

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

ALEXANDER RAY,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION FILE NO.
)	18EV001437
FULTON COUNTY; THEODORE)	
JACKSON, individually and as SHERIFF)	
OF THE FULTON COUNTY SHERIFF'S)	
OFFICE; JIMMY BUTTS; JIMMY)	
CARTER; Mildred Jackson; and)	
John Does 1-3,)	
)	
Defendants.)	
_____)	

FINAL ORDER

The above-styled case is before the Court on the Defendants' Motion to Dismiss.

On March 30, 2018, Plaintiff filed a complaint in the Fulton County State Court alleging that on October 17, 2013, a former Fulton County Sheriff's Office (FCSO) employee, Michael Carroll, shot him without reasonable justification at an apartment complex, two years after the former employee resigned in lieu of termination, from the FCSO. Plaintiff's complaint names Fulton County, Georgia, Theodore Jackson, individually and as Sheriff of Fulton County, Chief Deputy Jimmy Carter and Jimmy Butts and Mildred Jackson as Defendants. Plaintiff contends that Defendants are liable for negligence, reckless conduct, deliberate misconduct and the conduct of the individual defendants under the theory of respondeat superior. Furthermore, Plaintiff is requesting attorneys' fees and expenses of litigation. Having read and reviewed the entire record in the case and the parties' motions, the Court finds the following:

ANTE LITEM NOTICE

Plaintiff's claims against Defendants Fulton County and Sheriff Theodore Jackson, in his official capacity, are barred by the statute of limitations which ran on October 17, 2015.

Pursuant to O.C.G.A. § 9-3-33, actions for injuries to the person shall be brought within two (2) years after the right of action accrues. Plaintiff's alleged injuries arise out of an incident that occurred on October 17, 2013. Nevertheless, Plaintiff still served a summons and a copy of the complaint on each of the Defendants more than four (4) years after the statute of limitations ended. Additionally, Plaintiff did not file the required ante litem notice within twelve (12) months as required by O.C.G.A. § 36-11-1, which states, "All claims against counties must be presented within 12 months after they accrue or become payable or the same are barred, provided that minors or other persons laboring under disabilities shall be allowed 12 months after the removal of the disability to present their claims."

Plaintiff admits that the ante litem notice was untimely but that the ante litem deadline notice is independently tolled under O.C.G.A. § 9-3-99, a statute that tolls the statute of limitations during pending criminal prosecutions since pending criminal charges remain pending against Mr. Carroll.

The Court did not find any case law or statute to support Plaintiff's argument on whether the tolling of the statute under O.C.G.A. § 9-3-99 also tolls the ante litem notice requirement. There is simply no existing precedent that states this statute also tolls the ante litem notice requirement. Further, the plain reading of the statute cuts against Plaintiff's arguments. For the foregoing reasons, Plaintiff's claims against Defendant Fulton County are barred because he failed to timely serve the County with an ante litem notice within twelve (12) months of the date of his loss. This bar applies to Defendant Theodore Jackson, in his official capacity, as well, because a suit against Sheriff Jackson in his official capacity is also a suit against Fulton County. "A suit against a public official in his official capacity amounts to a suit against the county employing him." Brandon v. Holt, 469 U.S. 464 (1985).

SOVEREIGN IMMUNITY

In Plaintiff's response brief to Defendants' Motion to Dismiss, he concedes that sovereign immunity barred his complaint against Fulton County and Sheriff Jackson, in his official capacity. Plaintiff moved to dismiss both Fulton County and Sheriff Jackson in his official capacity as Defendants. The Court hereby **GRANTS** Plaintiff's motion to dismiss Fulton County and Sheriff Jackson, in his official capacity, as defendants because sovereign immunity immunizes them.

OFFICIAL IMMUNITY

A. Defendant Sheriff Jackson, in his individual capacity

This Court finds that Plaintiff's claims against Sheriff Jackson, in his individual capacity, are barred by official immunity. The Georgia Constitution provides official immunity to state and county officers and employees from claims against them in their individual – as opposed to official – capacities. Ga. Const. of 193, Art.I, Sec. II, Par IX(d). Under the doctrine of official immunity, a public official is not liable for his negligent performance of a discretionary act within the scope of his authority. However, he may be personally liable if he negligently performs a ministerial act or acts with actual malice or intent to injure while performing a discretionary act. Cameron v. Lang, 274 Ga. 122 (2001). The determination of whether an official function is discretionary or ministerial is a matter of law for the court. See Daley v. Clark, 282 Ga. App. 235, 245 (2006).

Plaintiff does not contend that Sheriff Jackson acted deliberately or with malice but contends that Sheriff Jackson acted negligently when a letter of employment verification was issued to Plaintiff. This Court finds that Plaintiff's complaint fails to demonstrate what specific

ministerial duty Sheriff Jackson, in his individual capacity, performed or what policies or procedures that Sheriff Jackson, in his individual capacity, violated.

B. Defendants Jimmy Butts and Jimmy Carter

Plaintiff's claims against Defendants Jimmy Butts and Jimmy Carter, in their individual capacities, are barred by official immunity. "Government employees are protected from suits in their individual capacities for discretionary acts performed when the scope of their public duties, as long as those discretionary acts were performed without malice." See Coffey v. Brooks County, 231 Ga. App. 886, 888 (1998) rev'd on other grounds. Rowe v. Coffey, 270 Ga. 715 (1999). Official immunity is provided, however, for ministerial duties negligently performed or when officials act with actual malice in the performance of their duties. Gilbert v. Richardson, 264 Ga. 744 (1994). "Negligence is predicated on what should be anticipated, rather than on what happened, because one is not bound to anticipate or foresee and provide against what is unlikely, remote, slightly probable, or slightly possible." Boyd v. Nichols, 616 F. Supp. 2d, 1331, 1347 (M.D. Ga. 2009) (citing Hodges v. Putzel Elec. Contractors, Inc., 260 Ga. App. 590, 194 (2003)).

This Court finds that Plaintiff has failed to sufficiently assert any claims that establish that Defendants Jimmy Butts and Chief Deputy Jimmy Carter performed any ministerial duties negligently. Defendants acted only within the scope of their discretionary authority when dealing with personnel issues. It is not reasonable that Defendants would foresee that a former employee of the Fulton County Sheriff's Office (FCSO) would injure Plaintiff two (2) years after his employment with the FCSO ended. Accordingly, Plaintiff's claims alleged against Defendants Jimmy Butts and Chief Deputy Jimmy Carter in their individual capacities must be dismissed as they are barred by official immunity.

For the foregoing reasons, the Court hereby **GRANTS** Defendants Motion to Dismiss as to all Defendants.

SO ORDERED, this 10th day of September, 2018.

Myra A. Dixon

Judge Myra Dixon
State Court of Fulton County