

RECEIVED

JUN 15 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
Aiken County

Doyet A. Early, III, Circuit Court Judge

Case No. 2014-CP-02-00879

Carlton E. Cantrell

----- Appellant

vs.

Aiken County; Aiken County Animal
Control Director, Shirley Hardin; Aiken
County Animal Control Officer Bobby
Arthurs; Judge Charles T. Carter.

----- Respondents

APPENDIX TO THE
RECORD ON APPEAL

Carlton E. Cantrell, Appellant
223 Muddy Branch Road
Aiken, South Carolina 29805
(803) 215-4747

William H. Davidson, II
Daniel C. Plyler
Davidson & Lindemann, PA
Attorneys for Respondents
PO Box 8568
Columbia, SC, 29202
(803) 806-8222

INDEX TO APPENDIX TO THE
RECORD ON APPEAL

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1. motion to Dismiss, or in the Alternative for Summary Judgment, filed May 29 2014, with Exhibits.	2-26

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 Carlton E. Cantrell,)
)
 Plaintiff.)
)
 v.)
)
 Aiken County; Aiken County Animal Control)
 Director, Shirley Hardin; Aiken County Animal)
 Control Officer, Bobby Arthurs; Judge Charles)
 T. Carter;)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-02-0879

**MOTION & ORDER INFORMATION
 FORM COVER SHEET**

Plaintiff's Attorney: <i>Pro Se</i> Mr. Carlton E. Cantrell 223 Muddy Branch Road Aiken, South Carolina 29805 Phone: Fax: E-Mail: Other:	Defendant's Attorney: Daniel C. Plyler Address: 1611 Devonshire Drive, Second Floor Post Office Box 8568 Columbia, South Carolina 29202-8568 Phone: 803-806-8222 Fax: 803-806-8855 E-Mail: dplyler@dml-law.com ; Other:										
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)											
SECTION I: Hearing Information Nature of Motion: <u>Motion to Dismiss, for Sanctions, and for Injunctive Relief</u> Estimated Time Needed: <u>20 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> Yes / <input type="checkbox"/> No											
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <div style="display: flex; justify-content: space-between;"> <div> <u>[Signature]</u> Signature of Attorney for Defendant(s) </div> <div> <u>6/25/2014</u> Date Submitted </div> </div>											
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: (check reason) <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act</td> <td><input type="checkbox"/> Post Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> <td><input type="checkbox"/> Motion for Publication</td> </tr> <tr> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</td> <td><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> </table> Name of Court Reporter: <input type="checkbox"/> Other:		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Indigent Status	<input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Post Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Publication	<input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
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JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE: _____ CODE: _____ DATE: <u>5-29-14</u>										
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ <input checked="" type="checkbox"/> MOTION FEE COLLECTED: <u>ck #25428</u> <input type="checkbox"/> CONTESTED - AMOUNT DUE: <u>rcpt</u>											
Deputy Clerk: <u>Anita Knoebel</u> ^{US}											

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
)
) Civil Action Number: 2014-CP-02-879

Carlton E. Cantrell,
Plaintiff,

v.

Aiken County, Aiken County Animal Control
Director, Shirley Hardin, Aiken County
Animal Control Officer Bobby Arthurs, and
Judge Charles T. Carter,
Defendants.

) **NOTICE OF MOTION AND MOTION**
) **TO DISMISS, OR IN THE**
) **ALTERNATIVE FOR SUMMARY**
) **JUDGMENT, FOR SANCTIONS, AND**
) **FOR INJUNCTIVE RELIEF ON**
) **BEHALF OF THE DEFENDANTS**

FILED 5.29.14
Liz England
D.C.P. & C.S.
Anita Knoepfle
Deputy Clerk

TO: CARLTON E. CANTRELL, PRO SE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE, that the undersigned counsel for the Defendants will move before the Presiding Judge of the Second Judicial Circuit at the Aiken County Courthouse, Aiken, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 12, SCRPC, dismissing this case with prejudice and awarding sanctions against the Plaintiff pursuant to Rule 11, SCRPC and S.C. Code Ann. § 15-36-10, as well as asking that injunctive relief be granted on behalf of the Defendants, on the following grounds:

1. Defendants Hardin, Arthurs, and Carter are entitled to absolute employee immunity under the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et seq.* The Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). An employee of a governmental entity is immune from liability for tortious acts committed within the scope of his or her official duties. *See. Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Cl. App. 2003). Therefore, the

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[Handwritten mark]

Plaintiff's allegations, as to Defendants Hardin, Arthurs, and Carter, must be dismissed as a matter of law.

2. The Defendants assert that the Plaintiff's claims are barred by the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et seq.*, including but not limited to § 15-78-60(3) and (4).

3. Pursuant to the allegations contained on the face of the Complaint, the Plaintiff's claims are time-barred pursuant to the applicable statute of limitations, and therefore this matter must be dismissed. *See*, S.C. Code Ann. § 15-78-110; *see also*, *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003).

4. The Plaintiff's claims are barred by the doctrines of *res judicata* and/or collateral estoppel, as these same claims have previously been litigated, on two separate occasions, in this very court against these same Defendants. *See*, Civil Action No. 08-CP-02-887 and Civil Action No. 11-CP-02-01480; *see also*, Exhibit A.

5. Defendant Carter is entitled to Judicial Immunity, and therefore the Plaintiff's claims against Defendant Carter must be dismissed. *See*, Unpublished Opinion of South Carolina Court of Appeals 2010-UP-533.

6. The Plaintiff's Complaint fails to state a claim against these Defendants upon which relief can be granted.

7. The Defendants assert that the Plaintiff's allegations are wholly frivolous and/or malicious in nature, specifically given the fact that these same claims have already been litigated by these same parties in this same court on two previous occasions; and the Defendants therefore ask for sanctions to be determined by the Court in accordance with the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, and for the costs incurred by the


SD

Defendants associated with this matter. Furthermore, the Defendants assert that sanctions would also be appropriate under Rule 11(a), SCRCP.

8. The Defendants ask that the Court issue an Order enjoining the Plaintiff from continuing his abusive, malicious, and frivolous practices of continuing to "re-file" these claims. Specifically, the Defendants ask that the Court issue an Order instructing the Clerk of Court to refrain from filing any additional Complaints or other Pleadings submitted by Mr. Cantrell that are related to the matters set forth in Civil Action No. 08-CP-02-887, 11-CP-02-1480, or 14-CP-02-879. The Defendants assert that such a remedy is well within the inherent authority of the Court, and appropriate in such circumstances. See, Exhibit B.

This motion is based on the pleadings, South Carolina Rules of Civil Procedure, the Laws of the State of South Carolina, the Case Law of the State of South Carolina, and such other matters as may be properly presented to the Court at the time of the hearing.

DAVIDSON & LINDEMANN, P.A.

By: 
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Counsel for the Defendants

Columbia, South Carolina

May 23, 2014

Exhibit A

5.29.14
Liz Hodson
R.C.P. & S.
Anita Knepper 105
Deputy Clerk

The Supreme Court of South Carolina

Carlton E. Cantrell, Petitioner,

v.

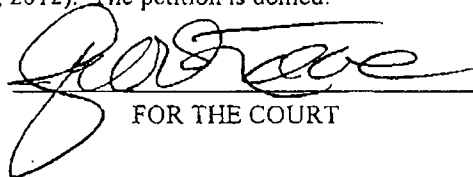
Aiken County; Aiken County Animal Control Director,
Shirley Hardin; Aiken County Animal Control Officer,
Bobby Arthurs; Judge Charles T. Carter, Respondents.

Appellate Case No. 2013-000351

Lower Court Case No. 2011-CP-02-01480

ORDER

This matter is before the Court pursuant to a petition for a writ of certiorari to review the Court of Appeals' decision in *Cantrell v. Aiken Cty.*, Op. No. 2012-UP-662 (S.C. Ct. App. filed Dec. 19, 2012). The petition is denied.

 C.J.
FOR THE COURT

Columbia, South Carolina

March 19, 2014

cc:

The Honorable Jenny Abbott Kitchings
William H. Davidson, II, Esquire
Daniel Clifton Plyler, Esquire
Carlton Cantrell
The Honorable Liz Godard

DIJSCN 03/21/14

The South Carolina Court of Appeals

Carlton E. Cantrell, Appellant,

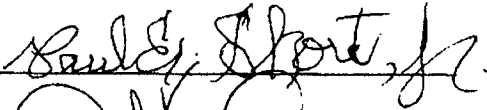
v.

Aiken County; Aiken County Animal Control Director,
Shirley Hardin; Aiken County Animal Control Officer,
Bobby Arthurs; Judge Charles T. Carter, Respondents.

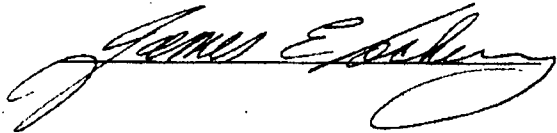
Appellate Case No. 2011-200486

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc: Carlton Cantrell
Daniel Clifton Plyler
William H. Davidson, II

FILED

25 January 2013

DISCN 01/28/13



DLSCN 12/21/12

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
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December 19, 2012

Carlton Cantrell
223 Muddy Branch Road
Aiken SC 29805

Mr. Daniel Clifton Plyler
PO Box 8568
Columbia SC 29202-8568

Mr. William H. Davidson, II
PO Box 8568
Columbia SC 29202-8568

Re: Cantrell, Carlton v. Aiken County
Appellate Case No. 2011-200486

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jenny A. Kitchings
CLERK

cc: Doyet A. Early, III

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Carlton E. Cantrell, Appellant,

v.

Aiken County; Aiken County Animal Control Director,
Shirley Hardin; Aiken County Animal Control Officer,
Bobby Arthurs; and Judge Charles T. Carter,
Respondents.

Appellate Case No. 2011-200486

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2012-UP-662
Submitted November 1, 2012 – Filed December 19, 2012

AFFIRMED

Carlton E. Cantrell, of Aiken, pro se.

William H. Davidson, II, and Daniel C. Plyler, of
Davidson & Lindemann, PA, of Columbia, for
Respondents.

PER CURIAM: Carlton Cantrell appeals the trial court's order granting a motion to dismiss in favor of Aiken County; Aiken County Animal Control Director, Shirley Hardin; Aiken County Animal Control Officer, Bobby Arthurs; and Judge Charles T. Carter. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: S.C. Code Ann. § 15-78-110 (2005) ("[A]ny action brought pursuant to [the Tort Claims Act] is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered. . . ."); *Fleteau v. Harrelson*, 355 S.C. 197, 203, 584 S.E.2d 413, 416 (Ct. App. 2003) ("According to the [Tort Claims] Act, '[n]otwithstanding any provision of law . . . [the 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.'" (quoting S.C. Code Ann. § 15-78-20(b) (2005))); *State v. Howard*, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct. App. 2009) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.").

AFFIRMED.¹

SHORT, KONDUROS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2011CP0201480

DLSCN 09/06/11

Carlton E Cantrell vs. Shirley Hardin

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: _____
- 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; Statement of Judgment by the Court:

Dated at Aiken, South Carolina, this 2nd day of September 2011.

Court Reporter

PRESIDING JUDGE -

This judgment was entered on the 2nd day of September 2011, and a copy mailed first class this 2nd day of September 2011, to attorneys of record or to parties (when appearing pro se) as follows.

Carlton E Cantrell 223 Muddy Ranch Road Aiken, SC 29805

Daniel Clifton Plyler Davidson Morrison & Lindemann, PA
P.O. Box 8568 Columbia, SC 29202-8568

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Angel Miller
Liz Godard, Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS.

Carlton E. Cantrell,)
Plaintiff,)

Civil Action Number: 11-CP-02-01480

v.)

**ORDER GRANTING MOTION TO
DISMISS FILED ON BEHALF OF THE
DEFENDANTS**

Aiken County; Aiken County Animal Control)
Director, Shirley Hardin; Aiken County)
Animal Control Officer, Bobby Arthurs; Judge)
Charles T. Carter:)

3 Sept 11

Defendants.)

8:30
am

This matter came before the Court on August 8, 2011 upon motion by the Defendants for the dismissal of this action. The Defendants were represented at the hearing of this matter by Daniel C. Plyler, Esquire, and the Plaintiff appeared *pro se*.

The Plaintiff filed his Complaint in the above-captioned matter on July 7, 2011. In the Complaint the Plaintiff makes allegations relating to the confiscation of a number of goats from his property by Aiken County Animal Control. The confiscation in question occurred on May 19, 2005. According to the facts set forth in the Complaint, the Plaintiff entered into a plea agreement, which he later had overturned as set aside. Specifically, the Plaintiff alleges that the plea agreement was set aside on October 3, 2007.

The Court takes judicial notice that the Plaintiff previously filed a civil action against the same named Defendants, regarding the same allegations, on May 30, 2008. See, Civil Action Number 08-CP-02-887. "A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records." *South Carolina*

DPE
DJ

Dep't of Social Servs v. Junice C., 383 S.C. 221, 678 S.E.2d 463 (Ct. App. 2009), citing *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984).

After hearing oral arguments and reviewing the filings on record with this Court, I find as follows:

It is clear from the face of the Plaintiff's Complaint that the claims set forth therein are time-barred. The Plaintiff's claims are governed by the South Carolina Tort Claims Act, which sets a two-year statute of limitations for all claims. See, S.C. Code Ann. § 15-78-110; see also, *Fleteau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). The last date alleged by the Plaintiff in his Complaint is October 3, 2007, and it is clear that the Plaintiff knew, or should have known, of the existence of his purported claims by at least that date. However, the Plaintiff did not file this action until July 7, 2011, and therefore the claims are time-barred. That finding is further supported by the fact that the Plaintiff filed the same lawsuit against the same named Defendants in May of 2008.

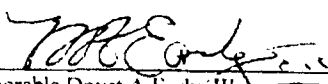
THEREFORE, it is the finding of this Court that the Plaintiff's claims are clearly time-barred, and the motion to dismiss filed on behalf of the Defendants is hereby **GRANTED** and this matter is **DISMISSED WITH PREJUDICE**.

It is also the finding of the Court, as additional grounds for granting the motion to dismiss, that the Plaintiff's claims against the individual Defendants, Hardin, Arthurs, and Carter, are subject to dismissal under S.C. Code Ann. § 15-78-70, and therefore even if the Plaintiff's Complaint was not time-barred those Defendants must be dismissed. Furthermore, it is clear that Defendant Carter is entitled to Judicial Immunity, and must be dismissed even if the Plaintiff's claims were timely. See, Unpublished Opinion of South Carolina Court of Appeals 2010-CP-533.

DAE
HL

THEREFORE, it is the finding of this Court that the Plaintiff's claims, as to Defendants Hardin, Arthurs, and Carter are also subject to dismissal pursuant S.C. Code Ann. § 15-78-70, and that Defendant Carter is entitled to Judicial Immunity, and those Defendants are hereby **DISMISSED WITH PREJUDICE.**

IT IS SO ORDERED.



The Honorable Doyet A. Early, III
Chief Administrative Judge for the Second Judicial Circuit

Aug 25 2011
Bumpay, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 Carlton E. Cantrell,)
)
 Plaintiff,)
)
 v.)
)
 Aiken County; Aiken County Animal Control)
 Director, Shirley Hardin; Aiken County Animal)
 Control Officer, Bobby Arthurs; Judge Charles)
 T. Carter;)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 11-CP-02-01480

MOTION & ORDER INFORMATION FORM COVER SHEET

Plaintiff's Attorney: <i>Pro Se</i> Mr. Carlton E. Cantrell 223 Muddy Branch Road Aiken, South Carolina 29805 Phone: Fax: E-Mail: Other:	Defendant's Attorney: William H. Davidson, II; Daniel C. Plyler Address: 1611 Devonshire Drive, Second Floor Post Office Box 8568 Columbia, South Carolina 29202-8568 Phone: 803-806-8222 Fax: 803-806-8855 E-Mail: w davidson@dml-law.com ; dplyler@dml-law.com ; Other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>Motion to Dismiss and for Sanctions</u> Estimated Time Needed: <u>15 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> Yes / <input type="checkbox"/> No	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for Defendant(s) <u>[Signature]</u> Date Submitted <u>7/26/11</u>	
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID - AMOUNT: <u>\$25.00</u> <input type="checkbox"/> EXEMPT: (check reason) <ul style="list-style-type: none"> <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ DATE: _____
CLERK'S VERIFICATION Collected by: <u>[Signature]</u> Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: <u>[Signature]</u> <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

SC CA-233 (11-03)

COPY ORIGINAL FILED
 JUL 29 2011
 AIKEN COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Civil Action Number: 11-CP-02-01480

Carlton E. Cantrell,)

Plaintiff,)

v.)

Aiken County; Aiken County Animal Control)
Director, Shirley Hardin; Aiken County)
Animal Control Officer, Bobby Arthurs; Judge)
Charles T. Carter;)

Defendants.)

NOTICE OF MOTION AND MOTION
TO DISMISS AND FOR SANCTIONS
ON BEHALF OF THE DEFENDANTS

TO: CARLTON E. CANTRELL, *PRO SE* PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE, that the undersigned counsel for the Defendants will move before the Presiding Judge of the Second Judicial Circuit at the Aiken County Courthouse, Aiken, South Carolina, at such time and place as may be set by the Court, for an order, pursuant to Rule 12, SCRCP, dismissing this case with prejudice and awarding sanctions against the Plaintiff pursuant to Rule 11, SCRCP and S.C. Code Ann. § 15-36-10, on the following grounds:

1. Defendants Hardin, Arthurs, and Carter are entitled to absolute employee immunity under the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et seq.* The Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." S.C. Code Ann. § 15-78-70(a). An employee of a governmental entity is immune from liability for tortious acts committed within the scope of his or her official duties. *See, Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2002). Therefore, the

COF
ORIGINAL
JUL 28 2011
AIKEN
CLERK

Plaintiff's allegations, as to Defendants Hardin, Arthurs, and Carter, must be dismissed as a matter of law.

2. The Defendants assert that the Plaintiff's claims are barred by the provisions of the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et seq.*, including but not limited to § 15-78-60(3) and (4).

3. Pursuant to the allegations contained on the face of the Complaint, the Plaintiff's claims are time-barred pursuant to the applicable statute of limitations, and therefore this matter must be dismissed. *See*, S.C. Code Ann. § 15-78-110; *see also*, *Fateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003).

4. The Plaintiff's claims are barred by the doctrines of *res judicata* and/or collateral estoppel, as these same claims have previously been litigated in this very court against these same Defendants. *See*, Civil Action No. 08-CP-02-887.

5. Defendant Carter is entitled to Judicial Immunity, and therefore the Plaintiff's claims against Defendant Carter must be dismissed. *See*, Unpublished Opinion of South Carolina Court of Appeals 2010-UP-533.

6. The Plaintiff's Complaint fails to state a claim against these Defendants upon which relief can be granted.

7. The Defendants assert that the Plaintiff's allegations are wholly frivolous and/or malicious in nature, specifically given the fact that these same claims have already been litigated by these same parties in this same court; and the Defendants therefore ask for sanctions to be determined by the Court in accordance with the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, and for the costs incurred by the Defendants

18

associated with this matter. Furthermore, the Defendants assert that sanctions would also be appropriate under Rule 11(a), SCRPC.

This motion is based on the pleadings, South Carolina Rules of Civil Procedure, the Laws of the State of South Carolina, the Case Law of the State of South Carolina, and such other matters as may be properly presented to the Court at the time of the hearing.

DAVIDSON & LANDEMANN, P.A.

By: 

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Post Office Box 8568
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wdavidson@dml-law.com
T: (803) 806-8222
F: (803) 806-8855

Counsel for the Defendants

Columbia, South Carolina

July 26, 2011

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)

Carlton E. Cantrell,) Civil Action Number: 11-CP-02-01480
)

Plaintiff,)

CERTIFICATE OF SERVICE

v.)

Aiken County; Aiken County Animal Control)
Director, Shirley Hardin; Aiken County)
Animal Control Officer, Bobby Arthurs; Judge)
Charles T. Carter;)

Defendants.)

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the **Motion Cover Sheet and Notice of Motion and Motion to Dismiss and for Sanctions on Behalf of the Defendants** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 26th day of July, 2011, addressed as follows:

Mr. Carlton E. Cantrell
223 Muddy Branch Road
Aiken, South Carolina 29805

Shelley E. Stafford



The Supreme Court of South Carolina

DLSCN 06/10/11

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080
FAX (803) 734-1499

June 8, 2011

Mr. Carlton E. Cantrell
223 Muddy Branch Road
Aiken, SC 29805

Re: Cantrell, Carlton v. Carter, Judge

Dear Mr. Cantrell:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:


"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

June 8, 2011."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,



CLERK

DES/lda

cc: Daniel Clifton Plyler, Esquire
The Honorable Liz Godard
The Honorable Tanya Gee

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Carlton E. Cantrell, Appellant,

v.

Aiken County, Aiken County Animal Control Director,
Shirley Hardin, Aiken County Animal Control Officer
Bobby Arthurs, and Judge Charles T. Carter,
Defendants,

Of whom Judge Charles T. Carter is the Respondent.

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2010-UP-533
Submitted December 1, 2010 – Filed December 14, 2010

AFFIRMED

Carlton Cantrell, pro se, for Appellant.

James M. Holly, of Aiken, for Respondent.

PER CURIAM: Carlton E. Cantrell appeals the trial court's order granting summary judgment in favor of Magistrate Judge Charles T. Carter. The trial court found Carter's complaint contained no allegation whatsoever concerning Carter, and even if it did, Carter was acting in his official capacity and therefore immune from liability. We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authority: *State v. Howard*, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct. App. 2009) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.").

AFFIRMED.

HUFF, KONDUROS, and LOCKEMY, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

<http://www.sccourts.org/opinions/unpublishedopinions/HTMLFiles/COA/2010-UP-533....> 12/15/2010

Exhibit B

5.29 14
~~_____~~
Liz Hedard
cc. C.P. & G.S.
Arita Knoepfle DS
Deputy Clerk

▽

Supreme Court of South Carolina.
In re Theron MAXTON, Petitioner.

Nov. 27, 1996.

Inmate's submitted pro se petition to Supreme Court, attempting to invoke its original jurisdiction. The Supreme Court held that, because inmate had submitted 64 frivolous pro se petitions over previous three years, it would require inmate to pay \$25 filing fee and require affidavit of good faith from petitioner before considering future petitions.

So ordered.

West Headnotes

Costs 102 ↪ 2

102 Costs

102l Nature, Grounds, and Extent of Right in General

102k1 Nature and Grounds of Right

102k2 k. In General. Most Cited Cases

Courts 106 ↪ 209(1)

106 Courts

106VI Courts of Appellate Jurisdiction

106VI(A) Grounds of Jurisdiction in General

106k209 Procedure in General

106k209(1) k. In General. Most Cited

Cases

Although South Carolina rules did not require filing fee for petition to invoke original jurisdiction of

South Carolina Supreme Court, repetitive and frivolous nature of inmate's 64 petitions over three years placed substantial enough burden on court's time and resources to warrant imposition of \$25 filing fee for any future petitions and to require inmate to execute notarized affidavit of his good-faith belief that matter raised in petition was nonfrivolous and proper for Supreme Court to consider in its original jurisdiction; rules generally required \$25 filing fee to file other motions and petitions with Supreme Court. Appellate Court Rules 224(d), 229.

**679 *4 ORDER

Petitioner, an inmate, has submitted sixty-four pro se petitions over the past three years, including forty-six so far this year, asking this Court to hear matters in its original jurisdiction or issue various extraordinary writs. Each petition submitted by petitioner has been frivolous and dismissed pursuant to *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991), because no extraordinary reason existed to entertain the matter in the original jurisdiction of this Court.

Despite the fact that petitioner has been informed numerous times that it is not appropriate to raise these matters before this Court, he has continued to file these petitions in an increasing number. More often than not, these petitions attempt to raise claims identical to ones previously dismissed by this Court. Further, the filing of these repetitive and frivolous petitions has wasted this Court's time and resources and has interfered with the fair administration of justice.

The courts in other jurisdictions have responded in a variety of ways to abusive filings such as those by petitioner. The United States Supreme Court has denied litigants who have filed repetitive, frivolous petitions the right to proceed *in forma pauperis*, resulting in the litigants having to pay the required filing fee with that Court. *In re Whitaker*, 513 U.S. 1, 115 S.Ct.

2, 130 L.Ed.2d 1 (1994); *In re Anderson*, 511 U.S. 364, 114 S.Ct. 1606, 128 L.Ed.2d 332 (1994); *In re Demos*, 500 U.S. 16, 111 S.Ct. 1569, 114 L.Ed.2d 20 (1991); *In re Sindram*, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991); *In re McDonald*, 489 U.S. 180, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989). Other courts have required that the abusive litigant file an affidavit certifying that he believes the petition raises an original claim or is nonfrivolous before accepting filings from the litigant. *In the Matter of Verdone*, 73 F.3d 669 (7th Cir.1995); *Abdul-Akbar v. Watson*, 901 F.2d 329 (3d Cir.1990); *Green v. Warden*, 699 F.2d 364 (7th Cir.), cert. denied, 461 U.S. 960, 103 S.Ct. 2436, 77 L.Ed.2d 1321 (1983).

*5 Although Rule 229, SCACR, does not require a filing fee for a petition to invoke the original jurisdiction of this Court, we find that the repetitive and frivolous nature of petitioner's numerous petitions has placed a substantial enough burden on this Court's time and resources to warrant imposition of a filing fee for any future petitions of this type from petitioner. Accordingly, we direct the Clerk of Court to refuse to accept further petitions from petitioner asking this Court to entertain matters in our original jurisdiction unless he pays a \$25.00 filing fee generally required for the filing of motions and petitions with this Court. See Rule 224(d), SCACR.

**680 Additionally, we instruct the Clerk not to accept future petitions of this type from petitioner unless the petition is accompanied by a properly notarized affidavit by petitioner that certifies that he in good faith believes that the matter raised in the petition is nonfrivolous and proper for this Court to consider in its original jurisdiction. Petitioner is warned that should he continue to file petitions with this Court containing matter that is frivolous or not proper for this Court to consider in its original jurisdiction, he may be held in contempt or sanctioned under Rule 240, SCACR.

IT IS SO ORDERED.

/s/ Ernest A. Finney, Jr., C.J.

/s/ Jean H. Toal

/s/ James E. Moore

/s/ John H. Waller, Jr., A.J.

/s/ E.C. Burnett, III, A.J.

S.C., 1996.
In re Maxton
325 S.C. 3, 478 S.E.2d 679

END OF DOCUMENT

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

) Civil Action Number: 2014-CP-02-879

Carlton E. Cantrell,

Plaintiff,

v.

CERTIFICATE OF SERVICE

Aiken County, Aiken County Animal Control
Director, Shirley Hardin, Aiken County
Animal Control Officer Bobby Arthurs, and
Judge Charles T. Carter,

Defendants.

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Defendants, does hereby certify that service of the Motion Cover Sheet and Notice of Motion and Motion to Dismiss, or in the alternative for summary judgment, for Sanctions, and for Injunctive Relief on Behalf of the Defendants in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 23rd day of May, 2014, addressed as follows:

Mr. Carlton E. Cantrell
223 Muddy Branch Road
Aiken, South Carolina 29805



5.29.14
Liz Hodson
C.C.P. & G.S.
Anita Knoepfel OS
Deputy Clerk

RECEIVED

JUN 15 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
Aiken County

Doyet A. Early, III, Circuit Court Judge

Case No. 2014-CP-02-00879

Carlton E. Cantrell

Appellant

vs.

Aiken County; Aiken County Animal
Control Director, Shirley Hardin; Aiken
County Animal Control Officer Bobby
Arthurs; Judge Charles T. Carter.

Respondents

CERTIFICATE OF CONTENTS RULE 210(g)

The undersigned Appellant hereby certifies that the Supplemental Record on Appeal contains all the matter proposed to be included by either party.

June 13, 2015



Carlton E. Cantrell, Appellant
223 Muddy Branch Road
Aiken, South Carolina 29805
(803) 215-4747

RECEIVED

JUN 15 2015

THE STATE OF SOUTH CAROLINA
In The South Carolina Court of Appeals

SC Court of Appeals

APPEAL FROM AIKEN COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2014-CP-02-879

Carlton E. Cantrell, Appellant

Aiken County: Aiken County Animal Control Director
Shirley Hardin: Aiken County Animal Control Officer
Bobby Arthurs: and Judge Charles T.
Carter, Respondents

PROOF OF SERVICE

I Carlton E. Cantrell, do hereby certify that I have this day, June 15 2015, served fifteen copies of the Supplemental Record On Appeal by hand delivery to the Court of Appeals and one copy to the opposing counsel by the United States Mail.

Other Counsel of Record:

William H. Davidson, II

Daniel C. Plyler

1611 Devonshire Drive, 2nd Floor

PO Box 8568

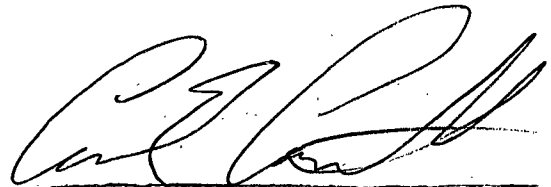
Columbia, SC 29202

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Attorneys for Defendants



Carlton E. Cantrell

223 Muddy Branch Road

AIKEN, SC 29805

803-215-4747

Plaintiff/Appellant

RECEIVED

JUN 15 2015

THE STATE OF SOUTH CAROLINA
in The South Carolina Court of Appeals

SC Court of Appeals

APPEAL FROM AIKEN COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2014-CP-02-879


Carlton E. Cantrell, Appellant:

Aiken County: Aiken County Animal Control Director
Shirley Hardin: Aiken County Animal Control Officer
Bobby Arthurs; and Judge Charles T.
Carter, Respondents

PROOF OF SERVICE

I, Carlton E. Cantrell, do hereby certify that I have this day, June 9th 2015, served one copy of the Supplemental Record Of Appeal, to the opposing counsel, by placing same in the united states Mail properly addressed and with correct postage.

Other Counsel of Record:
William H. Davidson, II
Daniel C. Plyler
1611 Devonshire Drive, 2nd Floor
PO Box 8568
Columbia, SC 29202
wadavidson@dml-law.com
T: (803) 806-8222
F: (803) 806-8855
Attorneys for Defendants


Carlton E. Cantrell
223 Muddy Branch Road
AIKEN, SC 29805
803-215-4747
Plaintiff/Appellant



Certificate Of Mailin

This Certificate of Mailing provides evidence that mail has been presented to the USPS for mailing. This form may be used for domestic and international mail.

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223 Muddy Branch Rd
Atlee SC 29503

To: Davidson & Lindeman
Dist Office Box 8568
Columbia SC 29202-8565

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