

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Twanda Marshinda Brown, et al., etc.,)	Civil Action No. 3:17-1426-MBS
)	
Plaintiffs,)	MEMORANDUM IN SUPPORT OF
)	LEXINGTON COUNTY'S
v.)	SUPPLEMENTAL MOTION FOR
)	RECONSIDERATION
Lexington County, South Carolina, et al.,)	
)	
Defendants.)	
_____)	

Defendant Lexington County has filed a supplemental motion for reconsideration, asking this Court to reconsider, amend or alter the part of this Court’s March 29, 2018 Order (ECF No. 84, entered March 30, 2018) that effectively denied Lexington County’s Motion for Summary Judgment on Damages, contained in ECF No. 50. In that Order, the Court did not specifically discuss the part of the Defendants’ Motion for Summary Judgment on Damages that pertained to Lexington County and Public Defender Madsen.¹

The pertinent procedural history of this matter insofar as it pertains to the matters raised by the present supplemental motion is as follows: Defendants on October 31, 2017 filed a Motion for Summary Judgment with regard to Plaintiffs’ damage claims. ECF No. 50. The bases for the motion were that the damage claims against the two magistrates and the sheriff were

¹ In the Report and Recommendation, the Magistrate Judge noted that “ the parties do not dispute that [public defender] Madsen is an agent of Lexington County. Because Plaintiffs have asserted the same causes of action against Lexington County and Madsen, the claims against Madsen are duplicative, and the undersigned recommends Madsen be dismissed from the case.” ECF No. 74 at 20. This uncontested issue was also not addressed in the Order, and Defendants accordingly have also requested that the Court clarify that Madsen should be dismissed without opposition from Plaintiffs.

barred by judicial or quasi-judicial immunity, and that the damage claims against Lexington County were barred for the following reasons other than the immunity grounds:

1. All of Plaintiffs' damage claims are barred by the principles set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994) and the *Rooker-Feldman* doctrine.
2. As a matter of law, Lexington County could not have created the policies alleged by Plaintiffs to exist with regard to matters occurring in the adjudicated cases of individuals.
3. Plaintiffs' damage claims against Lexington County based on underfunding of the public defender system are barred for lack of causation, because even if public defender systems did not exist, a magistrate would still be able to appoint counsel for indigent persons from members of the bar. In addition, no case has ever held that a federal damage claim lies against a county or municipal entity for failure to fund appointed counsel.
4. Plaintiffs' damage claims against Defendant Madsen, made only against him in his official capacity as a county official, are made against the County itself, and should be dismissed as duplicative. (Plaintiffs do not now contend otherwise.)

The Report and Recommendation, ECF No. 74, while recommending dismissal of the damage claims against the magistrates and sheriff based on immunities, declined after a very short discussion to recommend dismissal of the damage claims against Lexington County. ECF No. 74 at 20-21.

This Court's order of March 29, addressing Plaintiffs' objections to the Report and Recommendation, held that "that there are genuine issues of material fact as to whether

Defendants are entitled to judicial and quasi-judicial immunity.” ECF No. 84 at 28. The Court accordingly declined to grant summary judgment on the immunity claims at present.

Defendants filed objections to that part of the Report and Recommendation which declined to recommend the damage claims against Lexington County. ECF No. 79. This Court’s Order summarized Defendants’ contentions on those points, ECF No. 84 at 26, but those contentions are not mentioned in the “Analysis” portion of the Order, ECF No. 84 at 28-29. That portion of the Order appears to have considered only the immunity defenses of certain Defendants with regard to the damage claims, and not Lexington County’s defenses to the damage claims. Lexington County did not claim immunity of any kind.

APPLICABLE LAW

Defendants have already discussed the law applicable to motion to reconsider when the claim is that the party’s position was overlooked or misapprehended, ECF No. 87-1 at 4-5, and incorporate that discussion here as well.

ARGUMENT

1. For the reasons set forth in Defendants’ Motion for Summary Judgment on Damages, the damage claims against Lexington County should be dismissed.

It is frequently held that “[a] motion to reconsider is appropriate where the court has obviously misapprehended a party’s position or the facts or applicable law. . . .” *United States v. Grayson*, 2011 WL 9347462, at *1 (N.D.W. Va. 2011), *aff’d*, 435 F. App’x 225 (4th Cir. 2011); *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)(“a motion for reconsideration is appropriate where the court has misapprehended . . . a party’s position”). With regard to Lexington County’s defenses to Plaintiffs’ damage claims, the Court’s March 29 Order, in not discussing those defenses at all, contained “an error not of reasoning but of apprehension,” such as would warrant reconsideration. *South Carolina v. United States*, 232 F. Supp. 3d 785,

799 (D.S.C. 2017). Defendants are therefore not attempting to reargue a point on which the Court has already opined. Instead, Defendants ask the Court to rule on the aforementioned issues that the Court does not appear to have considered. In support of the merits of this motion, and in view of the fact that the point has not yet been addressed, Defendants would simply refer the Court to prior briefing on those issues: ECF Nos. 50, 50-1 at 11-15, 70 at 11-18, 79 (Lexington County) and 66 at 19-27, 40-45 (Plaintiffs).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this motion be granted, and that Plaintiffs' claims for damages against Lexington County be dismissed.

Respectfully submitted,

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