct from the S.C. Tort Claims Act. The Tort Claims Act explicitly deals with this issue: "Nothing in this chapter is construed as a waiver of the state's or

political subdivision's immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina." S.C. Code Ann. Section 15-78-20.

Section 1983 is vastly different than the Tort Claims Act. Section 1983 actions can only be brought against a "person" under the statute and is constitutionally prohibited from being brought against a state or a state official. Section 1983 actions feature unlimited liability. The S.C. Tort Claims Act limits liability in the case at bar to \$250,000.00, it prohibits in most cases actions against individuals, and it provides liability not only for permanent employees, but for anyone acting on "behalf" of a political subdivision.

An example of a Section 1983 case, which was decided in the South Carolina state courts, is Cone v. Nettles, 308 S.C. 109, 417 S.E. 2d 523 (1992). This case was decided under Section 1983, and it had nothing to do with the S.C. Tort Claims Act. In that case it was found that a sheriff was a state official for purposes of Section 1983. The Court pointed out that the state had the "potential power of control" over the sheriff, and that was all that was required for Section 1983 immunity. As to the deputy in that case, the Court found that he was "more closely connected to the state than to the county," which was all that was required to find him a state official for purposes of Section 1983 immunity. It was clear in the case that the deputy was a county official for other purposes. Any inference beyond purposes of Section 1983 liability is dicta not necessary for the ruling.

It is clear that sheriffs and sheriff's deputies are in large part county officials. For

example, sheriffs are required by statute to submit strict monthly accounts of all funds received to the county auditor and the county treasurer. S.C. Code Ann. Section 23-15-130. A sheriff upon taking office is required to take not only the oath of office in Article 3, Section 25 of the S.C. Constitution, but he is required to take the oath as a county officer set forth in S.C. Code Ann. Section 8-3-20. S.C. Code Ann. Section 23-11-20. Deputies are required to take an oath as a "county deputy," and they are required to file a bond approved by the county attorney and filed with the county clerk of court. S.C. Code Ann. Section 23-13-20.

Deputies are required by statute to patrol the entire county. S.C. Code Ann. Section 23-13-70. The funding of sheriffs by the counties is in part controlled by S.C. Code Ann. 4-9-30(5). And there are many more county duties regarding sheriffs and deputies.

The case of Edwards v. Lexington County Sheriff's Department and County of Lexington, 386 S.C. 285, 688 S.E. 2d 125 (2010), does not decide the issue before the Court in this case. In fact, the Supreme Court did not decide the issue of whether Lexington County was a proper party. In a footnote (footnote 1), the Court stated that a sheriff is a state official and liability is distinct from the county, but the Court stated that it was not deciding the issue. The Court respected the pleadings of the parties. The issue was not before the Court, it was not briefed, and it was not decided by the Supreme Court.

In the South Carolina District Court case of Carroll v. Greenville, County Sheriff's Dept., 871 F. Supp. 844 (1994), the Court dismissed the case for lack of jurisdiction. The court ruled that Section 1983 did not apply. There is dicta in the case regarding a suit against a sheriff in his official capacity. But the case does not involve directly the

issues of this case, and if it did, it is not binding precedent. Likewise, the South Carolina District Court case of Ramos v. Berkeley County, Not reported in F. Supp.2d (2012), 2012 WL 5292895, contains some dicta regarding an employee of a sheriff's department. However, the employee liability issues in the case have no bearing on the issues in this case.

The South Carolina Appellate Courts have not directly addressed the issue before this Court. There has been no South Carolina Appellate Court case which has explicitly held that under no circumstances can a county be held responsible for the actions of a deputy acting on behalf of the county.

Also, there has been no South Carolina Appellate Court case which has addressed the issue of whether a person may be an employee of more than one entity for the purpose of the South Carolina Tort Claims Act.

This is a novel issue which should not be decided on a Rule 12(b)(6) motion. In this case allegations which could apply to employees other than the deputy have been made. In this case allegations have been made in Paragraph 5 and 23 of the Complaint which implicate the Respondent. And before the Court is the Respondent's admission of ignorance of whether the allegations of Paragraphs 5 and 23 of the Complaint are true.

It is respectfully submitted that the South Carolina Appellate Courts have not ruled on the precise issue before this Court, and that the case should be reversed and remanded for the development of a fuller record.

C. DID THE CIRCUIT COURT ERR IN RULING ON THE RESPONDENT'S 12(b)(6) MOTION WITHOUT FIRST HEARING AND RULING UPON THE APPELLANT'S MOTION TO SUBSTITUTE PARTIES

The Honorable Circuit Judge in this case generously granted the parties additional time to file supplemental material for the consideration of the Court. The Appellant, after the hearing, and before the decision of the Court, filed a motion to substitute the Sumter County Sheriff's Office for the Respondent. A copy of the Motion to Substitute Party was forwarded to the Honorable Circuit Judge along with the request that the Court take judicial notice of the filing of the motion. Letter of Counsel, R. p. 67. Counsel for Appellant also referred to the Motion to Substitute Party in the Plaintiff's Supplemental Memorandum Opposing Defendant's Motion to Dismiss. The supplemental memorandum also referred to the Motion to Substitute Party. Plaintiff's Supplemental Memorandum Opposing Defendant's Motion to Dismiss, p. 3; R. p. 59, lines 10-12.

The Tort Claims Act provides explicitly for the substitution of an entity for an individual. S.C. Code Ann. Section 15-78-70(c).

Under the circumstances of this case, the Appellant should at least have been afforded a hearing on the Motion to Substitute Party before the action was dismissed pursuant to Rule 12(b)(6). The Respondent alleged in its Answer that it lacked information as to whether it was true that the persons alleged to have acted negligently were acting on behalf of the Respondent. It is clear that the deputy and other sheriff employees are also county officials. Even the Section 1983 cases relied upon by the Respondent often state that the deputies have county duties. By statute a county deputy is required to patrol the entire county. S.C. Code Ann. Section 23-13-70.

It is respectfully requested that this case be reversed and remanded for a hearing on the Motion to Substitute Party, before any ruling on the Respondent's Rule 12(b)(6) motion.

## CONCLUSION

The record before the Court includes allegations that the Respondent was negligent in a number of respects. It includes allegations that the employees of the Sumter County Sheriff's Department were acting as employees and on behalf of the Respondent. The Respondent in its Answer stated explicitly that it lacked information to form a belief as to the truth and veracity of the pertinent allegations of the Complaint.

The Respondent then moved to dismiss based upon the pleadings. Under the record before the Court, with the allegations of the Complaint taken as true and in the light most favorable to the Plaintiff, respectfully, it must be found that dismissal pursuant to Rule 12(b)(6) or Rule 12(c) is error.

Respectfully, if the Respondent after remand, desires to change its positions as to whether it knows if the pertinent allegations of the Complaint are true, it obviously may do so. And it can move for summary judgment with an affidavit.

As argued above, there are many facts pertinent to this case which are not before the Court. This includes ownership of the vehicle, insurance on the vehicle, identities and involvement of all individuals for whom negligence is alleged, other involvement of additional employees of the Respondent, and other important issues.

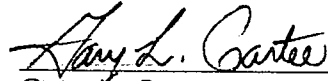
Respectfully, it would be wrong to allow the Respondent to have a dismissal under this record and without being required to provide additional facts.

Further, it is respectfully submitted that the South Carolina Appellate Courts have not yet ruled upon the issue of whether a deputy can be a county official under some circumstances under the Tort Claims Act. It has also not been ruled upon by the South Carolina Appellate Courts whether an official may be acting in a dual capacity for

purposes of the Tort Claims Act.

Finally, the Circuit Judge was made aware of a Motion to Substitute Party prior to the dismissal of this case. It is respectfully submitted that the Appellant should at least have been given an opportunity for this motion to be heard.

It is respectfully submitted that the dismissal of this case, on the record before the Court, should be reversed and remanded for further proceedings. Respectfully, the Appellant should not be deprived of the remedy sought upon this record.



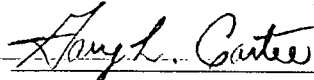
Gary E. Cartee  
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N. Charleston, S.C.  
January 29, 2015.

Attorney for Appellant

CERTIFICATE OF COUNSEL

Counsel for the Plaintiff hereby certifies that the Final Brief of Appellant is in compliance with Rule 211(b), SCACR.



---

Gary L. Cartee  
Attorney at Law  
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(803) 767-1800

---

Attorney for the Appellant

N. Charleston, SC  
January 29, 2015.

CERTIFICATE OF COMPLIANCE

Counsel for the Plaintiff hereby certifies that the Final Brief of Appellant is in compliance with the South Carolina Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, dated April 15, 2014.



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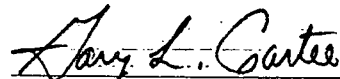
Attorney for the Appellant

N. Charleston, SC  
January 29, 2015.

CERTIFICATE OF SERVICE

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Clifton Newman, Circuit Court Judge

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Case No. 2012-CP-43-1463

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Brandon W. Hodge

Appellant

Sumter County

Respondent

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BRIEF OF RESPONDENT

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## STATEMENT OF THE CASE

This action rises out of a police pursuit that occurred on February 27, 1999. According to the allegations of the Complaint, the Appellant Brandon Hodge was a "small child" on that date and was a passenger in a vehicle driven by his father. (R. 5). Hodge alleges that Deputy Sheriff Anthony L. Horton engaged in a "high speed chase" of the vehicle driven by his father. (R. 6). During that pursuit, Deputy Horton allegedly lost control of his vehicle and struck the vehicle in which Hodge was a passenger, and that collision allegedly resulted in injuries to Hodge. (R. 6). Hodge alleges that Deputy Horton was negligent in his operation of the vehicle during the pursuit. He further alleges that "Headquarters" failed to exercise proper control over Deputy Horton during the pursuit. Lastly, he alleges the negligent failure to properly train Deputy Horton. (R. 6-8).

In his Complaint, the Appellant Hodge brought suit only against the Respondent Sumter County. Hodge erroneously pled that all employees of the Sumter County Sheriff's Office, including Deputy Horton, were employed by Sumter County. (R. 5).

The Respondent Sumter County filed a Motion to Dismiss contemporaneously with the filing of its Answer. Sumter County asserted that the County is not a proper party under the South Carolina Tort Claims Act because

under South Carolina law it is well settled that a sheriff and his deputies are not county employees. (R. 13). The County's motion to dismiss was heard by Circuit Court Judge Clifton Newman on June 17, 2013. By Order filed July 16, 2013, Judge Newman granted Sumter County's motion and dismissed the County as a party-defendant. (R. 1-4).

The Appellant Hodge did not file a Rule 59(e) motion but rather filed an appeal to this Court.

## ARGUMENTS

In his Complaint, the Appellant Brandon Hodge alleged that the Respondent Sumter County was negligent for a motor vehicle collision that occurred during a police pursuit on February 27, 1999. Hodge alleges that the County is liable based upon the conduct of Deputy Sheriff Anthony Horton and other unidentified employees with the Sumter Court Sheriff's Office. Circuit Judge Clifton Newman ruled that the employees of the Sheriff's Office are not county employees as a matter of state law and thus the County cannot be liable for Hodge's injuries. That ruling was correct and should be affirmed.

The dispositive question before the Circuit Court and this Court is an issue of law. That issue of law has previously been decided by the South Carolina Supreme Court and has been reaffirmed on numerous occasions. Contrary to Hodge's assertions, there is no novel issue of law raised in this litigation.

Specifically, the issue before Judge Newman was whether Sumter County is a proper party which may be held liable for the alleged negligence committed by Deputy Horton and other unidentified employees of the Sumter Court Sheriff's Department. That issue is well settled as a matter of law. In *Cone v. Nettles*, 308 S.C. 109, 417 S.E.2d 523 (1992), the South Carolina Supreme Court held that a sheriff and his deputies in South Carolina are state, rather than county, employees.

The Court in *Cone* 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 *Gulledge 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 *Gulledge* 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.*

Nonetheless, the Appellant Hodge appears to suggest that the existing case law, including *Cone*, is distinguishable from the present case because *Cone* was a Section 1983 action rather than an action brought under the South Carolina Tort Claims Act. However, that is a distinction without a difference. Hodge does not offer any plausible explanation as to why a sheriff or deputy sheriff should be considered a state employee for purposes of a federal cause of action but a county employee for purposes of a state tort claim. Moreover, *Edwards*, which is the most recent case reaffirming *Cone*, is a Tort Claims Act case. In short, there is no valid basis for treating a sheriff and his deputies as county employees under the Tort Claims Act and treating them as state employees for Section 1983 actions.

Furthermore, Section 15-78-70(c) of the Tort Claims Act, which governs the Appellant's negligence action against Sumter County, specifically provides that "a person, when bringing an action against a governmental entity under the provisions of this chapter shall name as a party defendant only the agency or political subdivision *for which the employee was acting.*" S.C. Code Ann. § 15-78-70(c). (Emphasis added). Similarly, in *Faile v. South Carolina Department of Juvenile*

*Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002), the Supreme Court held that "only the entity employing the employee whose act gives rise to the claim may be sued." 566 S.E.2d at 543. Clearly, any employees of the Sheriff's Office, including Deputy Horton who was involved in the pursuit, would be acting for the Sumter County Sheriff and not for Sumter County. Thus, Sumter County cannot be held liable under the Tort Claims Act for the acts or omissions of the Sheriff or his deputies in conducting the pursuit at issue. Sumter County's motion to dismiss was thus properly granted.

Because the legal issue dispositive of Sumter County's motion to dismiss is clearly established by existing Supreme Court precedent, the Appellant Hodge instead attempts to argue that Judge Newman's order was contrary to the standard of review applicable to a Rule 12(b)(6) motion. Hodge maintains that he has pled that "all employees of the Sumter County Sheriffs Department, including but not limited to Deputy Anthony L. Horton" were employees of Sumter County. (R. 5). He insists that the standard of review required Judge Newman to accept those allegations as true for purposes of adjudicating Sumter County's Rule 12(b)(6) motion.

When reviewing a motion to dismiss for failure to state facts sufficient to constitute a cause of action, the pleadings must be construed liberally, and all *well pled facts* must be presumed true." *Doe v. Bishop of Charleston*, 407 S.C. 128,

754 S.E.2d 494, 497-498 (2014). (Emphasis added). However, only "well pled facts" are to be presumed true. In contrast, issues of law -- which are not "well pled facts" -- are for the Court and are not determined by the pleadings. Importantly, this Court has previously explained 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." *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 699 S.E.2d 699, 705 (Ct. App. 2010). (Emphasis in original). Moreover, 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 short, issues of law are not "well pled facts," and the court is not required to accept those as true.<sup>1</sup>

Therefore, as the South Carolina Supreme Court has recently reaffirmed, the status of a sheriff and his deputies as state, not county, employees is already "settled law." *Edwards v. Lexington County Sheriff's Department*, 386 S.C. 285, 688 S.E.2d 125, 127, n.1 (2010). It is not a question of fact, nor can it be transformed into a question of fact by creative pleading or even by any admissions

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<sup>1</sup> By way of analogy, the same is also true where parties enter into stipulations regarding matters of law. Courts are never bound by parties' representations or stipulations as to issues of law. See, *Walterboro Community Hospital v. Meacher*, 392 S.C. 479, 709 S.E.2d 71 (Ct. App. 2011), (stipulations as to the law are not binding on the court); *McDuffie v. McDuffie*, 308 S.C. 401, 418 S.E.2d 331, 336 (Ct. App. 1992) (holding a stipulation concerning a question of law is not binding on the court); *Alltel Communications, Inc. v. South Carolina Department of Revenue*, 399 S.C. 313, 731 S.E.2d 869, 872 (2012) (holding that an "issue of law [is] to be decided by the court, rather than the parties" and "courts are not bound by parties' stipulations of law").

by the parties. In other words, Hodge's allegation that Deputy Horton is an employee of Sumter County is not a "well pled fact" that must be presumed as true. Instead, Judge Newman was correct to apply the settled law as established by Supreme Court precedent rather than be bound by Hodge's pleading which was contrary to that precedent.

Hodge also argues beyond what was pled that it is possible that employees of Sumter County may have been at fault. He argues that the County owned the vehicle driven by Deputy Horton. However, even if that is true, it is well settled that mere ownership of a vehicle does not give rise to liability. *See, Holder v. Haynes*, 193 S.C. 176, 7 S.E.2d 833 (1940). Furthermore, Hodges has not alleged any claim against the County for negligent entrustment or for negligent maintenance of the vehicle. Instead, Hodge focuses on the alleged acts and omissions of Deputy Horton, who he has pled was a deputy sheriff and thus not a county employee per the holding from *Cone* and its progeny. Hodges also makes allegations regarding negligent supervision of the pursuit and negligent training of Deputy Horton, but it is clear that the chain of command in the Sheriff's Office responsible for supervision of deputies, training, and policy would consist of the Sumter County Sheriff and other deputies, none of whom are county employees as a matter of law. Thus, there is no basis for concluding that Hodge has pled a claim of negligence committed by an actual employee of Sumter County.

Finally, the Appellant Hodge argues that Judge Newman erred in not adjudicating his motion to substitute party, which was filed subsequent to the June 17, 2013 motion hearing. The motion to substitute party was actually filed on July 5, 2013, which was *after* Judge Newman issued the order on appeal. Judge Newman dated his execution of the order as July 2, 2013. (R. 4).

At any rate, this argument fails for several reasons. First, as mentioned, there is no indication that Judge Newman was aware of the motion to substitute party when he issued the order on appeal. Second, there is no indication that the motion to substitute party was properly before Judge Newman. Third, the filing of a motion to substitute party does not prevent or bar the dismissal of Sumter County as a party-defendant. Judge Newman's order simply dismisses Sumter County as an improper party, which was a correct ruling. Fourth, after Judge Newman issued his order, Hodge never filed a Rule 59(e) motion requesting that the motion to substitute party be adjudicated. This issue, in fact, was never raised to nor decided by the Circuit Court and thus is not preserved for appeal.<sup>2</sup> In sum, Hodge's filing

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<sup>2</sup> The Supreme Court and this Court have repeatedly explained that an appellant cannot raise an issue on appeal that was not first raised to *and* decided by the lower court. In *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), the Supreme Court explained that "[i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." 602 S.E.2d at 779-780. "Error preservation requirements are intended 'to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.'" *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004), *citing I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). "It is well settled that an appellate court cannot address an issue unless it was raised to, *and ruled upon by*, the trial court." *Id.* (Emphasis in original).

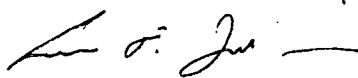
of a motion to substitute party does not require a different result nor support the conclusion that Judge Newman erred in dismissing Sumter County as a party-defendant.

**CONCLUSION**

Based on the foregoing discussion and analysis, the Respondent Sumter County respectfully requests that this Court affirm the order of Circuit Court Judge Clifton Newman dismissing the County as an improper party to this action.

Respectfully submitted,

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**CERTIFICATE OF COUNSEL**

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The undersigned counsel for the Respondent Sumter County certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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**CERTIFICATE OF COMPLIANCE**

---

The undersigned counsel for the Respondent Sumter County certifies that the Final Brief of Respondent complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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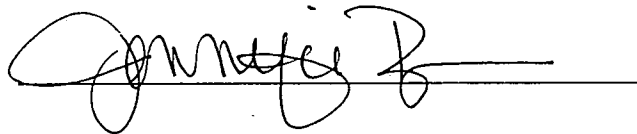
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**CERTIFICATE OF SERVICE**

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The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent Sumter County, does hereby certify that service of the **Brief of Respondent** 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 29th day of December 2014:

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A handwritten signature in black ink, appearing to read "Gary L. Cartee", is written over a horizontal line.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Clifton Newman, Circuit Court Judge

---

Appellate Case No.: 2013-001845  
Case No. 2012-CP-43-1463

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Brandon W. Hodge. . . . . Appellant,

v.

Sumter County. . . . . Respondent.

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FINAL REPLY BRIEF OF APPELLANT

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## ARGUMENT

A. There are facts and inferences in dispute.

Respectfully, it is clear that the Respondent's Brief does not answer some important questions. (1) Why did the Respondent file an Answer which stated a lack of information "to form a belief as to the truth and veracity of these allegations....?" See Paragraphs 5 and 23 of the Complaint, R. p. 5-6, 7-8; and Paragraph 8 of the Answer, R. p. 10. (2) Why did the Respondent never amend Paragraph 8 of the Answer? (3) Why did the Respondent not file an affidavit contesting the allegations of Paragraphs 5 and 23 of the Complaint and supporting its Motion to Dismiss?

It is a reasonable inference to be drawn from the record that the reason the allegations were not specifically denied by affidavit, or in the pleadings, is that one or more of the specifications of negligence, or the general allegation of negligence, involved a party or parties acting on behalf of the Respondent, or was a direct employee of the Respondent.

The record before the Court contains the allegations of the Plaintiff that "all employees of the Sumter County Sheriff's Department" were acting for the Respondent and "pursuant to the purposes and business of the Defendant." See Complaint, Paragraph 5, R. pp. 5-6. Also, Paragraph 23 of the Complaint makes allegations regarding the establishment of proper procedures for pursuits and training of the deputy (among other specifications of negligence). Paragraph 23 also includes a general allegation of negligence, "In failing to exercise the degree of care and caution necessary and reasonable under the circumstances." See Complaint,

Paragraph 23 (p), R. p. 8.

The Respondent argues in its Brief that "it is clear that the chain of command in the Sheriff's Office responsible for supervision of deputies, training, and policy would consist of the Sumter County Sheriff and other deputies, none of whom are county employees as a matter of law." Respondent's Brief, p. 8. However, that is not clear in the record before the Court. The Respondent failed to file an affidavit supporting those allegations. The Respondent failed to amend its Answer to make those allegations. Those allegations are not in the record either pursuant to affidavit or to pleading. Those allegations are found only in the Respondent's Brief, not in the record before the Court.

It is directly alleged that the Respondent was negligent in failing to establish policies and in training of Deputy Horton.

There simply is no record stating that all of the persons involved in establishment of policies or training of Deputy Horton were other deputies or the Sheriff himself. The identity of those persons, and their employer, is not in the record.

The Respondent's Brief also alleges that the Appellant's Complaint did not make specific allegations of negligent entrustment or negligent maintenance of the vehicle. Respondent's Brief, p. 8. However, the Complaint does include a general allegation of negligence in Paragraph 23 (p), R. p. 8, which could be made more specific depending upon facts which are discoverable.

For Rule 12 motions of dismissal, all well pleaded allegations are to be taken

as true. But more than that, the pleadings must be construed in the light most favorable to the non-moving party. And more than that, the facts and the inferences reasonably deducible from them must be taken in the light most favorable to the non-moving party. The action should not be dismissed if further elucidation of the facts would be beneficial.

The Respondent relies in part upon the case of Heath v. County of Aiken, 295 S.C. 416, 368 S.E. 2d 904 (1988). That case held that some employees of the Sheriff were covered by county personnel policies and grievance procedures. The case held that S.C. Code Ann. Section 4-9-30(7) applied to some Sheriff employees and not to others. The Court held that section of the Code did not apply to deputies, but it ruled that the legislature could grant powers as it wished for the purposes of the statute. That case had nothing to do with the Tort Claims Act.

The Respondent relies heavily upon the case of Cone v. Nettles, 308 S.C. 109, 417 S.E. 2d 523 (1992). That case dealt with liability under 42 U.S.C. Section 1983. The case had nothing to do with liability under the Tort Claims Act.

The Respondent argues in its brief that liability under Section 1983 as opposed to liability under the Tort Claims Act is a "distinction without a difference." Brief of Respondent, p. 5. The Appellant respectfully disagrees. Liability under Section 1983 and liability under the S.C. Tort Claims Act are almost polar opposites. Section 1983 has to do with liability of "persons." The S.C. Tort Claims Act has to do with liability of governmental entities. Section 1983 is restricted by the U.S. Constitution to actors who are not acting primarily as state officials. The analyses of Section 1983 liability as it relates to Sheriffs and deputies is solely

concerned with the U.S. Constitution's protections of states from liability.

There are no such concerns connected with the S.C. Tort Claims Act. On the contrary the Tort Claims Act specifically provides that, "Nothing in this chapter is construed as a waiver of the state's or political subdivision's immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina." S.C. Code Ann. Section 15-78-20.

It is respectfully submitted that it is a fundamental misunderstanding of the Section 1983 cases to confuse them with the S.C. Tort Claims Act. Section 1983 predates the S.C. Tort Claims Act and involves entirely different legal principles.

The Cone case was decided under Section 1983 and has nothing to do with the S.C. Tort Claims Act. It does not at all rule out a deputy being a county official but states that a deputy is "more closely connected to the state than to the county...." Cone, supra, at 417 S.E. 2d at 525. The deputy was found to be more closely connected to the state than to the county and a state official for purposes of Section 1983 liability. It does not address liability under the S.C. Tort Claims Act or the ways in which a deputy is also a county official.

B. There is a novel issue of law at issue.

The Respondent's Brief asserts that Judge Newman ruled that "the employees of the Sheriff's Office are not county employees as a matter of state law..." The Respondent asserts that ruling is correct. The Respondent further asserts that the matter of law has been previously decided and "reaffirmed on

numerous occasions.”

However, the Respondent fails to cite even one case under the S.C. Tort Claims Act for this proposition. The Respondent cites the Cone case. As noted in the previous section, the Cone case dealt with liability under Section 1983 and not the S.C. Tort Claims Act. The Respondent cites the Heath case. As noted in the previous section, the Heath case dealt with S.C. Code Ann. Section 4-9-30(7), which involved county personnel policies and grievance procedures. Heath found that deputies were not covered by the code section at issue, but contrary to the Respondent’s position, it also found that numerous other Sheriff’s employees were covered by the county’s policies and procedures. In this case, a number of persons allegedly negligent have not yet even been identified, because the case has not proceeded past the pleadings, and the Respondent submitted no affidavit to support its motion.

Finally, the Respondent cites the case of Edwards v. Lexington County Sheriff’s Department, 386 S.C. 285, 688 S.E. 2d 125 (2010). The Respondent relies upon a footnote. The footnote is clearly triple or quadruple dicta. The footnote states that “the Sheriff and sheriff’s deputies” are State, not county, employees.” However, the footnote makes it clear that (1) the parties did not address the issue, (2) the parties did not brief the issue, (3) the issue was not before the court, and, (4) the Court was not deciding the issue as a part of its opinion.

The Appellant does not believe that the Respondent is suggesting that the State is the proper party for all actions under the S.C. Tort Claims Act alleging

negligence by Sheriffs, deputies, or other Sheriff's employees. Yet the footnote in Edwards, supra, states that Sheriffs and deputies are "State employees." If that were truly the ruling of the Supreme Court under the S.C. Tort Claims Act, then the State of South Carolina would be the proper party defendant for all actions involving Sheriffs and deputies.

The footnote in Edwards, does not address employees other than deputies at all. In the case at bar, the inference can be drawn that other employees were involved in policies, procedures, and training. These could be direct employees of the Respondent or employees of the Sheriff's department other than deputies.

So, no case authority has been cited which decides the issue of liability under the S.C. Tort Claims Act. It is respectfully submitted that the issue is novel, and more facts should be developed than are found in the record before the Court in this case.

There is no doubt that deputies are at least in part county officials. As pointed out in the Appellant's brief the Sheriff himself is subject to the county auditor and the county treasurer, and, a Sheriff upon taking office takes an oath as a county officer. Deputies are required to take an oath as a "county deputy," and they are required to file a bond approved by the county attorney and filed with the county clerk of court. S.C. Code Ann. Section 23-13-20.

Deputies are required by statute to patrol the entire county. S.C. Code Ann. Section 23-13-70. Sheriffs' funding is controlled in part by the counties.

The S.C. Tort Claims Act provides that "employee" is defined as "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 of (emphasis supplied), or in service of a governmental entity in the scope of official duty, whether with or without compensation....” S.C. Code Ann. Section 15-78-30.

Far from being settled, it is respectfully submitted that the issues of liability in this case have not been directly addressed under the S.C. Tort Claims Act. The Appellant requests that the case be remanded for further elucidation of the facts in the Circuit Court.

C. The issue of the Motion to Substitute Parties is properly before the Court.

The Circuit Court gave the parties 10 days to submit additional material to the Court after the date of the hearing, and an additional five days to submit more material. R. p. 44 lines 7-12. The hearing was on June 17, 2013. The Appellant submitted material to the Circuit Court by fax and mail on June 27, 2013. The Appellant submitted additional material to the Circuit Court by fax and mail five days later on July 2, 2013. See letter, additional proposed order, Supplemental Memorandum, and Motion to Substitute Parties. R. pp. 67, 61, 57, 63.

The Motion to Substitute Parties was submitted by fax and mail on July 2, 2013. The Respondent points out that the Motion to Substitute was not filed until July 5, 2013, and the Order Granting the Motion to Dismiss was signed on July 2, 2013. The material was submitted timely on July 2, 2013, so it must be assumed that Judge Newman had the opportunity to review it before he signed the Order Granting the Motion to Dismiss. Also, the Order Granting the Defendant Sumter County's Motion to Dismiss was not filed until July 16, 2013, which allowed Judge

Newman considerable additional time for consideration of the Order before filing, if he so chose. R. p. 1.

It is respectfully submitted that the Circuit Court was timely presented with the request to decide the Motion to Substitute Parties. It is further submitted that the Court impliedly denied the request since the Order of Dismissal was filed two weeks after the Motion to Substitute Parties and the Supplemental Memorandum were submitted to the Circuit Judge.

It is respectfully submitted, that it was error to dismiss the case without hearing the Motion to Substitute Parties.

D. Conclusion.

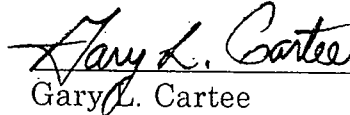
It is respectfully submitted that this case should not have been dismissed on the record before the Court. Respectfully, taking the well pleaded facts as true, viewing the pleadings in the light most favorable to the Appellants, and taking all reasonable inferences in the light most favorable to the Appellants, the case should not have been dismissed.

If the Respondents are confident that there are no allegations of negligence, specific or general, which involve a person acting on behalf of the Respondent, or who was a direct employee of the Respondent, it would be a simple matter on remand to file an affidavit to that effect and to file a motion for summary judgment.

There are good reasons that the standards for granting Rule 12 motions constitute a high bar. That is because the party opposing the motion loses his or her remedy.

The Appellant respectfully requests that this case be remanded to the Circuit Court for further proceedings.

Respectfully submitted,



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N. Charleston, S.C.  
January 29, 2015.

Attorney for the Appellant

CERTIFICATE OF COUNSEL

Counsel for the Plaintiff hereby certifies that the Final Reply Brief of Appellant is in compliance with Rule 211(b), SCACR.

*Gary L. Cartee*

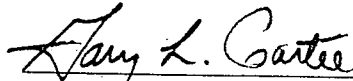
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CERTIFICATE OF COMPLIANCE

Counsel for the Plaintiff hereby certifies that the Final Reply Brief of Appellant is in compliance with the South Carolina Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, dated April 15, 2014.



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CERTIFICATE OF SERVICE

Counsel for the Plaintiff hereby certifies that the Final Reply Brief of Appellant was served by mail upon all counsel of record for the Respondent by placing a copy in the U.S. Mail, postage prepaid, this 29<sup>th</sup> day of January, 2015, addressed as follows:

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