

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2015-002057

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Daniel D. Hall, Circuit Court Judge

Case No.: 2013-CP-23-02017

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MAR 01 2017

SC Court of Appeals

Isiah James, Jr. and George Lee Tomlin, Plaintiffs,
of whom George Lee Tomlin is the

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

**FINAL BRIEF OF RESPONDENT
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

Carly H. Davis, Esquire
Russell W. Harter, Jr., Esquire
Chapman, Harter & Harter, P.A.
14 Lavinia Avenue
Post Office Box 10224 (29603)
Greenville, South Carolina 29601
Telephone: (864) 233-4500
Attorneys for Respondent

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COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court below commit a reversible error in granting summary judgment in favor of the South Carolina Department of Corrections (SCDC) on the grounds that Appellant failed to present any evidence to give rise to liability where the undisputed facts in the Record on Appeal demonstrate that pursuant to the Court of Appeals Order dated November 23, 2010, Tomlin was entitled to \$304.88 of costs, and on or before November 13, 2014, pursuant to the Affidavit of Debra Long, Tomlin's a payment was processed for \$304.88 into Tomlin's Cooper Account?

2. Did the Circuit Court below commit a reversible error in granting summary judgment in favor of the South Carolina Department of Corrections (SCDC) as to Tomlin's claim to enforce an alleged judgment for wages when there is no evidence in the record to support that claim, and when the claim related to wages was filed and litigated in a separate action in another court?

COUNTERSTATEMENT OF THE CASE

This is an action initially brought by two state prison inmates, Appellant George Tomlin and Isiah James, against Respondent South Carolina Department of Corrections (hereinafter “the Department” or “SCDC”). The procedural history of this action and the allegations contained in the Plaintiffs’ Complaint set forth in further detail in United States Magistrate Judge Hodge’s Report and Recommendation filed on September 25, 2013. (USDC Report and Recommendation, ECF #23; R. pp. 31-38.)

This case was originally filed in the Greenville County Court of Common Pleas, then removed to federal court, and subsequently remanded once plaintiffs clarified they were only alleging state law claims. The plaintiffs, by way of the Amended and Supplemental Complaints, allege numerous claims arising out of different circumstances.

The department filed a Motion for Summary Judgment on June 3, 2015. The court below held a hearing on the Department's Motion for Summary Judgment and Plaintiffs’ Motion for Partial Summary Judgment on July 13, 2015, at which time the arguments of counsel were heard, and evidence was received from the parties.

In an Order dated August 31, 2015, The Honorable Daniel D. Hall, Circuit Court Judge, presiding, concluded that the Department's Motion for Summary Judgment should be granted, and dismissed the Appellants’ Amended and Supplemental Complaints with prejudice. (Lower Court’s Order dated August 31, 2015, R. pp. 7-18.) The Court specifically granted summary judgment to the Respondent on Tomlin’s claims.

George Tomlin filed a Notice of Appeal with the South Carolina Supreme Court on or about October 2, 2015. The case was then transferred to the South Carolina Court of Appeals by

way of Order dated October 2, 2015. George Tomlin is the sole appellant in this action.

In pertinent part, for purposes of this appeal, Tomlin alleged two claims set forth in the Third and Fourth Causes of Action for injunctive relief related to Tomlin's collection of a state court judgment, and declaratory relief related to Tomlin's collection of a state court judgment.

STATEMENT OF FACTS

Appellant Tomlin's claims relate to the Third and Fourth Causes of Action of Plaintiff's Complaint wherein Tomlin alleges entitlement to wages and for costs related to the issuance of an Order of the South Carolina Court of Appeals dated November 23, 2010.

Tomlin was granted costs in the amount of \$304.88 in an Order of the South Carolina Court of Appeals. That Order did not award Tomlin wages. (R. p. 1.) Tomlin filed this separate action on July 15, 2013, to enforce the alleged judgment. During the pendency of the lower court action, it was determined that Tomlin had not in fact been paid the costs that were awarded to him in the South Carolina Court of Appeals Order dated November 23, 2010 in \$304.88. On November 13, 2014, a payment was processed for that amount into the Cooper Account of George Lee Tomlin. (Affidavit of Long, R. p. 106.). Tomlin did not present evidence at the summary judgment hearing to create a genuine issue of material fact as to any claim for "wages". Further, upon information and belief, Tomlin has received all sums to which he is entitled.

ARGUMENT

Standard of Review

When reviewing a grant of summary judgment, appellate courts, including this Court, apply the same standard applied by the trial court pursuant to Rule 56(c), SCRPC. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); *Peterson v. West Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999). Summary judgment is proper when no issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. “In determining whether any triable issue of fact exists, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). Thus, “[o]n appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.” *Catawba Indian Tribe v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753, *cert. denied*, 552 U.S. 888 (2007).

The purpose of summary judgment is to expedite the disposition of cases not needing the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment should be granted when plain, palpable and indisputable facts exist on which reasonable minds cannot differ. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 240, 672 S.E.2d 799 (Ct. App.), *cert. denied*, 2009 S.C. LEXIS 336 (S.C. June 9, 2009); *accord, Wallace v. Day*, 390 S.C. 69, 73, 700 S.E.2d 446, 448 (Ct. App. 2010). Summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *David v. McLeod Regional Med. Center*, 367 S.C. 242, 250, 626

S.E.2d 1, 5 (2006).

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537, 545 (1990) (citations omitted). With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by pointing out to the court that there is an absence of evidence to support the nonmoving party's case. *Id.*

Once the moving party carries its initial burden, the opposing party must, under Rule 56(e), come forward with specific facts showing that there is a genuine issue for trial. *Baughman v. AT&T*, 410 S.E.2d at 545.

- I. **The lower court correctly applied the summary judgment standard to the facts of this case and properly concluded that no genuine issue of material fact exists as to Tomlin's claims against SCDC concerning the payment of either "cost" or "wages"; therefore, SCDC is entitled to summary judgment as a matter of law.**

The lower court correctly applied the summary judgment standard to the facts of this case and properly concluded that no genuine issue of material fact existed at the time of the hearing as to any claim of Tomlin concerning the payment of cost pursuant to the Order of the South Carolina Court of Appeals dated November 23, 2010; therefore, SCDC is entitled to summary judgment as a matter of law.

The lower court correctly applied the law to the facts of this case and concluded during the hearing that the Affidavit of Debra Long confirms that upon a review of Tomlin's Cooper account, payment of costs of \$304.88 was not previously credited to Tomlin's account. (Affidavits of Long, R. pp. 103-120.) However, according to the Affidavit of Debra Long on November 13, 2014, during the pendency of the lower court action, a payment was processed for

that amount into the Cooper Account of George Lee Tomlin. (R. pp. 106-120.) Further, based on the Affidavit of Debra Long there are no additional monies and/or payments due to George Lee Tomlin by and/or from the South Carolina Department of Corrections. *Id.* As noted by the lower court, Inmate Tomlin has not come forward with any evidence to refute that position and/or conclusion; therefore, the lower court correctly concluded that SCDC is entitled to summary judgment as a matter of law.

II. Tomlin failed to raise a genuine issue of material fact as to any alleged claim for wages, and the lower court correctly applied the summary judgment standard to the facts of this case and determined SCDC is entitled to summary judgment.

Tomlin, by way of his Initial Brief, suggests that he is entitled to wages for prison labor. He references other proceedings as to such claim but he has failed to come forward with evidence to create a genuine issue of fact that he is entitled to any wages in any amount. (Affidavit of Long, R. pp. 106-120.). He references and/or relies on a prior Order and a ruling by the Administrative Law Court, the Circuit Court of Jasper County, and the South Carolina Court of Appeals, but nowhere in the record is there evidence that Tomlin was awarded a judgment for wages in any amount by any tribunal. The evidence in the record does not establish that Tomlin is entitled to any money that he has not been paid.

Further, Tomlin cannot relitigate and/or merge his “wage” claim allegations into this separate action. If for the sake of argument, Tomlin does have any recourse or relief of a claim related to prison “wages”, this Court would lack subject matter jurisdiction. Tomlin would be bound by any final adjudication or judgment by the Court where that claim was filed and heard.

To the extent Tomlin argues or suggests there was no final adjudication or judgment in that previous action, even if that were the case, he cannot assert that claim in this separate action.

III. The lower court correctly concluded that to the extent Plaintiffs' Complaint could be interpreted or construed to allege any claims subject to the South Carolina Tort Claims Act, such claims are barred and SCDC is entitled to summary judgment.

The lower court correctly concluded that to the extent Plaintiffs' Complaint alleges any claims subject to the South Carolina Tort Claims Act, the provisions of the South Carolina Tort Claims Act provide for immunity and limitations of liability that bar and/or preclude Tomlin from any recovery for any tort claim. *See*, S.C. Code Ann. §15-78-60(2), (3), (4). Specifically, S.C. Code Ann. §15-78-60 provides as that a governmental entity is not liable for a loss resulting from:

(2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;

(3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;

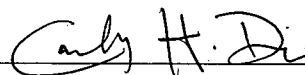
(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

S.C. Code Ann. §15-78-60(2), (3), (4).

CONCLUSION

In view of the arguments and authorities set forth above, Respondent South Carolina Department of Corrections respectfully requests that the judgment of the court below be affirmed.

Respectfully submitted,

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Carly H. Davis, Esquire
Russell W. Harter, Jr., Esquire
Chapman, Harter & Harter, P.A.
14 Lavinia Avenue
Post Office Box 10224 (29603)
Greenville, South Carolina 29601
Telephone: (864) 233-4500
Attorneys for Respondent

February 28, 2017
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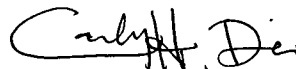
South Carolina Department of Corrections,

Respondent.

CERTIFICATION OF COUNSEL

The undersigned counsel for the Respondent hereby certifies that Respondent's Final Brief upon information and belief, complies with the requirements set forth in Rule 211(b).

Respectfully submitted,



Carly H. Davis, SC Bar #100112
Russell W. Harter, Jr., SC Bar #2778
Chapman, Harter & Harter, P.A.
14 Lavinia Avenue
Post Office Box 10224 (29603)
Greenville, South Carolina 29601
Telephone: (864) 233-4500
Attorneys for Respondent

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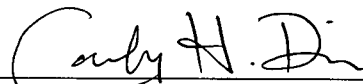
South Carolina Department of Corrections,

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PROOF OF SERVICE

I hereby certify that the undersigned attorney for the respondent in the within action did on this 28 day of February, 2017 serve the Appellant with a copy of **Respondent's Final Brief**, by placing a copy of same in an envelope addressed as below, proper postage affixed thereto:

George Lee Tomlin, #166361
Ridgeland Correctional Institution
CA-22, POB 2039
Ridgeland, South Carolina 29936



Carly H. Davis, SC Bar #100112
Russell W. Harter, Jr., SC Bar #2778
Chapman, Harter & Harter, P.A.

14 Lavinia Avenue
Post Office Box 10224 (29603)
Greenville, South Carolina 29601
Telephone: (864) 233-4500
Attorneys for Respondent

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