

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2016-002275

RECEIVED

APR 13 2017

SC Court of Appeals

Carlton E. Cantrell,Appellant,

v.

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

INITIAL BRIEF OF RESPONDENTS

Daniel C. Plyler
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondents



TABLE OF CONTENTS

Table of Authorities	3
Statement of the Case	4
Statement of Facts	6
Arguments	7
I. The Order dismissing the Complaint was appropriate.	7
Conclusion	13

2

TABLE OF AUTHORITIES

Cases

- Doe v. Doe*,
346 S.C. 145, 148, 551 S.E.2d 257, 258 (2001)
- Eagles v. South Carolina National Bank*,
301 S.C. 402, 392 S.E.2d 187 (Ct. App. 1990)
- Flateau v. Harrelson*,
355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003)
- Folkens v. Hunt*,
290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986)
- McBride v. Sch. Dist. Of Greenville County*,
389 S.C. 546, 566, 698 S.E.2d 845, 855 (Ct. App. 2010).
- McKenney v. Jack Eckerd Co.*,
304 S.C. 21, 22, 402 S.E.2d 887, 887 (1991).
- O'Laughlin v. Windham*,
330 S.C. 379, 498 S.E.2d 689 (Ct. App. 1998)
- Zurcher v. Bilton*,
379 S.C. 132, 135-136, 666 S.E.2d 224, 226 (2008)

Statutes and Rules

- Rule 8(f), SCRPC
- S.C. CODE ANN. § 15-78-60(1), (2), (4), (5), and (23)
- S.C. CODE ANN. § 15-78-70(a) and (b)
- S.C. CODE ANN. § 18-3-30

STATEMENT OF THE CASE

The Appellant filed this action on September 22, 2015. In the Complaint Appellant alleges he was wrongfully convicted on two Animal Control citations. (R.). The two citations in question were issued to Appellant on, or about, July 2, 2015 by Aiken County Animal Control. (R.). Specifically, Appellant was cited for Domestic Animals at Large and Failure to Vaccinate domestic animals. (R.). Appellant requested a jury trial on those citations, and on August 26, 2015 Appellant was tried, by jury, in the Monetta Summary Court. (R.). Aiken County Magistrate Judge Donna Williamson presided over the trial. (R.). At the close of the trial, the jury convicted Appellant on both citations. (R.) Appellant did not appeal the convictions.

Respondents filed a motion for Judgment on the Pleadings, or, in the alternative, for Summary Judgment, on September 26, 2016. (R.). That motion was heard by the Honorable Doyet A Early, III on October 10, 2016. (R.) Judge Early issued an order dated October 27, 2016, which dismissed Appellant's Complaint in its entirety. (R.). That order, along with the Judgment, was filed on November 3, 2016. (R.).

Judge Early found that Appellant failed to state a claim upon which relief could be granted, and therefore his Complaint failed to comply with Rule 8(f), SCRPC; that, to the extent Appellant was attempting to assert a claim for

Malicious Prosecution, Appellant had admitted in his own Complaint that he had been convicted by a jury on the charges at issue, and therefore Appellant's purported claim for Malicious Prosecution is barred as a matter of law; that, to the extent Appellant's Complaint was to be construed as a Appeal of the decision of the Monetta Summary Court, any such appeal was time-barred, because it was not properly drafted and filed within the ten (10) day time limit for making such appeals; that no matter how Appellant's purported claims were construed, Judge Williamson is entitled to Judicial Immunity under the Common Law and the South Carolina Tort Claims Act; that the other Respondents were entitled to immunity under the South Carolina Tort Claims Act, specifically S.C. Code Ann. § 15-78-60(4) and (23); that Respondents Williamson, Cooper, and Arthurs would be entitled to Summary Judgment pursuant to absolute employee immunity under the South Carolina Tort Claims Act, specifically S.C. Code Ann. §15-78-70(a); and that the entire action was barred by *Res Judicata* and/or the Collateral Estoppel doctrine.

Appellant did not file a Rule 59(e) Motion. He then filed his Notice of Appeal, which is dated November 9, 2016, and was filed with this Court on November 10, 2016.

STATEMENT OF THE FACTS

In this case Appellant has sued alleging he was wrongfully convicted on August 26, 2015 on two Animal Control citations, which were issued to him on, or about, July 2, 2015. (R. __).

ARGUMENT

In Appellant's Notice of Appeal and Brief, Appellant fails to actually address any of the grounds for dismissal and/or summary judgment listed in Judge Early's Order, and instead attempts to rehash the purported facts that he believes shows he was wrongfully convicted on the two Animal Control citations at issue. The closest Appellant appears to come to actually addressing any of the purported grounds for summary judgment is on page 4-5 of his initial brief where he states the following:

The defendants asserts [sic] in their defense that they are shielded from liability from their actions on the basis of South Carolina Code Sections 15-78-60(5) and 15-78-70(b), which bar liability on the part of a judicial authority where the act constitutes an exercise of judicial discretion [sic] or judgement [sic], where such act does not involve fraud, actual malice, intent to harm, or crime involving moral turpitude.

Initial Brief of Appellant, pg. 4-5, ¶ 5.

However, as is set forth above and is clearly shown by a review of Judge Early's Order at issue, Judge Early's decision to grant Respondents' motion was not based on S.C. Code Ann. § 15-78-60(5) or S.C. Code Ann. § 15-78-70(b)¹.

¹ Judge Early did find as an alternative, sustaining ground for summary judgment for the individual Respondents, that Appellant's allegations clearly showed those individual Respondents were working within the scope of their official duties at all times relevant to the matters alleged in the Complaint, and therefore found that they were entitled to summary judgment pursuant to S.C. Code Ann. § 15-78-70(a). *See*, Order of Judge Early, pg. 6-7.

Furthermore, Appellant has not even mentioned, nor has he attempted to appeal, the actual rulings made by Judge Early in the Order granting summary judgment to Respondents.

In *Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct. App. 1986), this Court 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 Appellant did not appeal from the alternative rulings by Judge Early dismissing this matter in its entirety, the dismissal must be affirmed.

Therefore, Respondents assert that this Court need go no further in its analysis of Judge Early’s October 27, 2016 Order dismissing the Appellant’s Complaint. However, Respondents assert that Judge Early’s decision was correct, in its entirety, as is set forth in detail below.

I. The Order dismissing the Complaint was appropriate.

Respondents argue that the order issued by Judge Early, dismissing the Appellant’s Complaint and granting summary judgment on behalf of Respondents, was appropriate on all stated grounds. Judge Early found that the Complaint failed

to comply with the requirements of Rule 8(f), SCRPC, and therefore was subject to dismissal.

Judge Early further found that to the extent the Complaint was construed to raise a claim of malicious prosecution, Appellant had failed to plead facts sufficient to establish such a claim. In order to recover on a claim of malicious prosecution, Appellant 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 (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).

As Judge Early correctly found, Appellant admitted in his Complaint that he was convicted, by a jury, on the two criminal citations at issue. As a result Appellant cannot establish the elements necessary to sufficiently allege a malicious prosecution cause of action, because he cannot possibly establish that the proceedings had terminated in his favor.

Additionally, Judge Early correctly found that even if the court was to construe Appellant's Complaint as an attempt to appeal the magistrate court convictions at issue, the Complaint would be subject to dismissal. Specifically, an appeal of a magistrate court conviction must be filed as a notice of appeal within ten (10) days of the date of the conviction. *See*, S.C. Code Ann. § 18-3-30. Appellant admits in his Complaint that he was convicted on August 26, 2015. (R.). However, his Complaint is dated September 13, 2015, and was not filed until September 22, 2015. (R.). Therefore, as Judge Early correctly found, even if the Complaint had been properly drafted as a notice of appeal of the magistrate court convictions, it would still be time-barred and must be dismissed.

Judge Early also correctly found that no matter how Appellant's Complaint is construed, it clearly attempts to allege causes of action against Respondent Williamson that deal with Respondent Williamson's actions in presiding over his magistrate court trial. (R.). As such, Judge Early correctly found that Respondent Williamson, a Magistrate Court Judge, was entitled to Judicial Immunity. This is true under both the common law of South Carolina, as well as certain provisions of the South Carolina Tort Claims Act. *See, O'Laughlin v. Windham*, 330 S.C. 379, 498 S.E.2d 689 (Ct. App. 1998); *see also*, S.C. Code Ann. § 15-78-70(1) and (2).

Furthermore, Judge Early also correctly found that even a liberal construction of Appellant's Complaint would be subject to dismissal pursuant to 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. Judge Early reasoned that a liberal reading of Appellant's Complaint makes it clear that he attempting to sue Respondents Aiken County, Arthurs, and Cooper for their roles in enforcing the animal control ordinances of the county of Aiken. Therefore, Judge Early found, with the admission made by Appellant in his own Complaint "that he was convicted by a jury, Appellant's allegations are clearly barred and must be dismissed." (R.).

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." Judge Early correctly found that Appellant appears to be attempting to sue Respondents Aiken County, Arthurs, and Cooper for that very reason, the "institution or prosecution" of the animal control citations at issue.

Additionally, as is stated above, Judge Early correctly found that Respondents 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. *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003).

Judge Early correctly found that Appellant's Complaint, at best, makes claims against those Respondents for actions and/or omissions taken in the course of their official duties as employees of the County of Aiken. Therefore, Judge Early was correct in dismissing Appellant's Complaint against those Respondents for that reason.

Lastly, Judge Early found that Appellant's Complaint was subject to dismissal pursuant to the doctrine of *res judicata* and/or collateral estoppel. Judge Early reasoned, correctly so, 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). As has been stated at length above, Appellant's central claim in his Complaint is that he believes he should not have been found guilty on the two animal control citations at issue, and therefore his Complaint is clearly an attempt at collaterally attacking those convictions. Therefore, Judge Early correctly ruled that Appellant's Complaint must be dismissed.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents respectfully request that this Court affirm the October 27, 2016 order of the Honorable Doyet A. Early, III, dismissing the Appellant's Complaint and granting summary judgment on behalf of the Respondents.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

DANIEL C. PLYLER
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for the Respondents

Columbia, South Carolina

April 11, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2016-002275

RECEIVED

APR 13 2017

SC Court of Appeals

Carlton E. Cantrell,Appellant,

v.

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

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that Respondents' Designation of Matter
to be Included in the Record on Appeal complies with Rule 209(b).

April 11, 2017



DANIEL C. PLYLER
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2016-002275

RECEIVED

APR 13 2017

SC Court of Appeals

Carlton E. Cantrell,Appellant,

v.

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

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys
for the Defendants, does hereby certify that service of the **Initial Brief of
Respondents, Designation of Matter, and Certificate of Compliance** in the
above-captioned action was made upon all parties 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 11th day of April, 2017, addressed as follows:

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


Shelley E. Stafford

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

Daniel C. Plyler
Joel S. Hughes
David A. DeMasters
Steven R. Spreuwers
Brandon M. Briggs
Jasmine D. Wyman

April 11, 2017

*Also Admitted In North Carolina
†Certified Mediator

Of Counsel
Kenneth P. Woodington

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Carlton E. Cantrell v. Aiken County, Aiken County Animal Control/Code Enforcement
Director Bobby Arthurs, Aiken County Animal Control/Code Enforcement Officer Ron
Cooper, Judge Donna L. Williamson
Appellate Case Number: 2016-002275
Date of Incident: August 26, 2015
Our File Number: 333.9800

RECEIVED

APR 13 2017

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find the original and one copy each of the **Initial Brief of Respondents**, **Designation of Matter**, **Certificate of Compliance**, and a **Certificate of Service** relative to the above matter. Please file the originals, returning the clocked copies to me in the enclosed return envelope.

By copy of this letter, I hereby serve a copy of the above documents upon the Appellant, Carlton E. Cantrell.

Please contact me with any concerns or questions.

Very truly yours,

DAVIDSON & LINDEMANN, P.A.


Daniel C. Plyler

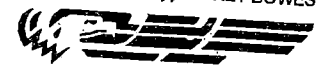
DCP:ses
Enclosures

cc: (w/Enclosures)

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



U.S. POSTAGE» PITNEY BOWES



ZIP 29204 \$ 002.66⁰
02 1W

0001400565 APR. 11. 2017.

DAVIDSON & LINDEMANN, P.A.

Attorneys and Counsellors at Law

Post Office Box 8568
Columbia, South Carolina 29202-8568

RECEIVED

APR 13 2017

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211