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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTERFIELD)

FOURTH JUDICIAL CIRCUIT

Case No. 2015-CP-13-645

2016 JUL 17 AM 9 18

James Long,

FAYE L. SELLERS
CLERK OF COURT

CHESTERFIELD COUNTY, S.C.
Plaintiff,

versus

Chesterfield County Sheriff's
Department and the Fourth Circuit
Solicitor's Office,

ORDER OF DISMISSAL OF DEFENDANT

A True Copy
CHESTERFIELD COUNTY
SHERIFF'S DEPARTMENT

Faye L. Sellers

RECEIVED

Defendants.

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

SEP 08 2017

SC Court of Appeals

This matter came before the Court at a regular term of Common Pleas non-jury court on June 21, 2016. The Defendant Chesterfield County Sheriff's Department (hereinafter "Sheriff") filed a Notice of Motion and Motion to Dismiss and to Strike on various grounds on December 4, 2015. Present at the hearing were counsel for the Plaintiff, Marcus Woodson, and counsel for Defendant Sheriff, C. Heath Ruffner.

The Plaintiff's Complaint allege causes of action against the Defendants regarding the failure to return the Plaintiff's personal property after the dismissal of charges in the Court of General Sessions (Case Nos. 2012-GS-13-0226 and 2012-GS-13-0227). At the hearing on this matter, the Defendant Sheriff sought dismissal on the basis of insufficiency of process and service of process pursuant to Rule 12(b)(2), (4) and (5), *SCRCP*, and on the basis that the Plaintiff's Complaint was time barred under the two year statute of limitations contained in S.C. Code Ann. § 15-78-110¹.

INSUFFICIENCY OF PROCESS/SERVICE OF PROCESS

In his Motion to Dismiss, the Defendant Sheriff sought the following relief: "Dismissal of the Plaintiff's Complaint on the basis of insufficiency of process and insufficiency of service of process

¹ The Defendant Sheriff also sought dismissal on other grounds and moved to strike punitive damages. The Court finds it is not necessary to address those arguments in light of the ruling as set forth herein.

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pursuant to Rule 12(b)(2), (4) and (5), *SCRCP*, to wit: *the Plaintiff has failed to personally serve the Sheriff, a state officer, as required by Rule 4(d)(5), SCRCP....*” (Emphasis added). Although not required to do so, Defendant Sheriff’s Motion to Dismiss specifically stated that the basis was the failure to personally serve the Sheriff as a state officer. That is, the Plaintiff was put on notice of the defect in service and was still within the 120 days after the filing of the Summons and Complaint such that the defect could have been cured by personal service of the Sheriff.

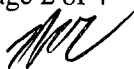
South Carolina law is well settled that sheriffs are state officials, and sheriff’s deputies are state agencies. *See Cone v. Nettles*, 308 S.C. 109, 112, 417 S.E.2d 523 (1992). Rule 4(d)(5), *SCRCP*, provides that service upon an officer or agency of the state must be effected “by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia.” The only proof of service contained in the Court’s file indicates that the Summons and Complaint were sent to the Sheriff via certified mail, return receipt requested on October 9, 2015. The Plaintiff admits that the Summons and Complaint were only sent to the Sheriff via certified mail, return receipt requested, but argues that this was proper service pursuant to Rule 4(d)(8), *SCRCP*. However, Rule 4(d)(8) provides that:

Service of a summons and complaint upon a defendant of *any class referred to in paragraph (1) or (3)* of this subdivision of this rule may be made by the Plaintiff or any person authorized to serve process pursuant to Rule 4(c), including a sheriff or his deputy, by registered or certified mail, return receipt requested and delivery restricted to the addressee.

(Emphasis added). As a state officer, the sheriff is not in any class referred to in paragraph 4(d)(1) or (3), but rather falls under 4(d)(5). *See also Maybin v. Northside Correctional Center*, 891 F.2d 72, 73 (4th Cir. 1989). Therefore, service via certified mail is not proper service of the Defendant Sheriff, and his Motion to Dismiss on that basis is granted.

STATUTE OF LIMITATIONS

Under S.C. Code Ann. § 15-78-110 of the South Carolina Tort Claims Act, “[a]ny action brought



pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered....” The Court takes judicial notice of the Verdict Form in General Sessions Case No. 2012-GS-13-0226 which indicates that the Plaintiff was acquitted on September 11, 2013, and the indictment in Case No.: 2012-GS-13-0227 which indicates that it was *nolle prossed* on September 11, 2013. The Defendant Sheriff contends that the statute of limitations began to run as of September 11, 2013, the date of the disposition of the Plaintiff’s criminal charges, but the Plaintiff argues that the statute of limitations did not begin to run until the Plaintiff knew or should have known that his items of personal property had been lost and would not be returned. In support of this argument and over the objection of Defendant’s counsel, the Plaintiff presented to the Court electronic mail correspondence (hereinafter “e-mail”) between Plaintiff’s counsel, who also represented the Plaintiff in the criminal proceedings, and the Assistant Solicitor that prosecuted the cases. The first of these e-mails is dated September 29, 2013 and indicates that the Assistant Solicitor has “the two phones from court” and that the Plaintiff “would need to call the sheriff’s office to get the rest.” The second e-mail is from Plaintiff’s counsel to the Assistant Solicitor on November 18, 2013 with a reply from the Assistant Solicitor on November 19, 2013 stating that the Plaintiff “has been to your county 3 times to retrieve the cell phones, camera and gun.” As a result of these e-mail exchanges, at the motion hearing, Plaintiff’s counsel argued that the statute of limitations did not begin to run until November 19, 2013.

Even if the Court accepts the Plaintiff’s argument that the statute of limitations did not begin to run until November 19, 2013, as set forth previously herein, the Plaintiff has yet to properly serve the Defendant Sheriff and, therefore, has failed to commence this action within the applicable two year statute of limitations. The Defendant Sheriff’s Motion to Dismiss based on the expiration of the statute of limitations is granted.

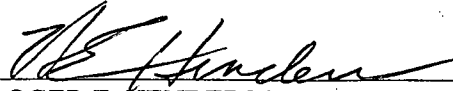
IT IS THEREFORE ORDERED:

That the Plaintiff’s Complaint as to the Defendant Sheriff is dismissed with prejudice for the



reasons set forth herein.

IT IS SO ORDERED.



ROGER E. HENDERSON
CIRCUIT COURT JUDGE
FOURTH JUDICIAL CIRCUIT

July 12, 2016
Chesterfield, South Carolina.