

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
[In the Supreme Court]

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper Jr,

Case No. 2015-CP-40-03112

South Carolina Department Of Employment Workforce,
South Carolina Budget and Control Board and Office
Of South Carolina Governor, Respondents,

v.

Clarence B. Jenkins Jr, Appellant,

BRIEF OF APPELLANT

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DEC 07 2015

SC Court of Appeals

FORM 13
BRIEF OF APPELLANT*

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Court of Common Pleas

G. Thomas Cooper Jr, Circuit Court Judge

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Employment Workforce,
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Respondent,

v.

Clarence B. Jenkins Jr,

Appellant.

[CBIJ] BRIEF OF APPELLANT

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* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

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2. THE APPELLANT ORIGINAL COMPLAINT NEVER SEPARATED ADRIENNE SORENSON FROM SOUTH DEPARTMENT OF EMPLOYMENT WORKFORCE, SOUTH CAROLINA BUDGET AND CONTROL BOARD AND OFFICE OF SOUTH CAROLINA GOVERNOR WHICH IS CLEARLY DEFINED BY EACH CAUSE OF ACTION. BECAUSE FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE, THE COURT ERRED WHEN IT CHARGED THE JURY THAT THE RESPONDENT MUST PROVE FRAUD BY A PREPONDERANCE OF THE EVIDENCE
3. JUDGE G. THOMAS COOPER JR, DISMISSED ORIGINAL COMPLAINT AFTER THE COURT WAS INFORMED THAT EVIDENCE ARE AVAILABLE

FOR REVIEW ON SEPTEMBER 15, 2015 WITHOUT SECURING WRITTEN
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STATEMENT OF ISSUES ON APPEAL

1. JUDGE G. THOMAS COOPER JR, ERR IN APPLYING THE LAWS ESTABLISHED BY SC GENERAL ASSEMBLY.
2. JUDGE G. THOMAS COOPER JR, DISMISSED COMPLAINT 2015-CP-40-03112 UNDER RULE 12(b) AFTER SUBMITTING MEMORANDA OF LAW FOR EACH MOTION, PRESENTATION OF ORAL ARGUMENTS ON SEPTEMBER 15, 2015 AND SUBMISSION OF PROPOSED ORDER PER REQUEST BY THE HONORABLE COURT. FURTHERMORE COMPLAINT 2015-CP-40-03112 SHOULD HAVE NOT BEEN DISMISSED UNDER RULE 12(b) BECAUSE EVERY QUALIFYING STIPULATION WAS MET.
3. THE ACTION OF ADRIENNE SORENSON ILLEGALLY BARRED FROM APPLYING WAS NEVER SEPARATED FROM SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT WORKFORCE, SOUTH CAROLINA BUDGET AND CONTROL BOARD AND OFFICE OF SOUTH CAROLINA GOVERNOR AND UNDER THEIR SUPERVISION.

STATEMENT OF THE CASE

I received an email from Sharlayne Bellamy of SC Judicial Center on July 24, 2013 that my application would no longer be considered for Administrative Specialist II/Docketing Specialist II position due to receiving notification from the state of South Carolina that candidate has been marked as "Barred From Applying". I have always believed that state of South Carolina was performing the blackball effect against me due to not receiving employment for position which was well qualified for.

I contacted state agencies seeking assistance due to a possible blackball effect that included South Carolina Department Of Employment Workforce and Office Of South Carolina Governor Office that went ignored.

By providing South Carolina Department Of Employment Workforce and South Carolina Budget and Control Board and Office Of South Carolina Governor of "Barred From Applying" after receiving notification from Sharlayne Bellamy therefore they either did not respond at all or declared a system error in an attempted cover up of an illegal employment activity. Judge G. Thomas Copper Jr, dismissed the complaint due to a preponderance of evidence that was never seen by the court..

FACTS

Appellant was "Barred From Applying" by South Carolina Department Of Employment Workforce which is an illegal employment activity referenced by exhibit. Senior Management at state agencies knew about "Barred From Applying " through documented conversation in an attempt to provide a cover up referenced by exhibit. By Appellant being illegally barred from applying prevented employment opportunities through unlawful employment activity therefore created an environment that led to deprivation referenced by exhibit.

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ARGUMENTS

- I. ADRIENNE SORENSON BY APPLYING "BARRED FROM APPLYING" ACTED IN A GROSSLY NEGLIGENCE MANNER AS AN EMPLOYEE OF SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT WORKFORCE THEREFORE STATE

AGENCIES BECOMES LIABLE AND FURTHERMORE DUE TO ADRIENNE SORENSON BEING REFERRED AS TO ACTING OUT OF SCOPE OF HER EMPLOYMENT WAS NOT REGARDING AN OFFICIAL DUTY BUT THE GROSSLY NEGLIGENCE CONDUCT BY ADRIENNE SORENSON BEING EMPLOYED AT SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT WORKFORCE IN THE HUMAN RESOURCES OFFICE APPLYING "BARRED FROM APPLYING" DURING NORMAL WORK HOURS WAS IN OFFICIAL DUTY.

[The South Carolina Tort Law 15-78-30 and South Carolina Law Exceptions to waiver of immunity 15-78-60 (25).]

- II. G. THOMAS COOPER JR, DISMISSED COMPLAINT 2015-CP-40-03112 AS PLAINTIFF WAS "BARRED FROM APPLYING" BY DEFENDANTS WHEN A STATE DECLARATION STATES IT IS A PUBLIC POLICY OF THIS STATE THAT ECONOMIC INSECURITY DUE TO UNEMPLOYMENT IS A SERIOUS MENACE TO HEALTH, MORALS AND WELFARE OF THE PEOPLE OF THIS STATE.

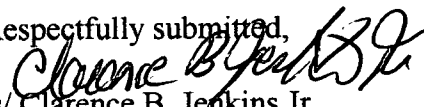
[South Carolina Law 41-27-20.]

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

December 7, 2015

Respectfully submitted,


/s/ Clarence B. Jenkins Jr,

Clarence B. Jenkins Jr,

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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jenny C. Mishoe, Respondent,

v.

QHG of Lake City, Inc., Appellant.

Appeal From Williamsburg County
Clifton Newman, Circuit Court Judge

Opinion No. 4027
Heard June 15, 2005 – Filed October 3, 2005.

AFFIRMED

Charles E. Carpenter, Jr. and S. Elizabeth Brosnan, both
of Columbia and Douglas C. Baxter, of Myrtle Beach, for
Appellant.

Ronnie Alan Sabb and W. E. Jenkinson, III, both of
Kingstree, for Respondent.

HEARN, C.J.: In this civil action, QHG of Lake City, Inc. appeals the award of \$750,000 in actual damages and \$1,250,000 in punitive damages in favor of Jenny C. Mishoe. QHG alleges a new trial should be granted as a result of an improper closing argument and the circuit court's erroneous restriction of the scope of QHG's cross-examination of Mishoe. Moreover, QHG argues the evidence does not support an award of punitive damages. We affirm.

FACTS

On June 3, 1998, Jenny C. Mishoe visited her grandmother at Carolinas Hospital System, a wholly owned facility of QHG of Lake City, Inc. After the visit, Mishoe left the hospital via the emergency room exit and proceeded to her car across the horseshoe drive area in front of the emergency room doors. While walking across the pavement near the emergency room exit, Mishoe's left foot got caught in a hole. Mishoe suffered serious injuries to both her left ankle and right knee.

QHG was required to perform regular, twice-yearly safety inspections of its premises to maintain its accreditation. On July 1, 1997, the head of maintenance for the hospital, Edward McDonald, provided the hospital with a written report stating a hole existed in the pavement near the emergency room exit. The hospital took no action to repair the hole or warn visitors and patients of the hole's existence.

The matter proceeded to trial and the jury returned a verdict in Mishoe's favor in the amount of \$750,000 actual damages and \$1,250,000 punitive damages. The jury found Mishoe ten percent comparatively negligent, and the circuit court reduced the actual damages accordingly. QHG made a motion for a

directed verdict and judgment notwithstanding the verdict on the issue of punitive damages, which the circuit court denied. The circuit court also denied QHG's motion for reconsideration. This appeal followed.

LAW/ANALYSIS

I. Punitive Damages

QHG alleges the circuit court erred in denying its motion for a directed verdict and judgment notwithstanding the verdict on the issue of punitive damages.^[1] Specifically, QHG argues the circuit court erred because there was no clear and convincing evidence the hospital's actions constituted willful, wanton, or reckless conduct. We disagree.

In reviewing the denial of a motion for directed verdict or JNOV, the appellate court applies the same standard as the circuit court. Gilliland v. Doe, 357 S.C. 197, 199, 592 S.E.2d 626, 627 (2004). When ruling on directed verdict or JNOV motions, the circuit court must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. Sabb v. South Carolina State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). If the evidence as a whole is susceptible to more than one reasonable inference, a jury issue is created and the motion should be denied. Adams v. G.J. Creel & Sons, Inc., 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).

On appeal from the denial of a motion for directed verdict or JNOV, the appellate court may only reverse if there is no evidence to support the circuit court's ruling. South Carolina Prop. & Cas. Guar. Ass'n v. Yessen, 345 S.C. 512, 521, 548 S.E.2d 880, 885 (Ct. App. 2001). Neither the circuit court nor the appellate court has the authority to decide credibility issues or resolve conflicts in testimony. Garrett v. Locke, 309 S.C. 94, 99, 419 S.E.2d 842, 845 (Ct. App. 1992).

In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or with reckless disregard for the plaintiff's rights. S.C. Code Ann. § 15-33-135 (2004); Taylor v. Medenica, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). A conscious failure to exercise due care constitutes willfulness. Welch v. Epstein, 342 S.C. 279, 301, 536 S.E.2d 408, 419 (Ct. App. 2000). When evidence exists that suggests a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness. See McGee v. Bruce Hosp. Sys., 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996). The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton. Welch, 342 S.C. at 301, 536 S.E.2d at 419.

The amount of damages, actual or punitive, remains largely within the discretion of the finder of fact, as reviewed by the trial judge. Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991). The trial judge is vested with considerable discretion over the amount of a punitive damages award, and this court's review is limited to correction of errors of law. Welch, 342 S.C. at 305, 536 S.E.2d at 421. Moreover, the appellate court must affirm the circuit court's punitive damages finding if any evidence reasonably supports the court's factual findings. Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 314, 594 S.E.2d 867, 875 (Ct. App. 2004).

Here, the evidence demonstrates the head of maintenance for QHG provided actual, written notice of the existence of the hole in question to the CEO of the hospital on July 1, 1997, almost one year before the accident occurred. QHG took no action to repair the hole after receiving notice of its existence. Moreover, the hospital took no precautions to warn visitors or patients of the existence of the hole. Therefore, we find the evidence of this written notice is sufficient to submit the issue of QHG's willful, wanton, reckless or malicious conduct to the jury.

QHG next argues the circuit court erred in failing to grant its motion for a mistrial. QHG alleges comments made by Mishoe during closing arguments could not be remedied by the circuit court's curative instruction and, therefore, a mistrial was warranted. Specifically, QHG claims any reference to the \$2.8 million sales price of the hospital resulted in sufficient prejudice to justify a mistrial. We disagree.

The granting or denying of a motion for mistrial is within the sound discretion of the trial judge. Creighton v. Coligny Plaza Ltd. Partnership, 334 S.C. 96, 118, 512 S.E.2d 510, 521 (Ct. App. 1998). Absent an abuse of discretion, the decision of the trial judge will not be overturned on appeal. Id. The burden is on the moving party to show not only error, but also the resulting prejudice. Id. The granting of a motion for a mistrial is an extreme measure which should be taken only when an incident is so grievous that the prejudicial effect can be removed in no other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999).

When an objection is timely made to improper remarks of counsel during closing arguments, the judge should rule on the objection, give a curative charge to the jury, and instruct offending counsel to desist from improper remarks. McElveen v. Ferre, 299 S.C. 377, 381, 385 S.E.2d 39, 41 (Ct. App. 1989). In this matter, counsel for Mishoe made the following remarks to the jury on the issue of punitive damages:

What is the reasonable relationship to harm-and there was harm-and the defendant's ability to pay. [sic] I ain't too much worried about that hospital paying. When they left Williamsburg County, they left with 2.8 million dollars worth of our money just when they left.

At that time, counsel for QHG objected, and stated:

QHG: Your Honor, I'd object to any testimony about how much money the hospital sold for, and everybody knows-

The Court: The objection is-

QHG: -the price of the deal

The Court: Yes, sir.

QHG: And I would move for a mistrial.

The Court: Pardon?

QHG: I'd move for a mistrial.

The Court: Ladies and gentlemen, the objection is sustained and you are to disregard the last argument by counsel. And, counsel, you are not to argue that particular issue. The motion is otherwise denied.

After the curative instruction was given, no additional objection was made by QHG.

The circuit court followed the procedure established in McElveen. The judge ruled on QHG's objection, offered a curative instruction to the jury, and admonished Mishoe's counsel not to mention the sales price and the fact it was "our money" again. See McElveen, 299 S.C. at 381, 385 S.E.2d at 41. The curative instruction adequately corrected the statement and advised the jury to disregard. Moreover, the sales price of the hospital had already been admitted, and the jury heard the amount during the trial. QHG cannot demonstrate evidence of a prejudicial effect warranting a mistrial. See Creighton, 334 S.C. at

110, 312 S.E.2d at 321. Therefore, we find the trial judge did not abuse his broad discretion in denying the mistrial motion.

III. Scope of cross-examination

QHG also argues the trial court erred in limiting the scope of its cross-examination of Mishoe. Specifically, QHG asserts the circuit court erred in prohibiting it from questioning Mishoe on her prior litigation history as it was relevant to her credibility. We disagree.

The admission and rejection of testimony is largely within the trial judge's sound discretion and will not be disturbed on appeal absent a showing that the trial court abused its discretion or its decision was controlled by an error of law. Ippolito v. Hospitality Mgt. Assocs., 352 S.C. 563, 569, 575 S.E.2d 562, 566 (Ct. App. 2003).

In this case, QHG argues the medical records of Dr. Hazelwood, a treating physician, are important to prove that Mishoe's medical condition had nothing to do with the fall at the hospital. The trial judge allowed QHG to introduce the majority of the medical records of Dr. Hazelwood. The trial judge allowed into evidence the portion of the records relevant to QHG's argument. The evidence in those records was relevant to the issue of whether Mishoe sought treatment from Dr. Hazelwood for injuries unrelated to the fall at the hospital was admitted. The only sentence the trial judge did not admit was Dr. Mendes "refused to see her again because of her prior experience with litigation." The trial judge allowed QHG to cross-examine Mishoe on her relevant medical history. Therefore, we hold the trial judge did not abuse his discretion in limiting the scope of the cross-examination.

CONCLUSION

For the aforementioned reasons, the decision of the circuit court and award of punitive damages is hereby

AFFIRMED.

BEATTY and SHORT, JJ., concur.

[1] QHG does not ask this court to review the circuit court's Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991), punitive damages analysis. Although QHG takes issue with opposing counsel's comment during closing argument regarding the \$2.8 million sale of the hospital, it does so only by arguing a mistrial should have been granted. See infra. QHG does not assert the use of the \$2.8 million sales price was an improper method to value QHG's net worth.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Doug Proctor d/b/a Anderson Tire Recycling,
Respondent,

v.

Department of Health and Environmental Control,
Appellant.

Appeal from Anderson County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 4098
Heard March 8, 2006 – Filed March 20, 2006

AFFIRMED

James W. Logan, Jr. and Stacey T. Coffee, of
Anderson, for Appellant.

Jeffrey Falkner Wilkes, of Greenville, for
Respondent.

ANDERSON, J.: A jury rendered a \$688,503 verdict for Doug Proctor d/b/a Anderson Tire Recycling (Proctor) against the Department of Health and Environmental Control (DHEC). The circuit judge reduced the award to \$300,000 pursuant to S.C. Code Ann. § 15-78-120(a)(1). DHEC contends Proctor failed to prove gross negligence; the trial court incorrectly charged the jury; and the damages awarded were so unduly liberal or grossly excessive as to require a new trial. We affirm.

FACTUAL/PROCEDURAL BACKGROUND

Proctor owns and operates a waste tire processing and disposal facility in Anderson County, South Carolina. South Carolina law endows DHEC with the authority to issue permits to waste tire facilities. In 1993, when DHEC became involved in the regulation of waste tires, Proctor timely applied for all required permits. Proctor became a permitted facility for both waste tire processing and waste tire disposal.

The business of waste tire disposal turns on the availability of a per-tire rebate allowed by the South Carolina Department of Revenue. Section 44-96-170(N) requires sellers of new tires to pay a two-dollar fee to the Department of Transportation for every new tire sold. S.C. Code Ann. § 44-96-170(N) (2005). However, section 44-96-170(O) provides, "A wholesaler or retailer required to submit a fee pursuant to subsection (N) who delivers or arranges delivery of waste tires to a permitted or approved waste tire recycling facility may apply for a refund of one dollar for each tire delivered." S.C. Code Ann. § 44-

§ 44-96-170(O) (2003). A tire retailer is entitled to a one-dollar rebate per tire for each used tire delivered to a permitted waste tire facility. Hence, the rebate essentially pays for the new-tire dealer's disposal of waste tires as the dealer pays a dollar to a waste tire disposal facility and gets back a dollar via the rebate.

DHEC maintains a list of approved waste tire recycling facilities. DHEC forwards the list to the Department of Revenue, and the Department of Revenue provides the rebate. The Director of Solid Waste Management, and later the Director of Solid Waste Reduction and Recycling with the Bureau of Land and Waste Management, William Culler, compiled the rebate list.

In 1998, DHEC found Proctor in violation of his permit and DHEC regulations. DHEC initiated an enforcement action, levied a fine against Proctor, and removed him from the rebate list. The case was eventually heard by this Court and resulted in an unpublished opinion. The underlying facts of the instant action are described in our prior opinion:

DHEC deferred enforcement action based on Proctor's commitment to build sheds where used tires for sale to the public could be separately stored. However, only one shed was constructed, and site conditions did not improve.

In September 1998, DHEC issued an administrative order to Proctor to take corrective action at the site and pay a civil penalty of \$51,330. The order cited Proctor for numerous violations relating to storage of waste tires and removed Proctor from DHEC's Waste Tire Facility Rebate List. . . .

Proctor appealed the order to the Administrative Law Judge Division. The Administrative Law Judge (ALJ) upheld \$8,200 of the penalty and ordered Proctor to close out the on-site drain field, clean and maintain fire access lanes, and cease commingling waste and used tires. The ALJ also ordered that Proctor be reinstated to the Waste Tire Rebate List. Both Proctor and DHEC appealed to the DHEC Board. The Board made its own findings of fact that the site exceeded the 1,500 tires allowed. Based on its factual findings, it partially reversed the ALJ, removed Proctor from the Waste Tire Rebate List until he complied with his permit and the regulations, and increased the civil penalty by \$500 to \$8,700. Proctor appealed to the circuit court, which affirmed the Board's decision.

Doug Proctor d/b/a Anderson Tire Recycling v. South Carolina Dep't of Health and Envtl. Control, 2003-UP-472 (S.C. Ct. App. filed July 24, 2003). We reversed the Board's increase of the fine and removal of Proctor from the rebate list:

Proctor also argues the Board erred in reversing the ALJ's order by increasing the fine where it was supported by substantial evidence. In a related argument, he contends the Board erred in overturning the ALJ's decision that he should remain on DHEC's Waste Tire Rebate List. We agree and reverse those portions of the Board's order.

Under South Carolina Code Annotated § 44-96-170(O) (2002), any retailer that sells new tires and delivers collected waste tires to a permitted facility is entitled to a refund of one dollar per waste tire delivered. If a tire retailer does not deliver its waste tires to a licensed waste tire facility, it is not eligible to claim the refund. Although DHEC's administrative order took Proctor off the rebate list, the ALJ ordered that Proctor be restored to the list. The Board then ordered Proctor's facility to be removed from the list until Proctor demonstrated "full compliance with this Order, his permits, and applicable law and regulation." The Board erred in doing so.

The ALJ found Proctor violated waste tire laws, but also found DHEC did not provide

to regulatory requirements. As substantial evidence supports the ALJ's decision to restore Proctor to the rebate list and supports the fine imposed, the Board erred in reversing the ALJ. Further, section 44-96-170(O), which sets forth the rebate system, indicates that as long as a wholesaler or retailer delivers waste tires to a permitted or approved waste tire recycling facility, he may apply for the refund. All permitted facilities are thus on the rebate list. There is no authority for the ALJ, or any other entity, to remove a licensed business from the list; only by revoking or suspending its license can an entity be removed from the list. As a licensed entity, Proctor is entitled to remain on the Waste Tire Rebate List.

Proctor, 2003-UP-472 (S.C. Ct. App. filed July 24, 2003).

Proctor subsequently was restored to the rebate list. Proctor initiated this action, maintaining DHEC was grossly negligent under section 15-78-60(12) of the South Carolina Code by keeping his facility off of the rebate list from 2000 until after this Court's decision in 2003. DHEC moved for a directed verdict on the ground Proctor failed to establish DHEC exercised a power or function in a grossly negligent manner. The trial court denied the directed verdict motion, and the jury awarded actual damages to Proctor in the amount of \$688,503. Pursuant to Section 15-78-120(a)(1) of the South Carolina Code, the award was reduced to the statutory maximum of \$300,000. DHEC moved for a judgment notwithstanding the verdict (JNOV), or, in the alternative, a new trial or new trial nisi remittitur. The trial court denied these motions.

LAW/ANALYSIS

I. Tort Claims Act

A. Waiver of Immunity

"The Tort Claims Act governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 280, 607 S.E.2d 711, 714 (Ct. App. 2005) (citing Flateau v. Harrelson, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003); Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998)); Hawkins v. City of Greenville, 358 S.C. 280, 291, 594 S.E.2d 557, 563 (Ct. App. 2004). "Notwithstanding any provision of law, this chapter, the 'South Carolina Tort Claims Act', is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty." S.C. Code Ann. § 15-78-200 (2005); see also Olson v. Faculty House of Carolina, Inc., 344 S.C. 194, 544 S.E.2d 38 (2001) (observing the Tort Claims Act is the exclusive remedy for tort claims against governmental entities), aff'd, 354 S.C. 161, 580 S.E.2d 440 (2003).

The Act provides: "The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein." S.C. Code Ann. § 15-78-40 (2005). Section 15-78-30(d) defines "governmental entity" as "the State and its political subdivisions." S.C. Code Ann. § 15-78-30(d) (2005); see Hawkins, 358 S.C. at 292, 594 S.E.2d at 563; Flateau, 355 S.C. at 204, 584 S.E.2d at 416. "The Tort Claims Act waives sovereign immunity for torts committed by the State, its political subdivisions, and governmental employees acting within the scope of their official duties." Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 121, 542 S.E.2d 736, 739 (Ct. App. 2001).

However, the Act's waiver of governmental immunity is limited. Hawkins, 358 S.C. at 293, 594 S.E.2d at 564. Section 15-78-60 currently contains forty exceptions to the waiver of immunity. See S.C. Code Ann. § 15-78-60 (2005 & Supp. 2005). Moreover, the provisions of the Act "must be liberally construed

in favor of limiting the liability of the State.” S.C. Code Ann. § 15-78-20(1) (2003); see also Steinke v. S.C. Dep’t of Labor, Licensing and Regulation, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999) (“Provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting liability.”); Baker v. Sanders, 301 S.C. 170, 391 S.E.2d 229 (1990); Staubes v. City of Folly Beach, 331 S.C. 192, 500 S.E.2d 160 (Ct. App. 1998), aff’d, 339 S.C. 406, 529 S.E.2d 543 (2000); Rakestraw v. S.C. Dep’t of Highways and Public Transp., 323 S.C. 227, 473 S.E.2d 890 (Ct. App. 1996). The Act expressly preserves all existing common-law immunities. S.C. Code Ann. § 15-78-20(b) (“The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved.”); see also Williams v. Condon, 347 S.C. 227, 246, 553 S.E.2d 496, 507 (Ct. App. 2001) (“The Tort Claims Act expressly preserves all existing common law immunities.”); O’Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689 (Ct. App. 1998). “The Act does not create a cause of action.” Bayle, 344 S.C. at 121, 542 S.E.2d at 739. “The Act does not create a new substantive cause of action against a governmental entity.” Hawkins, 358 S.C. at 292, 594 S.E.2d at 563 (citing Moore v. Florence Sch. Dist. No. 1, 314 S.C. 335, 339, 444 S.E.2d 498, 500 (1994)).

“The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense.” Steinke, 336 S.C. at 393, 520 S.E.2d at 152; accord Strange v. S.C. Dep’t of Highways & Pub. Transp., 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994); Faile v. S.C. Dep’t of Juvenile Justice, 350 S.C. 315, 324, 566 S.E.2d 536, 540 (2002) (“The governmental entity claiming an exception to the waiver of immunity under the Tort Claims Act has the burden of establishing any limitation on liability.”) (citation omitted).

B. Section 15-78-60(12)

DHEC contends the trial court erred in denying its motions for directed verdict, JNOV, and a new trial because Proctor failed to prove gross negligence under section 15-78-60(12). We disagree.

1. Standard of Review

“When reviewing the denial of a motion for directed verdict or JNOV, an appellate court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 27-28, 602 S.E.2d 772, 782 (2004) (citing Strange v. S.C. Dep’t of Highways & Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994)); Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002); see The Huffines Co., LLC v. Lockhart, 365 S.C. 178, 187, 617 S.E.2d 125, 129 (Ct. App. 2005) (“In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt.”). If the evidence as a whole is susceptible to more than one reasonable inference, a jury issue is created and the motion should be denied. Adams v. G.J. Creel & Sons, Inc., 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995); Bailey v. Segars, 346 S.C. 359, 365, 550 S.E.2d 910, 913 (Ct. App. 2001). However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. Hanahan v. Simpson, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997); Small v. Pioneer Mach., Inc., 329 S.C. 448, 461, 494 S.E.2d 835, 848 (Ct. App. 1997). In essence, the court must determine whether a verdict for the opposing party “would be reasonably possible under the facts as liberally construed in his favor.” Harvey v. Strickland, 350 S.C. 303, 309, 566 S.E.2d 529, 532 (2002). If the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and the motion should have been denied. Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003); Adams, 320 S.C. at 277, 465 S.E.2d at 85.

On appeal from the denial of a motion for a directed verdict, the appellate court may only reverse if there is no evidence to support the trial court's ruling, or where the ruling was controlled by an error of law. Clark v. S.C. Dep't of Public Safety, 362 S.C. 377, 382-83, 608 S.E.2d 573, 576 (2005); Abu-Shawareb v. S.C. State Univ., 364 S.C. 358, 613 S.E.2d 757 (Ct. App. 2005); S.C. Prop. & Cas. Guar. Ass'n v. Yensen, 345 S.C. 512, 521, 548 S.E.2d 880, 884-85 (Ct. App. 2001). The rule in South Carolina is that on motions for nonsuit, directed verdict, JNOV, and new trial, the evidence and all reasonable inferences which have to be drawn from it must be viewed in a light most favorable to the nonmoving party and if there is any testimony tending to prove allegations of the complaint, the motions must be refused. This rule is especially strong in South Carolina where the "scintilla of evidence rule" is applied. Sweatt v. Norman, 283 S.C. 443, 446, 322 S.E.2d 478, 480 (Ct. App. 1984). If there is any evidence which could support the jury's findings of gross negligence against DHEC, then the motions for directed verdict, JNOV, and new trial were properly denied. Cf. Jackson v. S.C. Dept. of Corrections, 301 S.C. 125, 127, 390 S.E.2d 467, 468 (Ct. App. 1989), aff'd, 302 S.C. 519, 397 S.E.2d 377 (1990).

2. DHEC's Gross Negligence

At trial, Proctor proceeded on the theory of gross negligence under section 15-78-60(12), which provides:

The governmental entity is not liable for loss resulting from:

....

(12) licensing powers of functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority, **except when the power or function is exercised in a grossly negligent manner. . . .**

S.C. Code Ann. § 15-78-60(12) (emphasis added).

"Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Clyburn v. Sumter County Sch. Dist. No. 17, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994); accord Jinks v. Richland County, 355 S.C. 341, 344, 585 S.E.2d 281, 283 (2003); Worsley Cos., Inc. v. Town of Mount Pleasant, 339 S.C. 51, 57, 528 S.E.2d 657, 661 (2000); Marietta Garage, Inc. v. S.C. Dep't of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999). It is the failure to exercise even the slightest care. Faile v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 331-32, 566 S.E.2d 536, 544 (2002); Rakestraw v. S.C. Dep't of Highways and Public Transp., 323 S.C. 227, 473 S.E.2d 890 (Ct. App. 1996). "Gross negligence . . . means the absence of care that is necessary under the circumstances." Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000); accord Hicks v. McCandlish, 221 S.C. 410, 70 S.E.2d 629 (1952); see also Jinks, 355 S.C. at 344, 585 S.E.2d 283 ("Gross negligence has also been defined as a relative term and means the absence of care that is necessary under the circumstances.") (citing Hollins v. Richland County School Dist. 1, 310 S.C. 486, 427 S.E.2d 654 (1993)). "Negligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care." Clyburn, 317 S.C. at 53, 451 S.E.2d at 887.

Gross negligence is ordinarily a mixed question of law and fact. Clyburn, 317 S.C. at 53, 451 S.E.2d at 887; Pack v. Associated Marine Institutes, Inc., 362 S.C. 239, 245, 608 S.E.2d 134, 138 (Ct. App. 2004); Faile, 350 S.C. at 332, 566 S.E.2d at 545. "In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." Faile, 350 S.C. at 332, 566 S.E.2d at 545. "[W]hile gross negligence ordinarily is a mixed question of law and fact, when the evidence supports but one reasonable inference, the question becomes a matter of law for the court." Etheredge, 341 S.C. at 310, 534 S.E.2d at 277; see also Stauber v. City of Folly Beach, 331 S.C. 192, 205, 500

S.E.2d 100, 100 (Ct. App. 1998) ("Gross negligence is a mixed question of law and fact and should be presented to the jury unless the evidence supports only one reasonable inference."), aff'd, 339 S.C. 406, 529 S.E.2d 543 (2000).

Pursuant to S.C. Code Ann. section 44-96-170(O) (2002), any retailer that sells new tires and delivers waste tires to a permitted facility is entitled to a one-dollar rebate for every waste tire delivered. All permitted waste tire facilities are thus on the rebate list. As held in our prior unpublished opinion, DHEC erroneously removed Proctor from the rebate list. Further, DHEC violated 25 S.C. Code Ann. Regs. 61-72.205(A) (Supp. 2005), which provides, "A petition for review of an order stays the order." DHEC did not stay its decision to remove Proctor from the rebate list even though he filed an appeal.

At trial, Proctor questioned former DHEC employee, George Tomlin, on the protocol for inspecting his tire disposal facility:

Q. Okay. Mr. Tomlin, are you familiar with the inspection procedures that DHEC does, in other words, the frequency, how often they do an inspection?

A. Yes, I'm familiar with it.

Q. In the solid waste section, I believe, is where Mr. Simpson worked; is that correct?

A. That is correct.

Q. And Mr. Simpson was the person while you were there who inspected Anderson Tire Recycling's facility; is that correct?

A. That's correct.

Q. Okay. Did you know if he—was he required to make inspections?

A. Yes, he was.

Q. Okay. Was there a policy that he make inspections periodically?

A. It was a policy for him to follow the requirements of the program to make inspections on a monthly basis.

DHEC's policy was to inspect facilities on a monthly basis. However, once DHEC removed Proctor from the list, it refused to inspect his facility, even though a favorable inspection was a prerequisite to his being restored to the list. DHEC did not inspect Proctor's facility for over four years, despite his requests for an inspection. DHEC employee Arthur Braswell could not explain the entity's failure to inspect:

Q. . . . What's the purpose of not coming to the facility for four years and four months?

A. I can't answer that. I don't know why our inspections weren't done.

Q. who would be to blame for not doing these inspections?

A. Well, not to blame, but our districts are responsible for doing inspections at facilities.

On appeal, DHEC argues that Proctor would not have been put back on the list even if he had obtained a clear inspection because he had not paid the fine. The evidence at trial suggests otherwise. Proctor questioned Arthur Braswell on this very point:

Q. When Mr. Shissias told you to go to the facility and check it out, did he tell you to discuss that Mr. Proctor should pay the fine before he could get back on the list?

A. No. He—he discussed exactly what I told you during the meeting, or our inspection, that if you were in compliance, there was a good chance you would be put back on the list that week

Q. So the supervisors . . . were the ones that were more concerned about getting the money, is that correct, than the compliance?

....

A. The money wasn't—they were willing to let the money go in order for some additional conditions at the site to improve the compliance of the facility. We discussed those issues during my inspection with you on April 10th, just as ideas of what would make the site better.

Q. But they weren't your conditions that you related to Mr. Proctor to be able to go back on the rebate list.

A. They were not stated as conditions during the inspection; they were in that letter that was sent to you.

Proctor remained a permitted facility, yet DHEC did not perform an inspection, as it was its policy to do. Further, DHEC ignored Proctor's requests for an inspection. Proctor could not return to the rebate list without an inspection, and DHEC, without explanation, refused to give him an inspection for over four years.

There is sufficient evidence to support the jury's finding of intentional, conscious failure by DHEC to do that which it ought to have done. The record supports the trial court's denial of DHEC's motions for a directed verdict, JNOV, and a new trial.

II. Section 15-78-60(1)-(5); (13) (2005)

A. Exceptions to the Waiver of Immunity

DHEC contends the trial court erred in denying its motion in limine and motion for a directed verdict regarding charging the jury on subsections (1), (2), (3), (4), (5), and (13) of S.C. Code Ann. § 15-78-60

The exceptions DHEC claims provide:

The governmental entity is not liable for a loss resulting from:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (5) the exercise of discretion or judgment by the governmental entity or employee of the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
- ...
- (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code or ordinance or contains a hazard to health or safety[.]

S.C. Code Ann. § 15-78-60 (2005):

Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), addressed the exception found in subsection (1) of section 15-78-60. Louie Hawkins sued the city of Greenville for improper and negligent design and maintenance of its municipal drainage system. Hawkins alleged the City's malfeasance caused his property to flood. This Court affirmed the trial court's grant of summary judgment in favor of the City. We noted that among other applicable exceptions to the waiver of immunity, "the City [wa]s not liable for loss resulting from: 'legislative, judicial, or quasi-judicial action or inaction[.]'" Id. at 293, 594 S.E.2d at 564. We instructed:

For each of these specific provisions, the determination of immunity from tort liability turns on the question of whether the acts in question were discretionary rather than ministerial. A finding of immunity under the Act "is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards." Wooten ex rel. Wooten v. South Carolina Dep't of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999). "The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense." Sabb v. South Carolina State Univ., 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002).

Although our courts have not applied the Tort Claims Act to facts similar to those of the present case, the Supreme Court of Texas has held that municipalities are not liable for the design and planning of their sewage and drainage systems because these acts are considered quasi-judicial, discretionary functions for which a government entity is not liable. City of Tyler v. Likes, 962 S.W.2d 489, 501 (Tex. 1997). The court in City of Tyler opined:

The duties of the municipal authorities in adopting a general plan of drainage.

and determining when and where sewers shall be built, of what size and at what level, are of a quasi judicial nature, involving the exercise of deliberate judgment and large discretion, and depending upon considerations affecting the public health and general convenience throughout an extensive territory; and the exercise of such judgment and discretion in the selection and adoption of a general plan or system of drainage is not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land.

Id. We find a comparable degree of discretion was granted to the City in the present case to exercise the measured policy judgments required to build and maintain an adequate municipal sewer and drainage system in Greenville. Accordingly, the City is immune from liability for negligence claims arising out of the design and maintenance of the drainage system in the Laurel Creek Basin.

Hawkins, 358 S.C. at 293-94, 594 S.E.2d at 564.

Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002), involved a suit against the Department of Juvenile Justice by the parents of Brandon Faile, a nine-year-old boy who was attacked by a twelve-year-old named Fredrico. Fredrico had a substantial record with DJJ, and had recently been put on probation with a one year suspended commitment to DJJ. The Department removed Fredrico from his parents' home and placed him in a therapeutic foster home. This arrangement was short-lived, however, as Fredrico was expelled from the foster home after threatening his foster mother with a gun he had stolen from a school police officer. Fredrico's DJJ probation counselor, Dorsey, returned Fredrico to the care of his biological mother, claiming no alternative placement was available.

Dorsey then filed a Rule to Show Cause with the family court to show why Fredrico's probation should not be revoked, and Dorsey informed the judge that he would recommend Fredrico be committed to DJJ. Dorsey did not tell the judge that Fredrico's current placement with his mother was in violation of a prior order. The judge scheduled a hearing, but Fredrico assaulted Faile before the court heard the matter.

Faile's parents maintained the Department was grossly negligent in placing Fredrico back in his family home. The trial court granted summary judgment for the Department, ruling it was immune from suit under section 15-78-60(1). This Court reversed, finding a question of fact whether the trial judge ratified Dorsey's administrative act of placing Fredrico with his biological mother. The supreme court affirmed, edifying:

The issue of whether juvenile probation officers are entitled to quasi-judicial immunity under the Tort Claims Act is one of first impression in South Carolina. Section 15-78-60(1) provides: "[t]he governmental entity is not liable for a loss resulting from: legislative, judicial, or quasi-judicial action or inaction." In addition to the judicial immunity under the Tort Claims Act, common law judicial immunity was expressly preserved in South Carolina under the Tort Claims Act. O'Laughlin v. Windham, 330 S.C. 379, 498 S.E.2d 689 (Ct. App. 1998), cert. denied 1999 Shearouse Adv. Sh. No. 10 at p. iv.

South Carolina recognizes three exceptions to judicial or quasi-judicial immunity. Judges and other officials are not entitled to judicial immunity if: (1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only. Id. at 385, 498 S.E.2d at 692. The second exception, which emphasizes the importance of the act, as opposed to the actor, is relevant here. Under the second exception, even judges are not insulated by judicial immunity when they act in an administrative capacity. Id. (citing Forrester v. White, 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988)). In determining whether an act is judicial, the Court looks to the nature and function of the act. Id.; Mireles v. Waco, 502 U.S. 9, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991); Stump v. Sparkman, 435 U.S. 349

38 S.Ct. 1099, 33 L.Ed.2d 331 (1976).
Therefore, we must determine whether probation officer Dorsey's placement of Fredrico had the nature and function of a judicial act, thereby entitling him, and thus DJJ, to quasi-judicial immunity.

Much of the analysis of judicial immunity has been made in the federal arena. Several federal circuits have granted probation officers quasi-judicial immunity, but only when carrying out certain functions the courts have deemed to be judicial. The Tenth Circuit has held that federal probation officers are absolutely immune when the action challenged is "intimately associated with the judicial phase of the criminal process." Tripathi v. United States Immigration & Naturalization Serv., 784 F.2d 345 (10th Cir. 1986) (finding probation officer immune for damages resulting from reporting plaintiff's conviction to immigration authorities). The Tenth Circuit has made clear the immunity arises from protected functions, not from protected individuals. Mee v. Ortega, 967 F.2d 423 (10th Cir. 1992); Forrester, *supra*. The key element is whether the officer was engaged in adjudicatory duties when the challenged act occurred. Harper v. Jeffries, 808 F.2d 281 (3d Cir. 1986).

Other federal circuit courts have granted probation officers absolute immunity in preparing pre-sentencing reports, and in other situations when they act "as an arm of the court." Gant v. United States Probation Office, 994 F.Supp. 729, 733 (S.D. W.Va. 1998) (citations omitted). Many of these courts, however, find no absolute immunity for the same type of officer when the officer is acting in his executive capacity. Gant, *supra*; Ray v. Pickett, 734 F.2d 370 (8th Cir. 1984); Ortega, *supra*; see also Harper v. Jeffries, 808 F.2d 281 (3d Cir. 1986) (denying absolute immunity of probation officer for charging appellant and presenting evidence against him at a parole hearing, because those were his duties as a parole officer).

If the individual is acting pursuant to a direct court order, courts are more likely to grant quasi-judicial immunity for that action. In Babcock v. Tyler, 884 F.2d 497 (9th Cir. 1989), a father sued the state for the actions of two social workers who placed his daughters in a home where they were sexually abused. The social workers placed the girls temporarily in the abusive home in April 1982. *Id.* at 449. The juvenile court confirmed the placement by order in May 1982. The sexual abuse did not occur until sometime after May. *Id.* Plaintiffs argued the social workers were not entitled to immunity for the temporary placement of the girls before the court order was issued. The court discounted this argument as irrelevant, however, on the grounds the abuse did not occur until **after** the court had confirmed the placement. *Id.*

Respondents argue the court's confirmation of the placement was essential to the court's finding of judicial immunity in Babcock. Conversely, DJJ cites Babcock as holding that placement is a judicial act even if not made pursuant to a direct court order. DJJ's argument, however, overlooks that the judge formally confirmed the placement **before** the injury took place. In the present case, Judge Barrineau's mere knowledge that Fredrico was placed in his family's home, in the absence of any further act by him, does not amount to confirmation or ratification of Dorsey's act.

Viewing the facts and all inferences that can be drawn in the light most favorable to Respondents, as the non-moving party, the trial court erred in granting summary judgment to DJJ on this ground. We agree with our Court of Appeals' conclusion that the placement of juveniles by a probation counselor is an administrative function. We find persuasive the precedent discussed above from other jurisdictions which supports this analysis. Just as police officers are not granted absolute immunity when they apply for arrest warrants, probation officers generally are not immune in performing their enforcement duties. See

Galt, supra, Acevedo v. Florida County Adult Prob. Dep't, 142 Am. 319, 690 F.2d 38 (1984) (holding that supervision of probationers is an administrative task, unconnected with the performance of a judicial function). Dorsey's placement of Fredrico was administrative. The Family Court's mere knowledge that Dorsey placed Fredrico with his family, without more, is insufficient to convert that placement into a judicial act.

For the forgoing reasons, we conclude DJJ is not entitled to quasi-judicial immunity.

Faile, 350 S.C. at 324-27, 566 S.E.2d at 540-42 (footnotes omitted).

Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001), construed subsections (1) and (2) of section 15-78-60 in the context of a suit against a solicitor and the Attorney General of South Carolina. The Williams court affirmed the trial court's dismissal of the case, in part, pursuant to subsections (1) and (2):

In 1985, our Supreme Court decided McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741. This case is significant because the Court largely abolished the doctrine of sovereign immunity. Certain exceptions to this holding, however, were carved out:

[T]he abrogation of the rule will not extend to legislative, judicial and executive acts by individuals acting in their official capacity. These discretionary activities cannot be controlled by threat of tort liability by members of the public who take issue with the decisions made by public officials. We expressly decline to allow tort liability for these discretionary acts. The exercise of discretion includes the right to be wrong.

Id. at 246, 329 S.E.2d at 742.

When the General Assembly enacted the Tort Claims Act, it codified the McCall exceptions. See S.C. Code Ann. § 15-78-60(1)(2) (Supp. 2000) (stating "The governmental entity is not liable for a loss resulting from (1) legislative, judicial, or quasi-judicial action or inaction; and (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature").

Williams, 347 S.C. at 248-49, 553 S.E.2d at 508.

We determined that the "duties of a prosecutor fall into the exceptions enumerated by McCall and § 15-78-60." Id. at 249, 553 S.E.2d at 508.

The case law cited throughout this opinion clearly supports the proposition that a prosecutor's typical duties are "judicial" or "quasi-judicial" in nature. Accordingly, this Court finds a prosecutor, in his official capacity, is immune from a Tort Claims Act suit involving "judicial" or "quasi-judicial" acts, provided a defendant prosecutor raises the affirmative defense of sovereign immunity in his return. See Tanner v. Florence City-County Bldg. Comm'n, 333 S.C. 549, 511 S.E.2d 369 (Ct. App. 1999) (holding sovereign immunity is an affirmative defense that must be pled).

Williams, 347 S.C. at 249, 553 S.E.2d at 508.

Wortman v. Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (1992), analyzed subsections (3) and (4) of section 15-78-60. Police arrested Wortman for possession of out-of-state lottery tickets, but the arresting officer dismissed the charges on the day of trial. Wortman sued the City claiming his arrest was unlawful because possession of lottery tickets was not illegal. The City obtained summary judgment, in part, on the trial judge's finding section 15-78-60(3) and (4) exempted the City from liability.

the supreme court reversed, holding the City was not entitled to summary judgment under the claimed exceptions:

The facts in the record establish that Wortman was arrested before the City obtained a warrant from a magistrate. Thus, the actions of the police did not occur during the execution or enforcement of the order of any court or during the lawful implementation of any process, as contemplated by section 15-78-60(3). As to section 15-78-60(4), the City cannot claim that Wortman's arrest for possession of lottery tickets resulted from its attempt to enforce a law absent a showing that a law exists that prohibits the possession of lottery tickets.

We conclude that the actions of the City do not fall within the exception provisions of sections 15-78-60(3) and (4). Consequently, we hold that the trial judge erred in granting summary judgment on the ground that the City was immune from liability under the Tort Claims Act.

Wortman, 310 S.C. at 3-4, 425 S.E.2d at 20.

At issue in Adkins v. Varn, 312 S.C. 188, 439 S.E.2d 822 (1993), was whether section 15-78-60(4) provided immunity to Greenville County for its failure to enforce an ordinance. The case arose when several vicious dogs chased a young girl on a bicycle into a street. The girl was struck and killed by an automobile as she attempted to flee from the dogs. Local residents had complained about the dogs to county animal control, and one neighbor had called the County at least five times just prior to the accident. The trial court dismissed the action, finding the County was immune from liability for failure to enforce an ordinance. The supreme court agreed:

The present facts establish that the County had notice that several vicious dogs were at large in the neighborhood. The facts also show that the County, for whatever reason, did not enforce the ordinance on these particular animals. It is undisputed that the County is a governmental entity within the meaning of the South Carolina Torts Claim Act, and therefore, is subject to the provisions of S.C. Code Ann. § 15-78-60(4).

The provisions of Section 15-78-60(4) are clear and unambiguous on their face, and are not subject to judicial interpretation. The statute clearly exempts from liability any loss resulting from the failure to enforce an ordinance; therefore, the County is immune from suit for any loss as a result of their non-enforcement of the animal control ordinance.

Adkins, 312 S.C. at 191-92, 439 S.E.2d at 824.

In Clark v. S.C. Dep't of Public Safety, 353 S.C. 291, 578 S.E.2d 16 (Ct. App. 2002), Amy Clark was killed when Charles Johnson crossed the centerline and hit her head-on. Police were chasing Johnson when the accident occurred. Trooper Lonnie Plyler was the supervisor at the time of the chase, but did not monitor the pursuit because he was administering a breathalyzer examination. Clark's father sued the Department and Johnson, and a jury returned a verdict of \$3.75 million in damages against them. The Department's \$750,000 share of the damages was reduced to \$250,000—the statutory maximum in place at the time. At some point the jury submitted a note, which read: "The Vehicle [and] Foot Pursuit Policy of SCDPS [the Department] dictates supervision of all pursuits. During this pursuit no supervisors were present or notified until after the pursuit was ended. It is our decision that this designates gross neglect on the behalf of SCDPS." Id. at 298, 578 S.E.2d at 19-20. Among its arguments on appeal, the Department contended "it was entitled to absolute immunity as a matter of law under section 15-78-60(4) of the Tort Claims Act." Id. at 306, 578 S.E.2d at 24.

In 1996, the Department adopted the South Carolina Department of Public Safety Policy Directive, Vehicle and Foot Pursuit Policy, which addresses the duties of troopers and their supervisors. The Pursuit Policy requires a supervisor to monitor all pursuits and states in

relevant part. The supervisor will continuously evaluate pursuit and will order termination of the pursuit when it appears to constitute an unreasonable risk."

Citing section 15-78-60(4), the Department asserts it is immune from liability for failing to enforce any written policy, in this case, the Pursuit Policy's guideline that a supervisor monitor all pursuits.

In denying the Department's directed verdict motion at the end of the plaintiff's case, the trial court found the Department was not entitled to absolute immunity under section 15-78-60(4) for the failure to enforce any law or written policy, stating, "I don't think it was a policy violation. I think it was a violation of the standard of care that they are supposed to provide to the public."

We hold the trial court properly refused to grant the Department judgment as a matter of law because the actions of the Department do not fall within the parameters of section 15-78-60(4). As noted by Clark, the Pursuit Policy was merely a statement of generally accepted law enforcement guidelines. This broad provision is not the kind of written policy that should be afforded the protection of absolute immunity under the Tort Claims Act.

Clark, 353 S.C. at 307, 578 S.E.2d at 24 (footnotes omitted).

In addition, the Department claimed discretionary immunity under section 15-78-60(5). The court disagreed:

Clark presented the testimony of his expert in high-speed chases, Samuel Killman, that the Department's employees did not properly balance the competing considerations of capturing a fleeing suspect versus maintaining the public's safety and that they disregarded appropriate standards in failing to terminate the pursuit. The Department attempted to rebut this evidence with Bradley's testimony that he did weigh these competing concerns. This created a question of fact that could not be resolved by the trial court. Accordingly, we hold the trial court properly denied the Department's motions for judgment as a matter of law on the ground of discretionary immunity.

Moreover, we question whether the discretionary immunity provision is applicable to this case in any event. Some jurisdictions determine whether an act is discretionary by considering if it can best be described as planning or operational. In this case, we believe the function of the Department's employees in carrying out a general pursuit policy is operational in nature and is not the type of discretionary act contemplated in the Tort Claims Act. The fact that the employees had to make decisions or exercise some judgment in their activities is not determinative. To read the exception that broadly would encompass virtually all traffic stops made by the Department's employees, as they all involve some degree of decision-making, but they are not the type of discretionary act envisioned under the Tort Claims Act.

Clark, 353 S.C. at 305-06, 578 S.E.2d at 23 (footnotes omitted).

Jackson v. S.C. Dep't of Corrections, 301 S.C. 125, 390 S.E.2d (Ct. App. 1989), aff'd, 302 S.C. 519, 397 S.E.2d 377 (1990), was a suit against the Department of Corrections for the wrongful death of inmate Stroman Jackson. Jackson was killed by another inmate, Wilson Atkinson. Atkinson had an extensive history of attacking inmates and officers and had killed an inmate on a prior occasion. A jury returned a verdict for Jackson, but the trial court granted the Department's JNOV. The Department claimed immunity under section 15-78-60(5) for what it claimed was "the exercise of discretion or judgment" in its decision to move Atkinson from a maximum-security facility to the facility where Jackson

While Atkinson's transfer was admittedly an act requiring the discretion and judgment of the Department, Section 15-78-60(25) provides an exception to immunity where the governmental entity exercises its responsibility or duty in a grossly negligent manner. Section 15-78-60(5) must be read in light of this exception. If discretion is exercised in a grossly negligent manner, the exception to the normal rule of immunity applies.

301 S.C. at 128, 390 S.E.2d at 468.

In Faile v. S.C. Dep't of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002), after ruling the Department was not immune from liability under section 15-78-60(1), the court turned to the Department's claim of discretionary immunity under section 15-78-60(5). The court concluded DJJ was not entitled to immunity under that provision:

A governmental entity is not liable for losses resulting from an exercise of discretion by its employees. Section 15-78-60(5) of the South Carolina Tort Claims Act exempts governmental entities from liability for losses resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." Discretionary immunity is an affirmative defense requiring DJJ to prove Dorsey evaluated competing alternatives and made a "judgment" call based on applicable professional standards. Foster v. South Carolina Dep't of Highways & Pub. Transp., 306 S.C. 519, 413 S.E.2d 31 (1992).

In determining whether Dorsey's action was discretionary, it is helpful to compare the two classifications for the duties of public officials. The duties of public officials are generally classified as either ministerial or discretionary. Jensen v. Anderson County Dep't of Soc. Servs., 304 S.C. 195, 403 S.E.2d 615 (1991). "The duty is ministerial when it is absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts." Id. at 203, 403 S.E.2d at 619. The duty is discretionary if the governmental entity proves it actually weighed competing considerations, faced with alternatives, and made a conscious decision based upon those considerations. Id. (citing Niver v. Dep't Highways & Pub. Transp., 302 S.C. 461, 395 S.E.2d 728 (Ct. App. 1990)).

In Jensen, this Court affirmed the Court of Appeals' finding that insufficient evidence was submitted to determine whether the Department of Social Services ("DSS") made a discretionary decision. Id. In the case, a teacher reported a potential child abuse case to DSS. A DSS social worker interviewed the child, and noted the presence of bruises and the child's fear of the mother's boyfriend. However, the social worker failed to follow up on the interview and eventually closed the file. One month later, the child's brother was beaten to death in the home. The Court held that DSS had a duty to conduct a thorough investigation before deciding to close the file. The Court concluded that conducting the investigation was ministerial but closing the file was discretionary because it required applying facts discovered through investigation to reach a decision. Id. Despite the fact that closing the file is discretionary, the Court held that there was insufficient evidence to grant discretionary immunity, because the decision was due to failure to complete the investigation, an administrative function, rather than a weighing of competing considerations. Id.

In the present case, DJJ claims Dorsey's decision to place Fredrico in his home after he was expelled from his foster home was a discretionary decision. Respondents claim Dorsey placed Fredrico in his family home because he thought no one else would take him.

However, Respondents argue there was alternative placement available in the Greenville Group Home, which had agreed earlier to take Fredrico in an emergency. Therefore, Respondents claim if Dorsey had weighed competing alternatives, he would have placed Fredrico in the Greenville Group home. Based on our holding in Jensen and the evidence before us, DJJ is not entitled to discretionary immunity.

In addition, even if we held Dorsey exercised discretion, the performance of discretionary duties does not give rise to immunity if the public official acted in a grossly negligent manner. See Jackson v. South Carolina Dep't of Corr., 301 S.C. 125, 390 S.E.2d 467 (Ct. App. 1989) aff'd, 302 S.C. 519, 397 S.E.2d 377 (1990). "Gross negligence is the intentional, conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Richardson v. Hambright, 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988). It is the failure to exercise even the slightest care. Hollins v. Richland County Sch. Dist. One, 310 S.C. 486, 427 S.E.2d 654 (1993). This Court has also defined it as a relative term that "means the absence of care that is necessary under the circumstances." Hicks v. McCandlish, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952).

Gross negligence is ordinarily a mixed question of law and fact. See Clyburn v. Sumter County School District # 17, 317 S.C. 50, 451 S.E.2d 885 (1994). When the evidence supports but one reasonable inference, it is solely a question of law for the court, otherwise it is an issue best resolved by the jury. Id. In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury.

In Jackson, supra, a jury found the Department of Corrections grossly negligent for placing a prisoner with strong violent tendencies into a minimum security prison, where he killed a fellow inmate. The Court of Appeals found the Department of Corrections transferred the inmate even though they knew he had multiple disciplinary violations, including the killing of a fellow inmate. The Court of Appeals held the jury could view the transfer as gross negligence since it demonstrated a "conscious indifference to the threat posed to the safety of other inmates." Jackson, 301 S.C. at 125, 390 S.E.2d at 468.

In the instant case, Dorsey placed Fredrico into a home where DJJ workers noted there was no proper supervision. Furthermore, Dorsey knew of Fredrico's violent tendencies. He even wrote before the incident that he "wouldn't give (Fredrico) two weeks with his mother before he would get into big trouble."

Based on the facts before us, DJJ is not entitled to discretionary immunity as a matter of law. At a minimum, Faile has presented enough evidence to overcome DJJ's summary judgment motion on the matter.

Faile, 350 S.C. at 330-32, 566 S.E.2d at 544-45.

B. Denial of Motion In Limine and Request to Charge

"When instructing the jury, the trial court is required to charge only the current and correct law of South Carolina." Cohens v. Atkins, 333 S.C. 345, 349, 509 S.E.2d 286, 289 (Ct. App. 1998). "The substance of the law is what must be instructed to the jury, not any particular verbiage A jury charge which is substantially correct and covers the law does not require reversal." Burroughs v. Worsham, 352 S.C. 382, 391, 574 S.E.2d 215, 220 (Ct. App. 2002). When reviewing a jury charge for alleged error, the appellate court must consider the charge as a whole in light of the evidence and issues presented at trial. Daves v. Cleary, 355 S.C. 216, 224, 584 S.E.2d 423, 427 (Ct. App. 2003). If the charge is reasonably free from error, isolated portions which might be misleading do not constitute reversible error. Id. "To warrant reversal for refusal to give a requested instruction, the refusal must have not only

been erroneous, but prejudicial as well. Cortez, 335 S.C. at 349, 509 S.E.2d at 209, see also Daves, 355 S.C. at 224, 584 S.E.2d at 427 (stating a circuit court's refusal to give a properly requested charge is reversible error only when the requesting party can demonstrate prejudice from the refusal).

When a governmental entity asserts multiple exceptions to the waiver of immunity and at least one of the exceptions contains a gross negligent standard, we must interpolate the gross negligence standard into the other exceptions. In Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999), our supreme court explained:

This Court and the Court of Appeals previously have recognized that the correct approach, when a governmental entity asserts various exceptions to the waiver of immunity, is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard. Duncan v. Hampton County School Dist. # 2, 335 S.C. 535, 517 S.E.2d 449 (1999) (reading discretionary immunity exception in light of exception to immunity in which governmental entity exercises its duty in a grossly negligent manner, such that discretionary immunity will not protect the government if it exercises that discretion in a grossly negligent manner); Etheredge v. Richland School Dist. I, 330 S.C. 447, 463, 499 S.E.2d 238, 246 (Ct. App. 1998) (when an action is brought alleging gross negligence by a governmental entity pursuant to an exception contained in Section 15-78-60, all other applicable exceptions must be read in light of the exception containing the gross negligence standard), cert. granted on other grounds, April 8, 1999. The principles expressed in Duncan and Etheredge are drawn from Jackson v. South Carolina Dep't of Corrections, 301 S.C. 125, 390 S.E.2d 467 (Ct. App. 1989), aff'd, 302 S.C. 519, 397 S.E.2d 377 (1990).

While provisions establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed to limit liability, we also must presume in construing a statute that the Legislature did not intend to perform a futile thing. See Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938). We are constrained to avoid a construction that would read a provision out of a statute, and must reconcile conflicts if possible. Ballard v. Ballard, 314 S.C. 40, 443 S.E.2d 802 (1994).

Steinke, 336 S.C. at 395-96, 520 S.E.2d at 153-54. Accordingly, the Steinke court held:

[T]he inspection powers exception must be read in conjunction with the key exception at issue in this case, Section 15-78-60(12), the licensing powers exception. Department must inspect an amusement device before deciding whether to issue, suspend, or revoke a license. S.C. Code Ann. §§ 41-18-70 and 41-18-80. Department also has an implicit duty to investigate potentially hazardous substantial modifications when it learns of them. It would make no sense to say Department may be found grossly negligent in a licensing decision, yet allow Department to escape liability because the inspection powers exception does not contain a gross negligence standard. The logical way to read these closely related provisions when both are at issue is that a governmental entity may be liable if it is grossly negligent in licensing or inspecting a particular device or activity.

Id. at 395-96, 520 S.E.2d at 153-54.

Therefore, because Proctor proceeded under a theory of gross negligence as provided in section 15-78-60(12), the other subsections of that statute do not provide immunity from DHEC's acts of gross negligence. Accordingly, the trial court did not err in denying DHEC's motion in limine, motion for a directed verdict, or in its jury charge.

III. Evidence of Events Prior to 2000

DHEC contends the trial court erred in allowing evidence of events and damages prior to the Board's 2000 order, because this evidence was barred by the statute of limitations. We disagree.

The admission of evidence is within the trial court's discretion. Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 241, 616 S.E.2d 431, 435 (Ct. App. 2005) (citing Gamble v. Int'l Paper Realty Corp. of South Carolina, 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996); Hofer v. St. Clair, 298 S.C. 503, 513, 381 S.E.2d 736, 742 (1989)); Floyd v. Floyd, 365 S.C. 56, 81-82, 615 S.E.2d 465, 479 (Ct. App. 2005); R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct. App. 2000) (citing Washington v. Whitaker, 317 S.C. 108, 451 S.E.2d 894 (1994)); Haselden v. Davis, 341 S.C. 486, 534 S.E.2d 295 (Ct. App. 2000), aff'd, 353 S.C. 481, 579 S.E.2d 293 (2003); Cudd v. John Hancock Mut. Life Ins. Co., 279 S.C. 623, 310 S.E.2d 830 (Ct. App. 1983). The court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law. Elledge v. Richland/Lexington Sch. Dist. Five, 352 S.C. 179, 185, 573 S.E.2d 789, 792 (2002); R & G Construction, 343 S.C. at 439, 540 S.E.2d at 121; see also Whaley v. CSX Transp., Inc., 362 S.C. 456, 483, 609 S.E.2d 286, 300 (2005) (observing admission of evidence will not be reversed absent an abuse of discretion); Gamble, 323 S.C. at 373, 474 S.E.2d at 441 (noting admission or exclusion of evidence will not be disturbed on appeal absent clear abuse). The trial court's decision will not be reversed on appeal unless it appears the trial court clearly abused its discretion and the objecting party was prejudiced by the decision. S.C. Prop. & Cas. Guar. Ass'n v. Yensen, 345 S.C. 512, 524, 548 S.E.2d 880, 886 (Ct. App. 2001); Sullivan v. Davis, 317 S.C. 462, 465, 454 S.E.2d 907, 909 (Ct. App. 1995); Cudd, 279 S.C. at 629, 310 S.E.2d at 833; see also Stevens v. Allen, 336 S.C. 439, 448, 520 S.E.2d 625, 629 (Ct. App. 1999) ("For this Court to reverse a case based on the admission of evidence, both error and prejudice must be shown."), aff'd, 342 S.C. 47, 536 S.E.2d 663. "The trial judge has wide discretion in determining the relevancy of evidence, and his decision to admit or reject evidence will not be reversed on appeal absent an abuse of that discretion." Moore v. Moore, 360 S.C. 241, 258, 599 S.E.2d 467, 476 (Ct. App. 2004); accord Hoeffner v. The Citadel, 311 S.C. 361, 365, 429 S.E.2d 190, 192 (1993); Davis v. Traylor, 340 S.C. 150, 155, 530 S.E.2d 385, 387 (Ct. App. 2000); Hawkins v. Pathology Assocs. of Greenville, P.A., 330 S.C. 92, 108, 498 S.E.2d 395, 404 (Ct. App. 1998).

All that is required for evidence to be relevant is that it have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCORE; see Hoeffner, 311 S.C. at 365, 429 S.E.2d at 192; Davis, 340 S.C. at 155, 530 S.E.2d at 387; Gulledge v. McLaughlin, 328 S.C. 504, 510, 492 S.E.2d 816, 819 (Ct. App. 1997). "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible." Rule 402, SCORE; see Pike v. South Carolina Dep't of Transp., 332 S.C. 605, 613, 506 S.E.2d 516, 520 (Ct. App. 1998), aff'd as modified, 343 S.C. 224, 540 S.E.2d 87 (2000). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCORE; In re Robert R., 340 S.C. 242, 246-47, 531 S.E.2d 301, 303 (Ct. App. 2000); Haselden, 341 S.C. at 497 n.12, 534 S.E.2d at 301 n.12; Hunter v. Staples, 335 S.C. 93, 101-02, 515 S.E.2d 261, 266 (Ct. App. 1999); see Watson ex rel Watson v. Chapman, 343 S.C. 471, 478, 540 S.E.2d 484, 487 (Ct. App. 2000) ("The dictates of Rule 401 are subject to the balancing requirement of Rule 403, SCORE, which requires a court to exclude relevant evidence upon a showing that its admission would be more prejudicial than probative.").

The evidence at issue here was necessary as a means of introducing the jury to the background events leading up to the period of time from 2000 through the date of the trial. For example, an e-mail referenced by Proctor served to show that DHEC officials were in a position to interact directly with retail sellers and would have knowledge of the rebate list's impact on a facility's business. Moreover, the facts

surrounding this claim and any other acts prior to 2000 were excluded from consideration by the jury for damages. The trial court specifically charged that "[t]he period here for which you are concerned with is that period commencing with July the 27th, 2000." The information relating to what happened prior to the issues in this case was relevant to the questions to be decided at trial. Furthermore, the trial court properly charged the jury that they should consider only those acts occurring after July 27th, 2000. Accordingly, we find no error.

IV. Lost Profits/Damages

DHEC asserts three issues dealing with lost profits and damages: (1) that the court erred in denying DHEC's directed verdict motion as to damages and in charging the jury as to lost profits; (2) that the court erred in refusing DHEC's request for a jury instruction limiting Proctor's damages to \$9,500; and (3) that the damages were so excessive as to require a new trial absolute, or a new trial nisi remittitur.

A. Reasonable Certainty Standard

DHEC did not request the trial court to submit a special verdict form to determine whether the actual damages were for lost profits, loss of goodwill, or some other measure. Without a special verdict form, it would be speculative for this Court to determine what portion of the award the jury attributed to lost profits as opposed to other tort damages. See Moore v. Moore, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004). Even so, the law does not require absolute certainty of data upon which lost profits are to be determined, but requires such reasonable certainty that damages are not based upon speculation and conjecture. It is sufficient if there is a certain standard or fixed method by which profits may be estimated and determined with a fair degree of accuracy. Beck v. Clarkson, 300 S.C. 293, 298-99, 387 S.E.2d 681, 684 (Ct. App. 1989) (quoting South Carolina Fin. Corp. of Anderson v. West Side Fin. Co., 236 S.C. 109, 113 S.E.2d 329 (1960)).

"'Profits' have been defined as the 'net pecuniary gain from a transaction, the gross pecuniary gains diminished by the cost of obtaining them.'" Moore, 360 S.C. at 253, 599 S.E.2d at 473 (quoting Restatement of Contracts § 331, Comment B (1932)); see also Mali v. Odom, 295 S.C. 78, 367 S.E.2d 166 (Ct. App. 1988) (defining profits as the net of income over expenditures during a given period).

Drews Co., Inc. v. Ledwith-Wolfe Assocs., Inc., 296 S.C. 207, 371 S.E.2d 532 (1988), offers an erudite and comprehensive analysis of the standards governing recovery of lost profits:

The crucial requirement in lost profits determinations is that they be "established with reasonable certainty, for recovery cannot be had for profits that are conjectural or speculative." South Carolina Finance Corp., supra, at 122, 113 S.E.2d at 336. "The proof must pass the realm of conjecture, speculation, or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn." 22 Am.Jur.2d Damages § 641 (1988).

Numerous proof techniques have been discussed and accepted in different factual scenarios. See, e.g., Upjohn v. Rachelle Laboratories, Inc., 661 F.2d 1105, 1114 (6th Cir. 1981) (proof of future lost profits based on marketing forecasts by employees specializing in economic forecasting); Petty v. Weyerhaeuser Co., supra (skating rink's projected revenues compared to those of another arena in a nearby town); see also Restatement (Second) of Contracts § 352, at 146 (1981) (proof of lost profits "may be established with reasonable certainty with the aid of expert testimony, economic and financial data, market surveys and analyses, business records of similar enterprises, and the like."); Note, supra, 48 Ohio St. L.J. at 872-3 (means of proving prospective profits include (1) "yardstick" method of comparison with profit performance of business similar in size, nature and location; (2)

comparison with profit history of plaintiff's successor, where applicable, (3) comparison of similar businesses owned by plaintiff himself, and (4) use of economic and financial data and expert testimony).

Drews Co., 296 S.C. at 213-14, 371 S.E.2d at 535-36. The Drews Co. case dealt specifically with lost profits in the context of a new business. The court explained: "While the factual contexts in which new business/lost profits cases arise will undoubtedly vary, these methods of proof and the 'reasonable certainty' requirement bear an inherent flexibility facilitating the just assessment of profits lost to a new business due to contractual breach." Id. at 214, 371 S.E.2d at 536. Although the instant case does not involve lost profits of a new business, the court's comment that the reasonable certainty requirement bears an inherent flexibility facilitating the just assessment of lost profits holds true here as well.

In Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981), our supreme court observed:

Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required. Piggy Park Enterprises, Inc. v. Schofield, 251 S.C. 385, 162 S.E.2d 705 (1968); Gray v. Southern Facilities, Inc., 256 S.C. 558, 183 S.E.2d 438 (1971).

Accord Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005); Collins Entm't, Inc. v. White, 363 S.C. 546, 611 S.E.2d 262 (Ct. App. 2005); see also Sterling Dev. Co. v. Collins, 309 S.C. 237, 242, 421 S.E.2d 402, 405 (1992) ("In claiming lost profits, the degree of proof required is that of reasonable certainty. . . . The proof must pass the realm of conjecture, speculation or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn.") (citations omitted). In Piggy Park Enterprises, Inc. v. Schofield, 251 S.C. 385, 162 S.E.2d 705 (1968), the supreme court inculcated:

It is, of course, true that the existence or amount of damages cannot be left to conjecture, guess or speculation.

'As a general rule, the evidence should be such as to enable the court or jury to determine * *
* the amount of damages with reasonable certainty or accuracy; and it is sufficient if they are so established.

'Proof of the amount of loss with absolute or mathematical certainty is not required, and it does not matter that the determination of damages depends to some extent on the consideration of contingent events. So, it had been held sufficient if a reasonable basis of computation is afforded, even though the result may be only approximate, or to adduce evidence which is the best the case is susceptible of under the circumstances and which will permit a reasonably close estimate of the loss.' 25A C.J.S. Damages § 162(2), p. 80. Cf. Powers v. Calvert Fire Ins. Co., 216 S.C. 309, 57 S.E.2d 638, 16 A.L.R.2d 1261; S. C. Electric & Gas Co. v. Aetna Ins. Co., 233 S.C. 557, 106 S.E.2d 276.

Piggy Park Enterprises, 251 S.C. at 391-92, 162 S.E.2d at 708. "The problematic nature of proving damages for loss of profits in a tort action will not prevent recovery where . . . the plaintiff can present evidence from which the court can make 'fair and reasonable approximation of them.'" Petty v. Weyerhaeuser Co., 288 S.C. 349, 355-56, 342 S.E.2d 611, 615-16 (Ct. App. 1986) (citations omitted).

1. Directed Verdict

DHEC contends the trial court should have directed a verdict in its favor for failure to prove damages. At the close of trial, DHEC moved for a directed verdict on damages, arguing:

And also the third ground for my motion for directed verdict is the failure to prove his damages in this case by evidence that the jury can look at and not engage in speculation or conjecture, and there's been no proper proof of damages in this case.

In its brief, DHEC reiterates, "Proctor failed to introduce any evidence that a jury could use to determine an amount of damages." We disagree.

In this case, the evidence advanced at trial supports the jury's award of damages. The evidence showed there are three million tires discarded in South Carolina each year and there are fewer than ten waste tire facilities in the State. Because Proctor was not on the rebate list, he was unable to sustain contracts with his major customers and lost the dollar he would have received for every tire he took into the facility. Proctor's customers disposed of over 15,000 tires per quarter, each of which was subject to the one-dollar rebate. Moreover, Proctor testified that "thirty-three to forty percent of the tires we got [from Sam's Club] we could sell them and make a profit[.]" Thus, from 2000 until the time Proctor was returned to the list, he lost the rebate for each tire he would have received from Sam's Club, plus lost profits from thirty-three to forty percent of the tires he would have sold as used tires. Further, Proctor sold chips from tires for playgrounds, carpet backing, and septic systems.

Proctor demonstrated that between 2000 and 2001, his company paid approximately \$9,500 to take tires to another processing facility after he was removed from the rebate list. Proctor presented evidence of the number of tires his business processed per year from 1995 through 2004, which included 30,000 tires in 1995, and 60,000 tires in 1996. Proctor asseverated that as a result of DHEC's actions, Anderson Tire Recycling's business reputation had been damaged and had not yet recovered.

We find sufficient evidence of damages to support the trial judge's submitting this case to the jury. See S.C. Prop. & Guar. Ass'n v. Yensen, 345 S.C. 512, 521, 548 S.E.2d 880, 884-85 (Ct. App. 2001) (noting on appeal from the denial of a motion for a directed verdict, the appellate court may only reverse if there is no evidence to support the trial court's ruling).

2. Jury Instructions

Similarly, we reject DHEC's argument that the court erred by not charging the jury that Proctor's damages, if any, were limited to \$9,500. "When instructing the jury, the trial court is required to charge only the current and correct law of South Carolina." Cohens v. Atkins, 333 S.C. 345, 349, 509 S.E.2d 286, 289 (Ct. App. 1999). In reviewing a jury charge for alleged error, the appellate court must consider the charge as a whole in light of the evidence and issues presented at trial. Daves v. Cleary, 355 S.C. 216, 224, 584 S.E.2d 423, 427 (Ct. App. 2003). If the charge is reasonably free from error, isolated portions which might be misleading do not constitute reversible error. Id. "To warrant reversal for refusal to give a requested instruction, the refusal must have not only been erroneous, but prejudicial as well." Cohens, 333 S.C. at 349, 509 S.E.2d at 289. Proctor proffered evidence of damages beyond the \$9,500 he paid to another facility to take tires. Therefore, the trial judge did not err by rejecting DHEC's request to charge.

B. Excessive Damages—New Trial Absolute/New Trial Nisi Remittitur

Finally, DHEC contends the amount of damages found by the jury was so unduly liberal or grossly excessive as to require a new trial nisi remittitur or a new trial absolute. We disagree.

"A new trial nisi is one in which a new trial will be granted unless the party opposing it complies with a condition set by the court." Waring v. Johnson, 341 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000)

(citing Elam v. Black River Elec. Coop., 233 S.C. 233, 104 S.E.2d 337 (1959)). The grant or denial of new trial motions rests within the discretion of the trial judge, and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. Chapman v. Upstate RV & Marine, 364 S.C. 82, 88-89, 610 S.E.2d 852, 856 (Ct. App. 2005); Waring, 341 S.C. at 256, 533 S.E.2d at 910; Vinson v. Hartley, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996). The trial court alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive. Chapman, 364 S.C. at 89, 610 S.E.2d at 856 (citing McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1995)); see also Evans v. Taylor Made Sandwich Co., 337 S.C. 95, 99, 522 S.E.2d 350, 352 (Ct. App. 1999) (noting that when the jury's verdict is inadequate or excessive, the trial judge has the discretionary power to grant a new trial *nisi*); Hawkins v. Greenwood Development Corp., 328 S.C. 585, 493 S.E.2d 875 (Ct. App. 1997) (same). However, compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur*. Cf. Pelican Bldg. Ctrs. v. Dutton, 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993). The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. Cf. Vinson, 324 S.C. at 405, 477 S.E.2d at 723. Great deference is given to the trial judge "who heard the evidence and is more familiar with the evidentiary atmosphere at trial," and who thus "possesses a better-informed view of the damages than this Court." Id. at 405-06, 477 S.E.2d at 723 (citing Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993)); accord Waring, 341 S.C. at 257, 533 S.E.2d at 911.

"When considering a motion for a new trial based on the inadequacy or excessiveness of the jury's verdict, the trial court must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 27, 602 S.E.2d 772, 781 (2004); accord Evans, 337 S.C. at 99-100, 522 S.E.2d at 352. "If the amount of the verdict is **grossly** inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute." Harrison v. Bevilacqua, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003) (internal quotation marks omitted) (quoting O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993)).

"The decision to grant or deny a new trial absolute based on the excessiveness of a verdict rests in the sound discretion of the trial court and will not ordinarily be disturbed on appeal." Elam, 361 S.C. at 27, 602 S.E.2d at 781; see Crawford v. Charleston-Isle of Palms Traction Co., 126 S.C. 447, 120 S.E. 381 (1923) (observing the refusal to grant a new trial on the ground that the verdict was excessive was addressed to the sound discretion of the trial judge). "In deciding whether to assess error when a new trial motion is denied, the appellate court must consider the testimony and reasonable inferences therefrom in the light most favorable to the nonmoving party." Becker v. Wal-Mart Stores, Inc., 339 S.C. 629, 635-36, 529 S.E.2d 758, 761-62 (Ct. App. 2000) (footnote omitted). "The jury's determination of damages, however, is entitled to substantial deference." Harrison, 354 S.C. at 140, 580 S.E.2d at 115.

As stated by the Vinson court:

A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993). The jury's determination of damages, however, is entitled to substantial deference. Id. The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. See Cock-n-Bull Steak House, Inc. v. Generali Ins. Co., ___ S.C. ___, 466 S.E.2d 727 (1996); McCourt by and Through McCourt v. Abernathy, 318 S.C. 301, 457 S.E.2d 603 (1995); Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557 (1993); O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993); Rush, *supra*. The failure of the trial judge to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal this Court

will grant a new trial absolute. Ven v. Citicorp Nat'l Servs., Inc., 312 S.C. 311, 433 S.E.2d 864 (1993); Allstate, supra; O'Neal, supra.

The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. Umhoefer v. Bollinger, 298 S.C. 221, 379 S.E.2d 296 (Ct. App. 1989). See also Boozer v. Boozer, 300 S.C. 282, 387 S.E.2d 674 (Ct. App. 1988) (Court of Appeals has no power to review trial court's ruling unless it rests on basis of fact wholly unsupported by evidence or is controlled by error of law). In deciding whether to assess error to a court's denial of a motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party. Umhoefer, supra.

Vinson, 324 S.C. at 404-05, 477 S.E.2d at 723; see also Welch v. Epstein, 342 S.C. 279, 302, 536 S.E.2d 408, 420 (Ct. App. 2000) ("[T]o warrant a new trial absolute, the verdict reached must be so 'grossly excessive' as to clearly indicate the influence of an improper motive on the jury."). If the verdict is grossly inadequate or excessive, such that it is the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute. O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 55, 56 (1993); Waring v. Johnson, 341 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000).

The decision to grant a new trial nisi remittitur is left to the sound discretion of the trial judge. This record contains sufficient evidence to support his ruling. Because the evidence supports the jury's verdict, we disagree that the damages are grossly excessive so as to suggest the jury was motivated by passion, caprice, or prejudice. The trial court did not abuse its discretion in denying DHEC's motions for a new trial nisi remittitur and a new trial absolute.

CONCLUSION

Based upon the foregoing, the trial court's order is

AFFIRMED.

HEARN, C.J., and KITTREDGE, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Prakash and Urmila Solanki, Respondents,

v.

Wal-Mart Store #2806, and Spartanburg County Sheriff's
Office, Defendants,

Of whom Wal-Mart Store #2806 is the Appellant.

Appellate Case No. 2012-213247

Appeal From Spartanburg County
The Honorable Frank R. Addy, Jr., Circuit Court Judge

Opinion No. 5264
Heard March 5, 2014 – Filed August 20, 2014

AFFIRMED

Regina Hollins Lewis and Mary Daniel LaFave, both of
Gaffney Lewis & Edwards, LLC, of Columbia, for
Appellant.

John David Hawkins and Charles Logan Rollins, II, both
of The Hawkins Law Firm, of Spartanburg, for
Respondents.

KONDUROS, J.: Wal-Mart Store #2806 (Wal-Mart) appeals the trial court's award of punitive damages to Prakash and Urmila Solanki (collectively, the Solankis) in an action for gross negligence. It also appeals the trial court's denial

of its post-trial motions for Judgment Notwithstanding the Verdict (JNOV) and for the reversal or reduction of punitive damages. We affirm.

FACTS/PROCEDURAL HISTORY

On November 27, 2009, "Black Friday," the Solankis went shopping at the Wal-Mart in Boiling Springs, South Carolina. After they selected their items, Mr. Solanki went to the self-checkout line; however, he experienced a problem with the register. Ryan Smalls, a Wal-Mart employee, attempted to help Mr. Solanki. When Smalls could not get the self-checkout machine to operate correctly, Smalls took Mr. Solanki to a cashier-assisted register. There were also problems with that register. During the transaction, Mr. Solanki handed Smalls his debit card and identification. Smalls manually stenciled Mr. Solanki's debit card, which he used as a credit card because Mr. Solanki could not remember his pin number. However, the credit card information of Robin Martin was hand keyed into the register during this transaction. A receipt with Martin's credit card information was signed by Mr. Solanki and \$144.70 was charged to her account. The Solankis left the store unaware of the mistake.

On December 1, 2009, Martin notified the Spartanburg County Sheriff's Office her credit card had been stolen and two unauthorized charges were on her account, including Mr. Solanki's purchase at Wal-Mart. Deputy Gina Cashion was assigned to the case. She requested Wal-Mart provide her with the video surveillance and receipts for the date and time of the unauthorized charges. Wal-Mart found one transaction for that date in the amount of \$144.70. It provided Deputy Cashion with video surveillance of the transaction, a copy of the stenciled impression of Mr. Solanki's debit card, the itemized receipt, and the store's copy of the receipt showing Martin's credit card information with Mr. Solanki's signature.

Deputy Cashion tried to contact Mr. Solanki but was unsuccessful. Based on the information at her disposal, she obtained an arrest warrant for Mr. Solanki. He was arrested in Georgia in April 2010 and spent six nights in jail before he was transported to South Carolina where he posted bail. He was indicted on financial transaction card theft and financial transaction card fraud, but the indictments were dismissed on August 24, 2010.

Mr. and Mrs. Solanki filed a complaint against Wal-Mart and the Sheriff's Office for (1) negligence, (2) gross negligence and recklessness, (3) false imprisonment, (4) intentional infliction of emotional distress, (5) defamation and defamation per

se, (6) assault, (7) battery, (8) malicious prosecution, and (9) loss of consortium.¹ The trial court directed a verdict for Wal-Mart on all causes of action except negligence and gross negligence. The jury returned a verdict against Wal-Mart for negligence. They awarded Mr. Solanki \$50,000 in actual damages and \$225,000 in punitive damages against Wal-Mart. They also found Mr. Solanki was comparatively negligent in the amount of 25%. Wal-Mart filed post-trial motions for JNOV, new trial *nisi* remittitur, reversal or reduction of punitive damages, or new trial pursuant to the Thirteenth Juror Doctrine. The trial court denied all of Wal-Mart's motions. This appeal followed.

LAW/ANALYSIS

I. Punitive Damages

Wal-Mart asserts the Solankis presented insufficient evidence to submit the issue of punitive damages to the jury. Specifically, Wal-Mart maintains the Solankis presented no evidence at trial its actions were willful, wanton, or reckless. Instead, it argues this is a case of simple negligence, which is not subject to punitive damages. Furthermore, Wal-Mart contends the trial court erred in applying the gross negligence standard without first making a finding of willful, wanton, or reckless misconduct before submission to the jury.

Additionally, Wal-Mart argues the Solankis asserted a heightened duty of care for Wal-Mart beyond the duty a merchant owes to its customers. Wal-Mart maintains it was not under a heightened duty of care, and under the general duty of care a merchant owes to a customer, no facts were presented at trial that demonstrated Wal-Mart breached its duty. Wal-Mart contends the Solankis presented no evidence showing it deviated from industry standards by handing over the evidence in its possession to the Sheriff's Office without conducting its own investigation. We disagree.

"In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding by the jury will not be disturbed unless a review of the record discloses no evidence that reasonably supports the jury's findings." *Wright v. Craft*, 372 S.C. 1,

¹ The trial court granted a directed verdict on all claims against the Sheriff's Office except for the claims of false imprisonment and malicious prosecution. The jury returned a verdict in favor of the Sheriff's Office on both claims.

18, 640 S.E.2d 486, 495 (Ct. App. 2006). According to Rule 220(c), SCACR, an appellate court may affirm the lower court's judgment for any reason appearing in the record on appeal. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 417, 526 S.E.2d 716, 722 (2000).

The standard of review as regards the refusal to grant a directed verdict is well established: In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt. The trial court can only be reversed by this [c]ourt when there is not evidence to support the ruling below.

Creech v. S.C. Wildlife & Marine Res. Dep't, 328 S.C. 24, 28-29, 491 S.E.2d 571, 573 (1997) (internal quotation marks omitted).

"The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future." *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). "Punitive damages also serve to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party." *Id.* at 378-79, 539 S.E.2d at 533.

To receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights. *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct. App. 2004). "A conscious failure to exercise due care constitutes willfulness." *McCourt ex rel. McCourt v. Abernathy*, 318 S.C. 301, 308, 457 S.E.2d 603, 607 (1995). The issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton. *Graham v. Whitaker*, 282 S.C. 393, 398, 321 S.E.2d 40, 43 (1984).

In light of *Gamble* [*v. Stevenson*, 305 S.C. 104, 111-12, 406 S.E.2d 350, 354 (1991)], there are now three stages in this state to a trial court's review of punitive damages.

First, the court must determine whether the defendant's conduct rises to the level of culpability warranting a punitive damage award. If not, the issue of punitive damages may not be submitted to the jury. If so, the jury should be adequately instructed to assess an appropriate amount of damages. Second, the trial judge must conduct a post-trial *Gamble* review to ensure that the award does not deprive the defendant of due process. If the award is determined to violate the defendant's due process rights, then the trial court must either grant a new trial absolute, or a new trial *nisi* remittitur. If the award is determined not to violate the defendant's due process rights, then the trial court reaches the third inquiry, to wit, whether, in the exercise of its discretion, it finds the award excessive or inadequate.

S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc., 324 S.C. 149, 154, 478 S.E.2d 57, 59 (1996).

Negligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care. *Clyburn v. Sumter Cnty. Sch. Dist. # 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994). "While punitive damages are recoverable for negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness, yet they are not awarded in this state for mere gross negligence." *Bell v. Atl. Coast Line R. Co.*, 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943). "If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning- the conscious failure to exercise due care." *Berberich v. Jack*, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011).

Gross negligence is ordinarily a mixed question of law and fact. *Clyburn*, 317 S.C. at 53, 451 S.E.2d at 887. "When the evidence supports but one reasonable inference, it is solely a question of law for [the] court, otherwise it is an issue best resolved by the jury. . . . In most cases, gross negligence is a factually controlled concept whose determination best rests with the jury." *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 144, 638 S.E.2d 650, 661 (2006). "[A] merchant is not an insurer of the safety of his customer but owes them only the duty of exercising ordinary care to keep the premises in reasonably safe condition." *Pennington v. Zayre Corp.*, 252 S.C. 176, 178, 165 S.E.2d 695, 696 (1969).

The record contains no evidence the trial court imposed a heightened duty of care on Wal-Mart. At trial, the Solankis' attorney discussed his own belief that Wal-Mart should be subject to a heightened duty; however, the record does not indicate the trial court instructed the jury on a heightened duty.

We find the Solankis presented sufficient evidence of Wal-Mart's willful, wanton, or reckless misconduct to send punitive damages to the jury in two factual circumstances—the taking of the credit card information for the sale and the turning over of the credit card information to law enforcement. The trial court followed proper procedure in making this finding. At the close of all evidence, Wal-Mart moved for a directed verdict, asserting the Solankis had not proven gross negligence, and the trial court denied the motion. In its order denying Wal-Mart's post-trial motions, the trial court explicitly found sufficient evidence of willful, wanton, or reckless misconduct by Wal-Mart to send the issue to the jury. Particularly in light of the standard of review for directed verdict motions, we find sufficient evidence existed at the close of evidence to allow the issue of gross negligence to go to the jury. Wal-Mart attempted to run Mr. Solanki's credit card at least three times. When that was unsuccessful, the employee resorted to manually stenciling Mr. Solanki's credit card; however, the information hand-keyed into the cash register belonged to Martin. At the end of the transaction, the receipt presented had Mr. Solanki's signature but showed Martin's credit card information. These facts combined with Mr. Solanki's testimony that he did not use Martin's credit card could allow a reasonable jury to determine Wal-Mart's actions amounted to gross negligence. When reviewing these facts in the light most favorable to the Solankis, we find no error in the trial court's conclusions.

The trial court also found evidence was presented from which a reasonable jury could have concluded Wal-Mart was aware of the dangerous condition it created. It determined Wal-Mart knew the employee hand-keyed the transaction and testimony was presented Mr. Solanki did not present any card but his own to the cashier. Therefore, viewing all facts in the light most favorable to the Solankis, the trial court determined it would be reasonable to conclude Wal-Mart was responsible for the error in processing the credit card. Furthermore, the trial court concluded Wal-Mart was responsible for the creation and production of the evidence used to arrest Mr. Solanki and it was in the best possible position to point out the discrepancies to the police officers.

II. Post-trial Motions

Wal-Mart asserts the evidence was insufficient to sustain the grant of punitive damages. Therefore, the trial court erred in denying the motion to reverse or reduce the amount of punitive damages.

Regarding the motion for JNOV, Wal-Mart argues the denial of this motion was the first time the trial court made a finding of willful, wanton, or reckless misconduct by Wal-Mart. It maintains this was an error of law. Additionally, it asserts the trial court erred in its evaluation of the *Gamble* factors and the trial court's reasoning is insufficient to sustain an award of punitive damages under a clear and convincing standard. In response to the trial court's evaluation of the first *Gamble* factor (defendant's degree of culpability), Wal-Mart contends the hand keying of Mr. Solanki's credit card only speaks to simple negligence. Additionally, Wal-Mart argues that even if its response to the Sheriff's Office's request for information amounted to negligence, it was only simple negligence, and no evidence was presented Wal-Mart was aware of a dangerous condition it then failed to mitigate. Therefore, it contends the evidence was insufficient to sustain the award of punitive damages.² We disagree.

When reviewing a motion for JNOV, an appellate court must employ the same standard as the trial court. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). On appeal from an order denying a motion for JNOV, an appellate court views the evidence and all reasonable inferences in a light most favorable to the non-moving party. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331-32, 732 S.E.2d 166, 171 (2012).

In *Gamble*, 305 S.C. at 111-12, 406 S.E.2d at 354, the supreme court of South Carolina specified an eight-factor post-verdict review for trial courts to conduct to determine if a punitive damages award comports with due process. The factors are:

- (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7)

² Wal-Mart makes no argument regarding the *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), factors.

defendant's ability to pay; and finally, (8) . . . other factors deemed appropriate.

Id. The trial court is not required to make findings of fact for each factor to uphold a punitive damage award. *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996).

"[W]e need dwell no longer upon the rationale, or upon the merits or demerits, of the doctrine [of punitive damages]. Acquiescence in it for almost two centuries justifies the conclusion that it is now agreeable to, and part of, the public policy of the state." *Rogers v. Florence Printing Co.*, 233 S.C. 567, 574-75, 106 S.E.2d 258, 261-62 (1958).

As previously noted, the Solankis presented sufficient evidence to send the issue of punitive damages to the jury. Accordingly, the trial court did not err in denying Wal-Mart's post-trial motion to reverse or reduce the amount of the punitive damages. We also disagree with Wal-Mart's proposition it was an error of law for the trial court to explicitly state its finding of willful, wanton, or reckless misconduct for the first time in its order denying Wal-Mart's post-trial motions.

We find the trial court's analysis of the *Gamble* factors is sufficient to sustain the punitive damages award. The trial court made the required *Gamble* analysis after the award of punitive damages. Regarding the defendant's degree of culpability, it found Wal-Mart created and disseminated the evidence used to arrest Mr. Solanki. Therefore, Wal-Mart was in the best position to point out the hand-keying of the credit card information to the Sheriff's Office. As to the duration of the conduct, the trial court determined the transaction itself lasted a few minutes. However, Wal-Mart had the opportunity to explain the odd nature of the transaction throughout the criminal process. Concerning the defendant's awareness or concealment, the trial court found Wal-Mart created the documents and had exclusive knowledge and possession of them when it turned the information over to the Sheriff's Office. Furthermore, Wal-Mart was in the best position to ensure the transaction was handled properly. The trial court stated a punitive damages award may encourage greater oversight in Wal-Mart's and similarly situated vendor's credit card processing procedures. Regarding whether the award is reasonably related to the harm likely to result from such conduct, the trial court found the award was reasonably related to the harm suffered by Mr. Solanki and others who may be improperly accused of a crime due its negligence. It further found Wal-Mart was able to pay the punitive damages award. The court considered the fact that the jury was able to view the transaction on video and then

render its verdict as a significant "other factor." We find the evidence supports the trial court's ruling.

CONCLUSION

Based on the foregoing, the trial court's decision is

AFFIRMED.

LOCKEMY, J., concurs.

WILLIAMS, J: I respectfully dissent and believe the trial court improperly sent the issue of punitive damages to the jury.

The Solankis failed to submit *any* evidence at trial that Wal-Mart's actions in processing Mr. Solanki's credit card or in complying with law enforcement's request were "willful, wanton, or in reckless disregard of [Mr. Solanki's] rights." *See Longshore v. Saber Sec. Servs., Inc.*, 365 S.C. 554, 564, 619 S.E.2d 5, 11 (Ct. App. 2005) (finding "the plaintiff must prove the defendant's misconduct was willful, wanton, or in reckless disregard of his rights" to support an award of punitive damages). Although I believe the error in hand-keying Mr. Solanki's credit card information would give rise to a negligence claim against Wal-Mart, no evidence was introduced at trial to show Wal-Mart's conduct was so gross or reckless of consequences that punitive damages were warranted. *See Rogers v. Florence Printing Co.*, 233 S.C. 567, 577, 106 S.E.2d 258, 263 (1958) ("The test by which a tort is to be characterized as reckless, wil[l]ful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights."); *Hicks v. McCandlish*, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952) ("Gross negligence is a relative term, and means the absence of care that is necessary under the circumstances, but the absence of this care alone, whether called 'gross' or 'ordinary' negligence, does not authorize the jury to give exemplary damages."); *Bell v. Atl. Coast Line R. Co.*, 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943) ("While punitive damages are recoverable for negligence so gross or reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness, yet they are not awarded in this state for mere gross negligence.").

Specifically, testimony from trial negates the Solankis' claim that Wal-Mart acted in a reckless manner. Ryan Smalls, the Wal-Mart employee who handled Mr.

Solanki's transaction, testified at trial to Wal-Mart's internal procedures for handling credit card transactions. Smalls testified that Wal-Mart's policy, when a credit card would not swipe at a self-checkout station, was to first try to finalize the transaction at the self check-out station. If this did not work, an employee would suspend the transaction and attempt to process the transaction at the employee's work station. If the credit card still would not work, the employee would hand key the credit card number into the system twice to ensure accuracy, enter the expiration date, and then ask a customer service manager to manually perform an override. After the override was performed, the employee would then enter the three-digit security code on the back of the credit card before finalizing the transaction. According to Smalls, even a manager could not override the transaction if each of these steps were not properly taken. Although Smalls did not independently recollect this transaction with Mr. Solanki, after viewing the video surveillance, he affirmed that each of the foregoing steps was taken during this transaction. Further, although it is regrettable that Mr. Solanki spent six nights in jail as a result of this incident, the Solankis presented no evidence that Wal-Mart's actions of complying with law enforcement's request were unreasonable or that Wal-Mart intentionally and recklessly processed Mr. Solanki's credit card transaction. *See Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 ("In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or with reckless disregard for the plaintiff's rights. A conscious failure to exercise due care constitutes willfulness." (internal citations omitted)).

Moreover, I believe the trial court erred when it failed to adequately assess the culpability of Wal-Mart's conduct *before* charging the jury on punitive damages. *See S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc.*, 324 S.C. 149, 154, 478 S.E.2d 57, 59 (1996) ("*First*, the [trial] court must determine whether the defendant's conduct rises to the level of culpability warranting a punitive damages award. If not, the issue of punitive damages may not be submitted to the jury." (emphasis added)); *Longshore*, 365 S.C. at 564, 619 S.E.2d at 11 ("[T]rial judges in this state have long been required, *as a threshold matter*, to assess the culpability of a defendant's conduct to determine whether punitive damages are available in a given case (i.e., whether the issue should be submitted to the jury)." (emphasis added) (quoting *South Carolina Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc.*, 324 S.C. 149, 152, 478 S.E.2d 57, 58 (1996))). Rather, the extent of the trial court's observation on the issues of gross negligence and punitive damages was as follows:

As a general rule, the issues of gross negligence are properly for the jury to determine. There's evidence, based upon the weirdness of the transaction, for lack of a better word, . . . from which the jury could conclude that, in some way, . . . the defendant Wal-Mart, was grossly negligent in the way they handled the transaction. . . . I'll charge gross negligence and punitives.

I believe the "weirdness of the transaction," standing alone, is insufficient as a matter of law to substantiate a gross negligence claim or to support an award of punitive damages. Thus, I respectfully disagree with the majority and would hold the trial court erred in submitting the issue of punitive damages to the jury.

FORM 14
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

RECEIVED
DEC 07 2015
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper Jr, Circuit Court Judge

Case No. 2015-CP-40-03112

South Carolina
Department Of
Employment Workforce,
South Carolina Budget and
Control Board and Office
Of South Carolina
Governor,

Respondents,

v.

Clarence B. Jenkins Jr,

Appellant.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

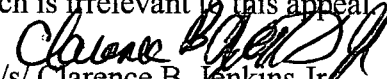
Appellant proposes the following be included in the Record on Appeal:

1. Order of October 8, 2015;
2. Order of September 15, 2015;
3. Plaintiff Proposed Order September 25, 2015;
4. Complaint;

5. Answer;
6. Memoranda Of Law September 3, 2015;
7. Unlawful Employment Practices, Exception 1-13-80 (1) (2);
8. South Carolina Tort Law 15-78-30;
9. South Carolina Law Slander and Libel 15-3-550;
10. South Carolina Law Declaration 41-27-20;
11. South Carolina Law Exemption to immunity 15-78-60 (25);
12. Rule 12(b);
13. Defendant's Exhibits 1, 2, 3, and 4.

I certify that this designation contains no matter which is irrelevant to this appeal

December 7, 2015


/s/ Clarence B. Jenkins Jr.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
G. Thomas Cooper Jr, Circuit Court Judge

RECEIVED

DEC 07 2015
SC Court of Appeals

South Carolina Department
Of Employment Workforce, South
Carolina Budget and Control Board
And Office Of South Carolina
Governor _____ Respondents,

v.

Clarence B. Jenkins Jr, _____ Appellant,

RECORD OF APPEAL

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**FORM 15
RECORD ON APPEAL**

DEC 07 2015

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]**

SC Court of Appeals

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

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South Carolina
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RECORD ON APPEAL

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Order of October 8, 2015

[ORDER GRANTING DEFENDANTS MOTION TO DISMISS BY JUDGE G. THOMAS COOPER JR.,]

Order of September 15, 2015

[STATEMENT OF JUDGMENT BY THE COURT BY G. THOMAS COOPER JR.,]

Complaint

[COMPLAINT BY CLARENCE B. JENKINS JR.,]

Answer

[MOTION TO DISMISS OF DEFENDANTS BY ATTORNEY EUGENE H. MATTHEWS.]

Memoranda Of Law

[MEMORANDA OF LAW BY CLARENCE B. JENKINS JR.,]

Proposed Order

[PROPOSED ORDER BY CLARENCE B. JENKINS JR.]

South Carolina Code Of Law

[TORT CLAIM ACT SECTION 15-78-30].

South Carolina Code Of Law

[DECLARATION OF STATE POLICY SECTION 41-27-20.]

South Carolina Code Of Law

[EXCEPTIONS TO WAIVER OF IMMUNITY SECTION 15-78-60 (25).]

South Carolina Code Of Law

[UNLAWFUL EMPLOYMENT PRACTICES; EXCEPTIONS SECTION 1-13-80 (1) (2).]

South Carolina Code Of Law

[TWO YEARS SECTION 15-3-550 (1).]

Rule 12 (b)

[DEFENSES AND OBJECTIONS-HOW PRESENTED.]

2.

Defendant's Exhibit 1

[Email Notification of Barred From Applying from Sharlayne Bellamy of SC Judicial Center.]

Defendant's Exhibit 2

[Email Communications between Sharlayne Bellamy and Terrashima Ellerbe of South Carolina Budget and Control Board.]

Defendant's Exhibit 3

[Email Communications from Samuel Wilkins to Valerie Wilkie pertaining to sending notification to state agencies that received Barred From Applying.]

Defendant's Exhibit 4

[Email Communications from Ed Cavazos to Samuel Wilkins of South Budget and Control Board providing verification Adrienne Sorenson of South Carolina Department Of Employment Workforce applied barred from applying on July 19, 2013 to December 30, 2018.]

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 7, 2015.


/s/ Clarence B. Jenkins Jr.
Clarence B. Jenkins Jr,
945 Wire Rd
Neeses, South Carolina 29107
(803) 263-4514
Attorney for Appellant

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4003112

Clarence B Jenkins Jr

SC Department of Employment Workforce
South Carolina Governor

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried and heard and a decision rendered.

☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Voluntary Non-suitor);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 12 October 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Clarence B Jenkins Jr

Eugene Hamilton Matthews

Clarence B Jenkins Jr

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Jeannette W McBride

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Clarence B. Jenkins, Jr.,)
)
Plaintiff,)

C/A No.: 2015-CP-40-03112

v.)

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

South Carolina Department of)
Employment & Workforce, South)
Carolina Budget & Control Board, and)
Office of the Governor of South Carolina,)
)
Defendants.)

2015 OCT 12 AM 11:36
FILED
RICHLAND COUNTY
JANETTE W. McCOY
C.C.P. & G.S.

This matter came before this Court on September 15, 2015, on the Motion to Dismiss filed by Defendants South Carolina Department of Employment & Workforce ("SCDEW"), South Carolina Budget & Control Board ("SCBC&B" or the "Board") and the Office of the Governor of South Carolina (hereinafter collectively the "Defendants") under Rule 12(b)(6), SCRCP. The Court also heard several motions filed by *pro se* Plaintiff, which were alternatively denied or dismissed as moot.

Having considered the memoranda provided by each side and the arguments of the parties, I hereby GRANT the Defendants' Motion to Dismiss and DISMISS this case with prejudice as the three named Defendants.¹

STANDARD OF REVIEW

In considering a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, the trial court must base its ruling solely on allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for

¹ Although the Complaint references certain individuals, none have been served as individual parties to this case.

relief. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). In this case, the Complaint does not state a claim for which relief can be granted. For that reason, the lawsuit must be dismissed.

PLAINTIFF'S ALLEGATIONS

Plaintiff is a former employee of SCDEW. (Plaintiff's Complaint, ¶ 7). He alleges that the Defendants "secretly blackballed [his] job application seeking employment with [the] State of South Carolina." (Plaintiff's Complaint, ¶ 6). He specifically claims that his applications for employment were rejected because a SCDEW employee named Adrienne Sorensen entered a "Barred from Applying" code to his applications. (Plaintiff's Complaint, ¶ 32). According to the Complaint, SCDEW and the Board identified the code as a system error occurring in July and August 2013. (Plaintiff's Complaint, ¶¶ 37-38).

Plaintiff purports to bring three (3) causes of action against the Defendants:

- Plaintiff attempts to allege a "Defamation" claim against the Defendants related to the "Barred for Applying" code allegedly entered into the State's computer system. Plaintiff variously described this as a "well formed plan" and that the Defendants' individual employees committed "intentional acts by manipulating computer functions performed with malice towards Plaintiff." (Plaintiff's Complaint, ¶¶ 37-38, 55). More specifically, Plaintiff argues that "it is reasonable to believe" that a single SCDEW employee, Adrienne Sorensen, "performed such an egregious act on her own without permission," and that such an act was "criminal." (Plaintiff's Complaint, ¶ 39). Plaintiff also alleges that she did so "outside the scope of her employment" and "with malicious intent." (Plaintiff's Complaint, ¶¶ 58-59).
- Plaintiff also attempts to allege an "Abuse of Process" claim² based on the same allegations. (Plaintiff's Complaint, ¶ 55).
- Plaintiff's final cause of action is stated under S.C. Code Ann. § 15-3-550 with the statute referencing a two-year statute of limitations for defamation claims. Because the statute does not describe an independent cause of action, Plaintiff's "Third Cause of Action" does not state a claim. (Plaintiff's Complaint, ¶¶ 56-59).

² Plaintiff's Second Cause of Action also includes a reference to a "Violation of S.C. Code Computer." This is not a legally cognizable claim.

OPINION

I. PLAINTIFF'S DEFAMATION CLAIM FAILS UNDER THE PROVISIONS OF THE SOUTH CAROLINA TORT CLAIMS ACT.

Under South Carolina law, each of the Defendants is an entity covered by the South Carolina Tort Claims Act ("SCTCA"). S.C. Code Ann. § 15-78-10 *et seq.* The SCTCA explicitly provides that these entities are immune from suit where an employee acts outside the scope of his or her duty, or with an intent to harm, or with malice. S.C. Code Ann. §§ 15-78-60(17), 15-78-70.

According to Plaintiff's own pleadings, the act for which he seeks redress – being "blackballed" because Adrienne Sorensen tagged Plaintiff's applications for employment with a "Barred for Applying" code – was done "outside the scope of her employment" and "with malicious intent." (Plaintiff's Complaint, ¶¶ 58-59). For that reason, the Plaintiff's own allegations bar recovery from these three specific Defendants under these provisions of the SCTCA. *See Moore by Moore v. Berkeley County School Dist.*, 326 S.C. 584, 586-587, 486 S.E.2d 9, 11 (S.C. App. 1997) (governmental entity immune from suit for employee's intentional torts, or acts outside the scope of his duty, under S.C. Code Ann. § 15-78-60(17)); *McCall v. Williams*, 52 F.Supp.2d 611, 615 (D.S.C. 1999) (governmental entity not proper party for intentional torts under Tort Claims Act).

II. PLAINTIFF HAS FAILED TO STATE A PRIMA FACIE CLAIM FOR ABUSE OF PROCESS AGAINST THE DEFENDANTS, AND FOR THAT REASON, IT MUST BE DISMISSED.

The South Carolina Supreme Court has defined abuse of process as "employment of legal process for some purpose other than which it was intended by law to effect – the improper use of a regularly scheduled process." *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693, 695 (1967). It is distinguished from malicious prosecution by saying it "involves the malicious misuse of perversion of the process, after its issuance, for an end not lawfully



warranted by it.” *Johnson v. Painter*, 279 S.C. 390, 307 S.E.2d 860 (1983). The elements, as articulated in *Huggins*, are (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding.

The second element, a “willful act,” has been described as “[s]ome definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process[.]” *Hainer v. Am. Med. Int’l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). The “willful act” element consists of three components: (1) “a ‘willful’ or overt act”; (2) “in the use of the process”; (3) “that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective.” *Food Lion, Inc. v. United Food & Commercial Worker’s Int’l Union*, 351 S.C. 65, 715 S.E.2d 251, 254 (S.C. App. 2002) (citations omitted).

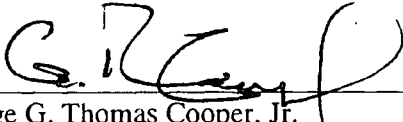
Here, the Complaint contains no allegation that any of the Defendants used or authorized civil or criminal “process” with regard to Plaintiff. Lacking this element, Plaintiff’s abuse of process claim fails and must be dismissed with prejudice.

CONCLUSION

For the reasons detailed above, Plaintiff has failed to state any justiciable claim against South Carolina Department of Employment & Workforce, the South Carolina Budget & Control Board, or the Office of the Governor of South Carolina.

This lawsuit is therefore DISMISSED with prejudice, with each side bearing its own costs and fees.

AND IT IS SO ORDERED.



Judge G. Thomas Cooper, Jr.
Fifth Judicial Circuit

10 - 8 ., 2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4003112

Clarence B. Jenkins Jr.

SC Department of Employment Workforce

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other Dismissed without prejudice
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court.

Plaintiff's Motion to Compel Defendants to Answer Complaint is DENIED.

Defendant's Motion to Dismiss is UNDER ADVISEMENT. Proposed orders in 15 days, September 30, 2015.

Plaintiff's Motion to Quash Dismissal of Defendants Request is DENIED.

Plaintiff's Motion to Leave and Motion to Amend Complaint is DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge



Judge Code 2126

Date 9-15-15

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of Sept, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Clarence B. Jenkins Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

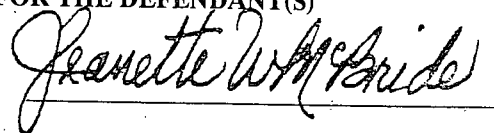
Eugene Hamilton Matthews

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

L. Coconut Pantsari

Clerk of Court



SCANNED

RE: Fw:Proposed Order

Friday, September 25, 2015 1:55 PM

From: "Cooper G. Thomas Law Clerk (Lauren E. Patterson)" <GCooperLC@sccourts.org>

To: "Clarence Jr" <upscale81@yahoo.com>

Mr. Jenkins,

Thank you for your order.

Lauren Patterson
Law Clerk to the Honorable G. Thomas Cooper, Jr.
Circuit Court of South Carolina, Fifth Circuit
1701 Main St., Room 320
P.O. Box 192
Columbia, SC 29201
Phone: (803) 576-1783
Fax: (803) 576-1741

-----Original Message-----

From: Clarence Jr [mailto:upscale81@yahoo.com]

Sent: Friday, September 25, 2015 2:47 PM

To: Cooper, G. Thomas Law Clerk (Lauren E. Patterson); gmatthews@richardsonplowden.com

Subject: Fw:Proposed Order

Ms. Patterson:

Please receive Pro Se Plaintiffs Proposed Order as requested. I have forward a copy to Atty. Matthews. Please notify if document was not received.

Sincerely,

Clarence Jenkins Jr

--- On Fri, 9/25/15, clarence jenkins <clarence491@live.com> wrote:

> From: clarence jenkins <clarence491@live.com>

> Subject:

> To: upscale81@yahoo.com

> Date: Friday, September 25, 2015, 2:37 PM

>

>

>

>

>

> Final

> Version

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

|                                        |   |                                  |
|----------------------------------------|---|----------------------------------|
| IN THE STATE OF SOUTH CAROLINA         | ) | IN THE COURT OF COMMON PLEAS     |
|                                        | ) |                                  |
| COUNTY OF RICHLAND                     | ) |                                  |
|                                        | ) |                                  |
| Clarence B. Jenkins Jr.                | ) | C/A No.: 2015-CP-40-03112        |
|                                        | ) |                                  |
| Plaintiff,                             | ) |                                  |
|                                        | ) | <b>ORDER DENYING DEFENDANT'S</b> |
| vs.                                    | ) |                                  |
|                                        | ) | <b>MOTION TO DISMISS</b>         |
|                                        | ) |                                  |
| SC Department Of Employment            | ) |                                  |
| Workforce, SC Budget And Control Board | ) |                                  |
| Office Of South Carolina Governor      | ) |                                  |
|                                        | ) |                                  |
| Defendants,                            | ) |                                  |
|                                        | ) |                                  |
| _____                                  | ) |                                  |

The matter came before the court on September 15, 2015 on the Motion To Dismiss filed by Defendants South Carolina Department Of Employment Workforce (SCDEW), South Carolina Budget And Control Board (SCBCB) And Office Of South Carolina Governor. Plaintiff filed a Memorandum Of Law In Opposition to Defendant's Motion To Dismiss based on a over whelming preponderance of evidence readily to be inspected by this Honorable Court for verification of unlawful employment practices that has promoted defamation through slander, libel and abuse of process while preventing

employment opportunities. The fact that Attorney Eugene H. Matthews for Defendants have asked this Honorable Court to dismiss complaint with prejudice instead of fairness and truth is of serious concerns which SCDEW, SCBCB And Office Of South Carolina Governor therefore has shown a willful act to violate the laws of this state established by South Carolina General Assembly. By the state of South Carolina classifying Plaintiff as "Barred From Applying" violated South Carolina Code of Law 1-13-80. South Carolina General Assembly attempted to promote dignity, fairness and harmony for one another therefore declared under South Carolina Code of Law 1-13-80 (A) (B) SECTION 1-13-80. Unlawful employment practices; exceptions.

(A) It is an unlawful employment practice for an employer:

(1) to fail or refuse to hire, bar, discharge from employment or otherwise discriminate against an individual with respect to the individual's compensation or terms, conditions, or privileges of employment because of the individual's race, religion, color, sex, age, national origin, or disability;

(2) to limit, segregate, or classify employees or applicants for employment in a way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, or disability;

(B) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against an individual because of the

individual's race, color, religion, sex, age, national origin, or disability, or to classify or refer for employment an individual on the basis of the individual's race, color, religion, sex, age, national origin, or disability.

Having considered the memoranda provided by each side and the arguments of the parties, I hereby GRANT the Plaintiff's Motion In Opposition To Dismiss Complaint and affirmed the law as established by the South Carolina General Assembly to govern.

### **STANDARD OF REVIEW**

In considering Memorandum Of Law In Opposition To Dismiss per Defendant's Request asked that this Honorable Court base its ruling on all allegations set forth in complaint because of the severity and a total disregard for the law. Plaintiff's Complaint specifically addressed Defamation by slander and libel as a claim which South Carolina Code of Law 15-3-550 affirmed. SCDEW, SCBCB And Office Of South Carolina Governor are all government entities where "Barred From Applying" was activated under their authority and supervision therefore is subject to the Tort Law of SC Code of Law 15-78-40. By SCDEW, SCBCB And Office Of South Carolina Governor all committed an unlawful employment practices under SC Code of Law 1-13-80 (A) {1,2} which discriminated against Plaintiff would be subject to the South Carolina Tort Claims Act Law 15-78-40.

### DEFENDANT'S ALLEGATIONS

Defendants has alleged no wrong doings and has not accepted responsibility for any issues raised in complaint. Defendants are alleging that Plaintiff's application was not secretly blackballed by state of South Carolina. Defendants has made no acknowledgment of "Barred From Applying" either by Adrienne Sorenson under the authority and supervision of SCDEW, SCBCB and Office of South Carolina Governor. Defendants has made referenced to SCDEW, and SCBCB was system error due to (Plaintiff's Complaint (37-38) but has failed to recognized in (38) that their own investigation had evidence that it was not a malfunction. Defendants are alleging that individual persons named in the complaint has not been served and because of this inaccurate and reckless statement only seek to deceive this Honorable Court due to government entities; SCDEW, SCBCB and Office of South Carolina Governor has clearly been notified as party. Defendants has stated that Defamation has not occur when Plaintiff Complaint outlined with First Cause Of Action as such through slander and libel of written communications. Defendants has stated no Abuse Of Process but SC Code Of Law 41-27-20 Declaration of State Public Policy clearly states: Economic insecurity due to unemployment is a serious menace to health, moral and welfare of the people of this state when involuntary. Defendants has alleged that Final Cause Of Actions does not described an independent cause of action which is clearly define by SC Code Of Law 15-3-550 as a stated claim therefore justification has been established that speaks directly to the injured.

## **OPINION**

Defendants; SCDEW, SCBCB and Office Of South Carolina has taken assurance that with the preponderance of evidence against them available through discovery this Honorable Court without answering the complaint will be granted a Motion To Dismiss with prejudice. To make a request for prejudice have asked this Honorable Court for a decision not based on evidence but bias and preferential treatment. Defendants to make false claims that individual persons have been named as party to complaint and not contacted is judicial obstruction.

### **DEFENDANTS ARE ALLEGING DEFAMATION CLAIMS FOR SOUTH CAROLINA TORT CLAIMS ACT FAILS UNDER THE LAW SOUTH CAROLINA CODE OF LAW 15-78-10.**

Defendants are alleging that because Adrienne Sorenson has been determined to have activated "Barred From Applying" which is outside scope of her duty as an employee of SCDEW therefore South Carolina Tort Claims Act does not apply.

SECTION 15-78-70. Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement. (25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner. Adrienne Sorenson secretly applied "Barred From Applying"

to expired December 30, 2018 unknown to applicant which has denied employment opportunities and as an employee of SCDEW acted in a grossly manner therefore he employer which is a government entity therefore can not apply immunity. Adrienne Sorenson was at her employment which is SCDEW on July 19, 2013 at 11:11 am when "Barred from Applying" was activated therefore out of the scope of her employment does not apply but within the scope of her duties applies. SC Code Of Law 15-78-30 (I) refers to Scope of Official Duty or Scope of State Employment means (1) acting in and about the official business of a governmental entity and (2) performing official duties. SC Code Of Law 15-78-30 (I) {1,2} specifically applies to the actions of Adrienne Sorenson in her official duty at SCDEW in the human resources department. Defendants are referring to Plaintiff's Complaint (58-59) suggesting Adrienne Sorenson acted outside the scope of her employment but failed to realized that (59) states Adrienne Sorenson committed "Barred From Applying" with malicious intent, originate, utter, circulate or published any false statement therefore a violation pertaining to slander and libel in her capacity at SCDEW under the authority of SCDEW, SCBCB And Office Of South Carolina Governor. SC Code of Law 15-78-60 does not apply to this complaint and does not exempt SCDEW, SCBCB And Office Of South Carolina Governor.

**DEFENDANTS ARE ALLEGING PLAINTIFF HAS FAILED A PRIMA FACIE CLAIM FOR ABUSE OF PROCESS DEFENDANTS, AND FOR THAT REASON, IT MUST BE DISMISSED.**

In reading Defendant's statement it is assuming that Plaintiff has not suffered of an (1) ulterior motive by Barred From Applying and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding. Plaintiff have suffered harm from SCDEW with senior level staff calling and making threats that there will be no interests in employment with false accusations of harassment by employees which has not been substantiated. SCDEW Senior Staff, Koa Morgan sent a letter to my residence advising not to have contact with a public agency that assist job applicants, false accusations of harassment and threats of filing charges with local law enforcement. Plaintiff has affirmed that "Barred From Applying" activated by Adrienne Sorenson under the authority and supervision of SCDEW, SCBCB And Office Of South Carolina Governor had an ulterior motive by such an egregious act because of the financial hardship that created a life of poverty currently surviving on foodstamps. The branding of Plaintiff "Barred From Applying" until December 30, 2018 would have life long lasting harm as unfit for employment opportunities publicly and privately as character assassination. Plaintiff has been unable to obtain employment that is compatible with education and past work experiences. Plaintiff has affirmed that "Barred From Applying" was a willful act in the use of the process not proper in the regular conduct of the proceeding because the primary function and fundamental basis for SCDEW is to assist with job seekers with employment. "Barred From Applying" for job opportunities became a willful act in the use of the process not proper in the regular conduct of the proceeding. Defendants would send Plaintiff email rejection letters for state of South Carolina positions applied for within

minutes of each other on the same day from four (4) to fourteen (14) therefore applications were not receiving proper consideration before "Barred From Applying" was known. Plaintiff had declared to government entities that he was being blackballed before "Barred From Applying". Plaintiff was not aware of "Barred From Applying" until receiving notification from Sharlayne Bellamy of S.C. Judicial Center stating this application can not be considered for employment since receiving that notification from the state of South Carolina. The state of South Carolina did not contact Plaintiff regarding notification of "Barred From Applying" when other positions was applied with the state of South Carolina during the same week. This Honorable Court with confidence can be assured that "Barred From Applying" was a willful and overt act because soon as notification was provided by Plaintiff it was immediately removed by Terrashima Ellerbe of SCBCB on July 25, 2013 at 8:22 am within the scope of her duties. Defendants has suggested that "Barred From Applying" activated by Adrienne Sorenson to be unauthorized therefore do not reach the element of willful which Plaintiff degreed with because all other numerous previous correspondences from her was sent under the authority of immediate Supervisor Kerry Paul that would suggest the same process for other job duties. Plaintiff has never suggested that Adrienne Sorenson as a Defendants but SCDEW, SCBCB And Office Of South Carolina Governor which are government

entity and therefore South Carolina Tort Claims Act Law is suitable and must be applied due to an employee grossly negligence act working for a government agency.

Here, the Defendant's Motion To Dismiss contains baseless allegations with regards to unlawful unemployment practices that has been stated in Complaint and affirmed by the preponderance of evidence which is readily to be inspected by this Honorable Court as verification therefore is justifiable to deny dismissal on fairness and truth.

### **CONCLUSION**

For the reasons detailed above, Plaintiff has stated justifiable claims against South Carolina Department Of Employment Workforce, South Carolina Budget and Control Board and Office of South Carolina Governor.

The Defendant's Motions To Dismiss with prejudice is DENIED and Plaintiff's Complaint moves forward with Discovery due to preponderance of evidence.

AND IT IS SO ORDERED.

---

Judge G. Thomas Cooper, Jr.

Fifth Judicial Circuit

\_\_\_\_\_, 2015

THE STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Clarence B. Jenkins Jr.

Plaintiff,

vs.

SC Department Of Employment  
Workforce, SC Budget And Control Board  
Office Of South Carolina Governor

Defendants,

) IN THE COURT OF COMMON PLEAS FOR  
) THE FIFTH JUDICIAL CIRCUIT

) Case No. 2015-CP-<sup>40</sup>~~08~~

03112

**COMPLAINT  
(JURY TRIAL REQUESTED)**

RICHLAND COUNTY  
FILED  
2015 MAY 21 PM 3:03  
JAMES H. WILSON  
Clerk, S.C.S.

The Plaintiff, complaining of the defendants, alleges as follows:

**JURISDICTION AND VENUE**

1. Plaintiff is a resident of the county of Orangeburg, State of South Carolina.
2. SC Department Of Employment Workforce (hereafter "SCDEW"), SC Budget And Control Board (hereafter "SCBCB") and Office of SC Governor are agencies of the State of South Carolina doing business and maintaining offices in Richland County, South Carolina.
3. SCDEW and SCBCB are connected with Office of SC Governor being an intricate part of the State of South Carolina Organization for maintaining an environment free from criminal activities such as corruption.
4. All pertinent actions alleged in the Complaint took place in Richland County.
5. Jurisdiction and venue are proper in this Honorable Court.

## FACTS

6. South Carolina Department Of Employment Workforce (hereafter "SCDEW"), SC Budget And Control Board (hereafter "SCBCB") and Office Of South Carolina Governor secretly blackball my job application seeking employment with State of South Carolina through "Barred From Applying".
7. Plaintiff had previously had employment with SC Ready Works formerly known as Voorhees One Stop Career Center for (4) four years of professional work experience.
8. Plaintiff held positions of Resource Specialist I, Job Developer, Case Manager, WIA coordinator/intake and finally Assistant WIA Director of Voorhees One Stop Career Center.
9. Plaintiff was an exceptional employee at Voorhees One Stop Career Center being nominated regional employee of the year by director, received excellent performance evaluations and received exemplary comments stating that all employees should pattern after Plaintiff by secret shoppers program.
10. Plaintiff was top performer each month at Voorhees One Stop Career Center for job placements.
11. SCDEW would send between (4) to (15) fifteen rejections email letters in a day sometimes within minutes of each other which has been documented and

recorded before "Barred From Applying" was provided to Plaintiff therefore constitutes deprivation.

12. Plaintiff received (2) two rejections email letters from SCDEW on February 23, 2012 within 5:56 pm to 6:10 pm a total of (14) fourteen minutes which is documented as applications not receiving proper consideration before "Barred From Applying" notification was provided to Plaintiff therefore constitutes deprivation..

13. Plaintiff received (2) two rejections email letters from SCDEW on December 10, 2011 within 7: 29 pm to 7: 35 pm a total of (6) six minutes which is documented as verification that applications are not receiving proper consideration before 'Barred From Applying" notification was provided to Plaintiff therefore constitutes deprivation.

14. Plaintiff received (7) seven rejection email letters from SCDEW on January 25, 2012 within 4:52 pm to 5:32 pm a total of (92) ninety-two minutes which is documented as verification that applications are not receiving proper consideration before "Barred From Applying" notification was provided to Plaintiff therefore constitutes deprivation..

15. Plaintiff received 15 (fifteen) rejection email letters February 3, 2012 with first (10) ten within 3:35 pm to 4:33 pm a total (58) fifty-eight minutes and (4) four coming within 8:23 pm to 8:37 pm a total of (14) fourteen minutes an

additional at 10:22 pm which is documented as verification that applications are not receiving proper consideration before "Barred From Applying" notification was provided therefore constitutes deprivation.

16. Plaintiff received (5) five rejections email letters from SCDEW on March 14, 2012 within 1:24 pm to 8:54 pm a total of (7,5) seven and half-hours from SCDEW which is documented as verification that applications are not receiving proper consideration therefore constitutes deprivation

17. Plaintiff called SCDEW requesting to speak with Adrienne Sorensen regarding {3} three email rejections letters pertaining to same job number within minutes which is not an accurate functioning of an automatic system that filter out applications as stated by SCDEW Senior Management which is documented and recorded.

18. SCDEW and Office of South Carolina Governor was informed by Plaintiff email and phone calls regarding the constant rejections letters pertaining to state employment that came within minutes of each others that have been recorded and documented therefore did not receive any protection.

19. SCDEW, SCBCB and Office Of South Carolina Governor was informed regarding the actions of being blackball through many phone calls and emails which have been recorded and documented therefore did not received

any protection before receiving notification of "Barred From Applying" therefore constitutes deprivation.

20. Plaintiff was treated a hostile manner by SCDEW employees when seeking information on job application and application rejection email letters by being place on hold for five minutes with no communication, by hanging up the phone, by avoidance and by given instructions not to call SCDEW.

21. Plaintiff sought the assistance of Office Of South Carolina Governor with employment that went unanswered when there is public record of her office helping friends obtaining jobs within the State Of South Carolina who is not qualified for positions being advertised.

22. "Barred From Applying" was applied to my state job application without notification provided to Plaintiff that prevented employment from July 19, 2013 to December 30, 2018 therefore constitutes deprivation.

23. SCDEW Senior Management and Human Resource Office discriminated against my job application without justification that was unknown to Plaintiff until inadvertently actions of Sharlayne Bellamy of SC Judicial Center which is deprivation.

24. SCDEW Senior Management and Human Resources made threats to not have any contact SCDEW Office and they have no interest in hiring me.as

stated by SCDEW Human Resource Manager, Kerry Paul on March 11, 2013.

25. SCDEW Human Resource Manager, Kerry Paul stated on March 11, 2013 by phone that a letter will be coming regarding my employment status with them and and not to have any contact with their agency which is a public agency to assist job seekers with employment therefore places a barrier to self sufficiency therefore a life of poverty which constitutes deprivation.

26.. SCDEW Interim Human Resource Manager, Koa Morgan stated there will be no more communication with me regarding employment and made false accusations of harassment with threats of calling local law enforcement to file charges in written letter dated March 13, 2013 that was sent to my home which provided verification to Kerry Paul threats made on March 11, 2013 by phone.

27. SCDEW, SCBCB and Office of South Carolina Governor Nikki Haley was informed by email communication of the threatened phone by SCDEW Human Resource Manager, Kerry Paul therefore did not receive any protection from attacks by Senior Management at SCDEW.

28. "Barred From Applying" Notification was inadvertently sent by Sharlayne Bellamy of SC Judicial Center on July 24, 2013 stating my application for Administrative Specialist II/Docketing Specialist II position will no longer be

considered because of receiving this warning therefore an employment opportunity was denied therefore maintaining a life of poverty.

29. SCDEW, SCBCB and Office Of South Carolina Governor are intertwine with each other with the intent of assisting citizens of this state with job opportunities not to established a system that denies employment and the ability to be self sufficient.

30. An independent investigation completed by South Carolina Human Affairs Commission Investigator, Sharon Dorn determined that "Barred From Applying" was intentionally applied to my job application account which denied employment opportunities which has been recorded and documented at South Carolina Human Affairs Commission.

31. The Plaintiff has personal knowledge that Defendants, SCDEW, SCBCB and Office Of South Carolina Governor has a well formed plan to act in a manner that have surely caused Plaintiff serious character assassination with defect regarding employment that has a life long lasting effect being intentionally authorized.

32. SCDEW and SCBCB, both stated that "Barred From Applying" was a system error which is not true as verified by independent investigation completed by Investigator, Sharon Dorn of South Carolina Human Affairs

is Commission and written documentations that shows Adrienne Sorensen of SCDEW did it on July 19, 2013.

33. SCDEW, SCBCB and Office of South Carolina Governor would not provide Plaintiff with hard written documentations of when "Barred From Applying" became active upon request after request from July, 2013 to March, 2015.

34. SCBCB finally provide hard verification to Plaintiff of when "Barred From Applying" in April, 2015 after (21) twenty-one months of making request which is recorded and documented.

35. The hard written verification of " Barred From Applying" received in April, 2015 confirmed that Adrienne Sorensen committed a computer crime against Plaintiff on July 19, 2013.

36. The hard written verification provided to Plaintiff of " Barred From Applying" received in April 2015 confirmed that Adrienne Sorensen manipulated SCDEW Job Application Portal to be in effect until December 30, 2018 which was unknown to Plaintiff therefore constitutes deprivation.

37. SCDEW and SCBCB provided prior written letters to Plaintiff stating that it was a system error when the corrupt actions was competed under their supervision and verification of Adrienne Sorensen actions on July 19, 2013.

38. SCDEW and SCBCB sent letters stating a system error in July, 2013 to August, 2013 when they had evidence that it was not according to their own investigation showed that verification was provided to them July 26, 2013.
39. It is reasonable to believe that Adrienne Sorensen is a mid-level employee in SCDEW Human Resource Office therefore to performed such an egregious act on her own without permission is criminal not prosecuted by the State Of South Carolina.
40. By "Barred From Applying" being place against Plaintiff job application for (5 ½) five and half years sought to destroy my ability to become financially stable and employable by not having active employment.
41. "Barred From Applying" was an assault, libel and slander on Plaintiff character that had an adverse effect therefore constitutes deprivation..
42. "Barred From Applying" prevented Plaintiff opportunities to receive employment opportunities that was comparable to my education and professional work experience.
43. SCDEW and SCBCB sent notifications to (35) thirty-five State of South Carolina Agencies informing them to ignored the "Barred From Applying"

because it was an error but the damage has been done. Plaintiff is damaged goods because a corrections and notification was sent to each potential employer therefore constitutes deprivation.

44. The (35) notifications was sent to SCDEW itself as verified by written documentations that is recorded and confirmed the intentional harm committed because of them being self notified when knowing the criminal act was performed by a staff employee, Adrienne Sorensen in SCDEW Human Resources Office.

45. SCBCB and SCDEW, both manipulated the actions of "Barred From Applying through interoffice communications with each other on how to approach the situation regarding Plaintiff concerns.

46. The false accusation of harassment claims by SCDEW has not been proven or ordered to provide verification but accepted without justification and therefore discredit Plaintiff name, character and with public shame.

47. The threatened bodily harm is mental anguish, mental stress, mentally and physically dysfunctional to be unfit for employment.

48. The threat is imminent because it has denied Plaintiff employment opportunities and SCDEW, SCBCB accepted responsibility and liability

therefore performed immediate attempts to correct the irreparable damage which is deprivation.

49.. Plaintiff has suffered public and private shame by being blackball with "Barred From Applying" supporting himself with food-stamps therefore living a life of poverty.

50. "Barred From Applying" was attached to my application from July 19, 2013 until December 30, 2018 due to inadvertently actions of Sharlayne Bellamy of SC Judicial Center providing notification therefore constitutes deprivation under U.S. Law.

51. SCDEW, SCBCB and Office Of South Carolina Governor Senior Staff all knew about "Barred From Applying" pertaining to Plaintiff according to written communications that has been documented,

#### **FIRST CAUSE OF ACTION**

**(DEFAMATION AGAINST DEFENDANTS KERRY PAUL, ADREINNE SORENSEN, KOA MORGAN, ABRAHAM TURNER, STEPHANI HAMBERG, CHERYL STANTON, JOHN FINAN, SAMUEL WILKINS, MARCIA ADAMS AND SOUTH CAROLINA GOVERNOR NIKKI HALEY IN THEIR INDIVIDUAL CAPACITY AND SCDEW, SCBCB AND OFFICE OF SOUTH CAROLINA**

52. Defendant's written statement and actions infer Plaintiff is unfit for his profession and is a liar and constitutes slander per se

53. These Defendant's statement and actions are intended to brand

Plaintiff as incompetent, unprofessional, trouble-maker and a liar and infer he is incapable of performing his job. These false statements and actions have already seriously injured Plaintiff's reputation as a potential state employee unable to obtain suitable employment.

54, The publication and re-publication of these false statements and actions by these Defendants have caused Plaintiff to suffer general damages and special damages including pain and mental anguish, and damage to his reputation. Additionally, Plaintiff seeks punitive damages against Defendants Sorensen, Paul, Morgan, Turner, Wilkins, Hamberg, Adams, Finan, Stanton and Haley for statements made and actions done in their individual capacity.

#### **SECOND CAUSE OF ACTION**

**(VIOLATION OF S.C. CODE COMPUTER AND ABUSE OF PROCESS AGAINST DEFENDANTS ADRIENNE SORENSEN, KERRY PAUL, KOA MORGAN, ABRAHAM TURNER, CHERYL STANTON, JOHN FINAN, SAMUEL WILKINS, MARCIA ADAMS, STEPHANI HAMBERG AND SOUTH CAROLINA GOVERNOR NIKKI HALEY IN THEIR INDIVIDUAL CAPACITY AND SCDEW, SCBCB AND OFFICE OF SOUTH CAROLINA GOVERNOR)**

55. Plaintiff has been injured by these Defendants' intentional acts by manipulating computer functions performed with malice towards Plaintiff and Plaintiff is entitled to compensable damages, punitive damages against Defendants Sorensen, Paul, Morgan, Turner, Wilkins, Adams, Hamberg, Stanton, Finan and Haley in their individual capacity, attorney fees and costs.

**THIRD CAUSE OF ACTION**  
**(VIOLATION OF S.C. CODE 15-3-550 AGAINST SCDEW, SCBCB AND  
OFFICE OF SOUTH CAROLINA GOVERNOR)**

56. Defendants SCDEW, SCBCB And Office Of South Carolina Governor violated this policy by making written false statements therefore constitutes per section (1) of this statute, as a resident of this State injured by SCDEW's, SCBCB's and Office Of South Carolina Governor's intentional misuse and violations of this statute, Plaintiff is entitled to damages, injunctive relief, and attorney fees and costs under deprivation statutes.

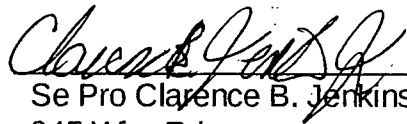
57. Defendants SCDEW, SCBCB and Office Of South Carolina Governor all are agency of this State of South Carolina therefore had prior knowledge of NEOGOV computer software and potential harm caused by Defendant, Adrienne Sorensen as an employee of the State.

58. Defendant Adrienne Sorensen acting outside the scope of her employment at SCDEW, intentionally and recklessly published defamatory statement in her capacity at SCDEW as a mid-level employee therefore caused deprivation.

59. Defendant Adrienne Sorensen committed "Barred From Applying" with malicious intent originate, utter, circulate or published any false statement therefore a violation pertaining to slander and libel in her capacity at SCDEW under the authority SCDEW, SCBCB and Office Of South Carolina Governor.

Wherefore, Plaintiff respectfully requests this Court grant Plaintiff the damages requested herein, as well as such other relief the Court deems appropriate, including costs and attorney fees.

Se Pro Clarence B. Jenkins Jr



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*Attorney for Plaintiff*

Neeses, South Carolina

Date 5-21-2015

|                                           |   |                                |
|-------------------------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE COURT OF COMMON PLEAS   |
|                                           | ) | FOR THE FIFTH JUDICIAL CIRCUIT |
| COUNTY OF RICHLAND                        | ) |                                |
| Clarence B. Jenkins, Jr.,                 | ) | C/A No.: 2015-CP-40-03112      |
|                                           | ) |                                |
| Plaintiff,                                | ) |                                |
|                                           | ) | <b>MOTION TO DISMISS</b>       |
| v.                                        | ) | <b>OF DEFENDANTS</b>           |
|                                           | ) |                                |
| South Carolina Department of              | ) |                                |
| Employment & Workforce, South             | ) |                                |
| Carolina Budget & Control Board, and      | ) |                                |
| Office of the Governor of South Carolina, | ) |                                |
|                                           | ) |                                |
| Defendants.                               | ) |                                |

NOW COME the Defendants South Carolina Department of Employment & Workforce ("SCDEW"), South Carolina Budget & Control Board ("SCBC&B" or the "Board") and the Office of the Governor of South Carolina (hereinafter collectively the "Defendants"), by and through counsel, and file this Motion to Dismiss under Rule 12(b)(6), SCRCF, seeking dismissal of each of Plaintiff's claims with prejudice. In support of this Motion, the Defendants state as follows:

**PLAINTIFF'S ALLEGATIONS**

Plaintiff is a *pro se* litigant and alleges that he is a former employee of SCDEW. (Plaintiff's Complaint, ¶ 7). He alleges that the Defendants "secretly blackballed [his] job application seeking employment with [the] State of South Carolina." (Plaintiff's Complaint, ¶ 6). He specifically claims that his applications for employment were rejected because a SCDEW employee named Adrienne Sorensen entered a "Barred from Applying" code to his applications. (Plaintiff's Complaint, ¶ 32). According to the Complaint, SCDEW and the Board identified the code as a system error occurring in July and August 2013. (Plaintiff's Complaint, ¶¶ 37-38).

Plaintiff purports to bring three (3) causes of action against the Defendants:

- Plaintiff attempts to allege a “**Defamation**” claim against the Defendants related to the “Barred for Applying” code allegedly entered into the State’s computer system. Plaintiff variously described this as a “well formed plan” and that the Defendants’ individual employees committed “intentional acts by manipulating computer functions performed with malice towards Plaintiff.” (Plaintiff’s Complaint, ¶¶ 37-38, 55). More specifically, Plaintiff argues that “it is reasonable to believe” that a single SCDEW employee, Adrienne Sorensen, “performed such an egregious act on her own without permission,” and that such an act was “criminal.” (Plaintiff’s Complaint, ¶ 39). Plaintiff also alleges that she did so “outside the scope of her employment” and “with malicious intent.” (Plaintiff’s Complaint, ¶¶ 58-59).
- Plaintiff also attempts to allege an “**Abuse of Process**” claim<sup>1</sup> based on the same allegations. (Plaintiff’s Complaint, ¶55).
- Plaintiff’s final cause of action is stated under S.C. Code Ann. § 15-3-550 with the statute referencing a two-year statute of limitations for defamation claims. Because the statute does not describe an independent cause of action, Plaintiff’s “Third Cause of Action” does not state a claim. (Plaintiff’s Complaint, ¶¶ 56-59).

For the reasons stated below, Plaintiff has failed to state a claim against the Defendants and his lawsuit must be dismissed with prejudice.

### **LEGAL ARGUMENT**

#### **I. PLAINTIFF’S DEFAMATION CLAIM FAILS UNDER THE PROVISIONS OF THE SOUTH CAROLINA TORT CLAIMS ACT.**

Under South Carolina law, each of the Defendants is an entity covered by the South Carolina Tort Claims Act (“SCTCA”). S.C. Code Ann. § 15-78-10 *et seq.* The SCTCA explicitly provides that these entities are immune from suit where an employee acts with intent to harm, with malice, or outside the scope of his or her duty. S.C. Code Ann. §§ 15-78-60(17), 15-78-70.

According to Plaintiff’s own pleadings, the act for which he seeks redress – being “blackballed” because Adrienne Sorensen tagged Plaintiff’s applications for employment with a “Barred for Applying” code – was done “outside the scope of her employment” and “with malicious intent.” (Plaintiff’s Complaint, ¶¶ 58-59). For that reason, the Plaintiff’s own

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<sup>1</sup> Plaintiff’s Second Cause of Action also includes a reference to a “Violation of S.C. Code Computer.” This is not a legally cognizable claim.

allegations bar recovery from the Defendants under these provisions of the SCTCA. *See Moore by Moore v. Berkeley County School Dist.*, 326 S.C. 584, 586-587, 486 S.E.2d 9, 11 (S.C. App. 1997) (governmental entity immune from suit for employee's intentional torts, or acts outside the scope of his duty, under S.C. Code Ann. § 15-78-60(17)); *McCall v. Williams*, 52 F.Supp.2d 611, 615 (D.S.C. 1999) (governmental entity not proper party for intentional torts under Tort Claims Act); *Smith v. City of Greenwood*, 2010 WL 2430952, at \*2 (D.S.C. May 13, 2010) (noting [District] "courts have been generally consistent in concluding that intentional acts of a governmental employee, intended to do others harm, are deemed outside the scope of their employment," therefore constituting an exception to South Carolina's waiver of immunity under the Tort Claims Act) (slip op. attached); *Doe v. Smith*, 2014 WL 2968925, at \*1 (S.C. App. June 30, 2014) (affirming the trial court's award of summary judgment to governmental entities pursuant to the Tort Claims Act where loss resulted from employee conduct outside of the scope of his official duties) (slip op. attached).

Simply put, as a matter of South Carolina law, the claim is not justiciable and must be dismissed with prejudice.

**II. PLAINTIFF HAS FAILED TO STATE A PRIMA FACIE CLAIM FOR ABUSE OF PROCESS AGAINST THE DEFENDANTS, AND FOR THAT REASON, IT MUST BE DISMISSED.**

The South Carolina Supreme Court has defined abuse of process as "employment of legal process for some purpose other than which it was intended by law to effect – the improper use of a regularly scheduled process." *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693, 695 (1967). It is distinguished from malicious prosecution by saying it "involves the malicious misuse of perversion of the process, after its issuance, for an end not lawfully warranted by it." *Johnson v. Painter*, 279 S.C. 390, 307 S.E.2d 860 (1983). The elements, as articulated in *Huggins*, are (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding.

The second element, a “willful act,” has been described as “[s]ome definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process[.]” *Hainer v. Am. Med. Int’l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). The “willful act” element consists of three components: (1) “a ‘willful’ or overt act”; (2) “in the use of the process”; (3) “that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective.” *Food Lion, Inc. v. United Food & Commercial Worker’s Int’l Union*, 351 S.C. 65, 715 S.E.2d 251, 254 (S.C. App. 2002) (citations omitted).

Here, there is no allegation that any of the Defendants used or authorized civil or criminal “process” with regard to Plaintiff. Lacking this element, Plaintiff’s abuse of process claim fails and must be dismissed with prejudice.

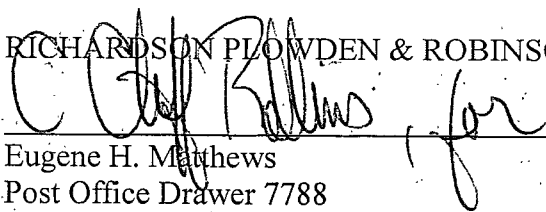
#### CONCLUSION

For the reasons detailed above, Plaintiff has failed to state any justiciable claim against any of the Defendants. Therefore, Plaintiff’s lawsuit must be dismissed with prejudice, and the Court should award the Defendants any other such relief as the Court deems just and proper.

Dated this the 22<sup>nd</sup> day of June, 2015.

Respectfully submitted,

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THE GOVERNOR OF SOUTH CAROLINA**

**Slip Opinion**

***Smith v. City of Greenwood,***  
**2010 WL 2430952 (D.S.C. May 13, 2010)**

2010 WL 2430952

Only the Westlaw citation is currently available.

United States District Court,  
D. South Carolina,  
Anderson/Greenwood Division.

Julia B. SMITH, Plaintiff,

v.

CITY OF GREENWOOD; Mathis Plumbing  
& Heating Company, Inc; James H. Mathis;  
Steven J. Brown; Lawrence Ouzts; and Ronnie  
Powell, in their individual capacities, Defendants.

Civil Action No. 8:09-2061-  
HFF-BHH. | May 13, 2010.

#### Attorneys and Law Firms

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Charles F. Thompson, Jr, Katherine Anne Phillips, Malone  
Thompson and Summers, Columbia, SC, Roy R. Hemphill,  
McDonald Patrick Tinsley Baggett Poston and Hemphill,  
Greenwood, SC, for Defendants.

#### REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

BRUCE HOWE HENDRICKS, United States Magistrate  
Judge.

\*1. This matter is before the Court on Defendant Brown's, Ouzts' and Powell's motion to dismiss pursuant to Federal Rule of Civil Procedure 12 [Doc. 33], requesting that the civil conspiracy claim against them be dismissed. In her Amended Complaint [Doc. 13], the plaintiff has pled claims for race discrimination pursuant to Title VII of the Civil Rights Act of 1991, as amended, for interference with contractual relations, and civil conspiracy.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(A), and Local Rule 73.02(B)(2)(g), D.S.C., all pretrial matters in employment discrimination cases are referred to a United States Magistrate Judge for consideration.

#### APPLICABLE LAW

##### MOTION TO DISMISS STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a motion to dismiss for failure to state a claim should not be granted unless it appears certain that the plaintiff can prove no set of facts which would support its claim and would entitle it to relief. In considering a motion to dismiss, the court should accept as true all well-pleaded allegations and should view the complaint in a light most favorable to the plaintiff. *Mylan Laboratories, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir.1993) (citations omitted).

#### DISCUSSION

The defendants Brown, Ouzts, and Powell contend that the plaintiff's civil conspiracy claim should be dismissed because it was not pled prior to the expiration of the two-year statute of limitations period under the South Carolina Tort Claims Act ("SCTA"). See S.C. Code § 15-78-110. The plaintiff responds that the SCTA does not apply to her claim of civil conspiracy and, therefore, a three-year statute of limitations is applicable. Specifically, the plaintiff argues that she has expressly sued the defendants in their individual, as opposed to official, capacities, which removes them from the ambit of the SCTA.

Section 15-78-70 of the Act provides:

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort *while acting within the scope of his official duty* is not liable therefor except as expressly provided in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability *if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.*

S.C. Code § 15-78-70 (emphasis added). Under Section 15-78-30: " 'Scope of official duty' or 'scope of state employment' means (1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C. Code § 15-78-30(i).

The plaintiff has specifically alleged in her Amended Complaint that “[s]uch actions on the part of the named defendants in their *individual capacities* and all *acting outside the course and scope of their employment* amount to an unlawful conspiracy.” (Am. Compl. ¶ 29 (emphasis added).) Accordingly, the plaintiff has attempted to remove her conspiracy claim from the scope of the SCTA by alleging that the acts of the defendants were expressly outside of the scope and course of the defendants’ employment.

\*2 The defendant’s contend that regardless of the averment, the SCTA is the exclusive statutory remedy for all torts against government employees and, therefore, its statute of limitations controls the timeliness of the conspiracy claim, even if it is ultimately proven that the defendants’ actions exceeded the scope of their duties. The plaintiff, in contrast, contends that the averment itself, alleging acts outside of the course of the defendants’ employment, exempts the claim from the SCTA. Both parties have relied on the South Carolina Court of Appeals’ decision, in *Fleteau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (S.C.Ct.App.2003), to fan their cause.

In *Fleteau*, the South Carolina Court of Appeals considered whether the STCA applied to common law tort claims of outrage, invasion of privacy, and civil conspiracy brought against individual employees of the S.C. Commission for the Blind. Unlike the present case, the Complaint did not allege actions outside of the scope of the defendants’ employment and, instead, expressly averred that “[a]t all time of the incident ..., the Defendants were members of the Board of the South Carolina Commission for the Blind.” *Id.* at 204, 584 S.E.2d 413. The court of appeals emphasized 6 separate averments that reinforced the express allegation in the Complaint that the defendants were acting pursuant to their official duties. *Id.* at 204–05, 584 S.E.2d 413. The Court of Appeals ultimately concluded that the “pleadings clearly and unequivocally” alleged acts taken in accord with the board members “official duties” about “the official business of the Commission.” *Id.* at 205, 584 S.E.2d 413. As a result of its determination that the SCTA “controls,” the court of appeals subsequently concluded that the Act’s two-year statute of limitations, therefore, applied. *Id.* at 207, 584 S.E.2d 413.

The plaintiff, here, counters that *Fleteau* is readily distinguishable from the present case, insofar as allegations of official conduct were pled there, and not here. The defendants have impressively reinforced their view of *Fleteau* by citing

a difficult portion of it, which appears at the very end of that decision and which would tend to support the defendants’ present position on the applicability of the SCTA statute of limitations. Namely, the court of appeals, stated in its conclusion, “We rule the two-year statute of limitations applies *even if the Board members acted outside the scope of their official duties or if their actions constituted fraud, actual malice, intent to cause harm, or a crime involving moral turpitude.*” *Id.* at 208, 584 S.E.2d 413 (emphasis added).

This statement has caused the undersigned some consternation and is, frankly, hard to understand. The court of appeals did not expound on its stray remark. The Court has tried to understand *Fleteau* both in the context of its specific facts and holding and prior precedent.

First, courts have been generally consistent in concluding that intentional acts of a governmental employee, intended to do others harm, are deemed outside the scope of their employment and, therefore, constitute an exception to South Carolina’s waiver of immunity under the Tort Claims Act. See S.C.Code § 15–78–60(17). The South Carolina Court of Appeals, *Moore by Moore v. Berkeley County School Dist.*, 326 S.C. 584, 486 S.E.2d 9, 11 (S.C.App.1997); the Fourth Circuit, *Anthony v. Ward*, 336 Fed. Appx. 311, 316–17 (4th Cir.2009) (“The jury’s finding that Defendants had civilly conspired against Plaintiff was sufficient to remove from the purview of the SCTCA’s protected class of government employees.”); and courts of this district, *Moody v. Darnell*, 2010 WL 297810, at \*3 (D.S.C. January 21, 2010); *Carthens v. Lewis*, 2009 WL 394299, at \*6 (D.S.C. February 17, 2009); *Harkness v. City of Anderson, S.C.*, 2005 WL 2777574, at \*4 (D.S.C. October 25, 2005); *McCall v. Williams*, 52 F.Supp.2d 611, 615 (D.S.C.1999), have all agreed.

\*3 Second, the court of appeals analysis, in *Fleteau*, specifically turned on the way in which the Complaint had been pled. The court went to some length to explain how the averments implicated the SCTA, by virtue of their focus on official duty acts. It is a reasonable interpretation of the difficult conclusion in *Fleteau*, that the court meant to say that the statute of limitations for the SCTA was applicable, even if it was later demonstrated that acts outside of the scope of the defendants’ employment were committed, because the Complaint had rightly implicated the SCTA in the first instance. The Court is unaware of any other interpretation which would render *Fleteau* and prior and controlling precedent comparably harmonious.

Turning to the Complaint at issue here, the plaintiff has, differently than in *Flateau*, pled her claim so as to limit her allegations to conduct which purports to either be beyond the scope of the defendants' employment or otherwise intended to cause harm. See S.C. Code § 15-78-70. As stated, the Amended Complaint alleges that the conspiracy was performed in the defendants' "individual capacities" and "outside the course and scope of their employment." (Amend. Comp. ¶ 29.) The defendants would be liable, therefore, if at all, only to the extent their conduct, in fact, proved of the kind left expressly beyond the reach of the SCTCA. Moreover, a civil conspiracy claim requires, as one of its three elements, proof of an intent to injure the plaintiff. See *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505, 511 (2006); *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 538 S.E.2d 15, 31 (Ct.App.2000). Accordingly, the Court finds the SCTCA, and its concomitant statute of limitations, inapplicable. Instead, the general three-year statute of limitations applies to the civil conspiracy claim pursuant to S.C. Code § 15-3-530(5). See *Dorman v. Campbell*, 331 S.C. 179, 500 S.E.2d 786, 788-790 (S.C.Ct.App.1998). This district has recently agreed. See *Moody v. Darnell*, 2010 WL 297810, at \*3 (D.S.C. January 21, 2010) ("Based upon the allegations in the complaint, the SCTCA statute of limitations would not apply to these claims." (emphasis added)). The defendants do not contend that the claim is untimely under that general statute of limitations.

To the extent the district court disagrees and finds that the Act is, in fact, applicable, the claim must be dismissed without prejudice and the statute of limitations issue left undecided. The circuit courts of South Carolina have exclusive jurisdiction over state-law claims against governmental entities pursuant to the South Carolina Tort Claims Act ("SCTCA"). See S.C. Code Ann. § 15-78-100(b). The District of South Carolina has recognized this limitation on its jurisdiction, based both on Section 15-78-100 and Section 15-78-20(e) of the South Carolina Code, which, expressly preserve the State of South Carolina's Eleventh Amendment immunity from suit in federal court. See *Stewart v. Beaufort County*, 481 F.Supp.2d 483, 493 (D.S.C.2007); *Smith v. Ozmint*, 2007 WL 858749, at \*35 (D.S.C. March 20, 2007). Accordingly, whatever claims the plaintiff has pursuant to SCTCA should be dismissed *without prejudice*.

#### CONCLUSION AND RECOMMENDATION

\*4 Wherefore, based upon the foregoing, the Court recommends that the defendants' motion to dismiss be DENIED.

IT IS SO RECOMMENDED.



**Slip Opinion**

***Doe v. Smith,***  
**2014 WL 2968925 (S.C. App. June 30, 2014)**

2014 WL 2968925

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.

Court of Appeals of South Carolina.

Jane DOE, Appellant,

v.

Charles SMITH, Charleston County School District  
and James Island High School, Respondents.

Appellate Case No.2013-000084.

No. 2014-UP-267. | Heard May  
7, 2014. | Decided June 30, 2014.

Appeal From Charleston County; W. Jeffrey Young, Circuit  
Court Judge.

**Attorneys and Law Firms**

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County School District and James Island High School; Robin  
Lilley Jackson, of Senn Legal, LLC, of Charleston, for  
Respondent Charles Smith.

**Opinion**

PER CURIAM.

\*1 Jane Doe appeals the order of the trial court granting  
summary judgment to Charles Smith, Charleston County  
School District (District), and James Island High School  
(High School) on her claims for breach of fiduciary duty,  
outrage, and gross negligence. We affirm.

(1) We find the trial court did not err in granting the District  
and the High School summary judgment on Doe's negligent  
supervision claim. See S.C. Code Ann. § 15-78-60(25) (2005)  
(providing a governmental entity is not liable for a loss  
resulting from the "responsibility or duty including but not  
limited to supervision, protection, control, confinement, or  
custody of any student, ... except where the responsibility

or duty is exercised in a grossly negligent manner ...");  
*Degenhart v. Knights of Columbus*, 309 S.C. 114, 116-  
17, 420 S.E.2d 495, 496 (1992) (stating an employer may  
be liable for negligent supervision when the employee  
intentionally harms another when he is on the employer's  
premises, he is on premises he is privileged to enter only as  
an employee or is using the employer's chattel, the employer  
knows or has reason to know he has the ability to control the  
employee, and the employer knows or has reason to know  
of the necessity and opportunity to exercise such control);  
*Moore v. Berkeley Cnty. Sch. Dist.*, 326 S.C. 584, 591-92,  
486 S.E.2d 9, 13 (Ct.App.1997) (finding district not liable  
for negligent supervision when although there was evidence  
teacher's classroom was conducted in a lax manner and  
some teachers observed what they considered "inappropriate"  
behavior in the classroom, none of the alleged classroom  
incidents were of such a character that the administration  
would have, if aware of them, reasonably anticipated that the  
teacher would engage in sexual intercourse with a student in  
her own home after school hours). Doe presented no evidence  
that the District knew or had reason to know of a need to  
exercise control over Smith to prevent him from abusing Doe.

(2) We find Doe's contention the School District and the High  
School failed to exercise slight care because it made no effort  
to offer guidance, accommodation, or other support to Doe  
after her suicide attempt is not preserved for appellate review.  
See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731,  
733 (1998) ("It is axiomatic that an issue cannot be raised for  
the first time on appeal, but must have been raised to and ruled  
upon by the trial judge to be preserved for appellate review.").

(3) We find the trial court did not err in holding the  
District and the High School are not liable under a theory  
of *respondeat superior*. See S.C. Code Ann. § 15-78-60(17)  
(2005) (excluding a governmental entity from liability for  
a loss resulting from "employee conduct outside the scope  
of his official duties or which constitutes actual fraud,  
actual malice, intent to harm, or a crime involving moral  
turpitude ..."); *Froneberger v. Smith*, 406 S.C. 37, 748 S.E.2d  
625, 633 (Ct.App.2013) (stating the modern doctrine of  
*respondeat superior* makes a master liable to a third party  
for injuries caused by the tort of his servant committed  
within the scope of the servant's employment); *Kase v. Ebert*,  
392 S.C. 57, 61-62, 707 S.E.2d 456, 458 (Ct.App.2011)  
("If a servant steps aside from the master's business for  
some purpose wholly disconnected with his employment, the  
relation of master and servant is temporarily suspended; and  
this is so *no matter how short the time*, and the master is not

liable for his acts during such time.”(internal citations and quotation marks omitted)); *Frazier v. Badger*, 361 S.C. 94, 103, 603 S.E.2d 587, 591 (2004) (“[S]exual harassment by a government employee is not within the employee’s ‘scope of employment.’ ”); *Brockington v. Pee Dee Mental Health Ctr.*, 315 S.C. 214, 218, 433 S.E.2d 16, 18 (Ct.App.1993) (holding an employee clearly was acting in his individual capacity and not as an agent for the defendants when he sexually assaulted the victim in his office).

\*2 (4) Doe failed to challenge the trial court’s granting of summary judgment to the District and the High School on Doe’s breach of fiduciary duty claim and outrage claim. She also failed to challenge the trial court’s ruling that all of Doe’s claims against the High School fail because the High School did not exist as a separate legal entity until 2003. These rulings are the law of the case. *See Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (“Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.”); *First Union Nat’l Bank of S.C. v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct.App.1998) (holding an “unchallenged ruling, right or wrong, is the law of the case and requires affirmance”).

(5) We find Doe failed to challenge properly the trial court’s ruling that her claims against Smith for outrage and punitive damages were barred by the Tort Claims Act. Her only discussion of this ruling is in a footnote in her brief within the argument section “The Respondents owed a duty of care to Doe,” in which she states: “To the extent Smith was acting outside the scope of his employment by taking Doe for rides in his car and tending to Doe after her suicide attempt, the ruling by the trial court barring the claims of outrage and for punitive damages against Smith are in error because those limitations on liability apply only to employees acting within the scope of their employment.” *See* Rule 208(b)(1)(B), SCACR (“Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.”); *Walde v. Ass’n Ins. Co.*, 401 S.C. 431, 435 n. 1, 737 S.E.2d 631, 633 n. 1 (Ct.App.2012) (refusing to address an issue when the appellant’s brief did not include an issue on appeal addressing this contention, did not argue the specific issue, and only briefly referred to this concern in another argument without providing any supporting authority); *Fassett v. Evans*, 364

S.C. 42, 50 n. 5, 610 S.E.2d 841, 846 n. 5 (Ct.App.2005) (holding that even if a one-sentence argument could be construed as raising a separate issue on appeal, it was abandoned for being conclusory and failing to cite any supporting authority).

(6) We find the trial court did not err in holding Doe’s claims were barred by the statute of limitations. *See Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 336, 340, 534 S.E.2d 672, 680, 682 (2000) (stating a plaintiff must present at the summary judgment stage and at trial independently verifiable, objective evidence that corroborates a repressed memory claim in order to assert the discovery rule); *id.* at 335, 534 S.E.2d at 680 (explaining the requirement of corroborating evidence “appropriately balances the plaintiff’s interest in pursuing a valid claim and the defendant’s interest in being able to defend a stale or false claim”); *id.* at 335–36, 534 S.E.2d at 680 (noting reasons for the requirement are “the disagreement among the psychological and medical communities about the validity of repressed memory syndrome, the danger a plaintiff’s memories could be faked or implanted during therapy, and the desire that a plaintiff not have the ability to control the running of the statute of limitations solely by allegations whose only support is contained within the plaintiff’s mind”); *id.* at 336, 534 S.E.2d at 680 (listing examples of corroborating evidence that may satisfy the objective verifiability requirement as “(1) an admission by the abuser; (2) a criminal conviction; (3) documented medical history of childhood sexual abuse; (4) contemporaneous records or written statements of the abuser, such as diaries or letters; (5) photographs or recordings of the abuse; (6) an objective eyewitness’s account; (7) evidence the abuser had sexually abused others; or (8) proof of a chain of facts and circumstances having sufficient probative force to produce a reasonable and probable conclusion that sexual abuse occurred”). In order to avoid application of the statute of limitations, Doe was required to establish independently verifiable, objective evidence to corroborate her repressed memory claim. We find Doe failed to present evidence that meets the requirements of *Moriarty*.

### \*3 AFFIRMED.

HUFF, THOMAS, and PIEPER, JJ., concur.

|                            |   |                                |
|----------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA    | ) | IN THE COURT OF COMMON PLEAS   |
| COUNTY OF RICHLAND         | ) | FOR THE FIFTH JUDICIAL CIRCUIT |
|                            | ) |                                |
| Clarence B. Jenkins Jr.    | ) | CASE NO: 2015-CP-40-03112      |
|                            | ) |                                |
| Plaintiff,                 | ) | <b>MEMORANDUM OF LAW</b>       |
| Vs.                        | ) |                                |
|                            | ) |                                |
| SCDEW, SCBCB and Office    | ) |                                |
| Of South Carolina Governor | ) |                                |
|                            | ) |                                |
| Defendants,                | ) |                                |
|                            | ) |                                |
|                            | ) |                                |
|                            | ) |                                |

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NOW COME the Defendants South Carolina Department of Employment Workforce, South Carolina Budget and Control Board and Office of South Carolina Governor regarding "Barred From Applying" which was an intentional act known to all but unknown to Plaintiff. I am asking this Honorable Court to decline Defendant's request for dismissal base on the South Carolina Code of Laws that South Carolina Department of Employment Workforce, South Carolina Budget and Control Board and Office of South Carolina Governor violated employment laws with "Barred From Applying".

### **FACTS**

SCDEW and SCBCB through deliberately and corrupt actions provided written communication that it was a system error but an independent agency as South Carolina Human Affairs determined that "Barred From Applying" was an intentional act. Plaintiff

has expired which is not accordance with facts of the civil complaint. "Barred From Applying was confirmed on July 22, 2013 and civil complaint filed May 21, 2015 therefore within the two years requirement.

### LEGAL ARGUMENT

SECTION 16-16-10. Definitions. For purposes of this chapter:

(a) "Computer" means a device that performs logical, arithmetic, and memory functions by manipulating impulses including, but not limited to, all input, output, processing, storage, computer software, and communication facilities that are connected or related to a computer in a computer system or computer network. For the purposes of this section, "computer" includes, but is not limited to, mainframes, servers, workstations, desktops, and notebooks; industrial controls such as programmable logic controllers and supervisory control and data acquisition systems; portable hand-held computing devices such as personal digital assistants and digital cellular telephones; data communications network devices such as routers and switches; and all other devices that are computer-based or communicate with or are under the control of a computer such as appropriate telephone switches, medical devices, and cable and satellite television interface systems. "Computer" does not include automated typewriters or typesetters.

SECTION (15-78-60) Exceptions to waiver of immunity: {25} responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of

SECTION 16-7-150. Slander and libel.

Any person who shall with malicious intent originate, utter, circulate or publish any false statement or matter concerning another the effect of which shall tend to injure such person in his character or reputation shall be guilty of a misdemeanor and, upon conviction therefor, be subject to punishment by fine not to exceed five thousand dollars or by imprisonment for a term not exceeding one year, or by both fine and imprisonment, in the discretion of the court; provided, that nothing herein shall be construed to abridge any right any person may have by way of an action for damages for libel or slander under the existing law.

SECTION 15-3-550. Two years.

Within two years:

- (1) an action for libel, slander, or false imprisonment; and
- (2) an action upon a statute for a forfeiture or penalty to the State

SECTION 15-78-30. Definitions.

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

received verification from SCBCB by Freedom of Information Request which showed Adrienne Sorenson in her scope of duty performed "Barred From Applying" until December 30, 2018 which prevented employment opportunities that has caused deprivation. Defendants are alleging that Plaintiff complaint considered the act of Adrienne Sorenson to be criminal and may not be brought as part of a civil action therefore the mentioning of such was to show how the State of South Carolina perceived her actions. The State of South Carolina did not prosecute Adrienne Sorenson after being dutifully notified of her actions therefore dismiss Defendants claim of a criminal act and for the purpose of this civil lawsuit but as such that has been stated as justifiable verification to slander and libel acts. Defendants are suggesting that Plaintiff stated Adrienne Sorenson did do "outside the scope of her employment and with malicious intent" which was only to show such an egregious act with "Barred From Applying" had to be approved by supervisory management due to being a lower level human resources employee because when responding to past email rejection letters from her referred back to Supervisor Kerry Paul and therefore a previous pattern suggest the same procedure. Adrienne Sorenson did act within scope of her job while at her employment location site of SCDEW. The malicious intent is referring the denied of a job opportunity at SC Judicial Center, denied other job opportunities and expiration date of December 30, 2018. Defendants are claiming no Abuse of Process which is in totally disagreement. Defendants are alleging that Plaintiff two years statue limitations for a Defamation claims

any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner.

SECTION 41-27-20. Declaration of State public policy.

Without intending that this section shall supersede, alter or modify the specific provisions contained in Chapters 27 through 41 of this Title, but as a guide to the interpretation and application of Chapters 27 through 41 of this Title, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this State; involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family; the achievement of social security requires protection against this greatest hazard of our economic life; this can be provided by encouraging the employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The General Assembly therefore declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

(b) "Claim" means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

(c) Prior to January 1, 1989, "employee" means any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, "employee" means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of

a

licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from a source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(d) "Governmental entity" means the State and its political subdivisions.

(e) "State" means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(f) "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

(g) "Occurrence" means an unfolding sequence of events which proximately flow from a single act of negligence.

(i) "Scope of official duty" or "scope of state employment" means (1) acting in and about the official business of a governmental entity and (2) performing official duties.

SECTION 15-78-40. Tort liability of State, agency, political subdivision, or governmental entity, generally.

The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

South Carolina Department of Employment Workforce, South Carolina Budget and Control Board and Office of South Carolina Governor clearly violated Section 41-27-20 Declaration of State public policy: without intending that this section shall supersede, either or modify the specific provisions contained in chapter 27 through 41 of this Title but as a guide to the interpretation and application of chapter 27 through 41 of this Title, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this state etc,al. "Barred From Applying" being applied to Plaintiff created that menace environment to health, morals and welfare under South Carolina Law Code 41-27-20.

SECTION 1-13-80. Unlawful employment practices; exceptions.

(A) It is an unlawful employment practice for an employer:

(1) to fail or refuse to hire, bar, discharge from employment or otherwise discriminate

against an individual with respect to the individual's compensation or terms, conditions,

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or privileges of employment because of the individual's race, religion, color, sex, age, national origin, or disability;

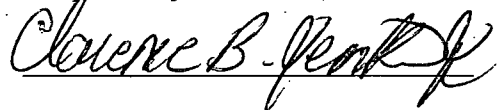
(2) to limit, segregate, or classify employees or applicants for employment in a way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, or disability;

The egregious act of "Barred From Applying" discriminated and deny employment opportunities, please refer to South Carolina Code of Law Section 41-27-240, 41-27-650 (B), 41-42-10, 41-29-120 (a, d), 1-13-20, 16-7-150, 1-13-80 {1}{2}.

### CONCLUSION

For this reason detailed above, Defendants has failed to state any justifiable claim against any of the Plaintiff. Therefore, Defendant's Dismissal must be denied and allow the civil complaint to move forward which is just according to violations of the laws that govern the state of South Carolina.

Respectfully submitted,



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September 3, 2015  
Neeses, South Carolina

HISTORY: 1962 Code Section 1-360.27; 1972 (57) 2651; 1973 (58) 698; 1979 Act No. 24 Sections 4-7; 1996 Act No. 426, Section 4.

**SECTION 1-13-80. Unlawful employment practices; exceptions.**

(A) It is an unlawful employment practice for an employer:

- (1) to fail or refuse to hire, bar, discharge from employment or otherwise discriminate against an individual with respect to the individual's compensation or terms, conditions, or privileges of employment because of the individual's race, religion, color, sex, age, national origin, or disability;
- (2) to limit, segregate, or classify employees or applicants for employment in a way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, or disability;
- (3) to reduce the wage rate of an employee in order to comply with the provisions of this chapter relating to age.

(B) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against an individual because of the individual's race, color, religion, sex, age, national origin, or disability, or to classify or refer for employment an individual on the basis of the individual's race, color, religion, sex, age, national origin, or disability.

(C) It is an unlawful employment practice for a labor organization:

- (1) to exclude or to expel from its membership or otherwise to discriminate against an individual because of the individual's race, color, religion, sex, age, national origin, or disability;
- (2) to limit, segregate, or classify its membership or applicants for membership or to classify or fail or refuse to refer for employment an individual in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment because of the individual's race, color, religion, sex, age, national origin, or disability;
- (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(D) It is an unlawful employment practice for a covered entity:

- (1) to exclude or otherwise deny equal jobs or benefits to a qualified individual because of a known disability of an individual with whom the qualified individual is known to have a relationship or association;
- (2) to fail or make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operations of the business of the covered entity; or to deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of the covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;
- (3) to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job related for the position in question and is consistent with business necessity;
- (4) to fail to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant, except where the skills are the factors that the test purports to measure.

(E) It is an unlawful employment practice for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against an individual because of the individual's race, color, religion, sex, national origin, or disability in admission to or employment in a program established to provide apprenticeship or other training.

(F) It is an unlawful employment practice for an employer to discriminate against an employee or applicant for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against an individual or for a labor organization to discriminate against a member or applicant for membership because the individual has opposed a practice made an unlawful employment practice by this chapter or because the individual has made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter.

(G) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published a notice or advertisement relating to employment by the employer or membership in or a classification or referral for employment by the labor organization or relating to a classification or referral for employment by the employment agency or relating to admission to or employment in a program established to provide apprenticeship or other training by the joint labor-management committee indicating a preference, limitation, specification, or discrimination based on race, color, religion, sex, national origin, or disability, except that the notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

(H) It is unlawful for an employer, labor organization, or employment agency to print or publish or cause to be printed or published a notice or advertisement relating to employment by the employer or membership in or a classification or referral for employment by the labor organization or relating to a classification or referral for employment by the employment agency indicating a preference, limitation, specification, or discrimination based on age.

(I) Notwithstanding any other provision of this chapter:

- (1) It is not an unlawful employment practice for an employer to employ employees, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in a program on the basis of the individual's religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.
- (2) It is not an unlawful employment practice for a party subject to the provisions of this section to compile or assemble information as may be required pursuant to Section 1-13-70(i) or Federal Equal Employment Opportunity Commission or federal contract compliance requirements or pursuant to another law not inconsistent with this chapter.
- (3) It is not an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations if the differences are not the result of an intention to discriminate because of race, religion, color, sex, national origin, or disability; nor is it an unlawful employment practice for an employer to give and to act upon the results of a professionally developed ability test if the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, or disability. It is not an unlawful employment practice under this chapter for an employer to differentiate upon the basis of sex in determining the amount of wages or compensation paid or to be paid to employees of the employer if the differentiation is authorized by Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).
- (4) Nothing contained in this chapter applies to a business or enterprise on or near an Indian reservation with respect to a publicly announced employment practice of the business or enterprise under which a preferential treatment is given to an individual because the individual is an Indian living on or near a reservation.
- (5) This chapter does not apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, educational institution, or society of its activities. It is not an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if the school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of the school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

# South Carolina Legislature

South Carolina Law &gt; Code of Laws &gt; Title 15

## South Carolina Code of Laws Unannotated Current through the end of the 2014 Session

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### Title 15 - Civil Remedies and Procedures

#### CHAPTER 78

#### South Carolina Tort Claims Act

##### SECTION 15-78-10. Short title.

This chapter may be cited as the "South Carolina Tort Claims Act".

HISTORY: 1986 Act No. 463, Section 1.

##### SECTION 15-78-20. Legislative findings; declaration of public policy; extent of, and construction of, waiver of immunity.

(a) The General Assembly finds that while a private entrepreneur may be readily held liable for negligence of his employees within the chosen ambit of his activity, the area within which government has the power to act for the public good has been without limit and, therefore, government did not have the duty to do everything which might have been done. The General Assembly further finds that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities. Thus, while total immunity from liability on the part of the government is not desirable, see *McCall v. Batson*, neither should the government be subject to unlimited nor unqualified liability for its actions. The General Assembly recognizes the potential problems and hardships each governmental entity may face being subjected to unlimited and unqualified liability for its actions. Additionally, the General Assembly recognizes the impossibility of insuring for acts retrospectively. The General Assembly seeks an orderly transition to the recognition of individuals' rights against the tortious sovereign as defined herein. Consequently, it is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein. It is further declared to be the public policy of the State of South Carolina that to insure an orderly transition from sovereign immunity to qualified and limited liability that the General Assembly intends to provide for liability on the part of the State and its political subdivisions only from July 1, 1986, forward in prospective fashion. No governmental entity which was not insured at the time of the injury for which compensation is sought is liable under this chapter and those which were insured are liable only to the extent provided herein. Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.

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

(c)(i) As to those causes of action that arise or accrue prior to the effective date of this act, the General Assembly reinstates sovereign immunity on the part of the State, its political subdivisions and employees, while acting within the scope of official duty provided that sovereign immunity will not bar recovery in any cause of action arising or accruing on or before the effective date of this act if the defendant maintained liability insurance coverage.

(ii) In such cases involving governmental health care facilities, as defined in Section 15-78-30(j), recovery shall not exceed the limits of the liability insurance coverage up to a maximum recovery of five hundred thousand dollars.

(iii) In all other such cases recovery shall not exceed the limits of the liability insurance coverage.

(d) Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract.

(e) 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.

(f) The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.

(g) The General Assembly recognizes the competing interests of either providing physicians and dentists qualified immunity under the provisions of the South Carolina Tort Claims Act or continuing unqualified liability for medical malpractice actions brought against governmentally employed physicians or dentists. While patients deserve accountable and competent health care, regardless of the public or private character of the provider, governmental entities, in order to attract qualified physicians and dentists, must be able to offer an affordable compensation and employment package, including liability insurance. The General Assembly, in amending this chapter, intends to provide an orderly transition from noninclusion to inclusion of physicians and dentists under the provisions of this chapter. Additionally, the liability limits, and hence mandated insurance coverage, of governmental entities for acts of physicians or dentists, acting within the scope of their profession, are set somewhat higher than those provided for other types of governmental liability. These higher limits and mandated coverages are recognition by the General Assembly of significantly higher damages in cases of medical malpractice. To this end, inclusion of physicians and dentists within this chapter has been delayed until January 1, 1989, when an affordable program of group liability insurance will be instituted.

HISTORY: 1986 Act No. 463, Section 1; 1987 Act No. 7, Section 1; 1988 Act No. 352, Section 2.

##### SECTION 15-78-30. Definitions.

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

(b) "Claim" means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

(c) Prior to January 1, 1989, "employee" means any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, "employee" means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from a source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(d) "Governmental entity" means the State and its political subdivisions.

(e) "State" means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(f) "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

(g) "Occurrence" means an unfolding sequence of events which proximately flow from a single act of negligence.

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

(i) "Scope of official duty" or "scope of state employment" means (1) acting in and about the official business of a governmental entity and (2) performing official duties.

(j) "Governmental health care facility" means one which is operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance and which is tax-exempt under state and federal laws as a governmental entity and from which no part of its net income from its operation accrues to the benefit of any individual or nongovernmental entity. Health care facility includes any facility as defined in Title 44, S. C. Code Ann. for the provision of mental or physical care to individuals, whether or not it is required to be licensed under those provisions.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Sections 3, 4; 1990 Act No. 351, Section 1; 1994 Act No. 380, Section 2; 1996 Act No. 271, Section 1; 2008 Act No. 199, Section 2, eff April 16, 2008.

#### **SECTION 15-78-40.** Tort liability of State, agency, political subdivision, or governmental entity, generally.

The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

HISTORY: 1986 Act No. 463, Section 1.

#### **SECTION 15-78-50.** Right of injured person to file claim; non-liability of governmental entity where employee would not be liable if a private person; injunctions against governmental entities.

(a) Any person who may suffer a loss proximately caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as hereinafter provided.

(b) In no case is a governmental entity liable for a tort of an employee where that employee, if a private person, would not be liable under the laws of this State.

(c) Nothing herein shall affect the power of a court of equity at the suit of a party complainant to enjoin unlawful acts committed by governmental entities or mandate lawful action by governmental entities.

HISTORY: 1986 Act No. 463, Section 1.

#### **SECTION 15-78-60.** Exceptions to waiver of immunity.

The governmental entity is not liable for a loss resulting from:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
- (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;
- (7) a nuisance;
- (8) snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee;
- (9) entry upon any property where the entry is expressly or impliedly authorized by law;
- (10) natural conditions of unimproved property of the governmental entity, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for the property within a reasonable time after actual or constructive notice of the defect or condition;

- (11) assessment or collection of taxes or special assessments or enforcement of tax laws;
- (12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;
- (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;
- (14) any claim covered by the South Carolina Workers' Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the South Carolina Unemployment Compensation Act, or the South Carolina State Employee's Grievance Act;
- (15) absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to in this item are those used in connection with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways. Governmental entities are not liable for loss on public ways under construction when the entity is protected by an indemnity bond. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice;
- (16) maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition;
- (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;
- (18) imposition or establishment of a quarantine by a governmental entity, whether the quarantine relates to persons or property;
- (19) emergency preparedness activities and activities of the South Carolina National Guard and South Carolina State Guard while engaged in state or federal training or duty. This exemption does not apply to vehicular accidents;
- (20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons;
- (21) the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons;
- (22) termination or reduction of benefits under a public assistance program;
- (23) institution or prosecution of any judicial or administrative proceeding;
- (24) holding or conduct of elections;
- (25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner;
- (26) failure to supervise or control areas open for public hunting or activities thereon. Failure to control, maintain, and/or supervise the use of and activities in, on, and around public boat ramps except within a reasonable time after actual notice of the defect or condition. Failure to maintain navigational markers, except within a reasonable time after actual notice of the defect or condition.
- (27) solicitations on streets and highways as authorized by the provisions of Section 5-27-910.
- (28) Notification of any public school student's parent, legal guardian, or other person with whom a public school student resides of the student's suspected use of alcohol, controlled substance, prescription or nonprescription drugs by any public school administrator, principal, counselor, or teacher if such notification is made in good faith.
- (29) acts or omissions of members of the state and county athletic commissions or ringside physicians acting within the scope of their official duties pursuant to Chapter 7 of Title 52.
- (30) acts or omissions of members of local foster care review boards acting within the scope of their official duties pursuant to Subarticle 4, Article 13, Chapter 7 of Title 20. However, the member shall act in good faith, his conduct may not constitute gross negligence, recklessness, wilfulness, or wantonness, and he must have participated in a training program established by the state foster care review board system.
- (31) acts or omissions of employees and volunteers of the South Carolina Protection and Advocacy System for the Handicapped acting within the scope of their official duties pursuant to Article 5, Chapter 33 of Title 43, when such acts or omissions are done or made in good faith, and do not constitute gross negligence, recklessness, wilfulness, or wantonness.
- (32) a pre-occupancy housing inspection contracted for by the South Carolina Department of Employment and Workforce pursuant to Section 46-43-40.
- (33) the performance of any duty related to the service of members of the Judicial Merit Selection Commission or the Citizens Committees on Judicial Selection.
- (34) the performance of any duty related to the service of the members of the Tobacco Community Development Board.
- (35) the failure of a library's or media arts center's governing board to adopt policies as provided in Section 10-1-205.
- (36) acts or omissions by a special state constable who is appointed pursuant to Section 23-7-10 and acting within the scope of his official duty under conditions of a national emergency or of a serious and immediate risk to the physical security of an energy facility within the special state constable's jurisdiction as provided in Section 23-7-40.
- (37) the performance of any duty related to the service of the members of the Tobacco Settlement Revenue Management authority.
- (38) conduct of a director appointed pursuant to Section 58-31-20 giving rise to a lawsuit under Section 58-31-57.
- (39) the grant or denial by a governing body of a county or municipality as provided in Section 23-35-175 of an application to extend a Fireworks Prohibited Zone beyond the subject property for which a Discharge of Fireworks Prohibited Agreement has been filed.
- (40) an injury a student may sustain as a result of self-monitoring or self-administering medications or for an injury that a student may sustain from taking or using medications or self-monitoring devices for which the student does not have a prescription or does not have authorization by the school district.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Sections 5, 6; 1988 Act No. 373, Section 2; 1988 Act No. 664; 1988 Act No. 675, Section 1; 1989 Act No. 132, Section 2; 1990 Act No. 351, Section 2; 1996 Act No. 386, Section 3; 1997 Act No. 35, Section 6; 1999 Act No. 77, Section 4; 2000 Act No. 362, Section 1; 2000 Act No. 387, Part II, Section 69A.5; 2000 Act No. 387, Part II, Section 97B; 2000 Act No. 407, Section 3; 2005 Act No. 6, Section 2, eff January 13, 2005; 2005 Act No. 81, Section 2, eff May 26, 2005; 2005 Act No. 137, Section 2, eff May 25, 2005.

**SECTION 15-78-70.** Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

(c) Prior to January 1, 1989, 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 and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. The provisions of this section may in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, 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 and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. The provisions of this section in no way shall limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim brought hereunder which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from any source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(d) A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.

(e) Nothing in this chapter may be construed to give a director appointed pursuant to Section 58-31-20 immunity from suit and liability as set forth in Section 58-31-57. The State Budget and Control Board, Insurance Reserve Fund, is prohibited from providing insurance coverage for this individual liability; however, nothing shall prevent the Public Service Authority or its directors from obtaining insurance coverage from any other source.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Section 7; 1994 Act No. 380, Section 3; 2005 Act No. 137, Section 3, eff May 25, 2005.

**SECTION 15-78-80.** Filing of verified claim; handling and disposition of claims; requirement that agencies and political subdivisions cooperate with Budget and Control Board.

(a) A verified claim for damages under this chapter, setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained may be filed:

- (1) in cases against the State, with the State Budget and Control Board, or with the agency employing an employee whose alleged act or omission gave rise to the claim;
- (2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim;
- (3) where the identification of the proper defendant is in doubt, with the Attorney General.

(b) Each agency and political subdivision must designate an employee or office to accept the filing of the claims.

(c) Filing may be accomplished by receipt of certified mailing of the claims or by compliance with the provisions of law relating to service of process.

(d) The verified claim may be received by the Budget and Control Board or the appropriate agency or political subdivision. If filed, the claim must be received within one year after the loss was or should have been discovered.

(e) In all cases in which a claim is filed, the Budget and Control Board or political subdivision has one hundred eighty days from the date of filing of the claim in which to determine whether the claim should be allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days from the date of filing of the claim is considered a disallowance of the claim.

(f) The handling and disposition of claims filed under this chapter are not subject to the provisions of Article 3, Chapter 23 of Title 1.

(g) In all cases, where insurance is provided by the Budget and Control Board, the agency or political subdivision involved must cooperate with the Budget and Control Board in the investigation and handling of any claim.

HISTORY: 1986 Act No. 463, Section 1.

**SECTION 15-78-90.** Settlement of claims and actions; institution of action where claim has or has not been filed.

(a) The Budget and Control Board, or the political subdivision where it has not purchased insurance from the Budget and Control Board, may adjust, compromise, settle, or allow any claim or settle or compromise any action.

(b) Whether or not the claim is filed, the claimant is entitled to institute an action against the appropriate agency or political subdivision. Provided, however, if a claimant files a claim, he may not institute an action until after the occurrence of the earliest of one of the following three events: (1) the passage of one hundred eighty days from the filing of the claim with the governmental entity, (2) the governmental entity's disallowance of the claim, or (3) the governmental entity's rejection of a settlement offer.

HISTORY: 1986 Act No. 463, Section 1.

**SECTION 15-78-100.** When and where to institute action; requirement of special verdict specifying proportionate liability of multiple defendants.

(a) Except as provided for in Section 15-3-40, an action for damages under this chapter may be instituted at any time within two years after the loss was or should have been discovered. Provided, that if a claim for damages was filed and disallowed or rejected an action for damages filed under this chapter, based upon the same occurrence as the claim, may be instituted within three years after the loss was or should have been discovered.

(b) Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred.

(c) In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Section 8.

**SECTION 15-78-110.** Statute of limitations.

Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Section 9.

**SECTION 15-78-120.** Limitation on liability; prohibition against recovery of punitive or exemplary damages or prejudgment interest; signature of attorney on pleadings, motions, or other papers.

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

**SECTION 15-3-550. Two years.**

Within two years:

- (1) an action for libel, slander, or false imprisonment; and
- (2) an action upon a statute for a forfeiture or penalty to the State.

**HISTORY:** 1962 Code Section 10-145; 1952 Code Section 10-145; 1942 Code Section 390; 1932 Code Section 390; Civ. P. '22 Section 333; Civ. P. '12 Section 139; Civ. P. '02 Section 114; 1870 (14) 448, Section 116; 1988 Act No. 391, Section 3; 2001 Act No. 102, Section 2.

**SECTION 15-3-555. Statute of limitations for action based on sexual abuse or incest.**

(A) An action to recover damages for injury to a person arising out of an act of sexual abuse or incest must be commenced within six years after the person becomes twenty-one years of age or within three years from the time of discovery by the person of the injury and the causal relationship between the injury and the sexual abuse or incest, whichever occurs later.

(B) Parental immunity is not a defense against claims based on sexual abuse or incest that occurred before, on, or after this section's effective date.

**HISTORY:** 2001 Act No. 102, Section 3.

**SECTION 15-3-560. One year.**

Within one year:

- (1) An action concerning or in any manner relating to wages claimed under a Federal statute or regulation;
- (2) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process; and
- (3) An action against any county of this State having a population as shown by the United States official census of 1930 or any subsequent United States official census in excess of eighty-five thousand brought by any former, present or future officer, including county auditors and county treasurers, employee or agent thereof on account of any claim for salary, wages, fees, costs or other emolument or claim alleged to be due him on account of services rendered or performed, or brought upon any such claim by an assignee or personal representative thereof.

**HISTORY:** 1962 Code Section 10-146; 1952 Code Section 10-146; 1942 Code Sections 391, 396-1; 1932 Code Section 391; Civ. P. '22 Section 334; Civ. P. '12 Section 140; Civ. P. '02 Section 115; 1870 (14) 448 Section 117; 1938 (40) 1631; 1945 (44) 337.

**SECTION 15-3-570. Action for penalty.**

An action upon a statute for a penalty or forfeiture given, in whole or in part, to any person who will prosecute for it must be commenced within one year after the commission of the offense. If the action be not commenced within the year by a private party it may be commenced within two years thereafter in behalf of the State by the Attorney General or the solicitor of the circuit where the offense was committed, unless a different limitation be prescribed in the statute under which the action is brought.

**HISTORY:** 1962 Code Section 10-147; 1952 Code Section 10-147; 1942 Code Section 393; 1932 Code Section 393; Civ. P. '22 Section 336; Civ. P. '12 Section 142; Civ. P. '02 Section 117; 1870 (14) 448 Section 119.

**SECTION 15-3-580. Actions by motor carriers for charges.**

All actions at law by motor carriers subject to Chapter 23 of Title 58 for the recovery of their charges or any part thereof shall be commenced within two years from the time the cause of action accrues and not thereafter. The cause of action by a motor carrier for its charges shall for the purpose of this section be deemed to accrue upon delivery or tender of delivery by the carrier.

**HISTORY:** 1962 Code Section 10-147.1; 1952 (47) 2170.

**SECTION 15-3-590. Actions against motor carriers for overcharges.**

(1) Actions at law for the recovery of overcharges against motor carriers subject to Chapter 23 of Title 58 shall be commenced within two years from the time the cause of action accrues and not thereafter, subject to the provisions of subsection (2) of this section; provided, that if a claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation, the period shall be extended to include six months from the time notice in writing was given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof.

(2) The cause of action against a motor carrier for overcharges shall for the purpose of this section be deemed to accrue at the time the charges are paid to the carrier.

(3) The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Public Service Commission.

**HISTORY:** 1962 Code Section 10-147.2; 1952 (47) 2170.

**SECTION 15-3-600. Action for other relief.**

An action for relief not provided for in this chapter must be commenced within ten years after the cause of action shall have accrued.

**HISTORY:** 1962 Code Section 10-148; 1952 Code Section 10-148; 1942 Code Section 394; 1932 Code Section 394; Civ. P. '22 Section 337; Civ. P. '12 Section 143; Civ. P. '02 Section 118; 1870 (14) 448 Section 120.

**SECTION 15-3-610. Action upon current account.**

In an action brought to recover a balance due upon a mutual, open and current account when there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

**HISTORY:** 1962 Code Section 10-149; 1952 Code Section 10-149; 1942 Code Section 392; 1932 Code Section 392; Civ. P. '22 Section 335; Civ. P. '12 Section 141; Civ. P. '02 Section 116; 1870 (14) 448 Section 118.

# South Carolina Legislature

South Carolina Law > Code of Laws > Title 41

## South Carolina Code of Laws Unannotated Current through the end of the 2014 Session

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### Title 41 - Labor and Employment

#### CHAPTER 27

#### Employment and Workforce - General Provisions

#### ARTICLE 1

#### Short Title; Purpose; Construction; Amendments

##### **SECTION 41-27-10.** Short title.

Chapters 27 through 41 of this title shall be known and may be cited as the "South Carolina Department of Employment and Workforce".

HISTORY: 1962 Code Section 68-1; 1952 Code Section 68-1; 1942 Code Section 7035-81; 1936 (39) 1716; 1966 (54) 2640; 2010 Act No. 146, Section 11, eff March 30, 2010.

##### **SECTION 41-27-20.** Declaration of State public policy.

Without intending that this section shall supersede, alter or modify the specific provisions contained in Chapters 27 through 41 of this Title, but as a guide to the interpretation and application of Chapters 27 through 41 of this Title, the public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this State; involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family; the achievement of social security requires protection against this greatest hazard of our economic life; this can be provided by encouraging the employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The General Assembly therefore declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

HISTORY: 1962 Code Section 68-38; 1952 Code Section 68-36; 1942 Code Section 7035-82; 1936 (39) 1716; 1941 (42) 369.

##### **SECTION 41-27-30.** Construction.

Nothing in Chapters 27 through 41 of this title must be construed to cause the department or the courts of this State in interpreting these chapters to be bound by interpretations as to liability or nonliability of employers by Federal administrative agencies, nor is it the intent of the General Assembly to require an identical coverage of employers under these chapters with coverage requirements pursuant to Section 3101 et seq. of the Federal Internal Revenue Code.

HISTORY: 1962 Code Section 68-39; 1952 Code Section 68-37; 1942 Code Section 7035-99; 1936 (39) 1716; 1939 (41) 487; 1940 (41) 1630; 1941 (42) 358, 369; 1957 (50) 580; 2010 Act No. 146, Section 12, eff March 30, 2010.

##### **SECTION 41-27-40.** Amendments.

The General Assembly reserves the right to amend or repeal all or any part of Chapters 27 through 41 of this Title at any time and there shall be no vested private right of any kind against any such amendment or repeal. All the rights, privileges, and immunities conferred by such chapters or acts done pursuant thereto shall exist subject to the power of the General Assembly to amend or repeal such chapters at any time.

HISTORY: 1962 Code Section 68-40; 1952 Code Section 68-38; 1942 Code Section 7035-103; 1936 (39) 1716; 1939 (41) 487.

#### ARTICLE 3

#### Definitions

**RULE 12**  
**DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR**  
**MOTION - MOTION FOR JUDGMENT ON PLEADINGS**

**(a) When Presented.** A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the Court directs otherwise when service of process is made pursuant to Rule 4(e), and provided further that the State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 30 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 30 days after service of the answer or, if a reply is ordered by the court, within 30 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the Court: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the Court's action; (2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within 15 days after the service of the more definite statement, and a responsive pleading, if necessary, shall be served within 15 days after notice of the court's action on a motion to strike.

**Note:**

This Rule 12(a) is identical to the Federal Rule except that it changes the time to answer from 20 to 30 days, and the time to plead after motion denied from 10 to 15 days. No other changes in State practice are affected by the Rule.

**Note to 1986 Amendment:**

The amendment to Rule 12(a)(2) sets the time for response after a motion to strike at 15 days, which is the same time set for pleading after a successful motion for a more definite statement.

**Note to 1995 Amendment:**

Rule 12(a) is amended to provide special time periods for the State to respond to applications for post-conviction relief because the thirty day time period for civil litigation is often extended so that the State may obtain a transcript of the proceeding before responding.

**(b) How Presented.** Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the

pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

**Note:**

This important Rule 12(b) enables a party to: (1) raise by motion or answer all of the defenses now raised by demurrer, and (2) eliminates the necessity of the awkward "special appearance to object to jurisdiction" under present State practice. The motion should be made before answer for early disposition of cases; but the defenses enumerated may be made in the responsive pleading and are not waived by being stated in a pleading rather than by motion. The last sentence eliminates the so-called "speaking demurrer" at trial, by treating such late motion as a motion for Summary Judgment under Rule 56.

**Note to 1986 Amendment:**

The amendment to the fourth sentence of Rule 12(b) clarifies the litigant's right to assert at trial any defenses as well as any claims he could have raised in a permissive pleading but chose not to do so. Consequently, the election not to reply to an affirmative defense does not waive the right to contest that affirmative defense.

**(c) Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

**Note:**

This Rule 12(c) preserves the present common law practice in this State; and it is more important than the Federal Rule, because of the requirement for fact pleading. It may also be treated as a motion for summary judgment in proper circumstances.

**(d) Preliminary Hearings.** The defenses specifically enumerated (1)-(8) in subdivision (b) of this rule, whether made in a pleading or by motion, motions for judgment on the pleadings under subdivision (c) of this rule, and motions for summary judgment under Rule 56, shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

**Note:**

This Rule 12(d) is the same as the Federal Rule, and assures timely disposal of 12(b) and 12(c) motions to dismiss or for judgment prior to trial.

**(e) Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 15 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.



**Subject:** Fw: Administrative Specialist II/Docketing Specialist II  
**From:** Clarence Jr (upscale81@yahoo.com)  
**To:** clrne\_jnkns@yahoo.com;  
**Date:** Wednesday, July 24, 2013 2:03 PM

----- Forwarded Message -----

**From:** "Bellamy, Sharlayne N." <snbellamy@sccourts.org>  
**To:** Clarence Jr <upscale81@yahoo.com>; "patricia.fuller@eeoc.gov" <patricia.fuller@eeoc.gov>  
**Sent:** Wednesday, July 24, 2013 1:17 PM  
**Subject:** RE: Administrative Specialist II/Docketing Specialist II

Good afternoon Mr. Jenkins:

I do not govern or control the State's website for job postings; therefore, I have not performed any illegal, fraudulent, unfair, unjust or discriminatory action towards you.

By way of this e-mail, I am notifying you that the State of South Carolina's website gave me a warning when your application came through.

Please feel free to review the notice I received below:

**NEOGOV** 

Search  

Class ▼ Post ▼ Benefits ▼ Reports ▼ CandidateTrack ▼ Tests ▼ Requisitions ▼ List ▼

 My HR

[View Applicants By Step](#)

**Exam Plan** 32328 - Administrative Specialist II/Docketing Specialist II

**Evaluation Step** Application Received

**WARNING**  
This candidate has been marked as  
"Barred From Applying" (Does not meet minimum qualifications).

**\* Required**

| Applicant: | Name                     | Person ID |
|------------|--------------------------|-----------|
|            | *Jenkins Jr., Clarence B | 2274761   |

**\* Pass/Fail Step:** ☐ Passed ☐ Failed ☒ Other

**Reject Reason:** == Select == 

**Comments:** This candidate has been marked as "Barred From Applying" per NEOGOV.

Save

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**From:** Clarence Jr [mailto:upscale81@yahoo.com]  
**Sent:** Wednesday, July 24, 2013 10:16 AM  
**To:** Bellamy, Sharlayne N.; patricia.fuller@eeoc.gov  
**Subject:** Re: Administrative Specialist II/Docketing Specialist II

Ms. Bellamy:

I would like to know who sent you notification of me being barred from applying from state positions. I have not been told or sent notification that employment with SC has been barred. I see this action to be illegal, fraudulent, unfair, injustice and discrimination as tax paying citizens who has not done anything wrong.

**Wilkins, Sam**

---

**From:** Ellerbe, Terrashima  
**Sent:** Friday, July 26, 2013 3:43 PM  
**To:** Wilkins, Sam  
**Subject:** FW: Administrative Specialist II/Docketing Specialist II

**Importance:** High

Terra Ellerbe  
Human Resources Consultant  
SC Budget & Control Board  
Human Resources Division  
8301 Parklane Rd Suite A220  
Columbia, SC 29223  
[tellerbe@ohr.sc.gov](mailto:tellerbe@ohr.sc.gov)  
803-896-5043

---

**From:** Bellamy, Sharlayne N. [<mailto:snbellamy@sccourts.org>]  
**Sent:** Wednesday, July 24, 2013 1:21 PM  
**To:** Ellerbe, Terrashima  
**Cc:** Rivers, Georgette  
**Subject:** FW: Administrative Specialist II/Docketing Specialist II  
**Importance:** High

Good afternoon Terra:

Please review the e-mails below and let me know what you can find out about Mr. Clarence B. Jenkins, Jr. being barred from applying for this job.

He was pretty upset with me, but you will see my comment back to him regarding this action.

Sharlayne Bellamy  
SC Judicial Department  
1015 Sumter Street, Suite 101  
Columbia, SC 29201  
[www.sccourts.org/](http://www.sccourts.org/)

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**From:** Bellamy, Sharlayne N.  
**Sent:** Wednesday, July 24, 2013 1:17 PM  
**To:** 'Clarence Jr'; [patricia.fuller@eeoc.gov](mailto:patricia.fuller@eeoc.gov)  
**Subject:** RE: Administrative Specialist II/Docketing Specialist II  
**Importance:** High

Good afternoon Mr. Jenkins:

**Subject:** Fw: Administrative Specialist II/Docketing Specialist II  
**From:** Clarence Jr (upscale81@yahoo.com)  
**To:** clrnclnkns@yahoo.com;  
**Date:** Wednesday, July 24, 2013 2:03 PM

## ----- Forwarded Message -----

**From:** "Bellamy, Sharlayne N." <snbellamy@sccourts.org>  
**To:** Clarence Jr <upscale81@yahoo.com>; "patricia.fuller@eeoc.gov" <patricia.fuller@eeoc.gov>  
**Sent:** Wednesday, July 24, 2013 1:17 PM  
**Subject:** RE: Administrative Specialist II/Docketing Specialist II

Good afternoon Mr. Jenkins:

I do not govern or control the State's website for job postings; therefore, I have not performed any illegal, fraudulent, unfair, unjust or discriminatory action towards you.

By way of this e-mail, I am notifying you that the State of South Carolina's website gave me a warning when your application came through.

Please feel free to review the notice I received below:

| NEOGOV IN                                                                                                                                   |                                                                                                  | Search     |
|---------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|------------|
| Class ▼                                                                                                                                     | Post ▼                                                                                           | Benefits ▼ |
| Reports ▼                                                                                                                                   | CandidateTrack ▼                                                                                 | Tests ▼    |
| Requisitions ▼                                                                                                                              | List ▼                                                                                           |            |
| My HR                                                                                                                                       |                                                                                                  |            |
| View Applicants By Step                                                                                                                     |                                                                                                  |            |
| Exam Plan 32328 - Administrative Specialist II/Docketing Specialist II                                                                      |                                                                                                  |            |
| Evaluation Step Application Received                                                                                                        |                                                                                                  |            |
| <p><b>WARNING</b></p> <p>This candidate has been marked as<br/>           "Barred From Applying" (Does not meet minimum qualifications)</p> |                                                                                                  |            |
| * Required                                                                                                                                  |                                                                                                  |            |
| Applicant:                                                                                                                                  | Name                                                                                             | Person ID  |
|                                                                                                                                             | Jenkins Jr., Clarence B                                                                          | 2274761    |
| Pass/Fail Step:                                                                                                                             | <input type="radio"/> Passed <input type="radio"/> Failed <input checked="" type="radio"/> Other |            |
| Reject Reason:                                                                                                                              | == Select ==                                                                                     |            |
| Comments:                                                                                                                                   | This candidate has been marked as "Barred From Applying" per NEOGOV.                             |            |
| Save                                                                                                                                        |                                                                                                  |            |

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**From:** Clarence Jr [mailto:upscale81@yahoo.com]  
**Sent:** Wednesday, July 24, 2013 10:16 AM  
**To:** Bellamy, Sharlayne N.; patricia.fuller@eeoc.gov  
**Subject:** Re: Administrative Specialist II/Docketing Specialist II

Ms. Bellamy:

I would like to know who sent you notification of me being barred from applying from state positions. I have not been told or sent notification that employment with SC has been barred. I see this action to be illegal, fraudulent, unfair, injustice and discrimination as tax paying citizens who has not done anything wrong.

I am requesting that you respond to your illegal action in writing because this is my first time being informed of such and receiving notification.

**Wilkins, Sam**

---

**From:** Wilkins, Sam  
**Sent:** Monday, July 29, 2013 3:16 PM  
**To:** Wilkie, Valerie  
**Cc:** Ellerbe, Terrashima  
**Subject:** Email Message

Valerie,

Here is the message for the email that Terra is providing us a list of agencies. Thanks.

Sam

From July 19-25, 2013, the e-recruitment system, NeoGov, published an **incorrect** notice concerning an applicant, Clarence Jenkins, Jr., indicating Barred from Applying. In reviewing the application of Mr. Jenkins concerning any postings you had open during that period of time, please disregard that incorrect notice. Thank you.

## **Wilkins, Sam**

---

**From:** Ellerbe, Terrashima  
**Sent:** Monday, July 29, 2013 3:12 PM  
**To:** Wilkins, Sam  
**Cc:** Wilkie, Valerie  
**Subject:** RE: Memo to Agencies

Sam,

Here's a list of all agencies that received an application from Clarence Jenkins Jr.

Adjutant General's Office  
Aiken Technical College  
Budget & Control Board  
Central Carolina Technical College  
Denmark Technical College  
Department of Commerce  
DEW  
DHEC  
HHS  
Insurance  
DJJ  
LLR  
DMV  
PRT  
PPP  
Revenue  
DSS  
DOT  
Election Commission  
Florence-Darlington Tech  
Governor's Office  
John de la Howe  
Lieutenant Governor's Office  
Midlands Tech  
Northeastern Tech  
Orangeburg-Calhoun Tech  
Piedmont Tech  
Judicial Dept.  
PEBA  
Spartanburg Community College  
State Accident Fund  
Housing  
Human Affairs Commission  
The Citadel  
Voc. Rehab.

**Terra Ellerbe**  
**Human Resources Consultant**

## Wilkins, Sam

**From:** Ed Cavazos <ecavazos@neogov.com>  
**Sent:** Friday, July 26, 2013 6:39 PM  
**To:** Wilkins, Sam  
**Subject:** Fwd: Applicant

Hi Sam -

Here's a snapshot of what took place.

Ed

----- Forwarded message -----

**From:** Joanne Hilty <joanne@neogov.com>  
**Date:** Fri, Jul 26, 2013 at 2:54 PM  
**Subject:** RE: Applicant  
**To:** Ed Cavazos <ecavazos@neogov.com>

Here's the audit trail and who made the change and when. They can pull this up as well by going to the Master Profile and clicking on 'audit trail' in the upper right.

Applicant **Clarence Jenkins Jr.**

Created 12/07/07 11:54 AM

Updated on 07/26/13 8:22 AM by Terra Elferbe

| Field Label          | Old Value | New Value |
|----------------------|-----------|-----------|
| Barred from applying | Yes       | No        |

Updated on 07/19/13 11:11 AM by Adrienne Sorenson

| Field Label               | Old Value | New Value                            |
|---------------------------|-----------|--------------------------------------|
| Barred from applying      | No        | Yes                                  |
| Barred Reason             |           | Does not meet minimum qualifications |
| Barred from applying Date |           | 12/30/2018                           |