

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Biafra Monique Curtis, Pro Se,)

v.)

South Carolina Department of Public)
Safety, Warren Ganjehsani, Mike)
Oliver, Leroy Smith, Kenneth)
Phelps, Anthony Grice, William)
Taylor, Nicklous King, Willie)
McCauley, Jr., Ada Schmidt, Aaron)
Canzater and Cherie Young,)
Individually and in their official)
Capacities,)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case Number: 2015-CP-40-05172

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JUN 23 2016

SC Court of Appeals

ORDER

RICHLAND COUNTY
FILED
2016 MAY 20 AM 9:18
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Plaintiff filed this action in Richland County on August 24, 2015. Defendants filed their notice of removal to federal court on September 18, 2015. The initial Complaint stated several causes of action under 42 USC §1983, as well as various state law causes of action. The March 31, 2016 Order of Judge Mary Geiger Lewis dismissed all federal causes of action, including portions of the First cause of action (to the extent it relied on 42 USC §14141), and the Third cause of action (civil rights violations) and the Fourth cause of action (federal conspiracy) in their entirety. The case was then remanded to the Richland County Court of Common Pleas. The named defendants were heard on the balance of the motion to dismiss, pursuant to Rule 12(b)(6), on May 18, 2016 in Richland County Courtroom 2-E at 9:30 a.m. All Defendants moved for dismissal of the remaining state court causes of action on the following grounds:

1. The action is barred, as to all state law causes of action, by the applicable statute of limitations, set forth in S. C. Code §15-78-100;

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2. The individual defendants, as state employees, cannot be sued for the state law causes of action, pursuant to S. C. Code §15-78-70; and

3. Any duties of the defendants are public duties, and the plaintiff has no private right of action against defendants for Violation of Oath of Office, Dereliction of Duty of Elected Official, Crimes of Moral Turpitude, Violation of Department Handbook, or Systematic Neglect of Duties.

FINDINGS OF FACT:

This action arises from an automobile accident that occurred on September 27, 2012. Plaintiff alleges she was the victim of an accident on Interstate 26 in South Carolina, having been forced off the road by an unknown driver in a vehicle collision. Plaintiff alleges the failure of the South Carolina Highway Patrol, a division of the South Carolina Department of Public Safety, to properly investigate the wreck deprived her of her opportunity to sue the alleged at fault driver for her injuries. Plaintiff named each individual involved in processing the accident, maintaining records related to the accident, and all officers who responded to her requests for information as defendants in this matter. Defendants deny all allegations of wrongdoing, but assert that no private right of action arises even if the allegations were true. Defendants further assert the statute of limitations and the South Carolina Tort Claims Act bars the state law causes of action.

APPLICABLE STANDARD OF REVIEW:

"A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must

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consider all well-pled allegations as true." *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014).

CONCLUSIONS OF LAW:

These Defendants are entitled to dismissal of plaintiff's state law causes of action, including the First Cause of Action (which includes Negligent Infliction of Emotional Distress, Negligent Supervision, and Negligence Per Se), Fifth cause of action (Dereliction of Duty), Sixth Cause of action (Crimes of Moral Turpitude), Seventh Cause of action (Violation of Policy), and Eighth Cause of action (Systemic Neglect of Duty) pursuant to S. C. Code of Laws, §15-78-100, as no verified claim was made within one year of the September 27, 2012, incident date alleged in the Complaint, pursuant to S.C. Code §15-78-80, and this action was not filed until August 24, 2015, more than two years after the date of the September 27, 2012, accident upon which Plaintiff's case is based. For this reason, even if the allegations are otherwise actionable, blanket dismissal of all state law causes of action is appropriate.

The individual Defendants are further entitled to dismissal from the First, Fifth, Seventh and Eighth Causes of Action, as they were all acting within the course and scope of their employment at all times alleged by Plaintiff. The South Carolina Tort Claims Act, S.C. Code §15-78-10, et seq., "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 §15-78-200. Pursuant to S.C. Code §15-78-70, the individual government employees cannot be sued for causes of action related to conduct in the scope of their duty. The allegations described in the

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First Cause of Action regard activity exclusively within the scope of employment of all individual defendants, and for this reason dismissal of the individual defendants from these state law causes of action is appropriate.

These Defendants are further entitled to dismissal of the plaintiff's Second (Violation of Oath of Office), Fifth Cause of Action (Dereliction of Duty of Elected Official), Sixth Cause of Action (Crimes of Moral Turpitude), Seventh causes of action (Violation of Department Handbook), and the Eighth Cause of action (Systematic Neglect of Duties), as these causes of action provide no private right of action upon which Plaintiff is entitled to seek relief. See also *Trask v Beaufort County*, 392 S.C. 560, 709 S.E.2d 536 (Ct. App. 2011); See also §23-6-30, §23-6-40, and §23-6-140, S.C. Code of Laws.

"The Public Duty Rule insulates public officials, employees, and governmental entities from liability for the negligent performance of their official duties by negating the existence of a duty toward the plaintiff." *Arthurs v. Aiken County*, 346 S.C. 97, 104, 551 S.E.2d 579 (2001). "The Public Duty Rule holds that public officials are generally not liable to individuals for their negligence in discharging public duties because the duty is owed to the public at large rather than to anyone individually." *Wells v. City of Lynchburg*, 331 S.C. 296, 306, 501 S.E.2d 746 (Ct. App. 1998). "Statutes which create or define the duties of a public office create no duty of care towards individual members of the general public." *Arthurs v. Aiken County*, 346 S.C. at 105-6 (2001). "Thus, where the duty is owed to the public in general, the official is not liable to an individual who may have been "incidentally injured" by the failure to perform the duty." *Wells v. City of Lynchburg*, 331 S.C. 296,

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307, 501 S.E.2d 746 (Ct. App. 1998), quoting *Parker v. Brown*, 195 S.C. 35, 10 S.E.2d 625 (1940); See also *Steinke v. S.C. Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999).

In this case, the essential purpose of the cited oaths, regulations, statutes, handbooks, and guidelines is not to preserve civil actions on behalf of the public. See *Rayfield v. South Carolina Department of Corrections*, 297 S.C. 95, 374 S.E.2d 910 (Ct.App.1988), *cert. denied*, 298 S.C. 204, 379 S.E.2d 133 (1989). Therefore, these Defendants owed no particular duty to Plaintiff, and any alleged violation is not actionable.

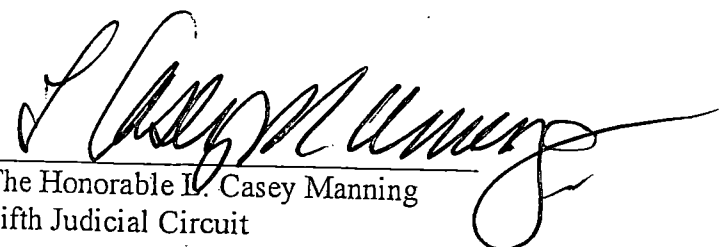
WHEREFORE, Plaintiff's cause of action is untimely, improperly alleged against individual governmental employees acting well within the course and scope of their employment, and premised on concepts that do not give rise to individual causes of action. These defendants are entitled to dismissal of this action, in its entirety, under §15-78-100 and §15-78-80, S.C. Code of Laws, and pursuant to the Public Duty Rule.

THEREFORE, IT IS ORDERED, Plaintiff's causes of action are hereby dismissed in their entirety, under SCRCP 12(b)(6), as the Complaint fails to state a claim upon which relief can be granted. This action is hereby dismissed, with prejudice.

AND IT IS SO ORDERED!

 S.C.

 2016


The Honorable L. Casey Manning
Fifth Judicial Circuit

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