

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CASE: 2021-CP-10-03740

AMENHOTEP MYERS,

Plaintiff,

v.

SOUTH CAROLINA DEPARTMENT OF  
MOTOR VEHICLES and KEVIN A.  
SHWEDO, in his official capacity as  
Executive Director of the South Carolina  
Department of Motor Vehicles,

Defendants.

ORDER

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**SC Court of Appeals**

This matter came before the court upon Defendants' Motion to Dismiss on February 11, 2022. Amenhotep Myers, Esquire, represented himself *pro se*, and Robin Jackson, Esquire represented the Department of Motor Vehicles (SCDMV or DMV) and Kevin Shwedo. After reviewing the briefs submitted and hearing oral arguments from both sides, for the reasons set forth herein, Defendants' Motion to Dismiss is granted.

In considering a SCRCP Rule 12(b)(6) motion to dismiss, the court construes the facts alleged in the Complaint in the non-moving party's favor to determine if such facts, as alleged, entitle him to relief under any theory. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E. 2d 245, 247-8 (2007). In considering a Rule 12(b)(6) motion, the trial court bases its ruling solely upon allegations set forth on the face of the Complaint. *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E. 2d 413 (S.C. App. 2003); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E. 2d 601 (1995). In this motion, the defendant solely relies on the allegations contained in the body of the Complaint and it is on this basis that they are entitled to have this matter dismissed.

This case is governed by the South Carolina Tort Claims Act (hereafter “Tort Claims Act” or “the Act”). The DMV is entitled to the immunities under the Tort Claims Act. The South Carolina Tort Claims Act, S.C. Code Ann. 15-78-10, *et. seq.* (Supp. 1997), which provides the exclusive remedy in tort against the DMV, is a limited waiver of governmental immunity, *Moore v. Florence Sch. Dist. No.1*, 314 S.C. 335, 444 S.E.2d 498 (1994). *See also* S.C. Code Ann. 15-78-20(b) (Supp. 1997); S.C. Code Ann. 15-78-40 (Supp. 1997).

#### **I. THE STATUTE OF LIMITATIONS.**

The allegations in this case are subject to the two-year statute of limitations as set forth in S.C. Code Ann. § 15-78-110 of the Act:

Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claiming first filed a claim pursuant to this chapter, then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

A three-year statute of limitations is only available to a party who files a “verified claim”. *See* S.C. Code Ann. § 15-78-80 (Supp. 2002); *Flateau*, 355 S.C. at 207; *see also Joubert v. South Carolina Dept’ of Soc. Servs.*, 341 S.C. 176, 534 S.E. 2d 1 (Ct. App. 2000) (if plaintiff files statutorily-defined claim within one year of loss or injury, statute of limitations is extended to three years). Here, the plaintiff did not file a statutorily compliant verified claim. As there is no evidence that Myers filed a verified claim, the three-year statute of limitations does not apply and the two-year statute of limitations is applicable. The DUI arrest and license suspension in this case occurred on July 7, 2018. The hearing on the Implied Consent suspension was requested on August 7, 2018. The letter at issue in this case was sent on August 13, 2018, and the hearing officer upheld the suspension on September 19, 2018. The allegations relating to Gross Negligence relate to the

letters sent to the plaintiff on August 13, 2018. The Plaintiff received one letter saying the suspension was deleted, and a second letter dated the same day, advising that the suspension was in effect and his request for hearing had been received. He also received copies of the SCDMV's motion to dismiss the Implied Consent hearing as the request was filed out of time (served August 14, 2018), the hearing officer's order to him to file a response (served on August 20, 2018 by e-mail), and the hearing officer's order dismissing the challenge to the implied consent suspension, which was served on him by e-mail on September 19, 2018.

Plaintiff admits he relied on the single letter dated August 13, 2018, that said the suspension was deleted but acknowledged that he received the two conflicting letters. It was at this time, that he was first on notice of an issue. He thereafter disregarded correspondence, motions and orders to the contrary.

The Complaint in this case was filed on August 16, 2021, over a year after the expiration of the two-year statute of limitations based on the conflicting letters and eleven months after receiving the hearing officer's order dismissing the implied consent challenge and upholding the license suspension. S.C. Code Ann. § 15-78-110. Additionally, in paragraph 28, plaintiff indicates that he was notified by Uber and Lyft on August 12, 2019 that his license was suspended. Even using this date as the date of notice, he has missed the two year statute of limitations by several days. Therefore, the claim for Gross Negligence is dismissed on the basis that the statute of limitations has expired.

Declaratory Judgment actions have a three year statute of limitations, but the plaintiff's request for declaratory relief is unclear at best. Plaintiff appears to be asking the court to declare that the right to operate a motor vehicle is a fundamental right under the due process clause of the 14<sup>th</sup> Amendment of the United States Constitution. If this is what the plaintiff is asking, his "right"

to operate a motor vehicle was suspended by virtue of his arrest for DUI and refusal to take a breathalyzer test on July 7, 2018. The statute of limitations for such an action would be July 7, 2021. This matter was not filed until August 16, 2021, more than a month after the expiration of the statute of limitations. Therefore, the request for declaratory judgment is dismissed based on the expiration of the statute of limitations.

## **II. SERVICE OF THE PLEADINGS.**

Plaintiff filed this Summons and Complaint on August 16, 2021. As the South Carolina Department of Motor Vehicles is a state agency, and Kevin Shwedo is a state officer, service must be accomplished on each pursuant to SCRCP Rule 4(d)(5), which requires, “*State Officer or Agency*. Upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia.” In this case, the summons and complaint were mailed to the Attorney General as evidenced by the filed Affidavit of Service. However, plaintiff has not shown any evidence that either Director Shwedo or the SCDMV were ever served. One hundred and twenty days from the date of filing, August 16, 2021, was December 14, 2021. Therefore, even if the Complaint was filed within the statute of limitations, the statute subsequently expired and the Complaint was not served within the 120 day time period required by SCRCP Rule 3(a)(2).

## **III. FAILURE TO STATE A CAUSE OF ACTION FOR WHICH RELIEF MAY BE GRANTED.**

Plaintiff filed a seventy two paragraph complaint which contains two causes of action – Gross Negligence and Declaratory Judgment. Neither of these claims entitles the plaintiff to any

relief. Plaintiff has not set forth any factual basis for how the DMV was grossly negligent. Instead he sets out facts regarding the history of driving in this country, and makes it clear that he willfully ignored multiple notices from the DMV about the status of his license.

In order to state a claim for declaratory relief, the plaintiff must clearly set forth what he is asking the court to declare. In this Complaint, the Plaintiff claims that the “right to operate a motor vehicle” is “like the right to marry, in that it can be regulated by the states”. (Compl. ¶53b). After that, he proceeds to include facts and information about the population of the state, the number of roadways in the United States, and automaker suppliers in South Carolina.

The plaintiff does not ask the court to declare the right to drive, but instead asserts that it is already a right. The declaratory judgment claim does not ask the court to do anything. Therefore, there is nothing for the Court to declare and therefore no cause of action upon which relief may be granted.

#### IV. KEVIN SHWEDO IS NOT A PROPER DEFENDANT FOR THE STATE LAW CAUSE OF ACTION LEVIED AGAINST HIM.

The plaintiff has brought a state law cause of action against moving defendants –Gross Negligence. The state law causes of action are necessarily brought pursuant to the South Carolina Tort Claims Act, S.C. Code §15-78-10 *et. seq.* Pursuant to the Tort Claims Act:

On or after January 1, 1989, a person when bringing an action against a governmental entity under the provisions of this chapter, **shall name as a party defendant only the agency or political subdivision for which the employee was acting ... in the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.**

S.C. Code Ann. § 15-78-70(c) (emphasis added); *see also Proveaux v. Med. Univ. of S.C.*, 326 S.C. 28, 482 S.E.2d 774 (1997) (granting summary judgment to hospital employee based on his being immune from suit under S.C. Code Ann. § 15-78-70(c)).

At all times relevant to the allegations in the Complaint, Kevin Shwedo was an individual acting in his capacity as the Executive Director of the Department of Motor Vehicles. In that capacity, he is an employee of the Department of Motor Vehicles. Therefore, Kevin Shwedo is not a proper defendant and should be dismissed from the state law causes of action, and the DMV (who is already named in these causes of action)—as “the agency or political subdivision for which the employee was acting”—should be substituted as the party defendant pursuant to S.C. Code Ann. § 15-78-70(c). To the extent that Shwedo, as the agency head would be a proper party defendant, he is not a proper party along with the DMV, as that would risk a double recovery on any such causes of action and therefore, Shwedo is hereby dismissed.

IT IS THEREFORE ORDERED THAT,

-Kevin Schwedo is dismissed as an improper party;

-The Complaint is dismissed on the basis that the plaintiff failed to file within the relevant statute of limitations and failed to properly serve the defendants;

-An additional grounds for dismissing the Complaint is that it fails to state a claim for which relief may be granted;

-All causes of action and all parties are dismissed and this matter is hereby dismissed.

AND IT IS SO ORDERED!



Charleston Common Pleas

**Case Caption:** Amenhotep Myers VS DMV South Carolina , defendant, et al

**Case Number:** 2021CP1003740

**Type:** Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134