

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-27-00439

John F. Green, #278705,)
)
Plaintiff,)

v.)

South Carolina Department of)
Corrections,)
)
Defendant.)

ORD **RECEIVED**

JUN 03 2021

SC Court of Appeals

2020 DEC -7 AM 10:35

FILED
JASPER COUNTY
CLERK OF COURT

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	<i>Pro Se</i>
Defendant's Attorney:	Charlotte Hickman, Esq.
Date of Hearing:	November 5, 2020
Court Reporter:	Cathy Young

This matter came before the Court on November 5, 2020 via WebEx¹ for a hearing on Defendant South Carolina Department of Corrections² Motion to Dismiss, filed September 30, 2020. Present was John F. Green, appearing *pro se*, and Charlotte D. Hickman, Esq. on behalf of the Defendant. For the following reasons, the Defendant's Motion to Dismiss is heard and respectfully Granted.

PROCEDURAL HISTORY

Plaintiff filed his *pro se* suit on August 22, 2018 against the South Carolina Department of Corrections. Plaintiff alleges that on July 22, 2009, he met with Dr. Gary Kocher for an eye exam and was negligently diagnosed with glaucoma and additionally met with Dr. Blake on August 24, 2009, where the Plaintiff claims that Dr. Blake could not save the vision in his right eye and that without the Plaintiff's knowledge or consent, Dr. Blake performed surgery on him placing an eye implant in his left eye. Plaintiff also

¹ The parties waived venue and consented to the hearing being held via videoconference.

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TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: [Handwritten signature]
DATE: 12-12-20

alleges the Wardens and Administrators at McCormick Correctional Institution and Ridgeland Correctional Institution failed to provide the adequate medical care and correct diagnosis.²

The moving Defendant filed its Answer and Motion to Dismiss on June 15, 2020 pursuant to S.C. Code Ann. § 15-78-110 on the grounds that the Complaint was filed outside the applicable Statute of Limitations.

CONCLUSIONS OF LAW

The Plaintiff's Motion is made pursuant to Rule 12(b)(6), SCRPC for failure to state a cause of action and pursuant to Rule 12(b)(1), SCRPC for lack of subject matter jurisdiction due to the expiration of the statute of limitations. For the following reasons, the Plaintiff's Motion to Dismiss pursuant to Rule 12(b)(6), SCRPC is heard and respectfully Denied, and the Plaintiff's Motion to Dismiss pursuant to Rule 12(b)(1), SCRPC is heard and respectfully Granted.

A ruling on a motion to dismiss a claim pursuant to Rule 12(b)(6), SCRPC, must be based solely on the allegations set forth on the face of the complaint. United Educational Distributors, LLC, v. Educational Testing Service, 350 S.C. 7, 13, 564 S.E.2d 324, 328 (Ct. App. 2002). The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. Washington v. Lexington County Jail, 337 S.C. 400, 404, 523 S.E.2d 204, 206 (Ct. App. 1999) ; McCormick v. England, 328 S.C. 627, 632-33, 494 S.E.2d 431, 433 (Ct. App. 1997). "[A] judgment on the pleadings is considered to be a drastic

² The Court was advised by the Plaintiff that he had filed the identical Summons and Complaint on August 28, 2018 in McCormick County, bearing Case No.: 2018-CP-35-00073. The Plaintiff's McCormick case was dismissed by Order of the Clerk of Court on February 25, 2019 pursuant to Rule 5(d), SCRPC for failure to file proof of service.

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procedure by our courts.” Russell v. City of Columbia 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). Therefore, pleadings in a case should be construed liberally and the trial court and this Court must presume all well pled facts to be true so that substantial justice is done between the parties. See Justice v. Pantry, 330 S.C. 37, 42, 496 S.E.2d 871, 874 (Ct. App.1998).

“The cause of action should not be struck merely because the court doubts the plaintiff will prevail in the action.” McCormick, 328 S.C. at 633, 494 S.E.2d at 434. Further, “a novel issue should not be summarily decided on a 12 (b)(6) motion.” Keiger v. Citgo, Coastal Petroleum Inc., 326 S.C. 369, 373, 482 S.E.2d 792, 794 (Ct. App. 1997). Viewed in the light most favorable to the non-moving party, the facts alleged and inferences deducible therefrom may entitle Plaintiff to relief on a theory of the case. Accordingly, the Plaintiff’s Motion pursuant to Rule 12(b)(6), SCRPC is heard and respectfully Denied.

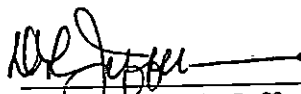
Pursuant to Rule 12(b)(1), SCRPC, the Court may dismiss a case for lack of jurisdiction due to the expiration of the statute of limitations. See Rule 12(b)(1), SCRPC. The Tort Claims Act has a general two-year Statute of Limitations. S.C. Code Ann. § 15-78-110. When a plaintiff files a statutorily defined claim within one year of the loss or injury, the statute of limitations is extended to three years. Id. S.C. Code Ann. §15-78-80 governs the filing, handling, and disposition of a verified claim. The Plaintiff did not file a verified claim. Under S.C. Code Ann. §15-78-120, when a Verified Claim has not been filed, the two-year statute of limitations applies. Here, under either the applicable two-year statute or the general three-year statute, the time for filing a claim has expired and the complaint is time barred. Viewing the Plaintiff’s Complaint in the light most

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favorable to the Plaintiff, the Plaintiff should have filed his Complaint on or before August 24, 2012. The Plaintiff filed his Complaint on August 22, 2018.


At the hearing, the Plaintiff conceded that he filed his Complaint outside of the statute of limitations, and consented to his case being dismissed on this basis. Accordingly, pursuant to S.C. Code Ann. §15-78-110 and with the consent of the Plaintiff, this case is hereby dismissed.

AND IT IS SO ORDERED.



Hon. Deadra L. Jefferson
Chief Administrative Judge
Fourteenth Judicial Circuit

November 24, 2020
Charleston, South Carolina
At Chambers

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LAW OFFICES OF CHRISTY L. SCOTT, LLC

ATTORNEYS AT LAW

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JUN 09 2021

SC Court of Appeals

December 9, 2020

Mr. John F. Green, #278705
Ridgeland Correctional Institution
5 Correctional Road
Ridgeland, SC 29936

Re: John F. Green, #278705 v. South Carolina Department of Corrections
C/A No.: 2018-CP-27-00439
Our File No.: 18-134

Dear Mr. Green:

Enclosed herewith and served upon you is a copy of the final signed Court Order dismissing your above referenced case.

Sincerely,

LAW OFFICES OF CHRISTY L. SCOTT, LLC



Christy L. Scott

CLS/cdh
Enclosures

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
John F. Green, #278705,)
Plaintiff,)
v.)
South Carolina Department of)
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Defendant.)

IN THE COURT OF COMMON PLEAS

C/A. NO.: 2018-CP-27-00439

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SC Court of Appeals

AFFIDAVIT OF SERVICE

PERSONALLY appeared before me the undersigned who, being duly sworn, on oath says:

1. That she is an employee in the Law Offices of Christy L. Scott, LLC, attorney for the Defendant herein;
2. That there is between Walterboro, South Carolina, and Ridgeland, South Carolina a regular communication by mail;
3. That on 9th day of December 2020, she emailed a true and correct copy of the foregoing memorandum in support of Defendant's Motion to Dismiss and Affidavit of Service to *Pro Se* Plaintiff herein by mailing it to Ridgeland Correctional Institution:


Mr. John F. Green, #278705
Ridgeland Correctional Institution
5 Correctional Road
Ridgeland, SC 29936

and depositing the same in the post office at Walterboro, South Carolina; and

4. That she is not a party to this action.

A handwritten signature in black ink, appearing to be "C. J. [unclear]", written over a horizontal line.

SWORN to before me this
9 day of December 2020

A handwritten signature in black ink, written over a horizontal line.

(L.S.)

Notary Public for South Carolina
My Commission Expires: Oct 5, 2030