



At the hearing, the City and State raised as an initial matter the issue of the Plaintiff's amended complaint removing the State of South Carolina. In response to that, Mr. Trachsel clarified that he intended to dismiss the State of South Carolina from this suit with his amended complaint. Therefore, the court ordered by formal order dated April 11, 2019 that the State of South Carolina be dismissed with prejudice from this matter, and the only remaining Defendant would be the City of Hardeeville, as the City of Hardeeville Police Department is merely a department of the City of Hardeeville.

The Court then addressed at that first motion hearing the motion to dismiss of the City of Hardeeville pursuant to Rule 12(b)(6) of the SC Rules of Civil Procedure. The City argued that the Plaintiff has failed to state a claim upon which relief can be granted having failed to allege any facts to support a claim for a violation of constitutional rights against a municipality such as the City of Hardeeville. The Court reviewed the Amended Complaint and agreed finding that the Plaintiff failed to state a claim for violation of the Plaintiff's constitutional rights against the City of Hardeeville. Accordingly, the court dismissed the Plaintiff's complaint with leave to re-file within 30 days. The Plaintiff expressed concern at his ability to re-file this matter in 30 days given some personal issues. Counsel for the City consented to an additional 30 days for the Plaintiff to re-file his complaint.

As a result of this order, the State of SC was voluntarily dismissed with prejudice, and the Plaintiff had 60 days to amend the complaint to properly assert causes of action against the City of Hardeeville. Instead, the Plaintiff filed a complaint re-asserting claims against the State of South Carolina and stating additional allegations and claims for damage against the City, including allegations arising out of the conduct of the municipal judge.

The Defendants now assert that the causes of action against the State of South Carolina are barred as the unappealed dismissal with prejudice of the State is the law of the case. As to the City of Hardeeville, the Defendants contend the Plaintiff has yet again failed to correct his original pleading and has not properly plead his claims under 42 U.S.C. §1983 against the City, and has asserted claims for actions taken by the municipal court for which there is judicial immunity.

The claims against the State of South Carolina have been dismissed with prejudice by order of Judge McIntosh, no appeal having been taken, and such dismissal is now the law of the case. Dismissal of a case “without prejudice” means a plaintiff may reassert her complaint by curing defects that led to the dismissal. In contrast, dismissal of a complaint “with prejudice” is intended to bar relitigation of the same claim. Collins v. Sigmon, 299 S.C. 464, 467, 385 S.E.2d 835, 837 (1989). An unappealed ruling, right or wrong, is the law of the case. Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). Therefore, as the Plaintiff failed to appeal the dismissal without prejudice, it is law of the case, and the claims asserted in the Amended Complaint against the State of South Carolina are barred.

The Plaintiff has asserted claims against the City of Hardeeville pursuant to 42 U.S.C. §1983 and pursuant to the South Carolina Tort Claims Act. Claims against a municipality, such as the City of Hardeeville in this matter, brought under Section 1983 were authorized by the landmark decision of the Supreme Court in Monell v. Dept. of Social Services, 436 U.S. 658 [98 S.Ct. 2018, 56 L.Ed.2d 611] (1978). In Monell, the court held that when a municipal policy of some nature is the cause of unconstitutional actions taken by municipal employees, the municipality itself will be liable. Liability will exist

where the constitutional action 'implements or executes a policy, statement, ordinance, regulation or decision officially adopted and promulgated by municipal officers, or where the constitutional deprivation is visited pursuant to governmental custom even though such a custom has not received formal approval.' The court defined 'custom' with reference to Adickes v. S.H. Kress and Co., 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970), as 'persistent in wide spread discriminatory practices of officials.' A policy or custom need not be made by the city's lawmakers, but can be set by those whose edicts which may fairly be said to represent official policy. Todd v. Smith, 305 S.C. 227, 230-31, 407 S.E.2d 644, 646 (1991). The Plaintiff having had the opportunity to correct and amend his pleading, has failed to properly plead a cause of action against a municipal entity and has failed to plead facts to support such a cause of action. Based on the foregoing, I find the Plaintiff's cause of action for civil rights violations under 42 U.S.C. §1983 against the City of Hardeeville is dismissed pursuant to Rule 12, SCRPC.

As to the remaining state law tort claims, the Plaintiff has asserted claims for false arrest as well as claims for damage arising out of actions taken by the municipal court. These claims sound in tort and are brought pursuant to the SC Tort Claims Act. Under the SC Tort Claims Act, a governmental entity such as the City is entitled to immunity from suit for:

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;

SC Code Ann. §15-78-60.

Based on the foregoing, those claims premised on allegations made against the City that pertain to decisions and actions made and taken by the municipal court and the enforcement of its orders are barred and shall be dismissed.

Given the foregoing, it is the order of this Court that the claims against the State of South Carolina set forth in Plaintiff's Amended Complaint be fully and completely stricken and the State dismissed as a party in the this matter. Additionally, the claims against the City pursuant to 42 U.S.C. §1983 are dismissed as the Plaintiff has failed to allege facts sufficient to support such a claim. Lastly, those state law tort claims premised upon the actions of the municipal court are dismissed as S.C. Code Ann. §15-78-60 provides immunity from suit premised upon those allegations. The claim for false imprisonment under the SC Tort Claims Act is not dismissed by this Order.

**IT IS SO ORDERED!**

By: \_\_\_\_\_  
Honorable Perry M. Buckner, III

Walterboro, South Carolina

October \_\_\_\_\_, 2019.



Jasper Common Pleas

**Case Caption:** Kristopher William Trachsel VS Hardeeville Police Department ,  
defendant, et al  
**Case Number:** 2019CP2700036  
**Type:** Order/Other

It is so Ordered

s/ Perry M Buckner III 2122