

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Doyet A. Early, Circuit Court Judge

Case No. 2018-CP-40-02425

Appellate Case Number: 2019-000648

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SC Court of Appeals

Jefferson Davis, Jr., Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Education Credit for Exceptional Needs Children Fund, South Carolina Oversight Committee, South Carolina Department of Revenue, South Carolina Department of Labor, Licensing and Regulations, First Impressions, Inc. d/b/a Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40,

.....

Respondents.

INITIAL BRIEF OF RESPONDENTS RICK REAMES AND
SOUTH CAROLINA DEPARTMENT OF REVENUE

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COUNTER-STATEMENT OF THE ISSUES ON APPEAL

- I. Did the trial court properly dismiss Davis' claims against Rick Reames (“Reames”) and South Carolina Department of Revenue (“SCDOR”) because Davis failed to serve the Amended Complaint on them within the time frame required by the trial court's prior order?
- II. Was the dismissal of Davis' claims against Reames and SCDOR further supported by the additional sustaining ground that the Amended Complaint fails to state any factual allegations against them that would constitute a cause of action or injury to Davis and also fails to allege any basis upon which they could be liable for the alleged wrongdoing of others?
- III. Was the dismissal of Davis' claims against Reames and SCDOR further supported by the additional sustaining ground that the claims Davis attempts to assert are fatally deficient?
- IV. Was the dismissal of Davis' claims against Reames and SCDOR further supported by Davis' failure to properly serve them with the Amended Summons and Complaint?
- V. Was the dismissal of Davis' Amended Complaint as to Reames and SCDOR further supported by the additional sustaining ground that the claims Davis attempts to assert are barred by the applicable two year statute of limitations pursuant to South Carolina Code Ann. § 15-78-110?
- VI. Was the dismissal of Davis' Amended Complaint as to Reames further supported by the additional sustaining ground that Reames is entitled to employee immunity pursuant to South Carolina Code Ann. § 15-78-70 as to the claims Davis attempts to assert?
- VII. Did the trial court properly dismiss Davis' claims against Reames and SCDOR with prejudice because Davis failed to comply with a prior order of the court, failed to timely and sufficiently serve Reames and SCDOR, has already been given an opportunity to amend his Complaint and still failed to assert viable claims or to allege facts capable of supporting them, and has identified no new facts in his post-dismissal filings that could remedy his deficient claims?

STATEMENT OF THE CASE AND FACTS

In the interests of judicial economy and efficiency, Rick Reames (“Reames”) and South Carolina Department of Revenue (“SCDOR”) adopt and incorporate by reference the Statement of the Case and Statement of the Facts found in the brief of co-Respondents Cato Institute and Howard S. Rich filed on October 7, 2019. *See* Rule 208(b)(6), SCACR (“In cases involving more than one appellant or respondent, ... any party may adopt by reference all or any part of the

brief of another."). In supplementation of the procedural history previously noted, Reames and SCDOR filed their Motion to Dismiss in the underlying action on December 21, 2019, asserting that the Plaintiff's Amended Complaint should be dismissed on additional grounds including improper service pursuant to Rule 4, SCRCP, application of the two year statute of limitations pursuant to South Carolina Code Ann. § 15-78-110, and employee immunity pursuant to South Carolina Code Ann. § 15-78-70 on behalf of Reames. *See* Mot. To Dismiss on Behalf of Reames and SCDOR (R. ____).

STANDARD OF REVIEW

Reames and SCDOR adopt and incorporate by reference the Standard of Review as set forth in the brief of co-Respondents Cato Institute and Howard S. Rich. *See* Rule 208(b)(6), SCACR.

ARGUMENT

Reames and SCDOR further adopt and incorporate by reference the arguments and authorities addressed in the brief of co-Respondents Cato Institute and Howard S. Rich, as well as all arguments and authorities addressed by other co-Respondents, which are applicable to Reames and SCDOR. *See* Rule 208(b)(6), SCACR. Reames and SCDOR further supplement those arguments only insofar as asserting that this Court should affirm the dismissal of the claims against Reames and SCDOR on additional sustaining grounds. *See* Rule 220(c), SCACR (The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

Foremost, Davis' Amended Complaint fails to allege facts that could give rise to liability on behalf of Reames and SCDOR. Although Reames and SCDOR are referenced in several paragraphs of the forty-five (45) page Amended Complaint and rendition of "Factual Allegations" as set forth by Davis, none of the paragraphs identify any specific act or omission by Reames and SCDOR which are causally related to any alleged loss or damages claimed to

have been sustained by Davis. *See generally* Amended Complaint (R. ____). Further, the allegations asserted in the subject pleading do not support any cause of action as to Reames and SCDOR. Rather, the Amended Complaint only contains vague causes of action as to all named parties for alleged defamation, invasion of privacy, negligence, intentional infliction of emotional distress, tortious interference with prospective contractual relations, unfair trade practices, and conspiracy. *See Id.* (R. ____).

In the absence of such specific allegations in support of the causes of action asserted, no claim may lie against Reames or SCDOR, and dismissal of the claims was appropriate. *See generally* Brief of Cato Institute and Rich, Argument II.A; *see also Krych v. Hvass*, 83 F. App'x 854, 855 (8th Cir. 2003) (affirming dismissal of claims when the plaintiff "failed to state any claim whatsoever against Stender and Fitzloff-Meyer because he merely listed these individuals as defendants in his complaint and did not allege they were personally involved in the constitutional violations"); *Black v. Lane*, 22 F.3d 1395, 1401 n.8 (7th Cir. 1994) ("The magistrate judge properly dismissed Greer, the Chief Administrative Officer at Menard. Although Greer is named as a defendant, there are no factual allegations involving him other than that he was charged with the administration of Menard and is responsible for all persons at Menard. This is not sufficient personal involvement for the imposition of liability."); *Hunt v. Hedgepath*, C/A No. 8:18-cv-2684-TMC-JDA, 2018 WL 6031317, at *3 (D.S.C. Oct. 22, 2018) (recommending dismissal of *pro se* plaintiff's claims because "Plaintiff has made no specific allegations in the body of his Complaint against these two Defendants, which is required to state a claim" and "[i]n the absence of substantive allegations of wrongdoing against these named Defendants, the Court is unable to liberally construe any type of plausible cause of action arising from the Complaint against them."); *Dupont v. County of Jasper*, C/A No. 2008-CP-27-223, 2011 WL 12565700 (S.C. Ct. of Common Pleas, Jasper County, Hon. Carmen T. Mullen, June

14, 2011) (dismissing County from lawsuit because "the Complaint contains no substantive allegations against the County of Jasper").

Additionally, Davis' failure to properly serve Reames and SCDOR is a further sustaining ground warranting the dismissal of Davis' claims. Davis attempted to serve the Amended Complaint upon Reames and SCDOR by insufficient means pursuant to the applicable South Carolina Rules of Civil Procedure, and the proof of service as to Reames and SCDOR filed by Davis in the underlying record do not reflect valid service. *See* Mot. To Dismiss on Behalf of Reames and SCDOR (R. ___); Rule 4, SCRPC. As such, dismissal of Davis' claims as to Reames and SCDOR is also warranted based on improper and insufficient service of process.

Dismissal of Davis' claims as to Reames and SCDOR is likewise proper with regard to the application of the statute of limitations in this action. The South Carolina Tort Claims Act "constitutes the exclusive remedy for any tort committed by an employee of a governmental entity." South Carolina Code Ann. § 15-78-70(a). Pursuant to the South Carolina Tort Claims Act, 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." South Carolina 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 important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of [the] wrongdoer." *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994).

Although a multitude of allegations are generally set forth in the Amended Complaint, specific reference is made to the fact that Davis was purportedly "politically targeted" by

SCDOR in October 2014, and that Reames was at the time the Director of SCDOR. *See* Amended Complaint, para. 96 – 98 (R. ____). To the degree the Amended Complaint otherwise sets forth any specific, tortious act or omission alleged to have been made by Reames and SCDOR, the pleading clearly establishes that Davis was aware of a potential claim as of October 2014. Notwithstanding, the Amended Complaint against Reames and SCDOR was not filed until November 19, 2018, approximately four (4) years after Davis' acknowledged notice of the alleged acts or omissions. Therefore, dismissal of Davis' claims as to Reames and SCDOR is also warranted based on the applicable statute of limitations.

Finally, a further sustaining ground warranting the dismissal of Davis' claims exists as to the application of employee immunity on behalf of Reames pursuant to the South Carolina Tort Claims Act. When a civil action is asserted against a governmental entity, the plaintiff "shall name as a party defendant only the agency . . . for which the employee was acting." South Carolina Code Ann. § 15-78-70 (c). "In the event that the employee is individually named, the agency ... for which the employee was acting must be substituted as the party defendant." *Id.* Accordingly, "[t]he Act is intended to cover those actions committed by an employee within the scope of the employee's official duty." *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2004). Such torts must be brought against "the governmental entity rather than the individual governmental employee." *Id.*

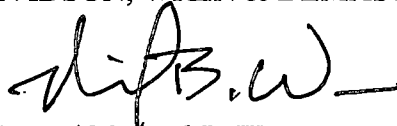
As previously noted, and as plead in the Amended Complaint, Reames was employed as Director of the South Carolina Department of Revenue at the time of the events as alleged by Davis in the underlying action. *See* Amended Complaint, para. 98 (R. ____). The Amended Complaint does not, however, set forth any evidence or allegation that Reames was acting outside the scope of his official duties or employment with the South Carolina Department of Revenue relevant to the allegations by Davis, and as such, Reames would be entitled to employee immunity

pursuant to South Carolina Code Ann. § 15-78-70 (c) as an additional sustaining ground for dismissal of Davis' claims.

CONCLUSION

For the foregoing reasons, Respondents Rick Reames and South Carolina Department of Revenue respectfully request this Court affirm the trial court's Order dismissing Mr. Davis' claims against them.

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Columbia, South Carolina
November 8, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Respondents.

PROOF OF SERVICE

The undersigned employee of Davidson, Wren & DeMasters, P.A., attorneys for the Respondents Rick Reames and South Carolina Department of Revenue, does hereby certify that

service of the **Initial Brief of Respondents Rick Reames and South Carolina Department of Revenue** in the above-captioned action was made upon all parties and counsel of record via email at the below listed email address on this 8th day of November, 2019.

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November 8, 2019

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Columbia, South Carolina 29201

RE: Jefferson Davis, Jr. v. Ellen Weaver, *et al.*
Civil Action Number: 2018-CP-40-02425
Appellate Case No. 2019-000648
Claim Number: C4358
Date of Incident:
Our File Number: 103.10474

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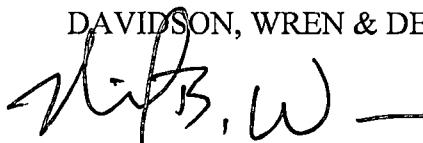
Dear Ms. Kitchings:

Please find enclosed for filing the originals and one copy each of the **Initial Brief of Respondents Rick Reames and South Carolina Department of Revenue, Respondents Rick Reames and South Carolina Department of Revenue's Designation of Matter to be Included in the Record on Appeal, and Proofs of Service**, in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope via courier.

By copy of this letter, I am herewith serving a copy of same via email to all parties and counsel of record. Thank you for your assistance in this matter.

Very truly yours,

DAVIDSON, WREN & DEMASTERS, P.A.



Michael B. Wren

MBW/ldrt
Enclosure

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
November 8, 2019
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