

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

David T. Stokes,)
)
Plaintiff,)

v.)

Oconee County,)

Defendants.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-37-00320

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SC Court of Appeals

**ORDER DENYING PLAINTIFF'S
MOTION TO AMEND COMPLAINT**

On August 8, 2019, this matter came before the Court for a hearing on the Plaintiff's Motion to Amend Complaint. The Court previously denied the motion via a Form 4 Order entered on August 9, 2019. The Court now enters this formal order.

PROCEDURAL BACKGROUND

The Plaintiff originally alleged two causes of action: slander *per se* and wrongful termination in violation of public policy. Various motions were filed by the parties, including motions for summary judgment filed by each of the defendants. A hearing on numerous motions was held on May 28, 2019. On June 14, 2019, this Court issued a Form 4 Order, which dismissed the slander/defamation cause of action.¹ On June 4, 2019, the Plaintiff filed a Motion to Amend Complaint "to bring claims against Defendants Edda Cammick and Wayne McCall in their individual capacities." Following a hearing on August 8, 2019, the Court entered its Form 4 Order denying the Plaintiff's motion and now enters this formal Order in connection with the Plaintiff's Motion to Amend Complaint.

¹ The related formal Order was filed on September 19, 2019.

LEGAL ANALYSIS

Under Rule 15, SCRCP, a party may amend his pleading by leave of court and “leave shall be freely given when justice so requires and does not prejudice any other party.” *Staubes v. City of Folly Beach*, 339 S.C.406, 413, 529 S.E.2d 543, 546 (2000). “Although leave to amend should generally be ‘freely given,’ ... it may be denied where the proposed amendment would be futile.” *Skydive Myrtle Beach v. Horry County*, 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019) (quoting *Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App.2010)). The Court finds that the Plaintiff’s motion to amend would be futile and is, therefore, denied.

The Court has previously ruled, and the Plaintiff acknowledged, that the original Complaint expressly alleges that individual defendants’ purported conduct was in their official capacity. Although Plaintiff did not file or present a proposed Amended Complaint, he seeks “leave to amend his Complaint to bring claims against Edda Cammick and Wayne McCall, in their individual capacities.”² However, as previously found by this Court, the Plaintiff failed to present a scintilla of evidence that Cammick or McCall acted outside of their official capacities as members of the Oconee County Council. As a result thereof, Cammick and McCall cannot be sued in their individual capacities under §15-78-70, so adding them as individual defendants would be futile.

In addition, it would also be futile to add Cammick and/or McCall as individual defendants because they have an absolute privilege as to statements made by them in the course of their functions as members of the County Council. “A sound public policy has long recognized an absolute immunity of members of legislative bodies for acts in the performance of their duties. Accordingly, an absolute privilege is recognized as to

² See Plaintiff’s Notice of Motion and Motion to Amend Complaint, filed on June 4, 2019.

defamatory statements made by legislators in the course of their functions, if such statements are connected with, or relevant or material to, the matter under inquiry.” Richardson v. McGaill, 273 S.C. 142, 255 S.E.2d 341 (1979) See also Restatement (Second) of Torts § 590 (1977) (a member of a local legislative body is “absolutely privileged to publish defamatory matter concerning another in the performance of his legislative functions”). The Plaintiff acknowledges that the alleged defamation occurred at a County Council meeting. Based thereon, the members of Council, including Cammick and McCall, are absolutely immune from suit for the alleged defamation and adding them as individual defendants would be futile.

CONCLUSION

Cammick and McCall, as County Councilmembers, enjoy absolute immunity from the Plaintiff’s allegations of defamation. In addition, they cannot be sued in their individual capacities under S.C. Code Ann. §15-78-70. Therefore, adding claims against them would be futile and the Plaintiff’s Motion to Amend Complaint to do so is DENIED.

AND IT IS SO ORDERED.



Oconee Common Pleas

Case Caption: David T. Stokes VS Oconee County , defendant, et al
Case Number: 2017CP3700320
Type: Order/Other

S/R. LAWTON McINTOSH

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