

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	(Jury Trial Demanded)
)	
Kenji C. Kilgore,)	
)	
Plaintiff,)	
)	
)	vs.
)	Order Dismissing Case
)	
Estate of Samuel Joe Dixon,)	C/A#: 2015-CP-04-
)	1605
Samuel E. Dixon, and)	
Fredda L. Dixon,)	
)	
Defendants)	
_____)	

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 SC Court of Appeals

On January 23, 2017, personally appeared before me Attorney Robert Davis on a Motion to Dismiss the Complaint.¹ Based on the evidence presented and applicable law, this Court dismisses this case with prejudice.

Procedural History

A hearing on a defense motion to dismiss was originally set for April 29, 2016. Defense counsel appeared for the hearing, but the motion was continued due to a notice issue with Plaintiff's attorney. The hearing was rescheduled for June 13, 2016. Plaintiff's attorney developed a conflict a few days before the June hearing. Another hearing was rescheduled for August 2016. Before the August hearing, this Court was notified of a settlement, and the motion was removed from the roster.

¹ In the alternative, a Motion to Compel Settlement was filed. Because this Court finds the Complaint should be dismissed as to all Defendants, the Motion to Compel Settlement was not reached.

On or about November 7, 2016, a Motion to Compel Settlement was filed as an alternative to the previous defense motion. The Motion alleges that on or about August 9, 2016, a settlement check, release, and stipulation of dismissal was sent to Plaintiff's attorney. None of the settlement documents or the settlement check were returned by Plaintiff. By letter to the Court, it was requested that both motions be scheduled for a hearing.

On December 22, 2016, the clerk of court scheduled a hearing on the pending motions and notice was given to all counsel of record. The hearing was set for January 23, 2017, at 11:00.

On January 19, 2017, Attorney Davis wrote the Court and all attorneys of record that he desired for the hearing in this case to go forward for January 23, 2017, but he was also scheduled for a jury trial in the Anderson Court of Common Pleas for a term also beginning on January 23, 2017. Attorney Davis advised that his case was second for trial, and he needed to appear for a roster meeting and jury qualification with Judge Hocker. Attorney Davis indicated that he would appear for the hearing in this case once he obtained permission from Judge Hocker following jury qualification.

On January 23, 2017, Attorney Davis appeared before me shortly before 11:00 for the hearing on this case. He had previously been present for the roster meeting and jury qualification before Judge Hocker. No attorneys appeared for Plaintiff. This Court delayed the hearing while counsel of record for Plaintiff were attempted to be contacted. After a delay and verifying with the clerk of court that Plaintiff's counsel were notified of the hearing, this Court moved forward with hearing.

Standard of Review

Pursuant to Rule 12(b)(6), SCRCP, a trial court must dismiss a claim when the pleadings,

taken in the light most favorable to the plaintiff, fail to allege facts to constitute a cause of action. See James F. Flanagan, South Carolina Civil Procedure 101 (3d. ed. 2010). A Rule 12(b)(6) motion tests the legal sufficiency of the allegations in the pleading. Id. “All well pleaded allegations are taken as true but not conclusions of law, and not necessarily inferences drawn by the plaintiff from the facts.” Id. at 102. Whether a duty exists as a necessary element in a negligence action is a question of law for the trial court. Skinner v. South Carolina Dept. of Trans., 383 S.C. 520, 523, 681 S.E.2d 871, 873 (2009).

Facts Alleged In the Complaint

In the Complaint, Plaintiff alleges:

1. Prior to July 2012, Plaintiff began living in a house at 240 Thompson Road, Starr, SC 29684 in Anderson County.
2. Samuel and Fredda Dixon owned the real estate that Plaintiff rented to live in.
3. Samuel and Fredda Dixon’s son Joe Dixon was Plaintiff’s roommate at the rented house.
4. On or about July 2, 2012, Joe Dixon shot Plaintiff inside the rented house by the criminal acts of a third party.
5. Joe Dixon intentionally shot Plaintiff.

Dismissal of Samuel and Fredda Dixon

Samuel E. Dixon and Fredda L. Dixon argue they owed no duty to Plaintiff for the alleged criminal act of a third party. I agree.

I. Samuel E. Dixon and Fredda L. Dixon Owed No Duty As Landlords.

South Carolina does not recognize a duty for landlords to protect tenants from criminal

activity. Cramer v. Balcor Property Mgmt., Inc., 312 S.C. 440, 441 S.E.2d 317 (1994).

In Cramer, the Decedent was murdered in her apartment by the criminal act of a third party. Decedent's Estate brought suit against Decedent's landlords arguing the landlords owed a duty to protect Decedent/Tenant from the criminal acts of a third party. The United States District Court for the District of South Carolina certified the following question to the South Carolina Supreme Court:

Does a landlord owe a duty to a tenant to provide security in and around a leased premises so as to protect the tenant from criminal activity of third parties?

Id. at 441, 441 S.E.2d at 317. Noting that a "landlord cannot be expected to protect [tenants] against the wiles of felony any more than the society can always protect them upon the common streets and highways leading to their residence or indeed in their home itself," the South Carolina Supreme Court failed to recognize such a duty. Id. at 443, 441 S.E.2d at 318.

Plaintiff, therefore, cannot make allegations against Samuel E. Dixon and Fredda L. Dixon that they owed any duty arising out the landlord tenant relationship based on the facts alleged in the Complaint. Id.

II. Samuel E. Dixon and Fredda L. Dixon Owed No Duty to Warn.

"South Carolina law does not recognize a general duty to warn of the dangerous propensity of others." Bishop v. South Carolina Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 82 (1998).

In Roe v. Bibby, 410 S.C. 287, 763 S.E.2d 645 (Ct.App. 2014), *cert. granted*, the mother of several minors, Roe, brought suit against Bibby, the wife of a man accused of molesting the minors. Bibby was aware that her husband had previously molested a minor, their daughter, in the

past. Despite this knowledge and her status as the wife of a child molester, the South Carolina Court of Appeals held that a mere familial relationship is not enough to create any duty to warn. Id. at 295-96; 763 S.E.2d at 649-50. For such a duty to exist, there must be an allegation and proof of the ability to monitor, supervise and control an individual's conduct that is created by statute or a commercial agreement coupled with a specific threat against the victim. Id.; see, e.g., Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) (assuming special relationship between psychiatrist and patient/injurer); Faile v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002) (finding special relationship between Department of Juvenile Justice and dangerous juvenile/injurer over whom it had custody per court order); Bishop v. South Carolina Dep't of Mental Health, 331 S.C. at 86, 502 S.E.2d at 81 (finding special relationship between Department of Mental Health and involuntarily-committed patient/injurer in its custody); Rogers v. S.C. Dep't of Parole & Cmty. Corr., et al., 320 S.C. 253, 464 S.E.2d 330 (1995) (assuming special relationship between state agencies charged with prisoner parole and prisoner/injurer who was being released from custody (but finding no specific threat)).

In this case, there exists no allegations that Samuel and Fredda Dixon had the ability to monitor, supervise and control another adult, Joe Dixon, or that any specific threats were made against Plaintiff. Accordingly, Samuel E. Dixon and Fredda L. Dixon are entitled to judgment as a matter of law. Id.

Dismissal of The Estate of Samuel Joe Dixon

This Court also finds that no action has been commenced against the Estate of Samuel Joe Dixon within the time required by law.

Samuel Joe Dixon died on July 7, 2012. An Estate was opened with Anderson County

Probate Court under case number 2012ES0400758. According to the Probate Court files, an affidavit of notice of creditors was published for the Estate of Samuel Joe Dixon in the News-Chronicle on August 1, 8, and 15, 2012. A final accounting for the Estate of Samuel Joe Dixon was signed on February 3, 2015 and the Estate closed. There is no evidence that Plaintiff ever presented a claim to the Estate of Samuel Joe Dixon pursuant to the times required by S.C. Code Ann. §§ 62-3-801 & 62-3-803. Furthermore, there is no evidence that any service took place on the Estate of Samuel Joe Dixon, which would properly commence an action, pursuant to Rule 4, SCRPC, or S.C. Code Ann. § 15-5-530.

Accordingly, the claims against the Estate of Samuel Joe Dixon are time barred.

IT IS THEREFORE ORDERED that this case is DISMISSED WITH PREJUDICE.



Anderson Common Pleas

Case Caption: Kenji C Kilgore VS Estate Of Samuel Joe Dixon , defendant, et al

Case Number: 2015CP0401605

Type: Order/Dismissal

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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