

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION

DAVIS MCARTHUR, by and through  
DANA MCARTHUR, his Court Appointed  
Guardian,

Plaintiff,

v.

CIVIL ACTION NO. 7:23-cv-00105

CHAD CASTLEBERRY, in his individual  
and official capacity as chief of the City of  
Adel, Georgia Police Department, et al.

Defendants.

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**REPLY IN SUPPORT OF THE MOTION TO DISMISS OF DEFENDANTS  
CASTLEBERRY, ROBERTS, GREEN AND FUTCH**

COME NOW Chad Castleberry (“Castleberry”), John Gary Roberts (“Roberts”), Taylor Green (“Green”), and Joel Futch (“Futch”), individually and in their official capacities as current and former employees of the City of Adel, Georgia, named as defendants in the above-styled action, and file this reply in support of their motion to dismiss the claims of plaintiff Davis McArthur (“Plaintiff”) that are being asserted by and through Plaintiff’s court appointed guardian, Dana McArthur, showing the Court as follows:

**STATEMENT OF FACTS**

1. Plaintiff is a mentally-ill individual who was declared legally incapacitated by a guardianship order (the “Guardianship Order”) that was entered in the Probate Court of Cherokee County, Georgia on October 13, 2017. (Doc. 1, pp. 2-3.)
2. In the Guardianship Order, Dana McArthur and Andrea McArthur, Plaintiff’s adoptive parents, were appointed as Plaintiff’s guardian. (Doc. 1, p. 3.)

3. Andrea McArthur died on August 5, 2012, and, since that time, Dana McArthur (“Dana”) has served as Plaintiff’s sole guardian. (Doc. 1, p. 3.)

4. On the afternoon of August 26, 2019, Plaintiff became suicidal. (Doc. 1, ¶ 10.)

5. At some point on that same day, Plaintiff was transported from his group home to the Phoebe Sumter Regional Medical Center (“Phoebe Sumter”) in Americus, Georgia. (Doc. 1, ¶ 11.)

6. Following Plaintiff’s arrival at Phoebe Sumter, the medical staff issued a Form 1013 Involuntary Transport Order (the “1013 Order”). (Doc. 1, ¶ 11.)

7. The 1013 Order authorized and mandated Plaintiff’s involuntary transport to Greenleaf Psychiatric Hospital (“Greenleaf”) in Valdosta, Georgia. (Doc. 1, ¶ 11, p. 5 n.3.)

8. Phoebe Sumter arranged for Transcare Medical, LLC (“Transcare”) to transport Plaintiff via ambulance from Phoebe Sumter to Greenleaf. (Doc. 1, ¶ 12.)

9. The regional headquarters for Transcare is in Adel, Georgia. (Doc. 1, ¶ 12.)

10. At some point on August 26, 2019, emergency medical technicians (“EMTs”) employed by Transcare assumed Plaintiff’s medical care from Phoebe Sumter and began to transport Plaintiff to Greenleaf in Valdosta. (Doc. 1, ¶ 13.)

11. On their way to Greenleaf, the EMTs who initially received Plaintiff from Phoebe Sumter decided to stop in Adel to effect a crew change that would replace the initial attending EMT – Christy Griffin (“Griffin”) – with another EMT – Diana Ray (“Ray”). (Doc. 1, ¶ 14.)

12. By the time the ambulance transporting Plaintiff reached Adel, and while the Transcare staff executed the substitution of Ray in place of Griffin, Plaintiff had relapsed into a highly agitated and irrational mental state. (Doc. 1, ¶ 17.)

13. A physical altercation (the “Altercation”) ensued between Plaintiff and Ray. (Doc. 1, ¶ 18.)

14. Transcare’s paramedic-driver, Roosevelt Norwood (“Norwood”), stopped the ambulance in a parking lot and assumed Ray’s place in the Altercation while Ray called 911. (Doc. 1, ¶ 19.)

15. On the day in question, Roberts was a sergeant with the Adel Police Department (Doc. 1, ¶ 5), and Roberts responded to the scene of the Altercation. (Doc. 1, ¶ 20.)

16. On the day in question, Futch and Green were also officers with the Adel Police Department (Doc. 1, ¶¶ 6-7), and Futch and Green arrived at the scene of the Altercation shortly after Roberts. (Doc. 1, ¶ 20.)

17. Following the arrival of Futch and Green, Roberts ordered Futch and Green to seize Plaintiff, handcuff Plaintiff, place Plaintiff in the back of a patrol car, and transport Plaintiff to the Cook County Jail (the “Jail”). (Doc. 1, ¶ 21.)

18. In accordance with the instructions they received from Roberts, Futch and Green seized Plaintiff, handcuffed him, placed him in the back of a patrol car, and transported Plaintiff to the Jail. (Doc. 1, ¶ 23.)

19. Neither Roberts, Futch, nor Green offered Plaintiff any medical treatment for Plaintiff’s obvious wounds and/or care for Plaintiff’s obvious psychiatric crisis. (Doc. 1, ¶ 25.)

20. Neither Roberts, Futch, nor Green made an effort to ascertain the reason that Plaintiff was being transported by ambulance, Plaintiff’s medical status, or Plaintiff’s need for continuing emergency care. (Doc. 1, ¶ 26.)

21. After Plaintiff was removed from the scene, Roberts approached the uniformed Transcare EMTs at the scene of the Altercation and obtained cursory statements from those individuals. (Doc. 1, ¶ 28.)

22. After Plaintiff arrived at the Jail, Plaintiff was processed and Plaintiff remained incarcerated in that facility until he posted bond nine (9) days later. (Doc. 1, ¶¶ 29, 32.)

23. On August 22, 2022, Plaintiff filed suit against Roberts, Futch, Green, and the Police Department for the City of Adel, and that lawsuit is hereinafter referred to as the “First Lawsuit.” *McArthur v. Chad Castleberry, et al.*, 7:22-cv-00085, Doc. 1 (M.D. Ga. 2022)

24. The Court dismissed the First Lawsuit on September 13, 2023. *Id.*, Doc. 8.

25. On September 25, 2023, Plaintiff filed this lawsuit (the “Lawsuit”). (Doc. 1.)

26. In the complaint he filed in this matter, Plaintiff names Roberts, Futch, and Green as defendants. (Doc. 1, ¶¶ 5-7.)

27. In addition, Plaintiff named Chad Castleberry as a defendant. (Doc. 1, ¶ 4.)

28. Castleberry is the Chief of the Adel Police Department, and he is hereinafter referred to as “Chief Castleberry.” (Doc. 1, ¶ 4.)

29. In Count I of the complaint, Plaintiff asserts a variety of claims against Roberts, Futch, Green, and Chief Castleberry (the “Adel Defendants”) pursuant to 42 U.S.C. § 1983. (Doc. 1, ¶¶ 29-37.)

30. In Count II of his complaint, Plaintiff asserts claims against the Adel Defendants pursuant to U.S. Code Title 42, Chapter 21. (Doc. 1, ¶¶ 38-51.)

31. In Count III of his complaint, Plaintiff seeks injunctive relief, and, in Count IV, Plaintiff seeks declaratory relief. (Doc. 1, ¶¶ 52-61.)

32. On October 19, 2023, Roberts, Futch, and Green (the “Patrol Officers”) and Chief Castleberry filed a motion to dismiss with respect to Plaintiff’s claims. (Doc. 3.)

33. In the memorandum filed in support of their motion to dismiss, the Patrol Officers and Chief Castleberry (the “Defendants”) argued that:

- a. the claims Plaintiff is asserting against the Patrol Officers pursuant to § 1983 for alleged violations of the Constitution and laws of the United States (including U.S. Code Title 42, Chapter 21) are barred by the statute of limitations or are otherwise not viable;
- b. the claims Plaintiff is asserting against the Patrol Officers pursuant to § 1983 for alleged violations of the Constitution and laws of the State of Georgia are not viable because § 1983 does not provide a cause of action for an alleged violation of state law;
- c. the § 1983 claims Plaintiff is asserting against Chief Castleberry are barred by the statute of limitations or are otherwise not viable;
- d. Plaintiff does not have standing to assert his claim for injunctive relief;
- e. Plaintiff’s claim for declaratory relief is barred by the statute of limitations because his underlying causes of action are not viable.

34. On November 9, 2023, Plaintiff filed a response to Defendants’ motion to dismiss and, in his response, Plaintiff focused solely on the statute of limitations arguments that were raised in the memorandum filed in support of Defendants’ motion to dismiss. (Doc. 5.)

35. In particular, in his response, Plaintiff argues that his claims are not barred because, at all times relevant hereto, he has been mentally ill and, therefore, he is entitled to the tolling afforded by O.C.G.A. § 9-11-90(a). (Doc. 5.)

For the reasons set forth below, Defendants show that, in these circumstances, tolling is not appropriate and, as a result, Plaintiff's claims are barred by the statute of limitations.

### **ARGUMENT AND CITATION OF AUTHORITY**

Section 9-3-90(a) of the Official Code of Georgia provides that, “[i]ndividuals who are legally incompetent because of intellectual disability or mental illness, who are such when the cause of action accrues, shall be entitled to the same time after their disability is removed to bring an action as prescribed for other persons.” However, as this Court noted in the order that it entered dismissing Plaintiff's first lawsuit (*McArthur v. City of Adel, et al.*, United States District Court for the Middle District of Georgia, Civil Action No. 7:23-cv-105, Doc. 8), the appointment of a guardian for someone who is legally incompetent due to mental illness halts the tolling otherwise afforded by O.C.G.A. § 9-3-90(a). In that regard, after referencing § 9-3-90(a), the Court stated: “[i]n situations where an individual has a guardian appointed on his behalf no such tolling shall take place.” *Id.*, p. 3 (citing *Price v. Dep't of Transportation*, 214 Ga. App. 85, 88 (1994)). Thus, this Court concluded that “Plaintiff does not benefit from any tolling due to mental incapacity as he was under a guardianship at the time of the incident.” *Id.*, p. 5.

### **CONCLUSION**

Based on the foregoing, Defendants submit that Plaintiff is not entitled to the tolling afforded by O.C.G.A. § 9-3-90(a) and, as a result, the claims Plaintiff is asserting against them are barred by the statute of limitations. For that reason, as well as the reasons set forth in the memorandum filed in support of their motion to dismiss, Defendants respectfully request that the Court enter an order that dismisses with prejudice the claims that Plaintiff is asserting against them.

This 23rd day of November, 2023.

s/Raleigh W. Rollins  
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s/H. Thomas Shaw  
H. Thomas Shaw Bar No. 593166

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 23, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/H. Thomas Shaw  
H. Thomas Shaw