



City of Greenville Police Officers K.A. Payne and Defendant Andrew League (“League”) responded to the call of the suspected ring theft. (Id. at 13.) Payne and League conducted a consensual search of Plaintiff’s pockets and clothing, but they did not find the missing ring. (Compl. at 17.) Plaintiff filed this Complaint in the Greenville County Court of Common Pleas on April 23, 2018, alleging a cause of action against Defendants for defamation. (Id. 20-25.) On May 21, 2018, Defendants City of Greenville and Defendant League filed an Answer to the Complaint and a Motion to Dismiss on the grounds of insufficiency of service of process, failure to state a claim and *res judicata*. On May 21, 2018, Defendant Healy filed a Motion to Dismiss on the grounds of failure to state a claim and insufficiency of service of process.

**Defendant City of Greenville and Defendant League are Dismissed for Res Judicata**

Plaintiff’s causes of action against the City of Greenville and League are dismissed pursuant to *res judicata*. This lawsuit is Plaintiff’s second bite at the apple. On June 1, 2016, Plaintiff filed suit under 28 U.S.C. § 1983 captioned *Gregory T. Christian v. City of Greenville, South Carolina, Greenville Police Officer K.A. Payne, Greenville Police Officer Andrew League*, Case No. 6:16-1757-TMC, in the United States District Court for the District of South Carolina, Greenville Division (the “Federal Lawsuit”). Plaintiff alleged in the Federal Lawsuit that on April 23, 2016 at a yard sale, he was improperly searched by officers of the City of Greenville Police Department in violation of the Fourth Amendment to the United States Constitution. On January 26, 2017, the United States District Court dismissed Plaintiff’s claims against City of Greenville with prejudice. (See Exhibit A to Defendants’ Motion to Dismiss.)<sup>1</sup> Subsequently, on February 28,

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<sup>1</sup> “When entertaining a motion to dismiss on the grounds of *res judicata*, a court may take judicial notice of facts from a prior judicial proceeding when the *res judicata* defense raises no disputed issue of fact.” *Andrews v. Daw*, 201 F.3d 521 n.1 (4th Cir. 2000). Plaintiff has not disputed the rulings in the Federal Case and has acknowledged the rulings at the hearing of July 17, 2018, so the Court takes judicial notice of the Orders.

2018, the United States District Court granted summary judgment for Defendant League in the Federal Lawsuit. (See Exhibit B to Defendants' City/League Mot. to Dismiss; Exhibit A to Defendants' City/League Memo in Supp.)

Plaintiff's Complaint against Defendants City and League is dismissed pursuant to *res judicata*. "Under the doctrine of *res judicata*, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which *might have been* raised in the former suit." S.C. Public Interest Found. v. Greenville County, 401 S.C. 377, 385, 737 S.E.2d 502, 506 (Ct. App. 2013) (quoting Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (emphasis added)). "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." RIM Assocs. v. Blackwell, 359 S.C. 170, 183, 597 S.E.2d 152, 159 (Ct. App. 2004). "To establish *res judicata*, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." Id. at 182, 597 S.E.2d at 159. "Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action." S.C. Public Interest Found. v. Greenville County, 401 S.C. at 386, 737 S.E.2d at 507. "Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues." Nelson v. OHG of S.C. Inc., 354 S.C. 290, 304, 580 S.E.2d 171, 178 (Ct. App. 2003).

The Court finds that Defendants City of Greenville and League establish each element of *res judicata*, warranting dismissal. First, the parties in this lawsuit (Plaintiff, City of Greenville, League) are identical to those in the Federal Lawsuit. Second, the judgments in this lawsuit were final, valid, and on the merits. The District Court granted the City of Greenville's motion to dismiss with prejudice and granted League's motion for summary judgment.

Last, the subject matter of the two lawsuits is identical. Plaintiff argues that he seeks a different cause of action pursuant to state law in this second lawsuit and is not barred. “Whether res judicata precludes a claim because the first and subsequent suits involve the same cause of action is not merely a matter of aligning identical causes of action or theories of liability; rather, the subject matter of the two suits must be the same.” Judy v. Judy, 383 S.C. 1, 8, 677 S.E.2d 213, 217 (Ct. App. 2009). “South Carolina courts use various tests in determining whether a claim should have been raised in a prior suit: 1) when there is identity of the subject matter in both cases; 2) where the cases involve the same primary right held by the plaintiff and one primary wrong committed by the defendant; 3) when there is the same evidence in both cases; and recently 4) when the claims arise out of the same transaction or occurrence.” Id. at 9, 677 S.E.2d at 217. Analysis under any of these tests leads to the conclusion that Plaintiff’s claims should or might have been raised in the Federal Lawsuit. This case and the Federal Lawsuit involve the same transaction or occurrence, the same evidence, and the same primary wrong committed by Defendants. Both cases revolve around the police officers’ actions, discussions with Plaintiff, and search of Plaintiff’s person at a yard sale.

Even “seeking a different remedy in the second suit for the same wrong does not alter the identical nature of the subjects of the two actions.” Judy v. Judy, 383 S.C. 1, 9, 677 S.E.2d 213, 218 (Ct. App. 2009). “For purposes of res judicata, cause of action is not the form of action in which a claim is asserted but, rather the cause *for* action, meaning the *underlying facts* combined with the law giving the party a right to a remedy of one form or another based thereon.” RIM Assocs. v. Blackwell, 359 S.C. 170, 184, 597 S.E.2d 152, 160 (Ct. App. 2004) (emphasis added).

**Defendant City of Greenville and Defendant League are Dismissed for Insufficiency of Service of Process**

Alternatively, Plaintiff's Complaint against the City and League are dismissed pursuant to Rule 12(b)(5) of the *South Carolina Rules of Civil Procedure* based on insufficiency of service of process, because service was not made in accordance with Rule 4 of the *South Carolina Rules of Civil Procedure*. Plaintiff conceded that service of process was insufficient both at the hearing of July 17, 2018 and in his Response to Defendant's Motion to Dismiss. (Pl's Resp. to City/League Mot. to Dismiss, 1). Specifically, Rule 4(d)(6) requires service on a local government to be made by delivering a copy of the summons and complaint to the chief executive officer or clerk. Plaintiff attempted to serve the summons and complaint on the Mayor, who is neither the chief executive officer nor the clerk of the City. See S.C. Code Ann 5-13-90 (in a council-manager form of government, "the manager shall be the chief executive officer..."); Greenville, S.C. Code of Ord. 2-1(a) (adopting council-manager form of government"). Further, Rule 4(d)(8) does not permit service by certified mail on a governmental entity. Therefore, service on Defendant City was insufficient. In fact, Plaintiff admits service was insufficient but argues it was "harmless error."

Service was also insufficient on League, because Plaintiff served the summons and complaint by mailing pleadings to League's place of employment in violation of Rule 4(d)(1) which requires service on an individual by delivering it personally or by leaving copies at his dwelling house or usual place of abode. Again, Plaintiff has conceded at the hearing and in responsive brief that service of process on Defendant League was insufficient. (Pl's Resp. to City/League Mot. to Dismiss, 2.)

**Defendant Healy is Dismissed for Insufficiency of Service of Process**

Plaintiff's Complaint against Healy is dismissed pursuant to Rule 12(b)(5) of the *South Carolina Rules of Civil Procedure* based on insufficiency of service of process, because service

was not made in accordance with Rule 4 of the *South Carolina Rules of Civil Procedure*. Plaintiff Christian conceded that service of process was insufficient both at the hearing of July 17, 2018 and in his Response to Defendant's Motion to Dismiss. (Pl's Resp. to Healy Mot. to Dismiss, 6.) Specifically, the Court finds that service of process on Defendant Healy did not comply with Rule 4(d)(8) of the South Carolina Rules of Civil Procedure as it was not mailed certified mail, return receipt requested, restricted delivery.

**Defendant Healy is Dismissed for Failure to State a Claim**

Plaintiff's Complaint against Healy is dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure* based on failure to state a claim. Of special note to the Court is Paragraph 24 of the Complaint, in which Plaintiff alleges that Defendant Healy did not defame him. Defamation is the sole cause of action. Plaintiff cannot maintain it against Healy when he alleges that she did not defame him.

In addition, the Complaint shows that Plaintiff invited the police to the scene. For that reason, Plaintiff cannot complain that Healy called them. South Carolina Jurisprudence, Vol. 20, Libel & Slander, p. 110. According to the facts alleged, the communication was privileged. Manley v. Manley, 312, S.C. 291, 353 S.E.2d 312 (Ct. App. 1987). The Complaint does not allege publication or fault, both of which are required elements of defamation, and is generally deficient with respect the required elements of that cause of action. Kendrick v. Citizens & Southern Nat'l Bank, 266 S.C. 450, 223 S.E.2d866 (1976); Erickson v. Jones Street Publishers, 368 S.C. 444, 629 S.E.2d 653 (2006).

**Plaintiff's Motion to Amend is Denied**

On July 3, 2018, Plaintiff filed an amended summons and complaint, which are identical to the original pleadings. However, more than thirty (30) days have passed since Defendants had

filed responsive pleadings. Therefore, Rule 15(a) of the *South Carolina Rules of Civil Procedure* states Plaintiff cannot file amended pleadings as a matter of right and is now required to have either consent of the parties or leave of court. Therefore, filing or attempted service of amended pleadings has no legal effect and are disregarded by the Court.

At the hearing on July 17, 2018, Plaintiff made an oral motion to amend his pleadings, and the Court denied that motion. The Court finds that any amended pleadings would be futile and would be prejudicial to Defendants. Specifically, nothing in amended pleadings could change the fact that any subsequent litigation arising out of this same transaction or occurrence is *res judicata*, and therefore, is barred as to Defendant City of Greenville and Defendant League. Also, for the reasons previously reviewed, it fails to state a claim.

**THEREFORE, IT IS ORDERED**

1. That Defendant City of Greenville and Defendant Andrew League's Motions to Dismiss for *res judicata* and pursuant to Rule 12(b)(5) for insufficiency of service are GRANTED.
2. That Defendant Healy's Motions to Dismiss pursuant to Rule 12(b)(5) for insufficiency of service and Rule 12(b)(6) for failure to state a claim are GRANTED.
3. That Plaintiff's oral motion to amend the pleadings is DENIED.
4. That this matter is dismissed with prejudice.

**IT IS SO ORDERED.**

By: \_\_\_\_\_  
Alex Kinlaw, Jr.  
Judge, Thirteenth Judicial Circuit

Greenville, South Carolina  
July \_\_\_\_\_, 2018



Greenville Common Pleas

**Case Caption:** Gregory T Christian vs. Anna Healy , defendant, et al  
**Case Number:** 2018CP2302513  
**Type:** Order/Dismissal

So Ordered

s/Alex Kinlaw, Jr., #2763

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