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SC Court of Appeals

ELECTRONICALLY FILED - 2020 Jan 10 10:26 AM - DILLON - COMMON PLEAS - CASE#2016CP1700217

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DILLON)
)
 Shawn Bethea,)
)
 Plaintiff,)
)
 vs.)
)
 Dillon County Sheriff's Department and)
 Dillon County,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 C/A NO.: 2016-CP-17-00217

Proposed

ORDER GRANTING SUMMARY JUDGMENT

This matter comes before the Court upon Motion for Summary Judgment filed by Defendants¹ on, or about, May 17, 2019, pursuant to Rule 56, SCRCP. A hearing on said motion was conducted by the undersigned at the Dillon County Courthouse on November 12, 2019. Present at the hearing was Daniel C. Plyler, Esq. on behalf of Defendants, and Tristan M. Shaffer, Esq., on behalf of Plaintiff.

Having considered the oral arguments presented and the entirety of the record before this Court, including all filings made by all parties, the Court finds that summary judgment must be granted to Defendants, as is set out in detail herein, and that the pending motion must be, and hereby is, **GRANTED**.

FACTUAL BACKGROUND

Plaintiff filed this matter on, or about April 21, 2016. In his Complaint Plaintiff asserts causes of action of false imprisonment, malicious prosecution and gross negligence. The incident in question began, on or about, February 11, 2013, when a Dillon County 911 dispatcher received

¹ Plaintiff has named both the Sheriff's Department and the County as defendants in this case. However, it is clear that the proper Defendant would be the Office of the Sheriff of Dillon County, and that the County itself is not a proper defendant to this case.

a call from a Helen Brewer stating that on February 10, 2013 two black males had come to her home looking to serve some papers on a Richard Delong at her residence. According to Ms. Brewer, one of the men, later determined to be the Plaintiff, Shawn Bethea, said he was with the Dillon County Sheriff's Office. A Deputy Rogers met with Ms. Brewer and prepared an incident report based on her complaint. On or about, February 13, 2013, based on Ms. Brewer's claims a warrant was issued for the arrest of Plaintiff for impersonation of a law enforcement officer. Subsequently, on or about February 19, 2013, Plaintiff turned himself in and was served with that arrest warrant. Plaintiff was released on a PR bond that same day. Furthermore, on May 23, 2013, the Grand Jury returned a True Bill indictment against Plaintiff with regards to the charges of impersonation of a law enforcement officer. The charges against Plaintiff were later *nolle prosequi*, on or about April 22, 2014, by the Solicitor's Office, with leave to refile.

Defendants deny Plaintiff has alleged any set of facts sufficient to establish a claim against them, as probable cause existed for Plaintiff's arrest and prosecution, and that Plaintiff has failed to establish that the charges at issue were dismissed in his favor and/or in a manner consistent with innocence. Additionally, Defendants assert that Plaintiff's claims for False Imprisonment and Gross Negligence are time-barred by the applicable statute of limitations, and that Plaintiff's claim of Malicious Prosecution is barred by the applicable portion of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(23).

STANDARD OF REVIEW

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); Rule 56(c), SCRPC. In ruling on a motion for summary judgment, the Court considers the pleadings, depositions, interrogatory answers, admissions, and affidavits

in determining whether there is a genuine issue of fact for trial. *Thomas v. Waters*, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994). In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

“Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006) (citing *Bloom v. Ravoira*, 339 S.C. 417, 425, 529 S.E.2d 710, 714 (2000)). A party opposing summary judgment may not rest upon the mere allegations of the pleadings but must instead set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (S.C. App. 1994).

DISCUSSION

Defendants argue for summary judgment on multiple grounds, and the Court finds that summary judgment is appropriate on all grounds raised by Defendants in their motion and at the hearing for same.

Plaintiff’s Malicious Prosecution Claim

With respects to Plaintiff’s claim of Malicious Prosecution, Defendants assert that they are immune from any such claim under the South Carolina Tort Claims Act (“SCTCA”), codified at S.C. Code Ann. §§ 15-78-10, *et seq.*, and that Plaintiff’s claim for malicious prosecution fails on the merits. To prevail on a claim for malicious prosecution, a plaintiff must show by a preponderance of the evidence: (1) the institution or continuation of original judicial proceedings; (2) by, or at the instance of, the defendant; (3) the termination of such proceedings in plaintiff’s

favor; (4) malice in instituting the proceedings; (5) lack of probable cause for the proceeding; and (6) the suffering of injury or damage as a result of the action or prosecution. *Law v. S.C. Dep't. of Corrections*, 368 S.C. 424, 435, 629 S.E.2d 642, 648 (2006).

Defendants assert, and the Court agrees, that they are immune with respects to Plaintiff's Malicious Prosecution claim pursuant to the SCTCA. Specifically, the plain meaning of Section 15-78-60(23) of the SCTCA negates the first element of any Malicious Prosecution claim against a government entity. The SCTCA provides in pertinent part that a governmental entity is not liable for any loss resulting from the "institution or prosecution of any judicial or administrative proceedings." S.C. Code Ann. § 15-78-60(23).

As a matter of public policy, the Legislature has determined that governmental entities within this state are only liable for their torts to the extent that sovereign immunity has been explicitly waived within the SCTCA. S.C. Code Ann. § 15-78-20(a). The remedy provided by SCTCA is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b)." *See* S.C. Code Ann. § 15-78-20(b). Section 15-78-60 of the SCTCA provides the exceptions to the waiver of sovereign immunity. As stated previously, Section 15-78-60(23) provides immunity based upon the "institution or prosecution of any judicial or administrative proceeding."

Furthermore, the SCTCA must be liberally construed in favor of limiting the liability of the State, its political subdivisions, and any government entities. S.C. Code Ann. § 15-78-20(f); *see also Plyler v. Burns*, 373 S.C. 637, 651, 647 S.E.2d 188, 196 (2007). The S.C. Supreme Court and the S.C. Court of Appeals have not directly interpreted Section 15-78-60(23) of the SCTCA. However, at least two U.S. District Court Judges in this state have. In *McCoy v. City of Columbia*, 929 F.Supp.2d541 (D.S.C. 2013), the federal district court determined that the plain language of

Section 15-78-60(23) precluded a Malicious Prosecution claim against a law enforcement agency. *McCoy*, 929 F. Supp. 2d at 567; *see also Brown v. Dorchester County South Carolina*, 2018 WL 1351510 (D.S.C. 2018)(solicitors immune from malicious prosecution claims under SCTCA). Additionally, at least two other states have drawn similar conclusions when analyzing similarly-worded statutes in their own jurisdictions. *See Asgari v. City of Los Angeles*, 15 Cal. 4th 744(Cal. 1997)(police officers not liable for instituting or prosecuting any judicial or administrative proceedings); *Livingston v. Consolidated City of Indianapolis*, 398 N.E.2d 1302, 1305 (Ind. Ct. App. 1979)(“it is clear [. . .] that the legislature fully intended to extend immunity to the [state] and other political subdivisions and their police officers in actions for malicious prosecution”).

It is axiomatic that the cardinal rule of statutory interpretation is to determine the intent of the Legislature. E.g., *Jones v. State Farm Mutual Automobile Insurance Co.*, 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct. App. 2005). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” *Id.* It is clear from the language of Section 15-78-60(23) of the SCTCA that immunity is extended to a political subdivision of the state and its law enforcement officers for initiating and/or prosecuting judicial proceedings, and therefore Defendants are immune as to Plaintiff’s Malicious Prosecution claim.

As a result, Defendants are entitled to summary judgment, and summary judgment is hereby **GRANTED** as to Plaintiff’s Malicious Prosecution claim based on the applicability of S.C. Code Ann. § 15-78-60(23).

Furthermore, even if Defendants were not immune from the Malicious Prosecution claim, the Court finds that Plaintiff has failed to establish his Malicious Prosecution claim, and Defendants would be entitled to summary judgment. The record before the Court clearly shows

that probable cause existed for the arrest and prosecution of Plaintiff, and that the dismissal of the charges at issue were not in a manner consistent with innocence. As a result, Plaintiff cannot establish two of the six elements of his Malicious Prosecution claim.

The Court finds that there have been two judicial findings of probable cause relating to the criminal charge that was instituted against Plaintiff. First, an arrest warrant was issued by a detached and neutral magistrate judge, which constitutes a judicial finding of probable cause. Second, the grand jury returned a True Bill Indictment against Plaintiff on the charge at issue. Our Courts have “long embraced the rule that a true bill indictment is prima facie evidence of probable cause....” *Law*, 368 S.C. at 436, 629 S.E.2d at 649. Therefore, the Court finds that there has been a judicial finding of probable cause, and Plaintiff’s claim for Malicious Prosecution must be dismissed. *Law*, 368 S.C. at 436, 629 S.E.2d at 649; *see also, McBride v. Sch. Dist. Of Greenville County*, 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010). “South Carolina has long embraced the rule that a true bill of indictment is prima facie evidence of probable cause in an action for malicious prosecution.” *Id.*; *see also, Kinton v. Mobile Home Industries, Inc.*, 274 S.C. 179, 262 S.E.2d 727 (1980).

Additionally, Plaintiff has failed to establish a favorable termination of the criminal charge at issue. While the charge against Plaintiff was ultimately *nolle prossed*, the record is clear that the indicted charge was dismissed with leave to refile. In order for a dismissal or similar disposition to satisfy the favorable termination requirement, there must be evidence that the charges were disposed of “for reasons which imply or are consistent with innocence.” *Law*, 368 S.C. at 435-36, 629 S.E.2d at 648-49. Plaintiff has produced no such evidence in this case, and a dismissal with leave to refile is not a termination consistent with innocence.

As a result, even if Defendants were not immune under the SCTCA with regards to

Plaintiff's claim of Malicious Prosecution, the Plaintiff's claim for Malicious Prosecution fails as a matter of law and therefore Defendants motion for summary judgment must be, and hereby is **GRANTED**.

False Imprisonment and Gross Negligence Claims

In his Complaint Plaintiff attempts to allege two separate claims, one for False Imprisonment and one for Gross Negligence. It is clear that Plaintiff's claim of Gross Negligence is centered entirely on the alleged activities of the employees of the Office of the Sheriff of Dillon County leading up to, and including, the arrest of Plaintiff. Additionally, it is undisputed that Plaintiff was arrested on February 19, 2013 when he turned himself into the Dillon County Sheriff's Department and was served with the arrest warrant in question. The Court notes that Plaintiff did not file the above-captioned action until April 21, 2016.

Defendant asserts that summary judgment is appropriate with regards to Plaintiff's False Imprisonment and Gross Negligence claims for multiple reasons. First, Defendants assert, and the Court agrees, that Plaintiff's claims of False Imprisonment and Gross Negligence are time-barred by the SCTCA's two-year statute of limitations. *See*, S.C. Code Ann. § 15-78-110. Second, Defendants assert, and the Court agrees, that Plaintiff has failed to establish his claims of False Imprisonment and Gross Negligence in this case, even if they were not time-barred, and therefore those claims must be dismissed.

As is stated above, the SCTCA is the sole and exclusive remedy for any torts claimed against governmental entities. The SCTCA includes a specific statute of limitations of two-years. Therefore, in order for Plaintiff's claims of False Imprisonment and Gross Negligence in this case to have been timely filed, Plaintiff must have filed this matter on, or before, February 19, 2015. Since Plaintiff did not file this matter until April 21, 2016, his claims of False Imprisonment and

Gross Negligence are clearly time-barred, and Defendant's motion for summary judgment must be, and hereby is, **GRANTED** on that ground.

However, the Court additionally finds that, even if those claims were not time-barred, Defendants would be entitled to summary judgment on the merits of said claims. In order to maintain a claim of False Imprisonment Plaintiff "must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful." *Law v. S.C. Dep't of Corr.*, 629 S.E.2d 642, 651 (2006). The Fourth Circuit has specifically held, and this Court agrees, that, "we recognized implicitly that a claim for false arrest may be considered only when no arrest warrant has been obtained." *Porterfield*, 156 F.3d at 568. Since Defendants had a facially valid arrest warrant for Plaintiff, the Court finds that any claim by Plaintiff relating to his arrest fails as a matter of law.

Furthermore, in *Baker v. McCollan*, 443 U.S. 137 (1979), the United States Supreme Court determined that the issuance of a facially valid warrant by a magistrate satisfies the probable cause standard. *See also, Clark v. Link*, 855 F.2d 156, 166 (4th Cir. 1988). In the instant case, a facially valid arrest warrant was obtained by Defendants from a neutral and detached Magistrate Judge, and therefore the Court finds that probable cause existed for the arrest of Plaintiff. In fact, nowhere in the Complaint does Plaintiff even challenge the validity of the arrest warrant at issue. Since Plaintiff's claim of Gross Negligence is essentially a restatement of his claim for False Imprisonment, the Court finds that Plaintiff has failed to establish this claim as well.

As a result, even if they were not time-barred, Plaintiff's claims of False Imprisonment and Gross Negligence fail as a matter of law, and Defendants motion for summary judgment must be, and hereby is, **GRANTED**.

ORDER

Wherefore, based upon the foregoing, **IT IS HEREBY ORDERED**, that Defendants' Motion for Summary Judgment is **GRANTED**, and this matter is hereby dismissed, with prejudice.

AND IT IS SO ORDERED.

The Honorable Roger E. Henderson
Presiding Judge for the
Fourth Judicial Circuit

January _____, 2020

_____, South Carolina



Dillon Common Pleas

Case Caption: Shawn Bethea VS Dillon County , defendant, et al
Case Number: 2016CP1700217
Type: Order/Summary Judgment

So Ordered

s/Roger E. Henderson 2754