

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Mitchell Shane Matthews, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 John McGill, Director; Ms. Versie J. )  
 Bellamy, Deputy Director; Ms. Holly )  
 Scaturro, Program Director; Ms. Cynthia )  
 Helff, Program Manager; Ms. Kimberly )  
 Pohlchuk, Program Coordinator; Ms. )  
 Sheila Lindsay, Resident Advisor; )  
 P.S.O. Sgt. Gunther; and Any Other )  
 Known or Unknown Actors of the State, )  
 whom are involved, in their Personal )  
 and Professional Capacity, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 Civil Action No. 2017-CP-40-01752

**ORDER OF DISMISSAL**

**RECEIVED**  
 NOV 05 2019  
 SC Court of Appeals

This matter is before this Court on the Motion for Dismiss filed by Defendants. A hearing was held on September 26, 2019. Present at the hearing was David A. DeMasters, Esquire, on behalf of Defendants. Also present at the hearing was the *pro se* Plaintiff Mitchell Shane Matthews. After full consideration of the arguments presented at the hearing and the applicable law, this Court grants Defendant's motion for the reasons set forth herein.

By way of procedural background, Plaintiff filed his Complaint in the Richland County Court of Common Pleas on March 23, 2017.<sup>1</sup> Following the filing of his Complaint, Plaintiff filed motions for default and damages, which were heard on February 12, 2018 at the Richland County

<sup>1</sup> Plaintiff filed an Amended Complaint on September 17, 2019, however that Amended Complaint was filed without consent of Defendants or leave of Court and is dismissed. Even if the Amended Complaint had been properly filed, it would still be subject to dismissal on the same grounds as the original Complaint that is addressed herein.

Courthouse. At that hearing, the presiding judge advised Plaintiff that he had not properly served his Complaint on Defendants, and he needed to do so before filing any motions. A Form 4 Order was issued on February 14, 2018 ruling that Plaintiff's motions could not be heard as Defendants have not yet been served. Subsequently, Plaintiff mailed a copy of his Complaint to the Office of General Counsel for the South Carolina Department of Mental Health that was received on October 10, 2018.

After becoming aware of the Complaint, counsel for Defendants made a special notice of appearance and filed a motion to dismiss and contended that this action should be dismissed. For reasons discussed below, this Court agrees with Defendants' position and dismisses Plaintiff's Complaint with prejudice.

### DISCUSSION

#### **I. PLAINTIFF'S ACTION IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS OF THE SOUTH CAROLINA TORT CLAIMS ACT**

The South Carolina Tort Claims Act ("SCTCA") provides the "exclusive civil remedy available for any tort committed by a governmental entity, its employees or its agents." S.C. Code Ann. § 15-78-20(b). Under the SCTCA, the statute of limitations for suit against a state agency or its employees is two years after the "date the loss was or should have been discovered." S.C. Code Ann. § 15-78-110. If the action is not brought within the required statute of limitations it is "forever barred." *Id.* A loss should be discovered when the "circumstances would put a person of common knowledge and experience on notice that some right has been invaded, or that some claim against another party might exist." *Joubert v. DSS*, 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000).

The basis of Plaintiff's Complaint is that Defendants allegedly searched his room and seized certain documents on October 17, 2014. Plaintiff filed his Complaint on March 23, 2017,

more than two years after his alleged date of loss, and was therefore filed well outside of the applicable two-year statute of limitations.

As such, the Plaintiff's Complaint is barred by the statute of limitations as set forth in the SCTCA and Defendants are entitled to be dismissed as a matter of law. While this is a sufficient basis in and of itself for dismissal of this action in its entirety, the Court also concludes that this action is subject to dismissal for the additional reasons set forth herein.

## II. COMPLAINT WAS NOT PROPERLY SERVED

"A court ordinarily obtains personal jurisdiction by the service of a summons." *Ex parte S.C. Dep't of Revenue*, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002) (citing *State v. Sanders*, 118 S.C. 498, 502, 110 S.E. 808, 810 (1920) ("The purpose of the summons is to acquire jurisdiction of the person of the defendant ....")); Rule 3(a), SCRCF ("A civil action is commenced by filing and service of a summons and complaint."). An action may be dismissed by the court upon failure to serve the summons and complaint. Rule 5 (d), SCRCF.

In this case, Plaintiff has failed to properly serve his Complaint or Amended Complaint upon any of Defendants.<sup>2</sup> The record reflects that Plaintiff only mailed his Complaint to the Office of the General Counsel for SCDMH and it was received on October 10, 2018. Thus, the Complaint was not served as required by Rules 4(d)(5) or 4(d)(8), nor is there evidence or proof of service in the court records indicating that anyone has been served as required by Rule 4(g), SCRCF.

Plaintiff has failed to properly commence this civil action under Rule 4, SCRCF, and his claims are dismissed.

---

<sup>2</sup> Plaintiff admitted at the hearing that he never served any of the named Defendants in this matter with either his Complaint or Amended Complaint as he believed that the Richland County Clerk of Court would serve Defendants on his behalf.

### III. S.C. CODE ANN. 15-3-20

In 2002, the South Carolina General Assembly enacted Section 15-3-20, which sets forth the general rule for the commencement of a civil action. Section 15-3-20(B) provides as follows:

- (B) A civil action is commenced when the summons and complaint are filed with the clerk of court *if actual service is accomplished within one hundred twenty days after filing.*

S.C. Code Ann. § 15-3-20(B). (Emphasis added). Section 15-3-20(B) requires that a civil action be served within 120 days of filing in order to be properly commenced.<sup>3</sup>

This Court concludes that actual service upon Defendants did not occur within 120 days of the filing of the Complaint. The Complaint was filed on March 23, 2017, and as a result, actual service needed to be accomplished by July 21, 2017. Plaintiff has not filed any proofs of service and did not furnish the Court with any proofs of service at the hearing. Plaintiff took the position that he only attempted to serve his Complaint via U.S. Mail after he was advised by the Court on February 22, 2018 that he was required to properly serve his Complaint. Clearly outside of the 120 day window provided by § 15-3-20(B).

As a result, this Court acknowledges that this civil action was never commenced. Because the action was never commenced, it must be dismissed. Even if Plaintiff ultimately effected service of process after July 21, 2017, that is of no legal effect or consequence. At that point, the civil action had not been commenced. There was not a properly commenced civil action to even be served. As an additional result of Plaintiff's failure to accomplish actual service within 120 days and properly commence a civil action, subject matter and personal

---

<sup>3</sup> "If a statute's language is plain, unambiguous, and conveys a clear meaning the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Buist v. Huggins*, 367 S.C. 268, 625 S.E.2d 636, 640 (2006).

jurisdiction have not properly attached, and as such this case is also dismissed under Rules 12(b)(1) and 12(b)(2), SCRC.P.

#### IV. S.C. CODE ANN. § 15-78-10

The SCTCA provides various immunities for employees of governmental actors and governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. *See Murphy v. Richland Mem'l Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct.App.1998). The SCTCA defines a “[g]overnmental entity” as “the State and its political subdivisions.” S.C.Code Ann. § 15-78-30(d). In addition, the SCTCA defines “employee” as “any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty.” S.C.Code Ann. § 15-78-30(c). “Scope of official duty or scope of state employment means (1) acting in and about the official business of a governmental entity and (2) performing official duties.” S.C.Code Ann. § 15-78-30(i).

Pursuant to Section 15-78-70(a), individuals who qualify as employees are not subject to suit as personal defendants for the alleged tort claims committed within the course and scope of their employment. Specifically, §15-78-70(a) provides in that “[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).” S.C.Code Ann. § 15-78-70(a). Subsection (b) declares: “Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct was not within

the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” S.C.Code Ann. § 15–78–70(b).

Importantly, the SCTCA is intended to cover those actions committed by an employee within the scope of the employee’s official duty. “The provisions of [the SCTCA] establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.” S.C.Code Ann. § 15–78–20(f); *see also Wade v. Berkeley County*, 330 S.C. 311, 498 S.E.2d 684 (Ct.App.1998) (noting that § 15–78–20(f) limits coverage to employees acting within the scope of official duty).

Plaintiff has named John McGill, Versie Bellamy, Holly Scaturro, Cynthia Helff, Kimberly Pohlchuk, Sheila Lindsay, and PSO Gunther as individual defendants in this case. The record reflects at the time of the incidents referenced in the Complaint, Defendants were employed by the South Carolina Department of Mental Health. It is evident from the record that Defendants were working within the course and scope of their official duties as employees with SCDMH. As a result, Defendants are entitled to be summarily dismissed from this action.

Plaintiff simply cannot successfully maintain a cause of action based on any of his allegations in this case, and therefore the Court finds that Defendants’ motion must be, and hereby is, **GRANTED**, and this matter is hereby **DISMISSED**.

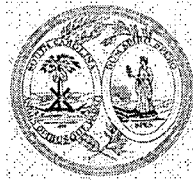
**AND IT IS SO ORDERED.**

---

Robert E. Hood  
Presiding Judge,  
Fifth Judicial Circuit

Columbia, South Carolina

\_\_\_\_\_, 2019



Richland Common Pleas

**Case Caption:** Mitchell Shane Matthews vs John McGill , defendant, et al  
**Case Number:** 2017CP4001752  
**Type:** Order/Dismissal

So Ordered

s/ R.E. Hood #2164