

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Judge L. Casey Manning, Fifth Judicial Circuit

Appellate Case No. 2016—001239

Biafra Monique Curtis.....Appellant

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.....Respondents

Respondents' Initial Brief

Norma A. T. Jett
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Ness & Jett, LLC
Attorneys for Respondents

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Issues on Appeal

- I. Did the Trial Court Err in Dismissing the Complaint in this Action Under Rule 12(b)(6), SCRCF?
 - A. Does South Carolina law create a private cause of action for failure to investigate a complaint?
 - B. Does the Tort Claims Act statute of limitations operate to bar Appellant's remaining negligence claims?
 - C. Are the individual Respondents immune from suit, under the South Carolina Tort Claims Act?

Counter-Statement of the Case

This action arises from an automobile accident that occurred on September 27, 2012. Biafra Monique Curtis, hereafter Appellant, 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. Appellant 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 the opportunity to recover damages from the alleged at-fault driver, for her injuries. In her complaint, Appellant names as a Defendant each individual involved in processing the accident, maintaining records related to the accident, and all officers who responded to her requests for information or requests for inquiry into the handling of the investigation of the accident. *See Complaint.*

Appellant filed her forty-six page Complaint in Richland County on August 24, 2015. All Respondents filed their joint notice of removal to federal court on September 18, 2015. *See Notice of Removal.* The initial Complaint stated several causes of action

under 42 USC §1983, as well as various state and federal law causes of action. Those causes of action include:

- First: As to South Carolina Department of Public Safety, State Law Negligence, Gross Negligence (Sub-causes of action for Negligent Infliction of Emotional Distress; Negligent Supervision; Negligence Per Se) and Federal Cause of Action for violations of 42 U.S.C. §14141
- Second: As to all Defendants, Violation of Oath of Office, under Article VI, Clause 3, of the U.S. Constitution
- Third: As to all Defendants, Violation of Civil Rights, under Title 28 U.S.C. 42, §§ 1981 and 1983 and the 1991 Civil Rights Act
- Fourth: As to all Defendants, Conspiracy to Interfere with Civil Rights under 42 U.S.C. §1985, violations of the Fair Labor Standards Act, and violations of 42 U.S.C. §1988
- Fifth: As to all Defendants, Dereliction of Duty, under a Res Ipsa Loquitur standard
- Sixth: As to all Defendants, Crimes of Moral Turpitude, under the 6th Amendment to the Federal Constitution
- Seventh: As to all Defendants, Violation of the SC Department of Public Safety Policies and Procedures
- Eighth: As to all Defendants, Systemic Neglect of Duty, Failure to Supervise and Failure to Train

On September 21, 2015, Defendants filed their Motion for Dismissal, pursuant to Fed. R. Civ. P. 12(b)(6), seeking dismissal of the action in its entirety. *See September 21, 2015, Notice of Motion and Motion for Dismissal for Failure to State A Claim, and Memorandum in Support of the Motion.* By Order of the Court, dated March 31, 2016, 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. Judge Lewis concluded that the complaint alleged only three actionable federal causes of action, under 42 U.S.C. §14141, 42 U.S.C. §1983, and 42 U.S.C §1985, and dismissed them all, while declining to exercise supplemental jurisdiction over Appellant's state law claims, which were remanded to Richland County. Appellant failed to appeal the Order.

On remand, Respondents were heard on their motion to dismiss the balance of the complaint, pursuant to Rule 12(b)(6), SCRPC, on May 18, 2016 in Richland County Courtroom 2-E at 9:30am, before the Honorable Casey Manning. *See Memorandum in Support of Motion to Dismiss; Transcript of Hearing, May 18, 2016.*

Respondents' motion was based on the following: (1) the remaining state law causes of action were time-barred by the applicable statute of limitations, set forth in S.C. Code §15-78-100; (2) the individual defendants were acting within the course and scope of their employment at all times alleged to be relevant to this cause of action, and are therefore immune from suit under S.C. Code §15-78-70; and (3) any duty owed to Appellant in this action is a public duty, creating no private right of action and offering no remedy at law.

After oral arguments on the matters described above, Judge Manning took the matter under advisement. A signed Order was sent to counsel for the Respondents by Judge Manning's office, bearing the date May 16, 2016. Counsel forwarded the order on to Appellant, proceeding pro se, that same day, by letter dated May 25, 2016. *See May 25, 2016 letter.* A few days later, the Clerk of Court sent a copy of the recorded Order to all parties, along with the executed Form 4, bearing the date May 18, 2016. Counsel

forwarded that copy along to Appellant as well, by letter dated June 3, 2016. *See June 3, 2016 letter.*

The original document was entered by the Clerk of Court for Richland County on May 20, 2016. It appears that Judge Manning may have committed a scrivener's error in entering the date of May 16, 2016 on page 5 of the Order, and entering the correct date of May 18, 2016 on the Form 4. *See May 18, 2016 Order.* This scrivener's error is of no consequence in this matter. Appellant failed to file a motion for reconsideration.

Appellant's Initial Brief was served on Respondent by U.S. Mail, with a printed postmark dated August 8, 2016, though Respondent filed an Affidavit of Service with the Court indicating that service was effective on August 5, 2016. *See Affidavit of Service and Service Envelope.*

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 consider all well-pled allegations as true." *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014). The appellate court applies the same standard of review as the circuit court in reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003). "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 relief.” *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 149, 714 S.E.2d 537, 539 (2011).

ARGUMENT

I. The Trial Court Correctly Dismissed the Complaint in This Action Under Rule 12(b)(6), SCRPC.

A. South Carolina Does Not Recognize a Private Cause of Action for Failure to Investigate a Claim.

The lower court properly dismissed the remaining causes of action, as the alleged violations provide no private right of action upon which Plaintiff is entitled to seek relief. *See 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*.

Appellant’s sprawling allegations all center on the central complaint regarding her vehicle accident. Appellant claims the failures of the respondents resulted in Appellant’s inability to recover civil damages from the drivers of the vehicles, which may have contributed to her vehicle accident. Essentially, Appellant alleges the failure to properly identify the parties contributing to the accident at the roadside on September 27, 2012 denied Appellant her potential for recovery in civil court. Appellant claims these damages, including lost wages, medical bills, future medical care, and property damage related to the accident, are properly imputed to the named-Defendants, who may have violated some policies or procedures in investigating her accident or investigation the actions of the officers themselves after the fact. *See Complaint, Page 44*. This position is unsupported by South Carolina law.

“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, 583 (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, 751 (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. 97, 105-6, 551 S.E.2d 579, 583 (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, 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). “The public duty rule is a rule of statutory construction, which aids the court in determining whether the legislature intended to create a private right of action for a statute's breach. It is a negative defense, which denies the existence of a duty of care owed to the individual.” *Repko v. Cty. Of Georgetown*, 416 S.C. 22, 36, 785 S.E.2d 376, 383 (Ct. App. 2016), *rehearing denied (May 20, 2016)*, citing *Vaughan v. Town of Lyman*, 370 S.C. 436, 635 S.E.2d 631 (2006).

As none of the respondents contributed in any way to the accident itself, Appellant's Complaint alleges causes of action only for violations of the Policies and Procedures Manual of the South Carolina Traffic Collision Report Manual, violations of

oaths of office, moral turpitude in failing to properly enter information into the CAD system, and violations of the Department of Public Safety Disciplinary Action Policy. *See Complaint, Page 23, Paragraph 35; Page 24, Paragraph 37; Page 37, Paragraph 46; and Page 40, Paragraph 48.*

The essential purpose of the cited regulations and policies is not to preserve civil actions on behalf of the public, which is the basis of Appellant's Complaint. *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). Appellant does not allege the existence of any special duty. *See Trask v. Beaufort County*, 392 S.C. 560, 708 S.E.2d 536 (Ct. App. 2011). Therefore, the Respondents owed no particular duty to Plaintiff, and any alleged violation is not actionable.

On Appeal, Appellant raises the issue of a letter from Respondent Warren V. Ganjesani, General Counsel for the Department of Public Safety, stating that the investigation into this matter was complete. This letter references the full investigation completed by the Insurance Reserve Fund. *See June 10, 2015 Letter of Warren V. Ganjehsani*. This letter is not the basis of any cause of action found within the Complaint. *See Rule 12(b)(6), SCRPC*.

The lower court properly found any duty owed to Appellant was a public duty, the breach of which cannot create a private cause of action.

B. Appellant's Causes of Action Are Time-Barred By the Statute of Limitations in the South Carolina Tort Claims Act

The lower court correctly found Respondents are entitled to dismissal of plaintiff's state law causes of action, 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 Appellant'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.

Appellant argues that her causes of action are not subject to the statute of limitations, as her causes of action did not accrue until she received word from the General Counsel of the Department of Public Safety notifying her that the investigation into the vehicle accident and her complaints regarding the handling of the accident had not yielded any information about the driver of the vehicle which ran her off the road. *See Transcript of Testimony, Page 10, line 20—Page 12, line 3.* Further, Appellant claims her complaints center on the failure of the Department of Public Safety and its employees to discipline or censure the officers who responded to her accident for failing to obtain the identification of the driver of the vehicle who alleged ran Appellant off the road. Appellant claims this failure occurred within the appropriate time frame, given the filing of her action, and renders the lower court's dismissal improper. *Ibid.*

The South Carolina Department of Public Safety is a "governmental entity" as defined by S.C. Code Ann. § 15-78-30(d) (Supp.1998). The Tort Claims Act, which governs tort claims against governmental entities, contains a two year statute of limitations which is applicable in this case. *See* S.C. Code Ann. § 15-78-100(a) (Supp.1998); S.C. Code Ann. § 15-78-110 (Supp.1998). Pursuant to § 15-78-110, S.C.

Code of Laws, “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.”

The discovery rule is applicable to actions brought under the Tort Claims Act. *Barr v. City of Rock Hill*, 330 S.C. 640, 500 S.E.2d 157 (Ct.App.1998). All of Appellant’s allegations accrued, if at all, on September 27, 2012, the date she suffered her vehicle accident. All injuries and damages accrued that day. Additionally, Appellant received the accident report from the responding officers the day of the collision, and was put on notice that the investigation did not yield identifying information related to the driver who likely caused the accident. *See Complaint, Page 7, Paragraph 17.*

The Complaint in this action is dated August 24, 2015, more than two years from the date of the accident. The lower court did not err in finding Appellant’s claims to be time-barred by operation of the South Carolina Tort Claims Act.

C. Individually Named-Defendants are Immune from Suit.

The lower court, accepting the allegations of the Complaint as true, determined that the individuals named in the complaint were acting within the course and scope of their employment at all times alleged during the Complaint. Appellant did not allege any activity outside the course and scope of employment. *See Order, May 18, 2016; Complaint.*

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.

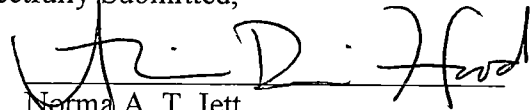
“An act is within the scope of a servant's employment where [it is] reasonably necessary to accomplish the purpose of his employment and in furtherance of the master's business.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006). The allegations described in the Complaint regard activity exclusively within the scope of employment of all individual respondents, and for this reason dismissal of the individual respondents from these state law causes of action is appropriate. There is no mention of any activity by any individual outside the course and scope of their respective obligations of employment.

Accepting the allegations of the complaint as true, the lower court properly dismissed the individual respondents who were acting within the course and scope of their employee.

CONCLUSION

For the reasons set forth above, Respondents pray this Court consider these matters and issue its opinion, upholding the lower court, and dismissing this appeal in its entirety.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

This is to certify that I, Alison Dennis Hood, Attorney for ALL RESPONDENTS, along with Richard B. Ness of Ness & Jett, LLC, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within **RESPONDENTS' INITIAL BRIEF AND INITIAL DESIGNATION OF MATTER, along with a MOTION TO EXCLUDE MATTER FROM RECORD ON APPEAL** in the matter captioned *Biafra Monique Curtis, Pro Se v. SCDPS, et al.*, Appellate Case Number: 2016-001239 to the following parties, at the following addresses:

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September 2, 2016

Honorable Jenny Abbott Kitchings, Clerk
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Post Office Box 11629
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Re: *Biafra Monique Curtis v. SCDPS, et al.*
Appellate Case Number: 2016-001239

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Dear Ms. Kitchings:

Enclosed for filing please find the original and one copy of **Respondents' Designation of Matter to be Included in the Record on Appeal and Respondents' Initial Brief**, as well as a Certificate of Service. Please clock in one copy of each as my proof of filing and return it to me in the enclosed envelope.

Please additionally find enclosed an original and one copy of **Respondents' Motion to Exclude Matter From the Record on Appeal**, as well as a check for the filing fee.

By copy of this letter, I am serving a copy of these items on Appellant as shown below.

Thank you for your assistance.

Sincerely,


Alison Dennis Hood

ADH
Enclosures

cc: Biafra Monique Curtis
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