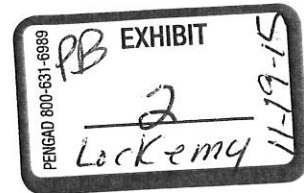


ADDENDUM TO PERSONAL DATA QUESTIONNAIRE QUESTION #35

BY

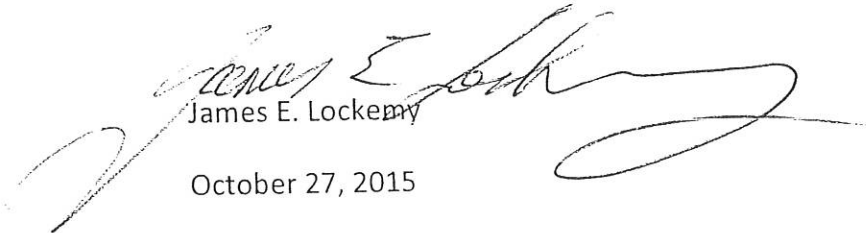
JAMES E. LOCKEMY



I would like to amend my answer to Question 35 of my Personal Data Questionnaire submitted earlier this year in regard to my reelection as Judge, Seat 9, South Carolina Court of Appeals. It came to my attention after I completed the questionnaire that I had omitted a lawsuit filed by a prison inmate on May 28, 2010. He had been indicted and later convicted in connection with his dogs killing a young boy in Dillon County, South Carolina. I was not involved in that trial but was petitioned by Dillon County and the Sheriff to sign an Order authorizing that the dogs be put down. I signed the Order. I was sued by the prison inmate, Bentley Collins, for doing this along with the County and the Veterinarian who actually injected the dogs with a lethal substance.

The case was originally filed in Richland County as Bentley Collins vs. County of Dillon, et.al., case # 2010CP4003585. I was represented by Samuel Arthur of the South Carolina Bar. My attorney moved for dismissal of the suit as it related to me on the basis of judicial immunity. At the same time a motion to change venue to Dillon County was filed. The Circuit Court, Honorable George C. James, Jr., presiding, ordered that I be dismissed from the suit based on judicial immunity on January 14, 2011. I have attached the Order for the Commission's review. The Court ordered the remainder of the case which did not include me to be transferred to Dillon County. Therefore, case # 2011CP1700027 which reflects the new case number in Dillon County, although it contains my name does not include me since I had previously been dismissed.

I hope this explains the oversight in leaving out this case from question #35. I am not sure why I had forgotten this case but since I did not testify, was not issued any interrogatories or subpoenas and really had very little to do with the process of the case, it slipped my memory. I sincerely apologize for this oversight. The entire case was later dismissed in its entirety by the Circuit Court in Dillon County by Order dated March 9, 2015.


James E. Lockemy

October 27, 2015

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP4003585

Bentley #333047 Collins
Plaintiff

vs.

County of Dillon
Defendant

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:

RICHLAND COUNTY
FILED
JAN 4 AM 11:24
JENNIFER W. MORRIS
C. C. P. & S.

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; Statement of Judgment by the Court:

Motion to dismiss Judge Locking granted. Mr. Arthur to prepare Order.

Dated at Columbia, South Carolina, this 6 day of Jan, 2010.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this 14 day of Jan, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Bentley #333047 Collins
Bentley #333047 Collins

Samuel F. Arthur III
David Leon Morrison
Kassi B. Sandifer

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]

Clerk of Court

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP4003585

Bentley #333047 Collins

vs.

County of Dillon

Plaintiff

Defendant

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), SCRCP;
 - Rule 41(a)
 - SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other:
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(j) SCRCP;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____

RICHLAND COUNTY
 FILED
 2010 JAN 4 PM 11:24
 JENNETTE W. BRIDGES
 CLERK OF COURT

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; Statement of Judgment by the Court:

Motion to transfer venue granted (to Dillon County). Ms. Sandifer to prepare order.

Dated at Columbia, South Carolina, this 6 day of Jan, 2010.

[Signature]
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this 14 day of Jan, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Bentley #333047 Collins
Bentley #333047 Collins

Samuel F. Arthur III
David Leon Morrison
Kassi B. Sandifer

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. Bridges

Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2010-CP-40-3585

Bentley Collins,)
)
Plaintiff,)

vs.)

County of Dillon; Honorable James)
Lockemy; and Dr. Robert Hooker,)
Veterinarian,)
)
Defendants.)

**ORDER GRANTING
MOTION TO DISMISS**

RICHLAND COUNTY
FILED
2011 JAN 14 PM 12:58
JEANETTE W. MORRIS
C.C.P. & G.S.

This matter comes before the court for disposition of Defendant The Honorable James Lockemy's Motion to Dismiss. A hearing of said Motion and multiple other motions related to the above-captioned civil action was conducted by this court on January 6, 2011. However, this Order specifically addresses Defendant Lockemy's Motion to Dismiss only and the other motions addressed during the January 6, 2011 hearing have been or will be disposed of by separate orders.

Appearing at the hearing on January 6, 2011 on behalf of the movant, Defendant Lockemy, was Samuel F. Arthur, III, Esquire. Plaintiff appeared *Pro Se* and all remaining Defendants were represented by Ms. Kassi Sandifer, Esquire. However, the only parties involved in this particular Motion were the moving Defendant Lockemy and Plaintiff.

For reasons more fully set forth below, this court finds that Defendant Lockemy's Motion to Dismiss should be granted.

BACKGROUND

This civil action arises from the court ordered destruction of multiple dogs owned by Plaintiff subsequent to seizure by Dillon County law enforcement in connection with an attack of a child that resulted in the child's death and criminal charges against Plaintiff. Plaintiff's Complaint alleges that on or about November 5, 2006, Judge Lockemy issued an order for the

SCANNED

destruction of the dogs. Plaintiff's Complaint further alleges that Judge Lockemy's act of issuing said order constitutes gross negligence, violated existing statute, and violated Plaintiff's due process rights.

On June 17, 2010, Defendant Lockemy filed a Motion to Dismiss, asserting that Plaintiff has failed to timely file and serve this action within the limitations period set forth in the *South Carolina Tort Claims Act* at SC Code § 15-78-100 and that Defendant Lockemy is entitled to, and asserts, the common law doctrine of judicial immunity as a total bar to this civil action. While Defendant Lockemy maintains the position that Plaintiff's Complaint was not timely filed and served, the focus of this memorandum of law is on Defendant Lockemy's assertion of the common law doctrine of judicial immunity as a complete bar to this action.

DISCUSSION

Judicial immunity has been defined as an "absolute bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances." *O'Laughlin v. Windham*, 330 S.C. 379, 385, 498 S.E.2d 689, 692 (Ct.App.1998) *reh'g denied* (Apr. 1998), *cert. denied* (Feb. 1999). When applicable, judicial immunity offers expansive protection. "A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors." *McEachern v. Black*, 329 S.C. 642, 649, 496 S.E.2d 659, 663 (Ct.App.1998) *reh'g denied* (Mar. 1998), *cert. denied* (Nov. 1998).

The *O'Laughlin* Court recognized that judicial immunity is not limitless. 330 S.C. at 385, 498 S.E.2d at 692. In that case, the Court of Appeals of South Carolina discussed the relevant law from the Supreme Court of the United States as it applies to immunity for judges. *O'Laughlin* lists three exceptions to judicial immunity.

First, no judicial immunity exists if the judge acts in the "clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 357, 98 S.Ct. 1099, 1105, 55 L.Ed.2d 331 (1978). Second, judicial immunity extends only to judicial acts. *Forrester v. White*, 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988). Finally,

judges cannot claim judicial immunity for suits seeking only prospective, injunctive relief. Pulliam v. Allen, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984).

O'Laughlin, 330 S.C. at 385, 498 S.E.2d at 692.

Of the three exceptions to judicial immunity, as discussed in O'Laughlin, the third exception does not apply in this case, given the fact that Plaintiff is not requesting any sort of injunctive relief. Therefore, for purposes of this case, we need only concern ourselves with the first and second exceptions.

The U.S. Supreme Court provided a test for determining when a judge acts in the absence of all jurisdiction. See Stump v. Sparkman, 435 U.S. 349, 356, 98 S.Ct. 1099, 1104-05 (1978). In that case, the Supreme Court affirmed the Court of Appeals which, "recognized that the necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him." Id. The Court in Stump further stated that, "the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." In a footnote, the Court makes reference to the much older Supreme Court case of Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872), which provides a very helpful example of the difference between acting in the clear absence of all jurisdiction and acting simply in excess of jurisdiction. The example the Court provides is that of a Probate Judge who decides to try a criminal case, an action that would be in the clear absence of all jurisdiction because his jurisdiction extends only to matters involving wills and estates. However, if a judge who has the authority to try criminal cases were to try a defendant on a non-existent crime, he would be acting in excess of his jurisdiction but not in the clear absence of all jurisdiction.

The second exception to judicial immunity relevant to our inquiry involves a distinction between judicial and non-judicial acts. The U.S. Supreme Court has also spoken on this issue.

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The Court said, “[t]his Court has never undertaken to articulate a precise and general definition of the class of acts entitled to immunity. The decided cases, however, suggest an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform.” Forrester v. White, 484 U.S. 219, 227, 108 S.Ct. 538, 544 (1988). The Court stated that the test to determine whether an act is judicial in nature or not involves an examination of the character of the act, rather than simply the identity of the individual carrying out the act. Id. The Forrester Court provided several examples of non-judicial acts in its opinion. One such example was the process of selecting jurors for a trial in the county courts. Id. The reason that this was not a judicial act was the fact that it was not necessary for a judge to choose these jurors. Id. Rather, juror selection in county courts could have been performed by a number of other non-judicial individuals. Id. Another example of a non-judicial act offered by the Court involved judges who “promulgate a code of conduct for attorneys.” 484 U.S. at 228, 108 S.Ct. at 545 (citation omitted). The distinction here is that promulgating this code of conduct was an act of rule making rather than a judicial act. Id.

In this case, it is important to first define the act in question. As set forth in Plaintiff’s Complaint, the act in question was Judge Lockemy ordering the destruction of the Plaintiff’s dogs. Judge Lockemy’s ordering of the destruction of Plaintiff’s animals was clearly a judicial act exercised in his capacity as a sitting circuit court judge with jurisdiction of matters subject to prosecution in the Dillon County Court of General Sessions. Therefore, there can be no argument that Judge Lockemy was acting in the absence of all jurisdiction when he ordered the destruction of the dogs in question.

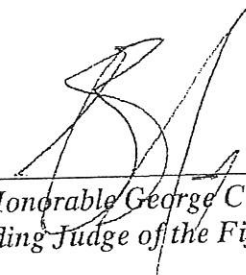
As discussed above, the first test we must apply to these facts is essentially the question of whether Judge Lockemy had jurisdiction over the subject matter before him. Plaintiff’s dogs were held because they were allegedly involved in a fatal attack on a child and Plaintiff was in

custody pending trial of criminal charges stemming from the same event and resulting, at least in part, from his ownership of the dogs. Accordingly, as Judge Lockemy could have been the trial judge in connection with the criminal charges, he clearly had jurisdiction to order the destruction of the dogs pursuant to applicable South Carolina statutory law and the first exception cannot be satisfied by Plaintiff.

As to the second exception to judicial immunity, there is no doubt that Judge Lockemy's action was a judicial act. As Forrester v. White teaches us, a proper analysis of judicial versus non-judicial acts involves a close inspection of the character of the act, rather than merely looking at the person doing the act. The law states that the fact that the actor was a Circuit Court Judge is immaterial. However, in this case, it should be noted that the act in question was an act that could not have been undertaken by someone other than a sitting judge with jurisdiction over the animals in question. See SC Code § 47-3-760. It was not an act of rule making or an administrative act. To the contrary, the act in question was undertaken by Judge Lockemy in his judicial capacity and pursuant to the discretionary authority provided by South Carolina statutory law. Therefore, the second exception is also inapplicable to this case.

Therefore, for the foregoing reasons, this court finds that Defendant Lockemy is entitled to the protection afforded by the common law doctrine of judicial immunity and his Motion to Dismiss is hereby **GRANTED**.

AND IT IS SO ORDERED!



The Honorable George C. James, Jr.
Presiding Judge of the Fifth Judicial Circuit

Columbia, South Carolina

January 14, 2011.