

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN )

Civil Action Number: 2015-CP-02-02241

**RECEIVED**

Carlton E. Cantrell, )

NOV 10 2016 )

Plaintiff, )

**SC Court of Appeals** )

v. )

**ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, SUMMARY JUDGMENT**

Aiken County, Aiken County Animal Control/Code Enforcement Director Bobby Arthurs, Aiken County Animal Control/Code Enforcement Officer Ron Cooper, Judge Donna L. Williamson, )

Defendants. )

FILED

11-3-2016

1:00 SP

*Liz Godard*  
C.C.P. & G.S.  
*Shadell Park*  
Deputy Clerk

This matter came before the Court on October 10, 2016 upon motion of the Defendants. Specifically, the Defendants filed a Motion for Judgment on the Pleadings, or, in the alternative, for Summary Judgment. At the hearing Defendants were represented by Daniel C. Plyler, Esquire and Jasmine Wyman, Esquire of Davidson & Lindemann, PA. The Plaintiff appeared *pro se*.

Having considered the oral arguments presented and the entirety of the record before this Court, including all filings made by all parties, the Court finds that summary judgment must be granted to the Defendants, as is set out in detail herein, and that the pending motion must be, and hereby is, **GRANTED**.

Plaintiff filed this matter on, or about September 22, 2015. In his Complaint Plaintiff alleges he was wrongfully convicted on two Animal Control citations. The two citations in question were issued to the Plaintiff on, or about, July 2, 2015 by Aiken County Animal Control.

Specifically, Plaintiff was cited for Domestic Animals at Large and Failure to Vaccinate

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

3 day of Nov 2016

*Liz Godard*  
C.C.P. & G.S. Aiken County, S.C.

*Shadell Park*

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domestic animals. Plaintiff requested a jury trial on those citations, and on August 26, 2015 the Plaintiff was tried, by jury, in the Monetta Summary Court. Aiken County Magistrate Judge Donna Williamson presided over the trial. At the close of the trial, the jury convicted Plaintiff on both citations.

Plaintiff did not appeal the convictions. Instead Plaintiff filed the above-captioned lawsuit, alleging that he should not have been convicted. Defendants subsequently moved for judgment on the pleadings, or, in the alternative, for summary judgment.

### STANDARD

The Defendants' motion is for judgment on the pleadings, or, in the alternative, for summary judgment. "Judgment upon the pleadings is a drastic procedure but it will be granted in proper cases." *Wooten v. Standard. Life & Cas. Ins. Co.*, 239 S.C. 243, 248, 122 S.E.2d 637, 638 (1961). "It is appropriate, where the pleading is fatally deficient in substance, that is where the complaint fails to state a good cause of action in favor of the plaintiff and against the defendant." *Id.*

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); Rule 56(c), SCRPC. In ruling on a motion for summary judgment, the Court considers the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *Thomas v. Waters*, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994). In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997).

“Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006) (citing *Bloom v. Ravoira*, 339 S.C. 417, 425, 529 S.E.2d 710, 714 (2000)). A party opposing summary judgment may not rest upon the mere allegations of the pleadings but must instead set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (S.C. App. 1994).

### DISCUSSION

The Court is mindful that “[a]ll pleadings shall be so construed as to do substantial justice to all parties.” Rule 8(f), SCRPC. However, the Court finds, even after liberally construing his allegations, that Plaintiff has failed to state a claim upon which relief could be granted, and therefore the Defendants’ motion must be, and hereby is, **GRANTED**.

Plaintiff does not specify in his Complaint the exact nature of his allegations against the Defendants, except to make it clear that he does not believe he should have been convicted on the two citations at issue. Such allegations could be construed in numerous ways, but regardless of the construction, Plaintiff’s allegations fail as a matter of law.

To the extent Plaintiff’s claims are construed to be a claim for Malicious Prosecution, he has not established the elements required to support such a cause of action.

In order to recover on a claim of malicious prosecution, the Plaintiff must establish the following elements: “(1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in the plaintiff’s favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.” *McBride v. Sch. Dist. Of Greenville County*, 389 S.C. 546, 566, 698 S.E.2d 845, 855

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(Ct. App. 2010). “In an action for malicious prosecution, the plaintiff must establish that the criminal proceeding was terminated in his or her favor.” *McKenney v. Jack Eckerd Co.*, 304 S.C. 21, 22, 402 S.E.2d 887, 887 (1991).

Plaintiff has admitted in his Complaint that he was convicted, by a jury, on the two criminal citations at issue. As his convictions remain in place, he cannot establish the elements necessary to sufficiently allege a Malicious Prosecution cause of action.

Similarly, were this Court to construe Plaintiff’s allegations as an appeal of the Magistrate Court convictions, Plaintiff’s claims would still fail as a matter of law.

This Court’s jurisdiction over a Magistrate Court conviction is appellate in nature. *DeWitt v. S.C. Dep’t of Highways and Pub. Transp.*, 274 S.C. 184, 185, 262 S.E.2d 28, 29 (1980). Under S.C. Code Ann. § 18-3-30, a person convicted, in Magistrate Court, of a criminal offense must file a proper notice of appeal of that conviction within ten (10) days. Furthermore, “it has been the established rule that a circuit judge cannot reverse a magistrate’s judgment when the appellant has failed to serve the magistrate the proper notice and grounds of appeal within the prescribed time limits. *Id.*

In this case the Plaintiff was convicted on August 26, 2015. To the extent that his Complaint in this case were to be considered a notice of appeal, it was not filed within the ten (10)-day time limit set forth by statute, nor was it properly drafted as a notice of appeal. As such, even if this Court were to construe his Complaint as an Appeal, the matter would have to be dismissed as a matter of law.

With regards to Plaintiff’s allegations against Judge Williamson, no matter how construed, it is clear that the allegations are barred by the doctrine of Judicial Immunity.

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Judicial immunity “is one of the basic common law tenets upon which the modern system of justice was built.” *O’Laughlin v. Windham*, 330 S.C. 379, 384, 498 S.E.2d 689, 692 (Ct. App. 1998). Absolute judicial immunity “is vital for the continuation of an independent judiciary and for the preservation of judicial integrity.” *Id.*

Presiding over a criminal trial is a judicial function. When liberally reading Plaintiff’s Complaint it becomes apparent that he is attempting to sue Judge Williamson simply because he is unhappy with her judicial decisions during his criminal trial. Therefore, pursuant to the common law doctrine of judicial immunity, the claims of the Plaintiff against Judge Williams are dismissed as a matter of law.

Similarly, notwithstanding common law judicial immunity, the South Carolina Tort Claims Act (“SCTCA”) bars Plaintiff’s allegations with respects to Judge Williamson.<sup>1</sup> *O’Laughlin, supra*, 330 S.C. at 385, 498 S.E.2d at 692 (holding that common law judicial immunity survived the enactment of the SCTCA and is distinct from the form of immunity incorporated in that Act). The SCTCA provides that a governmental entity is not liable for a loss resulting from judicial or quasi-judicial action or inaction. S.C. Code Ann. § 15-78-60(1) and (2).

As set forth in the SCTCA, the provisions of the Act are to be liberally construed in favor of limiting the government’s liability. S.C. Code Ann. § 15-78-20(e); *see also, Bakers v. Sanders*, 301 S.C. 170, 391 S.E.2d 229 (1990); *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117 (1998). This rule of construction is also in accord with the well-established principles that any law in derogation of common law must be strictly construed. *Watson v. Sellers*, 299 S.C. 426, 385 S.E.2d 369 (Ct. App. 1989).

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<sup>1</sup> The South Carolina Tort Claims Act is the sole and exclusive remedy for any tort committed by an employee of a governmental entity acting in the course and scope of his or her employment. S.C. Code Ann. § 15-78-70(a).

Accordingly, Plaintiff's purported allegations against Judge Williamson, even liberally construed, must be dismissed as a matter of law.

In addition to the reasons for dismissal addressed above, the Plaintiff's allegations are clearly barred by S.C. Code Ann. §§15-78-60(4) and (23).

S.C. Code Ann. §15-78-60(4) provides, in pertinent part, that a governmental entity is not liable for a loss resulting from the enforcement of any law and/or ordinance. A liberal reading of the Plaintiff's Complaint makes it clear that he is suing Defendants Aiken County, Arthurs, and Cooper for their roles in enforcing the animal control ordinances of the county of Aiken. Therefore, with the admission that he was convicted by a jury, Plaintiff's allegations are clearly barred and must be dismissed.

Likewise, S.C. Code Ann. §15-78-60(23) states that a governmental entity is not liable for a loss resulting from the "institution or prosecution of any judicial or administrative proceeding." In this case it seems clear that Plaintiff is attempting to sue Defendants Aiken County, Arthurs, and Cooper for that very reason.

Therefore, Plaintiff's allegations must be, and hereby are, dismissed as a matter of law.

Furthermore, Defendants Arthurs and Cooper are entitled to absolute employee immunity under the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 *et seq.* The SCTCA "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. *Fleteau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003).

The Plaintiff attempts to sue these Defendants for their roles as Animal Control Officers who brought criminal charges against him for violations of various animal control

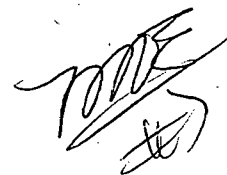


ordinances/law in the County of Aiken. Therefore, even if Plaintiff's allegations were not subject to dismissal *in toto*, which they clearly are, Defendants Arthurs and Cooper would be improper parties to this lawsuit pursuant to the SCTCA and are, therefore, dismissed as a matter of law.

Finally, the Court finds that Plaintiff's allegations must be dismissed pursuant to the doctrine of *res judicata* and/or collateral estoppel.

The doctrine of collateral estoppel provides that "once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim. *Richburg v. Baughman*, 290 S.C. 431, 434, 351 S.E.2d 164, 166 (1986). The doctrine of *res judicata*, on the other hand, "bars a litigant from raising any issues which were adjudicated in the former suit and any issues which *might* have been raised in the former suit." *Pye*, 325 S.C. at 433, 480 S.E.2d at 458 (emphasis added). See also, *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 452 S.E.2d 838 (1994) (res judicata bars subsequent action by the same parties on the same issues). "Res judicata also bars subsequent actions by the same parties when the claims arise out of the *same transaction or occurrence* that was the subject of a prior action between those parties." *Pye*, 325 S.C. at 432, 480 S.E.2d at 458 (emphasis added).

Specifically relevant in the analysis of the instant motion is the fact that the South Carolina Supreme Court has found that "once a person has been criminally convicted, the person is bound by that adjudication in a subsequent civil proceeding based on the same facts underlying the criminal conviction." *Doe v. Doe*, 346 S.C. 145, 148, 551 S.E.2d 257, 258 (2001); *see also, Zurcher v. Bilton*, 379 S.C. 132, 135-136, 666 S.E.2d 224, 226 (2008).

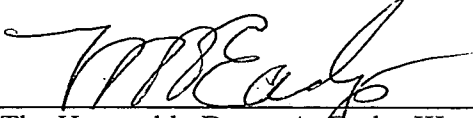
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Even a liberal reading of Plaintiff's Complaint shows that he is attempting to collaterally attack his magistrate level convictions. Those convictions have not been overturned and remain un-appealed. Therefore, such an attack is improper. *See generally, Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364 (1994).


Therefore, in addition to the reasons set forth above, the Court finds that Plaintiff's allegations are barred by the doctrines of collateral estoppel and/or *res judicata*. Consequently, they must be, and hereby are, dismissed as a matter of law.

Plaintiff simply cannot successfully maintain a cause of action based on any of his allegations in this case, and therefore the Court finds that Defendant's motion must be, and hereby is, **GRANTED**, and this matter is hereby **DISMISSED**.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
The Honorable Doyet A. Early, III  
Chief Administrative Judge  
2<sup>nd</sup> Judicial Circuit

October 27, 2016

  
\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS

Carlton E. Cantrell, )

Civil Action No. 2015-CP-02-02241

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**ORDER INFORMATION  
FORM COVER SHEET**

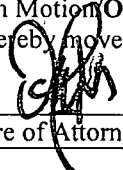
Aiken County, Aiken County Animal  
Control/Code Enforcement Director Bobby  
Arthurs, Aiken County Animal Control/Code  
Enforcement Officer Ron Cooper, Judge Donna  
L. Williamson, )

Defendants. )

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**SC Court of Appeals**

<b>Pro Se Plaintiff:</b> Carlton E. Cantrell 223 Muddy Branch Road Aiken, South Carolina 29805 Phone: 803-215-4747      Fax: E-Mail:                      Other:		<b>Defendant's Attorney:</b> Daniel C. Plyler, Bar No. 72671 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 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 checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____		Court Reporter Needed: <input type="checkbox"/> Yes / <input type="checkbox"/> No	
Estimated Time Needed: _____			
SECTION II: Motion/Order Type			
<input type="checkbox"/> Written motion attached <input checked="" 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) _____ 		Date Submitted: <u>October 31, 2016</u>	
SECTION III: Motion Fee			
<input type="checkbox"/> PAID - AMOUNT: \$25.00 <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <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 checked="" 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: _____	
<b>ERK'S VERIFICATION</b>			
Collected by: _____		Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____			