

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM LAURENS COUNTY
Court of Common Pleas

MAY 17 2018

SC Court of Appeals

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2017CP3000008
Appellate Case No. 2017-001831

Mosi A. Bundu and Malcolm DJ Watts, Appellants,

v.

Ricky Chastain, as Laurens County Sheriff, Michael Gainey, Socrates D. Ledda, as Laurens City Police Chief, John Doe(s), Laurens County Sheriff's Department, Logan Kinipe, and Laurens City Police Department,..... Respondents.

**INITIAL BRIEF OF RESPONDENTS
RICKY CHASTAIN AS LAURENS COUNTY SHERIFF AND LAURENS COUNTY
SHERIFF'S DEPARTMENT**

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TABLE OF CONTENTS

<u>Contents</u>	<u>Page</u>
TABLE OF CASES, STATUTES AND OTHER AUTHORITIES	i
COUNTERSTATEMENT OF ISSUES ON APPEAL	1
COUNTERSTATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
STANDARD OF REVIEW	3
ARGUMENT	3
CONCLUSION	5

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

<u>Cases</u>	Page
<i>Ashley River Props. I, LLC v. Ashley River Props. II, LLC</i> , 374 S.C. 271, 278, 648 S.E.2d 295, 298 (Ct. App. 2007)	3
<i>Doe v. Marion</i> , 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)	3
<i>Plyler v. Burns</i> , 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007)	3

Statutes

S.C. Code Ann. § 15-78-10 et seq	2
--	---

Rules

Page

SCRCP 3(a).....	3, 4
SCRCP 4	2, 4, 5
SCRCP 5(d)	5
SCRCP 12(b)(2).....	5
SCRCP 12(b)(6)	2, 3

COUNTERSTATEMENT OF ISSUES ON APPEAL

Did the Circuit Court below commit a reversible error in granting Respondents Ricky Chastain as Sheriff of Laurens County and Laurens County Sheriff's Department's Motion to Dismiss pursuant to Rule 4 of the South Carolina Rules of Civil Procedure?

COUNTERSTATEMENT OF THE CASE

This is an action brought by two pro se Appellants under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 et seq., The appellants filed the Complaint in this action on or about January 4, 2017. However, the appellants never served an actual summons in connection with their Complaint and therefore, failed to properly initiate this civil action.

The within Respondents, Laurens County Sheriff's Department and Sheriff Chastain, filed an Answer denying the allegations of the Complaint and a Motion to Dismiss pursuant to Rules 4 and 12 of the South Carolina Rules of Civil Procedure. In addition, the remaining Respondents filed an Answer and Motion to Dismiss pursuant to Rule 12(b)(6).

A hearing took place on June 1, 2017 to address the motions and The Honorable Judge Addy presided. The appellants did not attend the hearing even though they received proper notice.

Judge Addy heard the arguments of counsel and dismissed the case pursuant to Rules 12(b)(6) and Rule 4 of the South Carolina Rules of Civil Procedure. The appellants filed a Motion to Vacate that ruling. A rehearing was granted and took place on August 1, 2017. Judge Addy presided over the rehearing and after hearing the appellants' argument, the motion was denied and the case was again dismissed based on appellants' failure to attach an actual summons to the Complaint.

STATEMENT OF FACTS

This case was not dismissed due to the alleged facts of the Complaint. The action was dismissed based on the appellants' failure to state a claim upon which relief can be granted and the failure to file and serve a proper summons.

STANDARD OF REVIEW

An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. *Id.* The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). Dismissal under Rule 12(b)(6) is improper if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory. *Doe*, 373 S.C. at 395, 645 S.E.2d at 247. Moreover, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Id.* at 395, 645 S.E. at 248. The trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law. *Ashley River Props. I, LLC v. Ashley River Props. II, LLC*, 374 S.C. 271, 278, 648 S.E.2d 295, 298 (Ct. App. 2007).

ARGUMENT

THE COURT PROPERLY CONCLUDED THAT THE APPELLANTS' COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO SERVE AN ACTUAL SUMMONS.

Rule 3(a) of the South Carolina Rules of Civil Procedure provides in pertinent

part that “[a] civil action is commenced when the summons and complaint are filed with the clerk of court if:

- (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or
- (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

Rule 4 of the South Carolina Rules of Civil Procedure provides:

- (a) **Summons: Issuance.** The summons shall be issued by plaintiff or plaintiff's attorney. Copies of the original summons shall be served upon each defendant.
- (b) **Same: Form.** The summons shall be signed by the plaintiff or his attorney, contain the name of the State and county, the name of the court, the file number of the action, and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.
- (c) **By Whom Served.** Service of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action. Service of all other process shall be made by the sheriff or his deputy or any other duly constituted law enforcement officer or by any person designated by the court who is not less than eighteen (18) years of age and not an attorney in or a party to the action, except that a subpoena may be served as provided in Rule 45.
- (d) **Summons: Personal Service.** The summons and complaint must be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Voluntary appearance by defendant is equivalent to personal service; and written notice of appearance by a party or his attorney shall be effective upon mailing, or may be served as provided in this rule...

Furthermore, Rule 5(d) of the South Carolina Rules of Civil Procedure provides in pertinent part that “[u]pon failure to serve the summons and complaint, the action may be

dismissed by the court on the court's own initiative or upon application of any party.” Without an actual summons, there is no jurisdiction over the person pursuant to Rule 12(b)(2).

On January 4, 2017, appellants filed a Complaint and Civil Action Cover Sheet. The record confirms that the Appellants never filed or served a summons as required by Rule 4, and particularly Rule 4(b). What Appellants filed and served was not a summons at all.

At the August 1, 2017 hearing, Judge Addy clearly informed Mr. Bundu what was deficient with respect to the filed action and even explained that the dismissal was without prejudice. Further, Judge Addy “strongly recommended” that Mr. Bundu retain an attorney. The Court even went on to say “I would suggest strongly if you chose to pursue this, because I’m not dismissing this with prejudiced, but if you’re choosing to pursue this, Mr. Bundu, you really, really, really need an attorney.” (Transcript dated August 1, 2017, p. 21.)

The Court did so to especially educate the Appellants because the date of the alleged occurrence referenced in the Complaint was January 5, 2015.


The Appellants chose to initiate this appeal and not to adhere to the urging of the Court to retain an attorney. As a result, the plaintiff has not timely or properly commenced any claim, and any claims the appellants have asserted are time barred.

CONCLUSION

In view of the arguments and authorities set forth above, Respondents Ricky Chastain as Laurens County Sheriff and Laurens County Sheriff’s Department respectfully request that the

judgment of the court below be affirmed.

Respectfully submitted,



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May 15, 2018
Greenville, South Carolina

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APPEAL FROM LAURENS COUNTY
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The Honorable Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2017-CP-30-00008
Appellate Case No. 2017-001831

Mosi A. Bundu and Malcolm DJ Watts, Appellants,

v.

Ricky Chastain, as Laurens County Sheriff, Michael Gainey, Socrates D. Ledda, as Laurens City Police Chief, John Doe(s), Laurens County Sheriff's Department, Logan Kinipe, and Laurens City Police Department,.....Respondents.

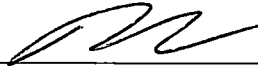
PROOF OF SERVICE

I certify that I have served the RESPONDENTS' INITIAL RESPONSE BRIEF AND DESIGNATION OF MATTER ON BEHALF OF RICKY CHASTAIN AS LAURENS COUNTY SHERIFF AND LAURENS COUNTY SHERIFF'S DEPARTMENT on the above named pro se Appellants and counsel for the remaining respondents by mailing to them, first-class postage pre-paid, at the following addresses:

Mosi Bundu
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May 15, 2018

The Honorable Jenny Abbott Kitchings
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RE: *Mosi A. Bundu and Malcolm DJ Watts v. Ricky Chastain, as Laurens County Sheriff, Michael Gainey, Socrates D. Ledda, as Laurens City Police Chief, John Doe(s), Laurens County Sheriff's Department, Logan Kinipe, and Laurens City Police Department*
Case Number: 2017-CP-30-00008
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Dear Ms. Kitchings:

I enclose herewith the original and one copy of the following on behalf of Respondents Ricky Chastain as Laurens County Sheriff and Laurens County Sheriff's Department:

1. Initial Brief;
2. Designation of Matter; and
3. Proof of Service.

By copy of this letter, I am forwarding a copy of said documents to the parties as reflected on the Proof of Service. Upon filing being effectuated, I respectfully request that you return a filed copy to this law firm in the envelope that I have provided.

Should you have any questions, please feel free to call our office.

With kind regards, I remain

Very truly yours,
CHAPMAN, HARTER & HARTER, P.A.

Carolyn C. Bradley
Paralegal to Russell W. Harter, Jr.

:ccb
Enclosures

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