

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
Tenth Judicial Circuit
Cordell J. Maddox, Jr., Circuit Court Judge

Civil Action No.: 2014-CP-04-01469
Appellate Case No.: 2017-002612

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SC Court of Appeals

Fayette Sherida Davenport, individually and
on behalf of the Estate of James Davenport.....Appellant

v.

Town of Iva, S.C.....Respondent

SUPPLEMENTAL RECORD ON APPEAL

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PLEADINGS and MOTIONS:

Amended Answer.....SR 1



<p>THE STATE OF SOUTH CAROLINA COUNTY OF ANDERSON</p>	<p>IN THE COURT OF COMMON PLEAS</p>
<p>FAYETTA SHERIDA DAVENPORT, individually and on behalf of THE ESTATE OF JAMES DAVENPORT,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE IVA (S.C.) POLICE DEPARTMENT,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">CIVIL CASE NO. 2014-CP-04-01469</p>

AMENDED ANSWER

COMES NOW the Town of Iva, South Carolina, as a matter of course pursuant to Rule 15(a), SCRPC, and files this Amended Answer respectfully answering the allegations of the Complaint for its Police Department (hereinafter "the Town") as follows:

FOR A FIRST DEFENSE

Pursuant to Rule 12(b)(5), service of process of the Complaint was insufficient in that it was not made in compliance with Rule 4(d), SCRPC.

FOR A SECOND DEFENSE

Plaintiff's Complaint is barred to the extent that it may have been asserted beyond applicable statutes of limitation or other deadlines.

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COMMON PLEAS AND
GENERAL SESSIONS

FOR A THIRD DEFENSE

To the extent applicable to this case, the Town of Iva has not and does not waive sovereign immunity for itself or its Police Department.

FOR A FOURTH DEFENSE

The Town is not liable for any alleged losses resulting from the exercise of discretion or judgment or performance of or alleged failure to perform any act or service within its discretion or judgment (S.C. Code Ann. Sec. 15-78-60(5)).

FOR A FIFTH DEFENSE

The Town is not responsible for any act or omission of any person other than an employee, including, but not limited to, the criminal actions of third persons (S.C. Code Ann. Sec. 15-78-60(20)).

FOR A SIXTH DEFENSE

Plaintiff should be estopped and/or precluded from asserting her claim and her Complaint should be dismissed because Plaintiff failed or refused to call 911, as she had been previously instructed to do by the responding officer, when her son contacted her again after the responding officer had told him not to have any further contact with Plaintiff.

FOR A SEVENTH DEFENSE

Plaintiff's conduct in failing or refusing to call 911 once her son contacted her again, as well as Plaintiff's conduct in not taking further precautions despite her apparently extensive knowledge of her son's violent propensity, constituted contributory negligence.

FOR AN EIGHTH DEFENSE

Plaintiff assumed the risk of harm when she chose not to call 911 when her son contacted her again after the responding officer had departed, as well as when she failed to take further precautions.

FOR A NINTH DEFENSE

Plaintiff's Complaint fails to state a cause of action for which relief can be granted.

FOR A TENTH DEFENSE

The Town cannot be held liable for injuries resulting from a public officer's alleged breach of a duty owed to the public as a whole under the public duty rule. Plaintiff has failed to properly plead facts or law indicating that any special or individual duty of care was owed to her outside of the duty owed to the public at large.

FOR AN ELEVENTH DEFENSE

All risk of harm and all harm suffered by Plaintiff was solely, directly, and proximately created and inflicted by Plaintiff's son, Robert Joe Frost.

FOR A TWELFTH DEFENSE

The Town acted in good faith and in a reasonable matter under the circumstances, and Plaintiff accepted and agreed with the officer's actions and decisions when he responded to her call regarding the phone message(s) from her son.

FOR A THIRTEENTH DEFENSE

Plaintiff has failed to join the sole responsible party, her son Robert Joe Frost, thereby rendering the litigation meaningless pursuant to Rule 12(b)(7), SCRCP. Accordingly, the Town moves this court for dismissal of the action in its entirety pursuant to Rules 12(b)(7) and 19, SCRCP.

FOR A FOURTEENTH DEFENSE

With respect to the specific allegations contained in the Complaint, the Town responds as follows:

1. Each allegation not specifically admitted below is hereby denied and strict proof demanded thereof.
2. With respect to the unnumbered introductory paragraph of the Complaint, the Town admits that Mrs. Davenport claims to be the personal representative of the Estate of James Davenport; the Town denies all other allegations contained in this paragraph.
3. The Town denies the allegations of paragraph 1 of the Complaint to the extent that the paragraph alleges that the Town or any of its officers committed any tort, caused any damage, or is responsible for any loss.
4. The Town denies the allegations of paragraph 2 of the Complaint to the extent that the paragraph alleges that the Town or any of its officers committed any tort, caused any damage, or is responsible for any loss.
5. The Town denies the allegations of paragraph 3 of the Complaint to the extent that the paragraph alleges that the Town or any of its officers committed any tort, caused any damage, or is responsible for any loss.

6. The Town denies the allegations of paragraph 4 of the Complaint to the extent that the paragraph alleges that the Town or any of its officers committed any tort, caused any damage, or is responsible for any loss.
7. The Town denies the allegations of paragraph 5 of the Complaint.
8. The Town denies the allegations of paragraph 6 of the Complaint to the extent that the paragraph alleges that the Town or any of its officers committed any tort, caused any damage, or is responsible for any loss.
9. With respect to the allegations contained in paragraph 7 of the Complaint, the Town admits that Plaintiff's son attacked her and her husband at their residence located at 920 East Front Street in the City of Iva in Anderson County, South Carolina. All other allegations contained in paragraph 7 of the Complaint are denied.
10. With respect to paragraph 8 of the Complaint, the Town incorporates by reference all responses above and below, as if set forth fully herein.
11. The Town admits the allegations contained within paragraph 9 of the Complaint, based on information and belief, as well as Plaintiff's representations.
12. The Town admits the allegations contained within paragraph 10 of the Complaint, based on information and belief.
13. With respect to the allegations contained in paragraph 11 of the Complaint, the Town is uncertain as to Plaintiff's intended meaning of the term "documented," and, thus, denies the allegations of this paragraph.

14. With respect to the allegations contained in paragraph 12 of the Complaint, the Town does not have firsthand knowledge as to the actions attributed to Plaintiff's son, but admits that Plaintiff represented to the Town that these actions occurred. Two officers met with the son and instructed him that he was not to return to Plaintiff's home; however, upon information and belief, Plaintiff and or her husband later invited and/or allowed the son to visit their home. All further allegations in paragraph 12 of the Complaint are denied.
15. With respect to paragraph 13 of the Complaint, the Town is without firsthand knowledge or information sufficient to admit or deny the truth of the allegations, and thus denies all allegations in this paragraph.
16. With respect to paragraph 14 of the Complaint, the Town is without firsthand knowledge or information sufficient to admit or deny the truth of the allegations, and thus denies all allegations in this paragraph.
17. With respect to paragraph 15 of the Complaint, the Town admits that on July 15, 2012, Plaintiff contacted law enforcement, told the responding officer that her son had called and made threatening remarks to her, and played a recording purportedly of her son for the responding officer. Further, the Town admits that the recording contained some statements that appeared to be threatening in nature, that the responding officer called the number provided by Plaintiff, and instructed the male that answered not to call or come to Plaintiff's home again. Finally, the Town admits that the responding officer told Plaintiff to call 911 "right away" if her son called.

at all or if he came by, that the responding officer asked Plaintiff whether she was okay with this, and that Plaintiff answered "yes." All other allegations in paragraph 15 of the Complaint are denied.

18. With respect to paragraph 16 of the Complaint, the Town does not have firsthand knowledge or information of the bulk of the allegations contained in this paragraph, and thus does not have sufficient information and belief to admit or deny the truth of such allegations. The Town admits that upon arrival, the responding officer observed that the side door to Plaintiff's home appeared to be "busted in," heard a female inside the home screaming for help, then observed Plaintiff's son on a motorcycle apparently trying to leave, drew his weapon and ordered Plaintiff's son to get off of the motorcycle and to lie face down on the ground. All other allegations in paragraph 16 are denied.
19. The Town denies the allegations contained in paragraph 17 of the Complaint.
20. With the respect to paragraph 18 of the Complaint, the Town is without information and belief as to the monetary value of the harm caused solely by Plaintiff's son, and thus denies all allegations in paragraph 18.
21. With respect to paragraph 19 of the Complaint, the Town incorporates by reference all responses above and below, as if set forth fully herein.
22. The Town denies the allegations contained in paragraph 20 of the Complaint.

23. The Town denies the allegations contained in paragraph 21 of the Complaint.
24. The Town denies the allegations contained in paragraph 22 of the Complaint.
25. The Town denies the allegations contained in paragraph 23 of the Complaint.
26. The Town denies the allegations contained in paragraph 24 of the Complaint.
27. The Town denies that Plaintiff is entitled to the relief sought in the Prayer for Relief, and further denies that Plaintiff is entitled to any other relief.

FOR A FIFTEENTH DEFENSE

The Town is not liable for any alleged losses resulting from adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies (S.C. Code Ann. Sec. 15-78-60(4)).

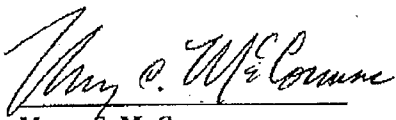
FOR A SIXTEENTH DEFENSE

The Town is not liable for any alleged losses resulting from responsibility or duty, or breach thereof, including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity (S.C. Code Ann. Sec. 15-78-60(25)).

WHEREFORE, having fully replied to Plaintiff's allegations, the Town prays that Plaintiff's Complaint and Prayer for Relief be dismissed in their entirety. The Town further prays that it be awarded all relief as may be just and proper.

This the 9th day of September 2014.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


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November 30, 2018