Duneske v. Greenville County Sheriff's Office et al

2023 | Cited 0 times | D. South Carolina | February 2, 2023

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION Lindsay A. Duneske,

Plaintiff, v. Officer Goins; Officer Mann,

Defendants. 1

C/A No. 6:20-cv-02599-DCC-JDA

REPORT AND RECOMMENDATION

This matter is before the Court on a motion for summary judgment filed by Defendants [Doc. 105] and a motion for temporary restraining order (" TRO") and preliminary injunction [Doc. 115]. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under 42 U.S.C. § 1983 and to submit findings and recommendations to the District Court.

Plaintiff filed this action pro se on July 13, 2020, asserting various claims against employees of the Greenville County Sheriff's Office ("GCSO") relating to their actions concerning a custody dispute between Plaintiff and her ex-husband. [Doc. 1.] She subsequently filed an Amended Complaint and a Second Amended Complaint. [Docs. 28; 45.]

On March 21, 2022, the Court granted in part a motion to dismiss, dismissing all claims except those " against [Defendants] Goins and Mann in their individual capacities for an illegal stop." [Doc. 94.] On June 24, 2022, Defendants filed a motion for summary judgment. [Doc. 105.] The same day, the Court issued an Order in accordance with

1 This caption represents the current parties in this action. Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the summary judgment/dismissal procedure and of the possible consequences if she failed to adequately respond to the motion. [Doc. 106.] Plaintiff filed a response in opposition on September 8, 2022. [Doc. 120.] Plaintiff also filed a motion for TRO and preliminary

injunction on August 1, 2022 [Doc. 115], and the Court instructed Defendants that no response was required [Doc. 116]. The motions are ripe for review.

BACKGROUND The record before the Court reveals the following facts. In 2018, Plaintiff, the mother of three children, was in the midst of a divorce from Kenneth Duneske, the father of those children. [Doc. 45 at 2 ¶ 2]; https://www.greenville county.org/appsas400/FamilyCourtSearch/ (search by Party "Duneske, Lindsay").

2 In early July 2018, Plaintiff traveled from Michigan to South Carolina to get her children after they had been visiting their father, Kenneth Duneske. 3

[Doc. 105-5(1) 4

0:00–0:40.] Plaintiff

2 This Court may take judicial notice of the records in Plaintiff's family court proceedings. Philips v. Pitt Cnty. Mem. Hosp., 572 F.3d 176, 180 (4th Cir. 2009) (Explaining that courts "m ay properly take judicial notice of matters of public record"); Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989) ("W e note that 't he most frequent use of judicial notice is in noticing the content of court records.'").

3 Two of the three children were with their father. [See Doc. 105-3 ¶ 2.] 4 Docket Entry Number 105-5 is a cover sheet listing various telephone call recordings that are included as Exhibit A to the affidavit at Docket Entry 105-4. Defendants submitted a DVD with these recordings. The Court cites the recordings as follows:

• "07-06-2018 11.26.16 CAD-8 (18-121034)" as [Doc. 105-5(1)]; • "07-07-2018 12.02.49 CAD-2 (18-121602)" as [Doc. 105-5(2)]; • "07-07-2018 12.16.48 CAD-3 (18-121602)" as [Doc. 105-5(3)]; • "07-07-2018 12.18.11 CAD-11 (18-121602)" as [Doc. 105-5(4)]; • "07-07-2018 12.26.57 CAD-12" as [Doc. 105-5(5)]; • "07-07-2018 13.43.16 CAD-11 (18-121631)" as [Doc. 105-5(6)];

2 contacted multiple law enforcement agencies, stating that the father would not return the children. [Id. 0:00–1:12.] On July 6, 2018, Goins spoke with Plaintiff twice about the situation, and Plaintiff requested that the Greenville County Sheriff' s Office ("GCSO") remove the children from their father's home and return them to her. [Doc. 105-3 ¶ 2.] Goins informed Plaintiff that "GCSO would not remove the children from [the father's] home because this appeared to the GCSO to be a [f]amily [c]ourt matter." [Id.] Also on July 6, 2018, Plaintiff contacted the GCSO to request a civil standby for her to get her children. [Doc. 105-5(1) 0:00–0:40.]

On July 7, 2018, Charles Nerswick, who identified himself as Plaintiff's fiance, called 911 to request police and report a kidnapping, stating that the children were in the father's home, that he had been

staking out the home, and that now that two cars were at the home, he needed an officer come to the home; the dispatcher informed Nerswick that an officer would call him to follow up. [Doc. 105-5(2).] Goins then called Nerswick and, during the discussion, informed Nerswick that GCSO would not send an officer to the father's home because it appeared to be a family court matter. [Docs. 105-3 ¶ 3; 105-5(5) 1:17–3:30.] Nerswick then informed Goins that he and Plaintiff had reason to believe the children were being sexually molested and were in immediate danger. [Doc. 105-5(5) 3:30–4:06.]

Goins also spoke with the children's father on July 7, 2018, and the father agreed to meet with GCSO deputies at a Wendy's restaurant to verify that the children were safe. [Doc. 105-3 ¶ 4.] However, the children's father subsequently called GCSO to report that

• "07-07-2018 13.47.38 CAD-6 (18-121635)" as [Doc. 105-5(7)]; and • "07-07-2018 14.03.53 CAD-1 (18-121631)" as [Doc. 105-5(8)].

3 Plaintiff and Nerswick had attempted to block him in his driveway as he was leaving to meet the deputies and that they were now following him with their bright lights shining. [Doc. 105-5(7) 0:00–0:18; see Docs. 105-2 ¶ 3; 105-3 ¶ 5.] The children's father informed the dispatcher that he was no longer planning to meet the deputies at Wendy's because he did not think it would be safe for his children. [Id. 3:08–3:18.] He stayed on the call with GCSO dispatchers as he drove and informed them at various points in the conversation that Plaintiff and Nerswick were driving recklessly—sw erving, driving over a curb, staying dangerously close to his car, and shining their bright lights. [Id. 3:19–27:19.] The father also stated that he did not want to stop at the same location as Plaintiff and Nerswick because he did not want the children around them, he did not feel safe, and the children were in tears. [Id. 6:15–7:38.]

While the children's father was on the call with GCSO, Plaintiff also called GCSO to inform them that the father had tried to crash into her and run her off the road and that she was now following him. [Doc. 105-5(8) 0:00–0:23.] During the call, Plaintiff refused the dispatcher's request to pull over or stop following him. [Id. 0:24–1:31; Docs. 105-2 ¶ 3; 105-3 ¶ 5.]

After receiving updates from both calls, GCSO Sergeant Chad Bright, who had been on his way to meet the father at Wendy's, directed the dispatcher to tell the father to drive to an alternate location where Bright and Goins would meet him to conduct a welfare check of the children. [Docs. 105-2 ¶¶ 2–4; 105-3 ¶ 6.] While on their way to meet the father, Bright and Goins received radio updates that Nerswick was driving erratically and continuing the pursuit on very busy roads. [Docs. 105-2 ¶ 5; 105-3 ¶ 7.] Therefore, Goins told Bright "to initiate a traffic stop of the pursuing vehicle occupied by" Plaintiff and

4 Nerswick while Goins was " parked in a nearby church parking lot waiting for [the father] to arrive." [Doc. 105-3 ¶ 8.] Bright activated his patrol vehicle's lights and siren and initiated the traffic stop; Nerswick pulled over after Bright pulled behind his vehicle. [Doc. 105-2 ¶ 7.]

After Nerswick stopped on the side of the rode, Plaintiff exited the vehicle. [Id. ¶ 8; Doc. 105-10(1) 5

.] Bright instructed Plaintiff to get back in the vehicle, and Plaintiff complied. [Docs. 105-2 ¶ 8; 105-10(1).] As Bright approached the driver side of the vehicle, both Nerswick and Plaintiff "beg an stating repeatedly that [Bright] had allowed [the father] to escape with the children," and Bright assured them that he "had not because [he] knew that Lieutenant Goins was meeting with [the father] at that time." [Docs. 105-2 ¶ 9; 105-10(1).] Bright told the couple that their actions had been dangerous, and "[t]hey responded that a GCSO dispatcher had instructed them to follow" the father. [Docs. 105-2 ¶ 10; 105-10(1).]

Meanwhile, Goins met with the father in a nearby church parking lot. [Doc. 105-3 ¶ 9.] "Althoug h the children were frightened by what had just transpired, [Goins] observed that they were both safe and unharmed," and they told Goins that they wanted to stay with their father. [Id.]

Goins left the church parking lot and joined Bright with Nerswick and Plaintiff. [Id. ¶ 10; Doc. 105-2 ¶ 11.] Goins let Plaintiff know that the children were safe and reiterated

5 Docket Entry Number 105-10 is a cover sheet listing recordings from body cameras worn by Bright and Goins that are included as Exhibit A to the affidavit at Docket Entry Number 105-9. Defendants submitted a DVD with these recordings. The Court cites the recordings as follows: "BW C Bright" as [Doc. 105-10(1)] and "BW C Goins" as [Doc. 105- 10(2)].

5 "that GCSO viewed [the] situation as a child custody dispute that should be resolved in [f]amily [c]ourt." [Doc. 105-3 ¶ 10; see Docs. 105-2 ¶ 12; 105-10(1); 105-10(2).] Goins also let the couple know that they were free to leave, "but the couple continued to engage [him] for several minutes, making various allegations against" the father. [Doc. 105-3 ¶ 11; see Docs. 105-2 ¶ 13; 105-10(1); 105-10(2).] Bright and Goins were able to disengage after several minutes and terminate the traffic stop. [Docs. 105-2 ¶ 13; 105-3 ¶ 12.]

APPLICABLE LAW Liberal Construction of Pro Se Complaint

Plaintiff brought this action pro se, which requires the Court to liberally construe her pleadings. Estelle, 429 U.S. 97, 106 (1976); Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam); Loe v. Armistead, 582 F.2d 1291, 1295 (4th Cir. 1978); Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978). Pro se pleadings are held to a less stringent standard than those drafted by attorneys. Haines, 404 U.S. at 520. Even under this less stringent standard, however, a pro se complaint is still subject to summary dismissal. Id. at 520–21. The mandated liberal construction means that only if the court can reasonably read the pleadings to state a valid claim on which the complainant could prevail, it should do so. Barnett v. Hargett, 174 F.3d 1128, 1133 (10th Cir. 1999). A court may not construct the complainant's legal arguments for her. Small v. Endicott, 998 F.2d 411, 417–18 (7th Cir. 1993). Nor should a court "conjure up questions never squarely presented." Beaudett v. City of Hampton, 775

F.2d 1274, 1278 (4th Cir. 1985).

6 Requirements for a Cause of Action Under § 1983

Some of the claims in this action are asserted pursuant to 42 U.S.C. § 1983, which provides a private cause of action for constitutional violations by persons acting under color of state law. Section 1983 "'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" Albright v. Oliver, 510 U.S. 266, 271 (1994) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)). Accordingly, a civil action under § 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 707 (1999).

Section 1983 provides, in relevant part,

"Ev ery person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ." 42 U.S.C. § 1983. To establish a claim under § 1983, a plaintiff must prove two elements: (1) that the defendant "de prived [the plaintiff] of a right secured by the Constitution and laws of the United States" and (2) that the defendant " deprived [the plaintiff] of this constitutional right under color of [State] statute, ordinance, regulation, custom, or usage." Mentavlos v. Anderson, 249 F.3d 301, 310 (4th Cir. 2001) (third alteration in original) (citation and internal quotation marks omitted).

The under-color-of-state-law element, which is equivalent to the "state action" requirement under the Fourteenth Amendment,

7 reflects judicial recognition of the fact that most rights secured by the Constitution are protected only against infringement by governments. This fundamental limitation on the scope of constitutional guarantees preserves an area of individual freedom by limiting the reach of federal law and avoids imposing on the State, its agencies or officials, responsibility for conduct for which they cannot fairly be blamed. Id. (quoting Dowe v. Total Action Against Poverty in Roanoke Valley, 145 F.3d 653, 658 (4th Cir. 1998)) (internal citations and quotation marks omitted). Nevertheless, "the deed of an ostensibly private organization or individual" may at times be treated " as if a State has caused it to be performed." Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass' n, 531 U.S. 288, 295 (2001). Specifically, "state action may be found if, though only if, there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself." Id. (internal quotation marks omitted). State action requires both an alleged constitutional deprivation "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State . . . or by a person for whom the State is responsible" and

that "the party charged with the deprivation [is] a person who may fairly be said to be a state actor." Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982). A determination of whether a private party' s allegedly unconstitutional conduct is fairly attributable to the State requires the court to "beg in[ ] by identifying the specific conduct of which the plaintiff complains." Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 51 (1999) (internal quotation marks omitted). Requirements for a Preliminary Injunction

A preliminary injunction is "an extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied only in the limited circumstances which clearly

8 demand it." Centro Tepeyac v. Montgomery Cnty., 722 F.3d 184, 188 (4th Cir. 2013) (internal quotation marks omitted). "T he purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." United States v. South Carolina, 720 F.3d 518, 524 (4th Cir. 2013) (internal quotation marks omitted). Because granting a motion for preliminary injunctive relief "req uires that a district court, acting on an incomplete record, order a party to act, or refrain from acting, in a certain way[,] [t]he danger of a mistake in this setting is substantial." Hughes Network Sys., Inc. v. InterDigital Commc'ns Corp., 17 F.3d 691, 693 (4th Cir. 1994) (internal quotation marks omitted). Accordingly, the decision whether to grant a preliminary injunction is committed to the equitable discretion of the district court. See Salazar v. Buono, 559 U.S. 700, 714 (2010); Christopher Phelps & Assocs., LLC v. Galloway, 492 F.3d 532, 543 (4th Cir. 2007).

The current standard for granting preliminary injunctive relief is set forth in Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008). Under Winter, to obtain a preliminary injunction, the moving party must demonstrate:

1) he is likely to succeed on the merits, 2) he will suffer irreparable harm if the preliminary injunction is not granted, 3) the balance of equities favors him, and 4) the injunction is in the public interest. 555 U.S. at 20; see also League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 236 (4th Cir. 2014). Moreover, Winter requires that each preliminary injunction factor "be 'satisf ied as articulated.'" Pashby v. Delia, 709 F.3d 307, 320–21 (4th Cir. 2013) (quoting

9 The Real Truth About Obama, Inc. v. FEC, 575 F.3d 342, 347 (4th Cir. 2009), vacated on other grounds, Citizens United v. FEC, 558 U.S. 310 (2010), aff'd, The Real Truth About Obama, Inc. v. FEC, 607 F.3d 355 (4th Cir. 2010) (per curiam)). Therefore, the movant bears a heavy burden in seeking a preliminary injunction. Id. at 321. Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure states, as to a party who has moved for summary judgment:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A

fact is "m aterial" if proof of its existence or non-existence would affect disposition of the case under applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of material fact is " genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. Id. at 257. When determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. Id. at 324. Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. Id. Under this

10 standard, the existence of a mere scintilla of evidence in support of the non-movant's position is insufficient to withstand the summary judgment motion. Anderson, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. Id. at 248. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Id. Further, Rule 56 provides in pertinent part:

A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact. Fed. R. Civ. P. 56(c)(1). Accordingly, when Rule 56(c) has shifted the burden of proof to the non-movant, he must produce existence of a factual dispute on every element essential to his action that he bears the burden of adducing at a trial on the merits. Qualified Immunity

Qualified immunity protects government officials performing discretionary functions from civil damage suits as long as the conduct in question does not "v iolate clearly established rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Thus, qualified immunity does not protect an official who

11 violates a constitutional or statutory right of a plaintiff that was clearly established at the time of the alleged violation such that an objectively reasonable official in the official's position would have known of the right. Id. Further, qualified immunity is "an immunity from suit rather than a mere defense to liability." Mitchell v. Forsyth, 472 U.S. 511, 526 (1985).

"In determining whether an officer is entitled to summary judgment on the basis of qualified immunity, courts engage in a two-pronged inquiry." Smith v. Ray, 781 F.3d 95, 100 (4th Cir. 2015). The first concerns whether the facts, viewed in the light most favorable to the plaintiff, demonstrate that the officer's conduct violated a federal right. See Saucier v. Katz, 533 U.S. 194, 201 (2001). The second "asks whether the right was clearly established at the time the violation occurred such that a reasonable person would have known that his conduct was unconstitutional." Smith, 781 F.3d at 100. For purposes of this analysis, a right is "clearly established" if " [t]he contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987).

District court judges are " permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." Pearson v. Callahan, 555 U.S. 223, 236 (2009). If a court decides in the negative the first prong it considers—i.e., the court decides the plaintiff has not alleged the deprivation of an actual constitutional right or the right was not clearly established at the time of the alleged violation—the court need not consider the other prong of the qualified immunity analysis. See id. at 243–45; Torchinsky

12 v. Siwinski, 942 F.2d 257, 260 (4th Cir. 1991) (holding the court "need not formally resolve" the constitutional question of " whether the [plaintiffs] were arrested without probable cause" to address the plaintiffs' § 1983 claim; the court stated that it "need only determine whether [the defendant]—a deputy sheriff performing within the normal course of his employment—acted with the objective reasonableness necessary to entitle him to qualified immunity").

DISCUSSION Motion for Summary Judgment

As stated, the only remaining claim in this case relates to Plaintiff's allegations that Goins and Mann illegally detained her when they " ran [her] off the road while [she] was following her children" and that Goins and Mann took her keys and detained her for more than 20 minutes. [Doc. 45 ¶¶ 8– 10.] Defendants argue they are entitled to summary judgment because (1) Mann had no personal involvement in the traffic stop; (2) the traffic stop was based upon reasonable suspicion and did not violate Plaintiff's Fourth Amendment rights; (3) the duration of the traffic stop did not violate Plaintiff' s Fourth Amendment rights; (4) excessive force was not utilized during the traffic stop 6

; and (5) Goins is entitled to qualified immunity. [Doc. 105-1 at 6–15.] The Court agrees Defendants are entitled to summary judgment.

6 The Court finds that Plaintiff has not alleged an excessive force claim against Goins in this case. To state an excessive-force claim, Plaintiff would be required to allege facts showing that Goins applied force to her "m aliciously and sadistically for the very purpose of causing harm." Whitley v. Albers, 475 U.S. 312, 320–21 (1986); Wilkins v. Gaddy, 559 U.S. 34 (2010). Here, Plaintiff has not alleged that

Goins applied force to her. [See Doc. 45.]

13 Defendant Mann As an initial matter, Defendants argue that Mann is entitled to summary judgment because he was not involved in the traffic stop. [Id. at 7–8.] They have provided an affidavit by Sergeant William Mann, in which he avers that he spoke with Plaintiff on the telephone in early July 2018 about a child custody issue but that he never interacted with her in person and that he did not participate in the traffic stop on July 7, 2018, and did not instruct any GCSO deputies to perform the traffic stop. [Doc. 105-8 ¶¶ 1–6.] And Plaintiff has failed to address this argument or provide any evidence suggesting that Mann was involved in the traffic stop. [See Doc. 120.] Accordingly, because the only evidence before the Court demonstrates that Defendant Mann was not involved in the traffic stop at issue in this case, the undersigned recommends that summary judgment be granted as to Defendant Mann. See Williamson v. Stirling, 912 F.3d 154, 171 (4th Cir. 2018) ("T o establish personal liability under § 1983, . . . the plaintiff must affirmatively show[ ] that the official charged acted personally in the deprivation of the plaintiff' s rights." (second alteration in original) (internal quotation marks omitted)).

Defendant Goins The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. In Terry v. Ohio, 392 U.S. 1 (1968), the Supreme Court "held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." Illinois v. Wardlow, 528 U.S. 119, 123 (2000). " The level of suspicion

14 must be a particularized and objective basis for suspecting the particular person stopped of criminal activity."

7 United States v. Black, 707 F.3d 531, 539 (4th Cir. 2013) (internal quotation marks omitted). The officer must be able to articulate something more than an "inchoate and unparticularized suspicion or 'hunch.'" Terry, 392 U.S. at 27. Courts must look at the totality of the circumstances and consider the "cum ulative information available to the officer." United States v. Branch, 537 F.3d 328, 337 (4th Cir. 2008) (internal quotation marks omitted). And, in determining whether reasonable suspicion exists, courts may credit "the practical experience of officers who observe on a daily basis what transpires on the street." United States v. Lender, 985 F.2d 151, 154 (4th Cir. 1993).

Here, the Court notes that Goins did not actually perform the traffic stop at issue; however, as stated, he directed Bright to initiate the traffic stop. [Doc. 105-3 ¶ 8.] Goins had had multiple telephone calls with Plaintiff, Nerswick, and the father about the child custody situation. [Docs. 105-3 ¶¶ 2–4; 105-5(5).] He had also received radio updates that Nerswick was driving erratically and pursuing the father in his vehicle on very busy roads and that Plaintiff refused the dispatcher's request to pull over or stop the pursuit. [Doc. 105-3 ¶ 5, 7.]

Given these facts, Goins had reason, at the time he directed Bright to initiate the traffic stop, to suspect that Nerswick and Plaintiff were involved in criminal activity because he had reason to suspect that Nerswick and Plaintiff were violating traffic laws. See, e.g., S.C. Code § 56-5-2920 ("Any person who drives any vehicle in such a manner as to

7 Stated another way, "[a]n officer may stop and briefly detain a person when the officer has reasonable, articulable suspicion that the person has been, is, or is about to be engaged in criminal activity." United States v. Monteith, 662 F.3d 660, 665 (4th Cir. 2011) (internal quotation marks omitted).

15 indicate either a wilful or wanton disregard for the safety of persons or property is guilty of reckless driving."). Additionally , no evidence in the record supports Plaintiff's contention that the officers ran her off the road. [Docs. 105-2 ¶ 7; 105-10(1).] And nothing about the duration of the stop, which was less than 18 minutes, violated Plaintiff's constitutional rights, particularly where Goins told Plaintiff and Nerswick around 7.5 minutes into the stop that they were allowed to leave but Plaintiff prolonged the stop by asking more questions and sharing more information about the custody dispute. [Doc. 105-10(1)]; see United States v. Sharpe, 470 U.S. 675, 688 (1985) ("reject[ing] the contention that a 20-minute stop is unreasonable when the police have acted diligently and a suspect's actions contribute to the added delay about which he complains"). Accordingly, the undersigned recommends that summary judgment be granted as to Defendant Goins. 8 Motion for TRO and Preliminary Injunction

In her motion for TRO and preliminary injunction, Plaintiff seeks an injunction "to halt the further malicious prosecution and retaliation against her, as well as stop the ongoing violation of her rights that is causing continual undue and irreparable harm to herself, her children and family." [Doc. 115 at 1; see id. at 2–3 ¶ 1, 9 ¶ 1, 10 ¶ 8.]

As an initial matter, the allegations in Plaintiff's motion are unrelated to this action, and she has therefore failed to show that she is entitled to relief pursuant to Winter. "[A] party moving for a preliminary injunction must necessarily establish a relationship between

8 Moreover, even if the officers lacked authority to execute a Terry stop, Goins would still be entitled to qualified immunity as Defendants argue he would be, because it was not clearly established on the day of the incident that a Terry stop was unjustified based on the facts known to the officers. Smith, 781 F.3d at 100. Indeed, Plaintiff has not pointed to any case in which a court ruled, on analogous facts, that the officer was not justified in executing a Terry stop.

16 the injury claimed in the party's motion and the conduct asserted in the complaint." Devose v. Herrington, 42 F.3d 470, 471 (8th Cir. 1994). The purpose of interim equitable relief is to protect the movant, during the pendency of the action, from being harmed in the manner in which the movant contends it was or will be harmed through the illegality alleged in the complaint. Thus, a preliminary

injunction may never issue to prevent an injury or harm that was not caused by the wrong claimed in the underlying action. Here, because Plaintiff's remaining claim in this case is about a purportedly illegal stop that occurred in 2018, and Plaintiff's motion for TRO and preliminary injunction has nothing to do with the 2018 traffic stop and instead seeks injunctive relief related to a family court case, the undersigned recommends that Plaintiff's m otion be denied. 9

Further, Plaintiff's motion should be denied because she has failed to meet the requirements for an injunction in that she has not made a showing to demonstrate that any of the four factors under Winter weigh in her favor. Indeed, because the Court recommends summary judgment in favor of Defendants, Plaintiff cannot show likelihood of success on the merits. Accordingly, Plaintiff's motion for TRO and preliminary injunction should be denied.

RECOMMENDATION In light of all the foregoing, it is recommended that Defendants' motion for summary judgment [Doc. 105] be GRANTED and Plaintiff's motion for TRO and preliminary injunction [Doc. 115] be DENIED.

9 The Court instructed Defendants that no response to the motion was required because, upon initial review of the motion, it determined that the allegations in the motion for TRO and preliminary injunction are unrelated to the remaining claim in this case.

17 IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin United States Magistrate Judge February 2, 2023 Greenville, South Carolina

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