

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE COURT OF COMMON PLEAS

CERTIFIED COPY

2012 NOV -7 AM 11:10

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP1800393

Lauren L Kyle

*Cheryl Beckler*  
CLERK OF COURT  
DORCHESTER COUNTY

Dorchester County  
Chapter SPCA

Frances R Willis SPCA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jason Alan Daigle 531 Savannah Hwy  
Charleston, SC 294077209

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk:  
\_\_\_\_\_  
\_\_\_\_\_

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Maite' Murphy  
Circuit Court Judge

3075  
Judge Code

11-1-12  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on 11-7-10212, and a copy mailed first class or placed in the appropriate attorney's box on 11-7-2012, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Cheryl Graham*  
Cheryl Graham - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA )

COUNTY OF DORCHESTER )

LAUREN L. KYLE, )

Plaintiff, )

v. )

DORCHESTER COUNTY CHAPTER )

SPCA, a/k/a FRANCES R. WILLIS )

SPCA, )

Defendants. )

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-18-393

ORDER

*Cheryl Chapman*  
CLERK OF COURT  
DORCHESTER COUNTY

2012 NOV -7 AM 10:10  
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This matter was before the Court on Motion of the Defendant, Dorchester County Chapter SPCA, a/k/a Frances R. Willis SPCA, to dismiss pursuant Rule 12(b)(1) of the South Carolina Rules of Civil Procedure for lack of subject matter jurisdiction. For the following reasons the Defendant's Motion to Dismiss is hereby GRANTED.

### FACTS

This case stems from a cat bite that the Plaintiff, Lauren Kyle, suffered while performing public service employment at the Dorchester County SPCA. The Plaintiff was arrested on or about June 16, 2006 in connection with the robbery of a home. On or about, January 25, 2007, Ms. Kyle pleaded to a lesser offense and received probation, a fine, and public service employment. Ms. Kyle performed her public service employment through the South Carolina Department of Probation, Parole and Pardon Services (the "Department"). Ms. Kyle performed the first portion of her public service employment at the Dorchester County Chapter SPCA.

On or about, November 20, 2007, while Ms. Kyle was performing her public service employment at the SPCA, she was bitten by a cat and suffered personal injuries. On or about December 29, 2009 Ms. Kyle filed a negligence law suit against the SPCA in the Court of Common Pleas for Dorchester County. Ms. Kyle never filed a workers' compensation claim for the injuries.

### STANDARD

The Court can consider evidence outside of the pleadings in a motion to dismiss for lack of jurisdiction. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). The existence of an employer-employee relationship is a jurisdictional question which the court must determine on its review of all evidence in the record. Posey v. Proper Mold & Engineering, Inc., 378 S.C. 210, 216, 661 S.E.2d 395, 398 (Ct. App. 2008). The proper procedure for raising lack of subject matter jurisdiction before trial is to file a motion to dismiss pursuant to Rule 12(b)(1) SCRPC. Id. at 217, 661 S.E.2d at 399. Additionally, the Court may consider affidavits on a question of law in a jurisdictional motion without converting the motion into one for summary judgment. Id. (citing Baird at 528, 511 S.E.2d at 74). The undisputed law of South Carolina is that when an employer and its employee have accepted the provisions of the Act, it shall exclude all other rights and remedies of such employee. S.C. Code Ann. § 42-1-540. Any doubts as to a worker's status should be resolved in favor of finding her covered by the Act. Posey, 378 S.C. at 218-19, 661 S.E.2d at 400.

## FINDINGS

The Court finds that the Plaintiff was a covered employee of the Department of Probation, Parole, and Pardon Services during her public service employment pursuant to § 42-1-505, S.C. Code Ann. The Department submitted an affidavit which evidences that it did elect to provide workers' compensation coverage to convicted persons, including the Plaintiff, under its supervision during their public service employment. The Court further finds that Ms. Kyle was a statutory employee of the Defendant during her public service employment pursuant to § 42-1-400 S.C. Code Ann. as interpreted by Bailey v. Owens, 298 S.C. 36, 39, 378 S.E.2d 63, 64 (Ct. App. 1989); Carter v. Florentine Corp., Inc. 310 S.C. 228, 230-1, 423 S.E.2d 112 (1992); Voss v. Ramco, Inc., 325 S.C. 560, 566, 482, S.E.2d 582, 585 (Ct. App. 1997); Olmstead v. Shakespeare, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003). The Court further finds that Ms. Kyle was not a true "volunteer" as contemplated by McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 400 S.E.2d 130 (1990) as she did receive consideration for her work, i.e. credit to satisfy her probationary sentence.

The Court further finds that there is a strong public policy issue at hand that to allow offenders to sue public service employers would chill their participation in the public service employment program thereby harming the criminal justice system in general. Ms. Kyle's injuries arose out of and in the course and scope of her public service employment and she is thereby bound by the exclusivity provision of the South Carolina Workers' Compensation Act.

Therefore, it is hereby

ORDERED that the Defendant's Motion to Dismiss is hereby GRANTED and the Plaintiff's Summons and Complaint are hereby DISMISSED pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

Nov. 1, 2012  
St. George, SC

Maite D. Murphy  
The Honorable Maite D. Murphy