

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

Jamaal Gittens,

Plaintiff,

vs.

John R. Rakowsky,

Defendant.

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

Case No. 2016-CP-32-263

RECEIVED

AUG 05 2016

SC Court of Appeals

ORIGINAL

ORDER DENYING PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT AND  
GRANTING DEFENDANT'S  
MOTION TO DISMISS

This matter comes before me on Plaintiff's Motion for Summary Judgment and Defendant Rakowsky's Motion to Dismiss the Complaint. Plaintiff's Motion is based upon the argument that Rakowsky was served with the Summons and Complaint and the he failed to answer the complaint within thirty days of service. Rakowsky's Motion to Dismiss was filed on two grounds, including lack of service of pleadings pursuant to Rules 12(b)(2), 12(b)(4) and 12(b)(5) of the South Carolina Rules of Civil Procedure and the doctrine of judicial immunity. A hearing was held in this matter on June 20, 2016.

On July 24, 2014, Plaintiff Jamaal Gittens ("Gittens"), was issued a Uniform Traffic Ticket and given a summons to appear in the Town of Lexington Municipal Court for trial upon violation of S.C. Code Ann. § 56-5-1520(G)(3), Speeding in excess of fifteen miles an hour but less than twenty-five miles an hour above the posted limit. He was inside the Town of Lexington city limits when he was cited. Despite receiving notice of the trial date, Gittens did not appear for the trial and was tried in his absence.

FILED  
2016 JUL 25 11:27  
FELTA A. O'NEILL  
CLERK OF COURT  
LEXINGTON, SC

Gittens has now brought suit against John Rakowsky, who was acting as Presiding Judge of the Town of Lexington Municipal Court during the trial, claiming that the court did not have subject matter jurisdiction to hear the case.

**I. Gittens' Motion for Summary Judgment**

Gittens claims that he served Rakowsky with a copy of the Summons and Complaint. As proof of this, he provided the Court with a "proof of service" dated March 29, 2016 attaching a certified letter receipt addressed to John Rakowsky at the address for the Town of Lexington. The receipt shows that a person named Jay Graham signed for the letter. Rakowsky provided an affidavit to the Court stating that he has never been served with a copy of the Summons and Complaint.

Plaintiff's Motion for Summary Judgment is denied. Plaintiff has failed to serve a copy of the Summons and Complaint upon the Defendant in compliance with South Carolina law. It appears that the certified letter was not sent return receipt requested, restricted delivery to Rakowsky at his address and was not signed for by him. This is not proper service upon an individual pursuant to Rule 4(d)(1) and it is not proper service by mail pursuant to Rule 4(d)(8). In addition, Rakowsky states in his affidavit that he never received service of the summons and complaint.

Furthermore, a review of the court file indicates that an Answer and Motion to Dismiss for failure to properly serve the Summons and Complaint were filed on behalf of the Defendant on April 29, 2016, within thirty days of the letter signed for by Jay Graham.



## II. Rakowsky's Motion to Dismiss

For the same reasons addressed above, Rakowsky's Motion to Dismiss is granted for lack of proper service upon Defendant. Plaintiff failed to serve the Summons and Complaint upon Defendant as required by South Carolina law.

Even if the action had been served correctly, Rakowsky, as a municipal court judge, is entitled to judicial immunity from suit as a matter of law. "The grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law." *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). "Judicial immunity affords absolute immunity from suit." *Stump v. Sparkman*, 435 U.S. 349, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978). "In other words, judicial immunity, if applicable, acts as a bar to suit, not just as an ultimate bar to relief. Therefore, a finding of judicial immunity renders a complaint alleging judicial misconduct meritless." *O'Laughlin v. Windham*, 498 S.E.2d 689 (Ct. App. 1998).

Judicial immunity is an absolute bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances. However, it is not without limitations. The United States Supreme Court has carved out three exceptions. The first exception (and the one cited by Plaintiff) is that no judicial immunity exists if the judge acts in the "clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 357, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978); *O'Laughlin v. Windham*, 330 S.C. 379, 498 S.E.2d 689, 1998 S.C. App. LEXIS 40 (S.C. Ct. App. 1998). No immunity is granted if "there is clearly no jurisdiction over the subject-matter . . . [and] the want of jurisdiction is known to the judge . . . ." *Stump v. Sparkman*, 435 U.S. 349, 357, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978). The question, then, is "whether at the time [the judge] took the challenged action he had jurisdiction over the subject matter before him," and, in

CR 3

answering that question, "the scope of the judge's jurisdiction must be construed broadly . . . ."

*Id.*

As a sitting judge, Judge Rakowsky is entitled to Judicial Immunity from suit and dismissal of this action. Judge Rakowsky clearly had subject matter jurisdiction to hear the case against Gittens.

The South Carolina General Assembly created the Municipal Court System and provided it with the subject matter jurisdiction to hear and decide traffic cases and certain other misdemeanors. *See*, 1949 S.C. Act (46) 466; 1980 S.C. Act No. 480; 1975 S.C. Act No. (59) 692 and 2012 S.C. Act No. 263; also *Pickens v. Schmitz*, 297 S.C. 253, 376 S.E.2d 271 (1989) (finding that municipal court had proper subject-matter jurisdiction to hear traffic violation case resulting in a DUI conviction). These Acts were then codified as S.C. Code Ann. § 56-5-6150, 5-7-10, S.C. Code Ann. § 5-7-90 and S.C. Code Ann. § 14-25-5 (see legislative history).

S.C. Code Ann. § 56-5-6150, enacted into law by the South Carolina General Assembly, at 1949 S.C. Act No. (46) 466 states,

#### Trial jurisdiction of municipal courts.

All municipal courts of the State may try and determine criminal cases involving violations of this chapter occurring within the respective limits of such municipalities when the penalty prescribed by this chapter for such violations does not exceed thirty days' imprisonment nor one hundred dollars' fine and may have trial jurisdiction over such criminal cases the same as magistrates.

S.C. Code Ann. § 5-7-10, enacted at 1975 S.C. Act No. (59) 692, states,

The provisions of this chapter provide for the structure, organization, powers, duties, functions and responsibilities of municipalities under all forms of municipal government provided for in Chapters 9, 11 and 13 unless otherwise specifically provided for in those chapters. The powers of a municipality shall be liberally construed in favor of the municipality and the specific mention of particular powers shall not be construed as limiting in any manner the general powers of such municipalities.

S.C. Code Ann. § 5-7-90, *see*, 1975 S.C. Act No. (59) 692; 2012 S.C. Act No. 263, § 1, states,

Trial of persons charged with violations of ordinances of municipality or laws of State

The municipal judge or judges of a municipality shall speedily try all persons arrested and incarcerated with violations of the ordinances of the municipality or the laws of the State within their jurisdiction in a summary manner without a jury unless jury trial is demanded by the accused. Trial must be held within ten days after the arrest or at a time scheduled by the court, in which event the trial is deferred. The municipal judge shall have the same power as a magistrate to compel the attendance of witnesses and require them to give evidence upon the trial before them of any person for the violation of ordinances of the municipality or the laws of this State subject to Section 5-7-30.

S.C. Code Ann. § 14-25-5, enacted at 1980 S.C. Act No. 480, states,

Establishment of municipal courts by ordinance; facilities for courts; use of magistrate court by municipality

(a) The council of each municipality in this State may, by ordinance, establish a municipal court, which shall be a part of the unified judicial system of this State, for the trial and determination of all cases within its jurisdiction. The ordinance shall provide for the appointment of one or more full-time or part-time judges and the appointment of a clerk.

(b) Any municipality establishing a municipal court pursuant to the provisions of this chapter shall provide facilities for the use of judicial officers in conducting trials and hearings and shall provide sufficient clerical and nonjudicial support personnel to assist the municipal judge.

(c) Any municipality may prosecute any of its cases in any magistrate court in the county in which such municipality is situate upon approval by the governing body of the county.

Furthermore, S.C. Code Ann. § 56-7-10, *see* 2005 S.C. Act No. 68, states,

The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served. This ticket will be designed by the department and approved by the Attorney General.


*CRS*

Despite these clearly crafted code sections vesting Judge Rakowsky with subject matter jurisdiction to dispose of the charge against him, Gittens claims that S.C Code Ann. §5-7-10, §5-7-90 and §14-25-5 56-7-10 have no force and effect because they contain no enacting clause as required by Art. III., sec. 16, of the South Carolina Constitution. Again, Plaintiff's basis for this lawsuit fails. Plaintiff has produced no evidence that the laws passed by the General Assembly creating the relevant code sections did not contain an enacting clause. In fact, the Court has reviewed some of the Acts under which these code sections promulgated and they do contain enacting clauses as required by the South Carolina Constitution. See, 1980 S.C. Acts No. 480; 1975 S.C. Acts No. (59) 692, 2012 S.C. Acts 263 and 2005 S.C. Acts 68. There is no requirement in our Constitution or otherwise requiring an enacting clause appear in the text of every code section.

**THEREFORE, IT IS ORDERED THAT:** Plaintiff's Motion for Summary Judgment is denied.

**IT IS FURTHER ORDERED THAT:** Defendant's Motion to Dismiss is granted and the case is dismissed with prejudice.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
Judge Thomas Cooper  
Presiding Judge, Eleventh Judicial Circuit

July 21, 2016  
Columbia, South Carolina

FILED  
JUL 25 A 11:27  
BETH ANN BRIDGES  
CLERK OF COURT  
LEXINGTON, SC