

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Joseph C. Sun,

PLAINTIFF,

v.

Bryan Norberg, Angela Tubbs, Joseph
Babkiewicz, Claudia Hebda, Jeffrey Dickson,
and Christian Gonzales,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-07-00943

ORDER

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OCT 30 2017

SC Court of Appeals

2015 DEC 28 PM 2:00
JERRI ANN ROSSEBAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

*W.P.C.
#1*

This matter came before the Court on the Defendants' Motion for Summary Judgment. The Defendants were represented by E. Mitchell Griffith of Griffith Sharp and Liipfert, LLC and the Plaintiff was represented by Kenneth Tootle of the Law Offices of Kenneth L. Tootle. The Defendants' motion for summary judgment as to Causes of Action One through Five of the amended complaint is granted.

The Plaintiff brought this action against the Town of Bluffton, the Bluffton Police Department, and the individual defendants named above pursuant to the S.C. Tort Claims Act. § 15-78-10 ("The Act"). These individuals are police officers and employees of the Town of Bluffton. As employees of the Town of Bluffton, they are subject to the Act. The original complaint was filed on April 21, 2014, and served on the Defendants. The Defendants filed a timely answer asserting various defenses and specifically, as an affirmative defense, raised the statute of limitations. The Town of Bluffton and Bluffton Police Department were represented by separate counsel, and they moved the Court to dismiss the complaint as being outside of the statute of limitations and untimely filed. On December 10,

2014, the Court entered an order dismissing the complaint finding "the incidents giving rise to the Plaintiff's cause of action all occurred outside of the two year period." [Judge Duker's Order filed December 10, 2014]

On April 28, 2015, the Plaintiff filed a motion to amend and add two causes of action namely Malicious Prosecution and a 42 USC §1983 claim. The Defendants filed their motion for Summary Judgment on August 28, 2015. Prior to the hearing on the motion for Summary Judgment, the Court granted the Plaintiff's motion to amend which added the two new causes of action. However, the allegations of the first five (5) causes of action mirrored the original complaint. The Parties agreed that the two new causes of action were not subject to the present motion as they had not been pleaded when the motion was filed.

WAL #2
In the complaint the Plaintiff makes various allegations of fact against the individual defendants. However, the complaint also alleges that each individual Defendant "was or at the time of the allegations contained herein was, an Officer of the Bluffton Police Department, duly employed by Bluffton Police Department and on active duty working for Bluffton Police Department, who committed tortuous acts against the Plaintiff in Beaufort County, South Carolina." (See Complaint ¶¶ 4-9). As employees of the Governmental entity and as pleaded, they are subject to the Act. The Act provides a strict statute of limitations period:

... any 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; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

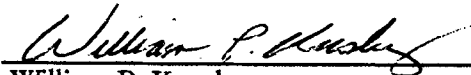
S.C. Code Ann. § 15-78-110:

As found by prior Order of the Court, the Plaintiff failed to file a verified claim, thus the two-year statute applies. The court's order of December 10, 2014, found that "The incidents giving rise to the Plaintiff's cause of action all occurred outside this two year period." Accordingly, based on the allegations in the complaint and the date of filing of the complaint, the suit was brought after the applicable statute of limitations expired on these causes of action. Additionally, the law of the case¹ is that the incidents are outside of the applicable statute of limitations.

THEREFORE, IT IS ORDERED that the Defendant is entitled to judgment as a matter of law on the first five causes of action - False Arrest/False imprisonment, Gross Negligence, Slander/Libel Per Se, Assault/Personal Injury and Civil Conspiracy - in the amended complaint and those causes of action are dismissed.

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AND IT IS SO ORDERED.


William P. Keesley
Presiding Circuit Judge

December 22, 2015

¹ Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. C.J.S. *Appeal & Error* § 991 (2008); see also *Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156 (2003) (holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become law of the case); *In re Morrison*, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal); *Cooper Tire & Rubber Co. v. Perry et al*, 261 S.C. 538, 201 S.E.2d 245 (1973) (holding that where a ruling on a demurrer to complaint is not appealed from, it becomes the law of the case); *Watkins v. Hodge*, 232 S.C. 245, 247-48, 101 S.E.2d 657, 658 (1958) (refusing to consider jurisdictional matter of underlying case where issue had been ruled upon and not challenged on appeal). *Judy v. Martin*, 381 S.C. 455, 458-59, 674 S.E.2d 151, 153 (2009).