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STATE OF SOUTH CAROLINA )	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON )	OR THE ELEVENTH JUDICIAL CIRCUIT
Donald Edward Baldauf, Jr., )	Civil Action No.: 2017-CP-32-01935
Plaintiff, )	
Vs. )	<b>PROPOSED ORDER GRANTING</b>
South Carolina Department of Social )	<b>SUMMARY JUDGMENT</b>
Services, )	
Defendant. )	

This matter came before the Court on Defendant South Carolina Department of Social Services' (SCDSS) Motion for Summary Judgment. A hearing was held on February 19, 2019. The Plaintiff, Donald E. Baldauf, Jr., appeared *pro se*. The Defendant was represented by Evan M. Gessner.

**FINDINGS OF FACT**

On June 3, 2015, SCDSS received a report that the Plaintiff in this action, Donald Edward Baldauf, Jr., was verbally abusive towards one of his children, to the point where the child self-harmed. Law enforcement had taken the child into emergency protective custody and, in accordance with S.C. Code sections 63-7-640, 63-7-660, and 63-7-700, SCDSS assumed legal custody of the child and placed the child with a relative. The child was again taken into emergency protective custody by law enforcement on June 18, 2015. The child was then placed into foster care.

A probable cause hearing was timely held in an action before the Family Court, designated as Civil Action number 2015-DR-32-1560X, wherein the Family Court Judge ruled that "[t]here was probable cause for law enforcement to take emergency protective custody and for the South Carolina Department of Social Services (SCDSS) to assume legal custody of the minor child." (*See id.*) The Court further ruled that SCDSS "was unable to make efforts to

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prevent the removal of the child" and that return of the child to the home would be contrary to the welfare of the child.

A merits hearing was held on September 8, 2015. The Plaintiff was present at this hearing, was represented by legal counsel, and as evidenced by the signature of his attorney on the corresponding Order, agreed with the findings. The Court again found that return of the minor child to the home would be contrary to the welfare of the minor child, and also found that "reasonable efforts had been made, and continue to be made, in a timely manner to reunify this family and to finalize a permanent plan for the child". The Court further found by a preponderance of the evidence, that Plaintiff physically neglected the minor child, although not willfully or recklessly. The Court's Order from the merits hearing also set forth the details of the treatment plan and warned that a failure to complete the treatment plan could result in the termination of parental rights.

Custody of the minor child was returned to Plaintiff by Consent Order on or about November 23, 2016. Thereafter, on December 14, 2016, a Judicial Review hearing was held and SCDSS was allowed to close its case.

Plaintiff commenced this action *pro se* on or about June 1, 2017 by filing a Summons and Complaint with this honorable Court. In his Complaint, Plaintiff alleges that SCDSS "did improperly, wrongfully, and illegally begin interfering with Plaintiff's custodial rights and did remove the daughter from his care, causing numerous severe injuries to Plaintiff and violating his individual rights and rights as a parent." (*See* Complaint, ¶ 4.) The Defendant timely answered the Complaint, and later moved for Summary Judgment, arguing that Plaintiff's claims were barred by the doctrine of collateral estoppel and the S.C. Tort Claims Act. Plaintiff argued against Summary Judgment, stating that during the course of the SCDSS investigation and prosecution of the family court action, Defendant had failed to take certain evidence into account

or provide this evidence to the Family Court judge. For the reasons stated herein, this Court grants Defendant's Motion for Summary Judgment.

### **STANDARD OF REVIEW**

Summary Judgment is appropriate and should be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See, e.g., Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 329, 673 S.E.2d 801, 802 (S.Ct. 2009); *Lanier Construction Company, Inc. v. Bailey & Yobs, Inc.*, 384 S.C. 275, 278, 681 S.E.2d 909, 911 (S.C. App. 2009). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Hancock*, 381 S.C. at 329-330, 673 S.E.2d at 802. "[W]hen only one reasonable inference, not just one inference, but one reasonable inference, can be deduced from the evidence, it becomes a question of law for the court, and not a question of fact for the jury." *Radcliffe v. Southern Aviation School*, 209 S.C. 411, 420, 40 S.E.2d 626, 630 (1946).

### **ANALYSIS**

#### **Collateral Estoppel**

Under the doctrine of collateral estoppel, also known as issue preclusion, when an issue has been actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action whether on the same or a different claim. *South Carolina Prop. and Cas. Ins. Guar. Assoc. v. Wal-Mart Stores, Inc.*, 403 S.E.2d 625, 627 (S.C. 1991). The doctrine shall be invoked when the precluded party had a full and fair opportunity to litigate the issue in the first action. *Id.* Only a party to a prior action or one in privity with a party to a prior

action can be precluded from relitigating an issue. *Ex parte Allstate Ins. Co.*, 528 S.E.2d 679, 681 (S.C. Ct. App. 2000).

Here, Plaintiff was a party to the prior Family Court action, designated as Civil Action Number 2015-DR-32-1560X, and he was represented by counsel. Plaintiff now seeks to relitigate issues from the Family Court action and introduce evidence and arguments that should have been introduced then. In fact, not only did Plaintiff have the means and the opportunity to adequately address his concerns in the Family Court action, but he actually consented to the orders of the Family Court. In other words, Plaintiff had a full and fair opportunity to litigate the issues outlined in his Complaint, and actually agreed with the Family Court in ratifying SCDSS's actions. The doctrine of collateral estoppel prevents exactly this type of relitigation of issues and, as a result, Plaintiff's complaint is barred and must be dismissed as a matter of law.

#### **S.C. Tort Claims Act**

Plaintiff's Complaint is based on SCDSS's alleged actions and inactions related to a Child Protective Services investigation and subsequent removal proceedings before the Family Court. Governmental entities, such as SCDSS, are immune from suit for any alleged loss resulting from the compliance (or non-compliance)<sup>1</sup> with any law or the institution and prosecution of any judicial proceedings. *See* S.C. Code § 15-78-60(4) and (23).

With the passage of the South Carolina Tort Claims Act, the South Carolina Legislature acknowledged that total immunity of the state was not desirable, and also recognized that the government should not be subjected to unlimited or unqualified liability. *See* S.C. Code Ann. § 15-78-20(a). The Tort Claims Act therefore provides for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided therein. *See* S.C. Code Ann. § 15-78-20(b). The provisions of the Tort Claims

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<sup>1</sup> Defendant asserts that it fully complied with all applicable laws, regulations, and policies. However, to the extent Plaintiff may allege that Defendant failed to comply with any law, regulation, or policy, Defendant is nevertheless entitled to immunity.

Act establishing limitations on and exemptions to liability must be liberally construed in favor of limiting the liability of the State. *See* S.C. Code Ann. § 15-78-20(f).

Several of the limitations on liability contained within the Tort Claims Act are applicable here. Of particular importance to this motion is S.C. Code Section 15-78-60(4), which states that a governmental entity is not liable for a loss resulting from the "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies." The South Carolina Supreme Court has ruled that "[t]he provisions of Section 15-78-60(4) are clear and unambiguous on their face, and are not subject to judicial interpretation." *Adkins v. Varn*, 312 S.C. 188, 192, 439 S.E.2d 822, 824 (1993).

To the extent Plaintiff claims he was harmed by SCDSS's compliance (or non-compliance) with the sections of the Children's Code which requires SCDSS to take physical and legal custody of children taken into emergency protective custody by law enforcement, conducting of an investigation, and other acts taken in accordance with Title 63, Chapter 7 of the South Carolina Children's Code - Child Protection and Permanency, SCDSS is immune from suit.

Additionally, a governmental entity is "not liable for a loss resulting from . . . [the] institution or prosecution of any judicial or administrative proceeding." S.C. Code Ann. § 15-78-60(23). The United States District Court for the District of South Carolina has held that 15-78-60(23) bars tort claims relating to the institution or prosecution of a judicial proceeding. *See McCoy v. City of Columbia*, 929 F.Supp.2d 541, 567 n. 10 (D.S.C. 2013); *see also Brown v. Dorchester County*, No. 2:16-cv-01311-MBS (D.S.C. Mar. 15, 2018) (Complaint dismissed pursuant to the Federal Rule 12(b)(6) when the complaint alleged that criminal charges were maintained against the plaintiff for many months despite the solicitor's knowledge that probable

cause was lacking); *Palmer v. Santanna*, No. 2:16-cv-03350-PMD-MGB ("While the Court recognizes that Plaintiffs experienced significant consequences as a result of Mr. Palmer's arrest and detention, the Defendants are nonetheless immune from suit for Ms. Palmer's loss of consortium claim.").

Consequently, SCDSS is entitled to immunity under the South Carolina Tort Claim Act for any tort allegedly arising out of the compliance or non-compliance of any law, regulation, or policy, or the institution and prosecution of judicial proceedings against Plaintiff and, as a result, this Court must grant SCDSS's Motion for Summary Judgment and dismiss Plaintiff's Complaint as a matter of law.

**CONCLUSION**

For the reasons stated herein, Defendant SCDSS's Motion for Summary Judgment is GRANTED and the Plaintiffs' Complaint against it is dismissed as a matter of law.

AND IT IS SO ORDERED.

\_\_\_\_\_  
The Honorable R. Keith Kelly  
Circuit Court Judge

Dated: \_\_\_\_\_, 2019  
\_\_\_\_\_, South Carolina



Lexington Common Pleas

**Case Caption:** Donald Edward Baldauf Jr VS Department of Social Services South Carolina  
**Case Number:** 2017CP3201935  
**Type:** Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165