THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 09-CP-10-4264

Harold Simmons, Jr., ... Appellant,

v.

Charleston Family Court, Paul W. Garfinkel and
South Carolina Department of Social Services,
Pamela Brown, ... Respondents.

BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE GROUNDS OF ABSOLUTE JUDICIAL IMMUNITY AND DISMISSED THIS ACTION AGAINST RESPONDENT JUDGE PAUL W. GARFINKEL.

2. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE GROUNDS OF ABSOLUTE PROSECUTORIAL/QUASI JUDICIAL IMMUNITY AND DISMISSED THIS ACTION AGAINST RESPONDENT DSS ATTORNEY PAMELA BROWN.

STATEMENT OF THE CASE

Appellant Harold Simmons, Jr. commenced this *pro se* action against Family Court Judge Paul W. Garfinkel and Department of Social Services attorney Pamela Brown on July 10, 2009, for false imprisonment alleging, "On August 16, 2006 Harold Simmons Jr. Was wrong imprisons by Charleston County Judge Paul Garfinkel and South Carolina Department of Social Services Attorney Pam Brown." All of Judge Garfinkel's dealings with appellant were as the presiding judge over his cases for failure to pay court-ordered child support. Respondent Brown was the prosecuting attorney and represented DSS. Appellant complains that he was ordered to jail after being found in contempt of court for his failure to pay his child support.

The respondents pleaded the defenses of judicial immunity, the statute of limitations of S.C. Code Ann. § 15-78-110, and "judicial, or quasi-judicial" immunity under the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-60.

Respondents moved for summary judgment, supported by the affidavits of Judge Garfinkel and attorney Brown. Appellant did not present any timely contesting affidavits or evidence. Respondents' motion came before the Honorable Roger M. Young, presiding judge of the Ninth Judicial Circuit, on December 10, 2010. After hearing the presentations of the parties Judge Young ruled that the respondents were entitled to judicial and prosecutorial/quasi-judicial immunity, granted summary judgment, and dismissed this action.

Appellant served his Notice of Appeal on February 25, 2011, and this appeal followed.

ARGUMENTS

1. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE GROUNDS OF ABSOLUTE JUDICIAL IMMUNITY AND DISMISSED THIS ACTION AGAINST RESPONDENT JUDGE PAUL W. GARFINKEL.

Respondent Paul W. Garfinkel is a Family Court Judge of the Ninth Judicial Circuit. All of his dealings and contact with appellant, which precipitated this action, were through his position as presiding judge in the Family Court of Charleston County in his judicial position dealing with delinquent child support cases. In that capacity, he had jurisdiction of the cases and appellant under S.C. Code Ann. § 63-3-530, Jurisdiction in Domestic Matters. Judge Garfinkel avers that appellant was not falsely imprisoned. (R. pp. 28-31).

In his Amended Answer Judge Garfinkel pleaded the affirmative defense of judicial immunity. (R. p. 14). Judicial immunity is one of the basic common law tenets upon which our modern system of justice is built. At common law, since at least 1772, "Neither party, witness, counsel, jury or Judge can be put to answer, civilly or criminally, for words spoken in office." *King v . Skinner*, Lofft 55, 56, 98 Eng. Rep. 529, 530 (K.B. 1772), quoted in *Burns v. Reed*, 500 U.S. 478, 490 (1991).

Judicial immunity is not a defense, it is a complete immunity to being sued. Its existence is a legal issue. "Judicial immunity affords absolute immunity from suit." *Stump v. Sparkman*, 435 U.S. 349 (1978). "Judicial immunity is an absolute bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances." *O'Laughlin v. Windham*, 330 S.C. 379, 385, 498 S.E. 2d 689, 692 (1998). "Therefore, a finding of judicial immunity renders a complaint alleging judicial misconduct meritless." *McEachern v. Black*, 329 S.C. 642, 647, 496

S.E. 2d 659 (1998).

Judicial immunity is an absolute and complete bar to legal actions against judges except in three exceptions. First, no judicial immunity exists if a judge acts in the "clear absence of all jurisdiction." *Stump v. Sparkman,* 435 U.S. 349, 357 (1978). Secondly, judicial immunity extends only to judicial acts. *Forrester v. White*, 484 U.S. 219 (1988). The third limitation, which is of no concern in our present case, states judges cannot claim judicial immunity for suits seeking only prospective injunctive relief. *Pulliam v. Allen*, 466 U.S. 522, FN 2 (1984).

South Carolina is in accord with this. "[J]udges and other officials are not entitled to judicial immunity if: (1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only." *Faile v. South Carolina Dep't of Juvenile Justice*, 350 S.C. 315, 324, 566 S.E.2d 536, 541 (2002) (internal citations omitted).

As to the acts of which appellant complains, Judge Garfinkel had jurisdiction of both the case and party. He was performing a judicial act. Appellant is not seeking any prospective injunctive relief. Accordingly, respondent Judge Paul W. Garfinkel is entitled to absolute judicial immunity and the trial court's grant of summary judgment to him should be affirmed.

2. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE GROUNDS OF ABSOLUTE PROSECUTORIAL/QUASI JUDICIAL IMMUNITY AND DISMISSED THIS ACTION AGAINST RESPONDENT DSS ATTORNEY PAMELA BROWN.

At all times alleged in appellant's Complaint respondent Pamela Brown was a staff attorney with the S.C. Department of Social Services in the Charleston County offices. In all of her dealings and contacts with appellant she was prosecuting and handling delinquent child

support cases filed against him in the Charleston County Family Court which were assigned to her. All of the proceedings were in open court, judicial, procedurally proper, and intimately associated with the judicial phase of the Family Court processes. Attorney Brown avers that appellant was not falsely imprisoned. (R. pp. 25-26).

In her Amended Answer respondent Pamela Brown pleads the defense of prosecutorial and quasi-judicial immunity. (R. pp. 25-26).

The South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10 *et. seq.*, provides, "The governmental entity is not liable for a loss resulting from: (1) legislative, judicial, or quasi-judicial action or inaction." S.C. Code Ann. § 15-78-60(1).

Absolute prosecutorial immunity "is not grounded in any special 'esteem for those who perform these functions, and certainly not from a desire to shield abuses of office, but because any lesser degree of immunity could impair the judicial process itself.'" *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997)(quoting *Malley v. Briggs*, 475 U.S. 335, 342 (1986)). Prosecutors are entitled to absolute immunity from civil liability for conduct "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman,* 424 U.S. 409, 430 (1976). Absolute immunity is afforded prosecutors when acting "within the advocate's role." *Buckley v. Fitzsimmons*, 509 U.S. 259, 278 (1993).

"[T]he immunity which is extended to the judges is in like manner extended to the attorneys in the presentation of the client's case to the court or the jury." *Yaselli v. Goff,* 275 U.S. 503, 72 L.Ed. 395, 402 (1927), cited in *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496, 501 (S.C. App. 2001).

> The duties of a prosecutor fall into the exceptions enumerated by *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985) and § 15-78-60. The case law cited throughout this opinion clearly supports the proposition that a prosecutor's typical duties are "judicial" or "quasi-judicial" in nature. Accordingly, this Court finds a prosecutor, in his official capacity, is immune from a Tort Claims Act suit involving "judicial" or "quasi-judicial" acts, provided a defendant prosecutor raises the affirmative defense of sovereign immunity in his return. *See Tanner v. Florence City-County Bldg. Comm'n*, 333 S.C. 549, 511 S.E.2d 369 (Ct. App. 1999) (holding sovereign immunity is an affirmative defense that must be pled).

Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496, 508 (S.C. App. 2001).

Accordingly, for the reasons stated, based on applicable law, respondent Pamela Brown, acting in her capacity as a prosecuting attorney, is entitled to absolute prosecutorial/quasi judicial immunity, and the grant of summary judgment for her should be affirmed.

<u>ADDITIONAL SUSTAINING GROUND</u>

1. THIS ACTION WAS NOT TIMELY BROUGHT NOR FILED WITHIN THE APPLICABLE STATUTE OF LIMITATIONS PERIOD OF S.C. Code Ann. § 15-78-110, SOUTH CAROLINA TORT CLAIMS ACT, AND IS THUS TIME BARRED BY THAT PROVISION.

Appellant alleges in his Complaint filed July 10, 2009:

> Client Stated on May 8, 2006 he was arrested on a family court warrant on a rule to show cause. And on May 11, 2006 he was brought before Charleston County Judge Segars Andrews and South Carolina Department Of Social Services Attorney Pam Brown with also his workman Comp attorney Thomas White of Steinberg law frm. Who argue reasons why his client Harold Simmons Jr. should not be charged with contempt and to be release from jail. On May 11, 2006 Harold Simmons was released and was told to come back to court on August 16, 2006 for a review just to give a workman comp update report. On August 16, 2006 Harold Simmons Jr. Was wrongful imprisons by Charleston County Judge Paul Garfinkel and South Carolina Department of Social Services Attorney Pam Brown. This comes under the legal term "wrong", because of this Harold Simmons file this as follow:

* * * *

False Imprisonment Dates from-
<u>August 16, 2006 through out October 20, 2006 to February 16, 2007</u>

(R. pp. 6-7).

As emphasized above all of the acts of which appellant complains in this action, including "False Imprisonment Dates from- August 16, 2006 through out October 20, 2006 to February 16, 2007," occurred during the years 2006 and 2007, and ended on February 16, 2007.

Appellant did not file this action until July 10, 2009, more than two years after the last complained of event. The statute of limitations provision of the S.C. Tort Claims Act provides:

> **§ 15-78-110. Statute of limitations.**
>
> Except as provided for in Section 15-3-40, 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.

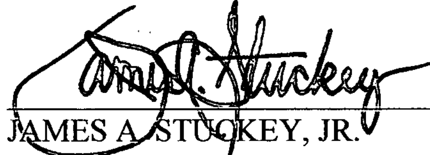
Accordingly, since the last act of which appellant complains occurred on February 16, 2007, and this action was not filed until July 10, 2009, more than two years after the complained of event, this case is additionally barred by the SCTCA statute of limitations provision set forth in S.C. Code Ann. § 15-78-110.

CONCLUSION

Based on the submitted Affidavits of respondents Judge Paul W. Garfinkel and DSS attorney Pamela Brown, which were uncontradicted by appellant by either affidavits or evidence, and for the reasons stated, in accordance with applicable law and precedent, the summary judgments granted by The Honorable Roger M. Young should be affirmed, and this appeal of the

pro se appellant should be dismissed.

Respectfully submitted,



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September 27, 2012

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CERTIFICATE OF COUNSEL

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I CERTIFY that this Brief of Respondents complies with Rule 211(b), SCACR.

JAMES A. STUCKEY

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I CERTIFY that I have served the Brief of Respondents on *pro se* Appellant Harold Simmons, Jr. by delivering a copy via U.S. Mail First-Class postage prepaid on the 27th day of September 27, 2012, addressed as follows:

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