

State Of South Carolina
IN The Court Of Appeals

Appeal From Spartanburg
Court Of Common Pleas

Honorable: J Durham Cole - Circuit Judge
Case No 2011-CP-42-1329
Appellate Case 2013-000736

Michael J. Ferola - Pro-Se
Appellant

VS-

South Carolina Department of Corrections
Respondents

APPELLANT Brief

RECEIVED

APR 29 2013

SC Court of Appeals

Michael J. Ferola # 291941
Evans Correctional Institution
610 Hwy 9 West
Bennettsville, S.C.

29512

Table OF CASES

	Pg
1) Celotex Corp v Catrett 477 US 317, 322 (1986)	4
2) Matsushita Electric Industrial Co Vs Zenith Radio Corp 475 US 574, 587	4
3) TAYLOR V WALKER 320 NC 729, 733, 360 SE2d 796 (1987)	4
4) Foy v Bremson 30 NC App 662, 667, 228 SE2d 88, 91, (1976)	4
5) Quail V County OF Richland 692 SE2d 499 (SC2010).	4
6) Hoard ex rel Hoard v Roper Hospital INC 694 SE2d 1, 387 SC 539 (2010)	4
7) THEHS v mims 682 SE2d 813, 384 SC 491 rehearing DENIED	4
8) Calowell v Deese 288 NC 375, 218 SE2d 379 (1975)	4
9) USAA Property Cas Ins Co v Clegg 661 SE2d 791 rehearing DENIED	4
10) Englert INC v beafiguard USA INC 659 SE2d 496 (2008)	4
11) McKnight v S.C. Department of Corrections 684 SE2d 566, 385 SC 380 (2009)	4
12) Austin v Beaufort County Sheriff office 659 SE2d 122 rehearing DENIED.	4
13) Worgan v KUNZC 666 SE2d 901, 379 SC 581 rehearing DENIED, cert DENIED 129 Sct 1617 (2008)	4

Statement Of Case :

On March 18, 2011 Plaintiff filed a claim before the circuit Court as a result of a assault by defendant Johnson. The complaint alleged as a result of information provided by Lt Christopher Lott to inmate Shawn Johnson plaintiff was assaulted. Plaintiff further alleged once Lt Lott became aware of said assault he failed to take any corrective action. On May 31, 2012 the defendants move for Summary judgement before the Honorable Mark Hayes AND their motion was Denied. On February 8, 2013 the defendants again sought to have the complaint dismissed based upon a affidavit of Lt Lott. Once defendants filed their motion for Summary judgement Plaintiff filed a objection and submitted a affidavit AS to what occurred AND in dispute of the facts Alleged by Lt Lott. The plaintiff informed the court on February 8, 2013 hearing that based upon the Allegations in the complaint AND plaintiff affidavit disputing Lt Lott facts Summary judgement was inappropriate AND should be Denied. The Defendants Alleged that I did not obtain a affidavit from Defendant Johnson stating the Assault occurred as a Direct result of Lt Lott Actions. However, the defendant never obtained a affidavit from Defendant Johnson stating Lt Lott was not the cause of plaintiff assault. Defendant Lott admitted in two grievances plaintiff filed [macc 140-10] that he was aware plaintiff had been assaulted AND that plaintiff stated "It was nothing AND it was over" however, Lt Lott affidavit states he had no knowledge of the assault on plaintiff. [See Exhibit - A Step 1 Grievance], AND Exhibit - B Step 2 grievance]. Plaintiff further complained to Lt Hartzog prior to the assault that Lt Lott was informing inmates that plaintiff worked for Lt Hartzog. [See Interrogatory 11 Answered by Lt Hartzog].

Did The Circuit Court Error In Granting Defendant(s) Motion For Summary Judgement?

Summary judgement is appropriate "if the pleadings, depositions, Answers to Interrogatories, and admissions on file, together with any affidavits, show that there is NO GENUINE issue as to any material fact. Celotex Corp v Catrett 477 US 317, 322 (1986) quoting Fed R. Civ. Proc 56(c). IN considering a motion for Summary Judgement the inferences to be drawn from the UNDERLYING facts must be viewed in light most favorable to the Non-moving party. Matsushita Electric Industrial Co v Zenith Radio Corp 475 US 574, 587 (1986); Further courts have held issues arising in negligence cases are ordinarily Not Susceptible of "Summary Adjudication." Taylor v Walker 320 NC 729, 733, 360 SE2d 796 (1987); Foy v Bremson 30 NC App 662, 667, 228 SE2d 88, 91 (1976). Summary judgement should not be granted even when there is no dispute as to evidentiary facts if there is a dispute as to the conclusion to be drawn from those facts. Quail v County of Richland 692 SE2d 499 (SC 2010). IN the instant case there exist the fact of whether Lt Bott had knowledge the assault would occur, and Plaintiff affidavit defeats Defendants Summary Judgement. This court has held Summary Judgement is a drastic remedy and should be cautiously invoked so a litigant will not be improperly deprived of a trial on disputed factual issues; Hoard ex rel Hoard v Roper Hosp INC 694 SE2d 1, 387 SC 539 (2010); Melts v Mims 682 SE2d 813, 384 SC 491 rehearing Denied. Factual Inferences arising from the evidence must be drawn against the moving party. Caldwell v Dese 288 NC 375, 218 SE2d 379 (1975) IN The courts order the Honorable Judge Cole states nothing in the record support any facts and there was no evidence to support liability, as to South Carolina Department of Corrections however, there is evidence to show Lt Bott had knowledge of the assault AND failed to do anything about it. IN fact Lt Bott observed the injuries to plaintiff face/head AND took no action. Lt Botts lack of action constitutes "Gross Negligence" and establishes liability, Lt Bott further Admits knowledge of the assault AND plaintiff was not seen by medical for two days. USAA Property and Cas Ins Co v Clegg 661 SE2d 791 rehearing Denied, Englert INC v Beafguard USA INC 659 SE2d 496 (2008). McKnight v S.C.D.C 684 SE2d 566, 385 SC 380 (2009) Further this case requires the services of a fact finder AND Summary Judgement is inappropriate. Wogan v Kunze 666 SE2d 901, 379 SC 581 rehearing Denied, certiorari Denied 129 Sct 1617 (2008) Austin v Beaufort County Sheriff office 659 SE2d 122 rehearing Denied (2008).

CONCLUSION:

Wherefore, Based upon plaintiff affidavit and the record as a whole defendants motion For Summary Judgment should be reversed AND allowed to proceed to trial on the issues raised in the complaint.

Respectfully Submitted

Michael J. Yeral

Evans Correctional Inst

610 Hwy 9 West

BENNETTSVILLE, SC. 29512

Certificate Of Service

I do hereby certify I've mailed a true and correct copy of the within "Brief" on this 25th day of April 2013 to:

Russell W Harter JR

14 Lavinia Ave

Greenville, SC. 29601