

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Doyet A. Early, III, Circuit Court Judge

Opinion No. 2016-UP-397
(S.C. Ct. App. filed August 3, 2016)
Appellate Case No. 2016-002162

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S.C. SUPREME COURT

Carlton E. Cantrell,..... Petitioner,

v.

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

**RETURN TO PETITION
FOR WRIT OF CERTIORARI**

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Counsel for Respondents



STATEMENT OF THE CASE

The Petitioner, Carlton E. Cantrell filed this action against Defendants Aiken County, [former] Aiken County Animal Control Director Shirley Hardin, Aiken County Animal Control Officer Bobby Arthurs, and [Magistrate or Summary Court] Judge Charles T. Carter [hereinafter, "Respondents"] in the Court of Common Pleas for Aiken County on April 16, 2014. For all intents and purposes, the Complaint asserted the exact same allegations, against the exact same defendants, as the Complaints filed by the Petitioner on May 19, 2008 and July 7, 2011.¹

In the Complaint the Petitioner asserts claims relating to the seizure of a number of goats from his property by Aiken County Animal Control. The seizure in question occurred on, or about, May 19, 2005. According to the facts set forth in the Complaint, the Petitioner entered into a plea agreement regarding charges stemming from the seizure of his goats, which he later had overturned and set aside. Specifically, the Petitioner alleges that the plea agreement was set aside on October 3, 2007. These facts are clearly stated on the face of all three of Petitioner's filed Complaints.

The Respondents moved to dismiss the Petitioner's most recent Complaint on May 29, 2014. In that motion Respondents also asked that sanctions be issued against Petitioner for his repeated abuse of the system, and for violations of the South Carolina Frivolous Civil Proceedings and Sanctions Act. That motion was heard by the Honorable Doyet A. Early, III on July 7, 2014. Judge Early issued an order dated August 28, 2014, which dismissed the Petitioner's Complaint in its entirety, and levied sanctions against Petitioner, to include an

¹ Those earlier Complaints were dismissed, and Petitioner pursued appeals in both cases. This Court denied his two, previous Petitions for Writ of Certiorari on June 10, 2011 and March 19, 2014 respectively. *See*, Appellate Case No. 2013-000351 and 2011-1888506.

injunction against Petitioner filing yet another civil action on the same claims. That order was filed on September 4, 2014.

Judge Early found Petitioner's claims were time-barred by the applicable statute of limitations as set forth under the provisions of the South Carolina Tort Claims Act; Respondents Hardin, Arthurs and Carter were subject to dismissal pursuant to S.C. Code Ann. § 15-78-70; Respondent Carter was entitled to judicial immunity; and Petitioner's claims were barred by the doctrines of *res judicata* and/or collateral estoppel. Furthermore, Judge Early found Petitioner's repetitive efforts of filing litigation on claims that had previously been dismissed warranted sanctions under the South Carolina Frivolous Civil Proceedings and Sanctions Act, and imposed sanctions against Petitioner. The Petitioner did not file a Rule 59(e) Motion.

Following the hearing on Respondents' motion to dismiss, but prior to a written Order being issued by Judge Early, Petitioner filed a notice of appeal with the Court of Appeals on, or about, August 4, 2014. The Court of Appeals affirmed the dismissal of the Petitioner's Complaint by Unpublished, *per curiam*, Opinion No. 2016-UP-397, which was submitted April 1, 2016 and filed August 3, 2016.

The Petitioner filed a petition for rehearing with the Court of Appeals dated August 17, 2016, which was denied by Order filed September 23, 2016. The Petitioner then filed a petition for writ of certiorari with this Court on, or about, October 24, 2016, seeking to have this Court review the Opinion of the Court of Appeals, which affirmed the dismissal of the Petitioner's third Complaint.

STATEMENT OF THE FACTS

In this case the Petitioner has sued seeking compensation relating to the seizure, and alleged loss, of a number of goats by Aiken County Animal Control. The Petitioner asserts in his Complaint, that the goats in question were seized on May 19, 2005. According to the facts set forth in the Complaint, the Petitioner entered into a plea agreement regarding charges stemming from the seizure in question, which he later had overturned and set aside. Specifically, the Petitioner alleges, in his Complaint, that the plea agreement was set aside on October 3, 2007.

ARGUMENTS

I. The decision of the South Carolina Court of Appeals does not warrant the issuance of a writ of certiorari.

Rule 226(b), SCACR, sets forth general factors considered by this Court in determining whether issues require review on certiorari. The Respondents submit that, aside from the merits which are addressed below, there are several factors that demonstrate that a writ of certiorari is entirely unwarranted in this case.

First, the unpublished, *per curiam* decision of the three-judge panel in the Court of Appeals contained no dissenting opinion. Moreover, the decision of the Court of Appeals does not conflict with any existing decisions of this Court. In addition, this case does not involve any issue of first impression, nor any issue of great public interest or importance. Further, because the Court of Appeals' *per curiam* opinion is unpublished, it has no precedential value that would potentially impact any future cases.

Based upon the foregoing considerations, there is simply no need for this Court to review the decision of the Court of Appeals.

II. The Court of Appeals ruled correctly that dismissal of the Petitioner's Complaint was appropriate

The Respondents argue that the Court of Appeals was correct in affirming the order issued by Judge Early, dismissing the Petitioner's Complaint. Judge Early correctly, and specifically, found the Complaint was time-barred, the individual defendants were subject to dismissal under S.C. Code Ann. § 15-78-70, defendant Carter was entitled to judicial immunity, and Petitioner's claims were barred by the doctrines of *res judicata* and/or collateral estoppel.



Petitioner did not appeal Judge Early's finding that the Complaint was subject to dismissal under the doctrines of *res judicata* and/or collateral estoppel. There was no mention of the ruling that the Complaint was subject to dismissal under the doctrines of *res judicata* and/or collateral estoppel in the Petitioner's brief to the Court of Appeals, nor in his petition for writ of certiorari to this Court.

In *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986), the Court of Appeals held that “[a]n alternative ruling of a lower court that is not excepted to constitutes a basis for affirming the lower court and is not reviewable on appeal.” *Folkens*, 348 S.E.2d at 845. Such a ruling becomes the law of the case. *Id.* See also, *Eagles v. South Carolina National Bank*, 301 S.C. 402, 392 S.E.2d 187 (Ct. App. 1990). Because the Petitioner did not appeal from the alternative ruling by Judge Early dismissing the Complaint on the basis of the doctrines of *res judicata* and/or collateral estoppel, the dismissal of the Complaint was properly affirmed.

Furthermore, as is correctly stated in Judge Early's Order dismissing the Petitioner's Complaint, the Petitioner filed this lawsuit outside the time allowed to do so by the applicable statute of limitations. The statute of limitations at issue in this matter is the statute of limitations set forth in the South Carolina Tort Claims Act (hereinafter the “Act”), S.C. Code Ann. §§ 15-78-10 *et seq.* The Act provides for a two-year statute of limitations. S.C. Code Ann. § 15-78-110; see also, *Flateau v. Harrelson*, 355 S.C. 197, 207, 584 S.E.2d 413, 418 (Ct. App. 2003).

In *Flateau* the Court of Appeals held that the Act's two-year statute of limitations applies, even if the claim at issue alleges that the employees at issue acted outside the scope of their official duties or that those actions “constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” *Flateau*, 355 S.C. at 208, 584 S.E.2d at 419, citing S.C. Code Ann. § 15-78-70(b). Importantly, the decision of the Court of Appeals in *Flateau* was also

a review of an order granting a motion to dismiss. The Court of Appeals cited the appropriate authority in its opinion, and applied it correctly in affirming the dismissal.

The Respondents assert that this Court need go no further in its analysis of the Court of Appeal's opinion affirming Judge Early's August 28, 2014 Order. However, the Respondents assert Judge Early's alternative rulings, finding Respondents Hardin, Arthurs and Carter were also subject to dismissal under S.C. Code Ann. 15-78-70, find the Complaint time-barred by the applicable statute of limitations, and finding Respondent Carter was entitled to judicial immunity, were also correct, and provide alternative bases for affirming the dismissal. It is clear from the face of the Petitioner's Complaint that the allegations against the Respondents are for actions taken in the course of their employment. The Petitioner did not allege otherwise in his Complaint. Therefore, the dismissal of Respondents Hardin, Arthurs, and Carter under S.C. Code Ann. § 15-78-70 was appropriate, and provided an alternative basis for affirming the dismissal of those defendants.

Furthermore, it is clear from the face of his Complaint Petitioner's claims arose, at the latest, in October of 2007. The South Carolina Tort Claims Act provides a two-year statute of limitations, meaning that Petitioner's claims would have had to be filed no later than October of 2009. *See*, S.C. Code Ann. § 15-78-110; *see also*, *Flateau v. Harrelson*, 335 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Petitioner did not file the Complaint at issue until April 16, 2014, meaning he missed the statute of limitations by four and a half years. Clearly his claims in his most recent Complaint are time-barred.

Lastly, as has been the case in all three of his appeals, Petitioner's claims against Respondent Carter are clearly barred by Judicial Immunity.

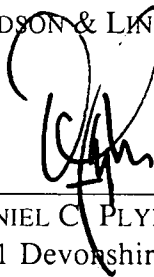


CONCLUSION

Based on the foregoing discussion, the Respondents respectfully request that this Court deny the Petitioner's petition for writ of certiorari.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.



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November 17, 2016

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In The Supreme Court

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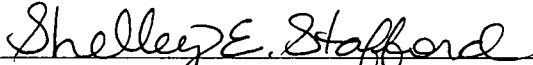
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PROOF OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent, does hereby certify that service of the **Return to Petition for Writ of Certiorari on behalf of the Respondents** 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 17th day of November, 2016, addressed as follows:

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


Shelley E. Stafford