

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE NINTH JUDICIAL CIRCUIT  
COUNTY OF CHARLESTON ) CASE NO.: ~~2016~~-CP-10-2679  
 ) 2017

CARLOS COLEMAN,

Plaintiff,

v.

EDWARD L. KNISLEY, JR.,

Defendant

**ORDER GRANTING MOTION TO  
DISMISS PURSUANT TO SCRPC RULE  
12(B)(4), (5), & (6)**

**RECEIVED**

OCT 10 2017

SC Court of Appeals

BY  
JULIE A. STRONG  
CLERK OF COURT  
2017 SEP 28 PM 4:28

FILED

THIS MATTER came before me for a hearing on Defendant Edward L. Knisley, Jr.'s Motion to Dismiss in Lieu of Answer Pursuant to SCRPC Rule 12(b)(4), (5), and (6). Present in the Court were Plaintiff Carlos Coleman, pro se and Phillip Ferderigos, attorney for Edward L. Knisley, Jr.

After reviewing the pleading "Declaratory Judgment and Injunctive Relief," the Defendant's Motion to Dismiss in Lieu of Answer Pursuant to SCRPC Rules 12(b)(4), (b)(5), and (b)(6), Plaintiff's Motion in Opposition to Motion to Dismiss, and the court filings, the Court makes the following findings of fact and conclusions of law.

**A. BACKGROUND**

The pro se Plaintiff filed a Complaint captioned "Declaratory Judgement and Injunctive Relief" pursuant to SC Code Ann. § 30-4-10 seeking both a declaratory judgment and injunctive relief from the Circuit Court concerning a Freedom of Information Act (FOIA) request wherein the pro se Plaintiff alleges he "asked for the attorney name whom I was told the case was deferred to, bonding information, and bar card number." The Complaint lists "Edward L. Knisley, Jr.," an individual, as the only party Defendant. In response, Defendant filed a Motion to Dismiss Pursuant to 12(b)(4), (5) and (6), based, on several grounds, including 1) Plaintiff failed to establish proper

service of process on the individual Defendant pursuant to SCRPC Rule 4(d)(1) & (8),<sup>1</sup> which Plaintiff failed to do, and therefore the claim must be dismissed per SCRPC Rules (12)(b)(4) and (5); and 2) Plaintiff failed to properly set forth a claim against Defendant for which relief can be granted because Knisley is not a proper party under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et seq.* (“FOIA”).<sup>2</sup>

Based on the foregoing, the Court makes the following findings of fact and conclusions of law:

**B. Motion To Dismiss Pursuant To SCRPC Rule 12(b)(4) and (5) is hereby granted.**

The pro se litigant has filed a lawsuit against an individual, Edward L. Knisley, Jr., and attempted service upon other individuals (not the above-mentioned Defendant), as well as via certified mail; however, Plaintiff admits that the attempted service via certified mail was not in compliance SCRPC Rule 4(d)(1) or 4(d)(8), as the purported service letter/pleadings were not sent Registered or Certified Mail, Return Receipt Requested, and Delivery Restricted to the Addressee, and said documents were not signed for by the Defendant. Accordingly, pursuant to SCRPC Rule 4, the attempted service of the individual Defendant, Edward L. Knisley, Jr. was improper and not in compliance with the Rules of Civil Procedure and I hereby grant this Defendant’s 12(b)(4) and 12(b)(5) Motion to Dismiss on such basis.

**C. Motion to Dismiss Pursuant to SCRPC Rule 12(b)(6) is hereby granted.**

South Carolina Code Ann. § 30-4-10, *et al.*, referenced as the South Carolina’s “Freedom of Information Act” (FOIA), sets forth the statutory basis providing for a right to inspect or copy public records in accordance with South Carolina Code Ann. § 30-4-30 which provides, in relevant

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<sup>1</sup> Defendant Knisley is an individually named Defendant and not named in any representative or governmental capacity. SCRPC Rule 4(d)(1) sets forth proper service upon an individual.

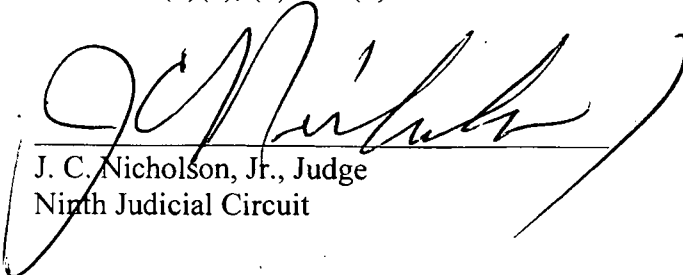
<sup>2</sup> More specifically, FOIA provides any person with the right to inspect or copy any public record of a *public body*, with exceptions. S.C. Code Ann. § 30-4-30(a)(emphasis added). Knisley is not a public body as defined by FOIA, and is not a proper party to an alleged FOIA violation claim.

part, “any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40 [matters exempt from disclosure] in accordance with the reasonable rules concerning time and place of access.” South Carolina Code Ann. § 30-4-40, entitled “Matters Exempt From Disclosure” sets forth 19 matters being exempt from disclosure, including (2) “information of a personal nature where the public disclosure thereof would unreasonable invasion of personal privacy” and (7) “correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.” The key operative provision of FOIA provides a right to inspect or copy any public record of a public body as defined by SC Code Ann. § 30-4-30(a).

I hereby find that this Defendant is not a “public body,” but rather is an individual, and the South Carolina’s FOIA statute does not provide for a private right of action in favor of the Plaintiff against an individual person. See generally, Sloan v Friends of Hunley, Inc., 369 S.C. 20 (2006) and Burton v York County Sheriff’s Dep’t, 358 S.C. 339 (Ct. App. 2004). Moreover, even assuming *arguendo* that the South Carolina FOIA statute did apply to individuals, I hereby find the exceptions set forth in § 30-4-40(2) and (7) concerning information of a personal nature and the work product/attorney-client privilege would exempt the requested information from being provided to the Plaintiff pursuant to such exemptions. Accordingly, on such grounds, I hereby grant this Defendant’s 12(b)(6) Motion to Dismiss.

Based on the above findings, legal conclusions and reasoning, I hereby grant Defendant’s Motion to Dismiss Pursuant to SCRCF Rule 12(b)(4), (5) and (6).

IT IS SO ORDERED!



J. C. Nicholson, Jr., Judge  
Ninth Judicial Circuit

Dated: 9/28/17  
Charleston, South Carolina