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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No.: 2016-CP-26-01048

RECEIVED

JAN 30 2017

SC Court of Appeals

Terrance J. McLeod, Appellant,

v.

Jarius Orel English-McMillan, Roland Shelley, Roland G. Shelley, II,
Scott C. Shelley and Coastal Carolina University, Defendants,

Of whom Coastal Carolina University is the Respondent.

RECORD ON APPEAL

John D. Clark, Esquire, Bar No.: 64296
Clark Law Firm, LLC
22 East Liberty Street
P.O. Drawer 880
Sumter, South Carolina 29151-0880
(803) 775-1234
Attorney for Appellant

Lisa A. Thomas, Esquire
Thompson & Henry, P.A.
1300 Second Avenue, 3rd Flr
Post Office Box 1740
Conway South Carolina 29528
(843) 248-5741
Attorney for Respondent
Coastal Carolina University

Jimmy C. Powell, Esquire
Turner, Padget, Graham & Laney, P.A.
Founders Centre
2411 North Oak St., Suite 301
P.O. Box 2116
Myrtle Beach South Carolina 29578
(843) 213-5502
Attorney for Defendants Roland Shelley,
Roland G. Shelley, II & Scott C. Shelley

INDEX

Amended-Complaint	1
Defendant Coastal Carolina University's Notice of Motion and Motion to Dismiss	6
Answer to Plaintiff's Amended Complaint	11
Transcript of Record	16
Order of Dismissal as to Defendant Coastal Carolina University	23

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Terrance J. McLeod,)

Plaintiff,)

-v.-)

Jarius Orel English-McMillan, Roland)
Shelley, Roland G. Shelley, II, Scott C.)
Shelley and Coastal Carolina University,))

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEEN JUDICIAL CIRCUIT
2016-CP-26-1048

AMENDED-COMPLAINT

(Jury Trial Demanded)

(Assault and Battery)

(Intentional Infliction of Emotional Distress)

(Gross Negligence)

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The Plaintiff, complaining of the Defendants above named, would respectfully show unto this Honorable Court that:

1. Plaintiff is a citizen and resident of the County of Berkeley, State of South Carolina.
2. The Defendant Jarius Orel English-McMillan is a citizen and a resident of the State of Florida, and at the time of the herein occurrence, was a college student at Coastal Carolina University in Conway, SC.
3. The Defendants Roland Shelley, Roland G. Shelley, II and Scott C. Shelley are citizens and residents of the County of Charleston, State of South Carolina, and at the time of the herein occurrence, were the owners of the residence located at 1501 Pace Circle, Conway, South Carolina, said residence being known by the students of Coastal Carolina University as the "Goodyear House."
4. The Defendant Coastal Carolina University is a South Carolina State supported university in the County of Horry, State of South Carolina, and at all times referenced herein,

Plaintiff Terrance J. McLeod and Defendant Jarius Orel English-McMillan were students at Coastal Carolina University.

5. That prior to February 16, 2014, the occupants of the "Goodyear House" held parties where alcohol was being consumed and on many occasions violence involving students of Coastal Carolina University occurred and law enforcement had to be called to keep the peace.

6. That Defendants knew or should have known about the violence that had occurred at the parties held at the "Goodyear House" involving Coastal Carolina University students prior to February 16, 2014.

FIRST CAUSE OF ACTION
(Assault and Battery)

7. Plaintiff realleges the allegations of the above paragraphs, and incorporates the same herein and by reference as if fully repeated verbatim.

8. On or about February 16, 2014 at approximately 1:34 a.m., a party was being held at the "Goodyear House" and alcohol was being consumed.

9. At approximately 1:34 a.m., Plaintiff was attending the aforementioned party at the "Goodyear House" and was violently attacked by Defendant Jarius Orel English-McMillan and struck in the face with brass knuckles.

10. After being attacked, Plaintiff was left lying on driveway leading to the house, profusely bleeding from his mouth as Defendant Jarius Orel English-McMillan and several others fled the scene.

11. As a result of being struck with brass knuckles in the face by Defendant Jarius Orel English-McMillan, Plaintiff suffered great physical harm and injury, including great emotional distress and psychological injury, all of which has and will cause him to incur a great sum of medical expenses, and to miss time from work and to lose wages and earnings.

SECOND CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

12. Plaintiff realleges the allegations of the above paragraphs, and incorporates the same herein and by reference as if fully repeated verbatim.

13. The Plaintiff alleges he has suffered great emotional distress from the outrageous conduct by the Defendant Jarius Orel English-McMillan, in which Defendant Jarius Orel English-McMillan:

- a. Intentionally or recklessly inflicted harm that was certain to result in emotional distress;
- b. Behaved in a manner that was so extreme and outrageous in a nature that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community;
- c. Caused the Plaintiff to suffer from severe emotional distress; and
- d. The emotional distress suffered by the Plaintiff was severe so that no reasonable man could be expected to endure it.

All of which resulted in the Plaintiff suffering emotional and psychological depression as well as other mental disabilities, thus resulting in costly therapeutic attention.

THIRD CAUSE OF ACTION
(Gross Negligence)

14. Plaintiff realleges the allegations of the above paragraphs, and incorporates the same herein and by reference as if fully repeated verbatim.

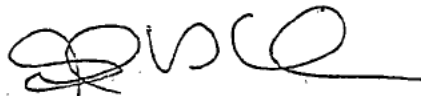
15. Plaintiff alleges that the Defendants Roland Shelley, Roland G. Shelley, II, Scott C. Shelley and Coastal Carolina University (herein after referenced as "Defendants") were malicious, reckless and grossly negligent in their failure to exercise due care in the following particulars:

- a. In failing to discover risks and to take safety precautions to warn of or eliminate unreasonable risks, including the foreseeable risk of criminal conduct by others, within the area of invitation on the premises;
- b. In failing to use slight care in protecting Plaintiff as a student from a dangerous location and conditions which it knew or should have known existed by means of warning, security or other reasonable action.

All of which were the direct and proximate causes of the injuries and damages suffered by the Plaintiff herein, said acts being in violation of the statutes and laws of the State of South Carolina.

WHEREFORE, Plaintiffs request judgment against the Defendants, for actual and punitive damages in an appropriate amount, for the cost of this action, and for such other and further relief as the Court may deem just and proper.

CLARK LAW FIRM, LLC
ATTORNEYS FOR PLAINTIFF



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22 East Liberty Street
Post Office Drawer 880
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Sumter, South Carolina
February 22, 2016

THOMPSON
& HENRY, P.A.

ATTORNEYS AT LAW

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POST OFFICE BOX 1740

CONWAY, SOUTH CAROLINA 29528

LISA A. THOMAS

LThomas@THOMPSONLAW.COM

TELEPHONE
(843) 248-5741

FACSIMILE
(843) 248-5112

April 29, 2016

VIA HAND DELIVERY

The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
Post Office Box 677
Conway, SC 29528

RE: Terrance J. McLeod v. Jarius Orel English-McMillan, Roland Shelley, Roland G. Shelley, II, Scott C. Shelley and Coastal Carolina University
C/A #2016-CP-26-01048
T&H No.: 54601.62

Dear Melanie:

I am enclosing the original and one (1) copy of Defendant Coastal Carolina University's Notice of Motion and Motion to Dismiss in connection with the above-captioned matter along with the Motion Coversheet, Rule 11 Certification, proper filing fee and proof of service on opposing counsel. Upon your filing, please return the clocked copy to me via our assistant who has hand delivered these items to you.

Thank you in advance for your assistance in this regard.

Very truly yours,

THOMPSON & HENRY, PA

Lisa Thomas
Lisa A. Thomas

LAT/lwj

Enclosures

cc: John D. Clark, Esquire
Jackie Patterson [IRF #99372]

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

FIFTEENTH JUDICIAL CIRCUIT)

COUNTY OF HORRY)

CASE NO.: 2016-CP-26-01048)

Terrance J. McLeod)

MOTION AND ORDER INFORMATION)

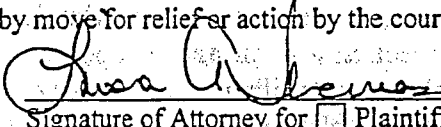
Plaintiff,)

FORM AND COVERSHEET)

vs.)

Jarius Orel English-McMillan, et al)

Defendant.)

Plaintiff's Attorney: John D. Clark, Bar No. _____ Address: PO Box 880, Sumter, SC 29151 Phone: 803-775-1234 Fax 803-775-8590 E-mail: jclark@theclarklawfirm.com Other: _____	Defendant's Attorney: Lisa A. Thomas, Bar No. 66458 Address: PO Box 1740, Conway, SC 29528 Phone: 843-248-5741 Fax 843-248-5112 E-mail: lthomas@thompsonlaw.com Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Dismiss Estimated Time Needed: 30 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	
Date submitted: 4/22/16	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Terrance J. McLeod,)
)
Plaintiff,)
)
vs.)
)
Jarius Orel English-McMillan,)
Roland Shelley, Roland G.)
Shelley, II, Scott C. Shelley)
and Coastal Carolina University,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-01048

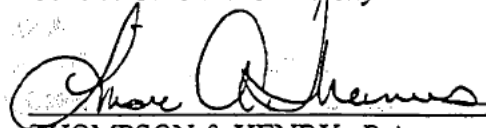
**DEFENDANT COASTAL
CAROLINA UNIVERSITY'S
NOTICE OF MOTION
AND MOTION TO DISMISS**

**TO: PLAINTIFF, NAMED ABOVE, AND JOHN D. CLARK, ESQUIRE, HIS
ATTORNEY OF RECORD**

YOU WILL PLEASE TAKE NOTICE that the Defendant Coastal Carolina University, by and through its undersigned attorneys, will move before the Presiding Judge of the Fifteenth Judicial Circuit, Court of Common Pleas, Horry County, Conway, South Carolina, on the tenth (10th) day after service hereof, or on such day and at such time as the court may appoint, for an Order in the above entitled action granting this Defendant's Motion to Dismiss. This motion will be based on Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, S.C. Code Ann. § 15-78-110, and upon such other pleadings and documents in this matter on file in the Horry County Clerk of Court's office, relevant law, and upon such other documents and arguments as may be presented at the hearing of this motion.

All of which is respectfully submitted.

Lisa A. Thomas, SC Bar #66458
Attorneys for the Defendant
Coastal Carolina University



THOMPSON & HENRY, P.A.
1300 Second Avenue, Third Floor (29526)
P. O. Box 1740
Conway, South Carolina 29528
(843) 248-5741 - voice
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lthomas@thompsonlaw.com

April 29, 2016
Conway, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Terrance J. McLeod,)

Plaintiff,)

vs.)

Jarius Orel English-McMillan,)

Roland Shelley, Roland G.)

Shelley, II, Scott C. Shelley)

and Coastal Carolina University,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-01048

CERTIFICATION

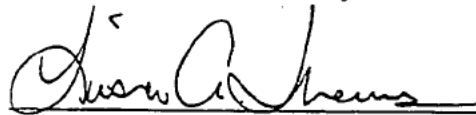
I hereby certify that prior to filing the attached Defendant Coastal Carolina University's Notice of Motion and Motion to Dismiss, I have either consulted with the opposing party and attempted in good faith to resolve the matter or that such consultation would serve no useful purpose or that such consultation could not be timely held in this instance.

This Certificate is made in satisfaction of Rule 11(a) of the South Carolina Rules of Civil Procedure.

Lisa A. Thomas, SC Bar #66458

Attorneys for the Defendant

Coastal Carolina University



THOMPSON & HENRY, P.A.

1300 Second Avenue, Third Floor (29526)

P. O. Box 1740

Conway, South Carolina 29528

(843) 248-5741 - voice

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lthomas@thompsonlaw.com

April 29, 2016
Conway, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
 Terrance J. McLeod,)
)
 Plaintiff,)
)
 vs.)
)
 Jarius Orel English-McMillan,)
 Roland Shelley, Roland G.)
 Shelley, II, Scott C. Shelley)
 and Coastal Carolina University,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 C/A NO. 2016-CP-26-01048

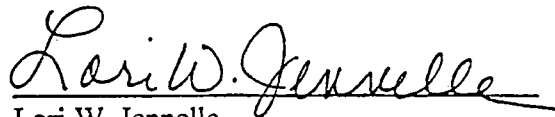
CERTIFICATE OF SERVICE

I, Lori W. Jennelle, an employee for Thompson & Henry, P.A., attorneys for the Defendant Coastal Carolina University in the above-captioned action and/or actions, certify that I have this 29th day of April, 2016 mailed a copy and/or copies of the following:

1. Defendant Coastal Carolina University's Notice of Motion and Motion to Dismiss

to the undersigned at his/her address(es) of record, with sufficient postage attached thereto, as follows:

John D. Clark, Esquire
 Sharon Baker Clark, Esquire
 Clark Law Firm, LLC
 22 E. Liberty Street
 P. O. Box 880
 Sumter, SC 29151


 Lori W. Jennelle
 Legal Assistant to Lisa A. Thomas, Esquire

Conway, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	Docket No.: 2016-CP-26-1048
TERRANCE J. MCLEOD,)	
Plaintiff,)	
v.)	
JARIUS OREL ENGLISH-MCMILLAN,)	ANSWER TO PLAINTIFF'S
ROLAND SHELLEY, ROLAND G.)	AMENDED COMPLAINT
SHELLEY, II, SCOTT C. SHELLEY)	(Jury Trial Demanded)
AND COASTAL CAROLINA)	
UNIVERSITY,)	
Defendants.)	

Defendants, Roland Shelley, Roland G. Shelley, II, and Scott C. Shelley answer and respectfully show unto the Court:

FOR A FIRST DEFENSE

1. These answering Defendants demand a jury trial.
2. Upon information and belief, the allegations of Paragraph 1 of the Amended Complaint are admitted.
3. Upon information and belief, the allegations of Paragraph 2 of the Amended Complaint are admitted.
4. Answering the allegations of Paragraph 3 of the Amended Complaint, it is admitted that the Shelleys are owners of 1501 Pace Circle in Conway, SC. The remaining allegations of Paragraph 3 are denied and strict proof is demanded thereof.
5. Upon information and belief, the allegations of Paragraph 4 of the Amended Complaint are admitted.
6. These answering Defendants are without sufficient inform or knowledge to form a belief as to the allegations of Paragraph 5 of the Amended Complaint, therefore said paragraph is denied and strict proof is demanded thereof.

7. The allegations of Paragraph 6 of the Amended Complaint directed towards this answering Defendant are denied and strict proof is demanded thereof.

8. Answering the allegations of Paragraph 7 of the Amended Complaint, these Defendants reiterate and reallege their responses to Paragraphs 1-6 above as if repeated verbatim herein.

9. Answering the allegations of Paragraph 8, upon information and belief, it is admitted that a party occurred on February 16, 2014. Further, these Defendants deny knowledge of any party on February 16, 2014 or knowledge of any activities occurring at said party.

10. Answering the allegations of Paragraph 9 of the Amended Complaint, upon information and belief, the Plaintiff was attending a function and was attacked by Defendant, Jarius Orel English-McMillan. These Defendants deny knowledge of any such party, any such attack and any information or knowledge concerning any injuries alleged by the Plaintiff in this matter.

11. Answering the allegations of Paragraph 10 of the Amended Complaint, these Defendants have no information or knowledge concerning the series of events of February 16, 2014. To the extent these allegations allege a cause of action against these Defendants, said allegation is denied and strict proof is demanded thereof.

12. Answering the allegations of Paragraph 11 of the Amended Complaint, to the extent these allegations construe a cause of action against this Defendant said allegations are denied and strict proof is demanded thereof.

13. Answering the allegations of Paragraph 12 of the Amended Complaint, these answering Defendants reiterate and reallege their responses to the allegations of Paragraphs 1-11 above as if repeated verbatim herein.

14. The allegations of Paragraph 13 of the Amended Complaint are not directed towards these answering Defendants. To the extent these allegations could be construed to form a cause of action against these answering Defendants, said allegations are denied and strict proof is demanded thereof.

15. Answering the allegations of Paragraph 14 of the Amended Complaint, these answering Defendants reiterate and reallege their responses to the allegations of Paragraphs 1-13 above as if repeated verbatim herein.

16. The allegations of Paragraph 15 (including subparts) directed towards these answering Defendants are denied and strict proof is demanded thereof.

17. Except as specifically admitted, qualified, or explained, Defendant denies the allegations and demands strict proof of each allegation.

AS AN ADDITIONAL DEFENSE
(Comparative Negligence)

18. FURTHER ANSWERING, any injury and damage sustained by Plaintiff may have been caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, by others. Therefore, the Court should reduce any recovery awarded to Plaintiff for the alleged injuries and damage based upon the percentage of negligence or willfulness attributed to Plaintiff.

AS AN ADDITIONAL DEFENSE
(Punitive Damages)

19. FURTHER ANSWERING, any award of punitive damages would violate the constitutional safeguards provided by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded.

AS AN ADDITIONAL DEFENSE
(Sole Negligence of Terrance J. McLeod)

20. FURTHER ANSWERING, any injury or damage sustained was due to and caused by the sole negligence, gross negligence, willfulness, wantonness, or carelessness on the part of Terrance J. McLeod over whom these answering Defendants had or have no authority or control.

AS AN ADDITIONAL DEFENSE

(Sole Negligence of Jarius Orel English-McMillan)

21. FURTHER ANSWERING, any injury or damage sustained was due to and caused by the sole negligence, gross negligence, willfulness, wantonness, or carelessness on the part of Jarius Orel English-McMillan over whom these answering Defendants had or have no authority or control.

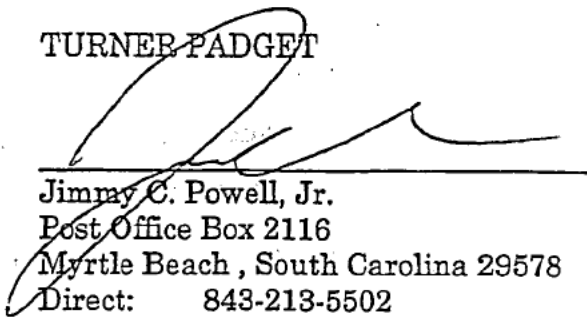
AS AN ADDITIONAL DEFENSE

(Lack of Duty)

22. All claims of the Plaintiff, Terrance J. McLeod should be dismissed as these answering Defendants have no legal duty to Terrance J. McLeod.

WHEREFORE, having answered, Defendant asks this Court to dismiss the Complaint and to grant such other and further relief as this Court deems just and proper.

TURNER PADGET


Jimmy C. Powell, Jr.
Post Office Box 2116
Myrtle Beach, South Carolina 29578
Direct: 843-213-5502
Fax: 843-213-5602

Myrtle Beach, South Carolina
June 06, 2016

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) Docket No.: 2016-CP-26-1048

TERRANCE J. MCLEOD,)

Plaintiff,)

v.)

CERTIFICATE OF SERVICE

JARIUS OREL ENGLISH-MCMILLAN,)

ROLAND SHELLEY, ROLAND G.)

SHELLEY, II, SCOTT C. SHELLEY)

AND COASTAL CAROLINA)

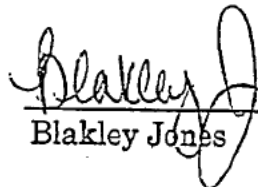
UNIVERSITY,)

Defendants.

On June 6, 2016 I mailed a copy of Defendant's Answer to Plaintiff's Amended Complaint, Interrogatories and Request for Production to Plaintiff to:

John D. Clark
Clark Law Firm, LLC
Post Office Drawer 880
22 East Liberty Street
Sumter, SC 29151-0880

Attorneys for Plaintiff


Blakley Jones

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2016-CP-26-01048

Terrance J. McLeod,)

Plaintiff,)

vs.)

Jarius Orel English-McMillan,)

Roland Shelley, Roland G. Shelly,)

II, Scott C. Shelley and)

Coastal Carolina University,)

Defendants.)

Transcript of Record

June 14, 2016

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

John D. Clark, Esquire
Attorney for Plaintiff

Lisa A. Thomas, Esquire
Attorney for Defendant,
Coastal Carolina University

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)

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1 (On the record, June 14, 2016.)

2 THE COURT: 2016-CP-26-1048, Terrence J. McLeod versus
3 Jarius Orel English-McMillan, and others. According to my
4 roster the matter is before the Court on a motion to dismiss.
5 Please give the court reporter your names and who you
6 represent.

7 MS. THOMAS: Certainly, Lisa Thomas, Your Honor, on
8 behalf of Coastal Carolina University.

9 THE COURT: All right.

10 MR. CLARK: Good morning, Your Honor. I'm John D. Clark
11 on behalf of the Plaintiff, Terrance McLeod.

12 THE COURT: All right. Ms. Thomas, this is your motion?

13 MS. THOMAS: Yes, Your Honor.

14 THE COURT: All right. Let me hear from you.

15 MS. THOMAS: Your Honor, this is, again, a motion to
16 dismiss. In looking at the four corners of the complaint, the
17 allegations are that the Plaintiff went to an off-campus party
18 on private property that was not a function of the university,
19 there are no allegations that any university employees or
20 agents were involved, and got into an altercation with another
21 student. They have sued the university alleging assault and
22 battery, intentional infliction of emotional distress and
23 gross negligence, and Your Honor, by the admissions in this
24 document and the allegations in this document, we bring this
25 12(b)(6) motion stating that there is no cause of action

1 against the university, there is no duty for the university to
2 intervene in the actions of adult students after hours engaged
3 in non-university activities to either preclude them for doing
4 this, nor do they have the power to preclude them for doing
5 this or to warn them of going to parties where, as alleged in
6 the complaint, there was excessive consumption of alcohol.
7 So, Your Honor, we put forth that we do not believe there is a
8 cause of action, much less any cause of action for gross
9 negligent, within the four corners of this complaint as to
10 Coastal Carolina University.

11 THE COURT: All right. Mr. Clark.

12 MR. CLARK: May it please the Court, Your Honor. Your
13 Honor, I believe the Defendant's argument is improper at this
14 stage of the proceeding in that we have alleged gross
15 negligence and that the university would be liable under the
16 Tort Claims Act 15-78-60, Subsection 25 if they did not
17 exercise duty of supervision, protection, control, custody of
18 a student if they exercise it in gross, in a grossly negligent
19 manner, and we've alleged that, and whether or not the
20 university had a duty is a factual legal issue that might be
21 addressed at summary judgment, at the summary judgment stage,
22 but to say that the pleadings, which allege gross negligence,
23 does not state a cause of action I think is, is inappropriate
24 at this stage of the proceeding, Your Honor. That's, that's
25 our position on, on that issue.

1 THE COURT: All right. Thank you. Anything in reply?

2 MS. THOMAS: Your Honor, if I, if I could point out in,
3 in the words of the complaint, paragraph three, they allege
4 that the residence where this altercation took place is a
5 privately owned residence. There are no allegations of any
6 connection whatsoever to the university. Furthermore, they
7 have named for the alleged assault and battery which occurred
8 in February of 2014 the party who committed this act, who is a
9 Co-Defendant, Jarius Orel English-McMillan. There are no
10 allegations of any involvement by any employee, any agent of
11 Coastal Carolina University. The only nexus with the
12 university is that apparently these two students who were
13 involved in the altercation, these two gentlemen were both
14 students. The complaint itself does not allege that this was
15 a sanctioned event, that it was any function of the
16 university, that it was on university property, and in fact it
17 states emphatically it was on a private residence and the
18 owners of that private residence are named as Defendants in
19 this case as well. Your Honor, we just feel that merely
20 asserting gross negligence without any nexus, without any
21 facts whatsoever, just asserting a conclusory statement is not
22 enough to hold Coastal Carolina in this suit.

23 THE COURT: All right. All right. I'm going to grant
24 your motion, Ms. Thomas. If you would prepare an order that
25 basically says that the complaint fails to allege any cause of

1 action upon which relief can be granted. I mean, I understand
2 your argument, but the complaint in and of itself basically
3 admits that there is no duty by Coastal Carolina, private
4 property, off campus, and all you've got are two students that
5 went to Coastal Carolina, and that's not sufficient to create
6 any type of duty by the university. So I'm going to grant the
7 motion. All right.

8 MS. THOMAS: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (Adjourned.)

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C E R T I F I C A T E

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2
3 I, the undersigned, Grace L. Hurley, Official Court
4 Reporter for the State of South Carolina, do hereby certify
5 that the foregoing is a true, accurate and complete Transcript
6 of Record of the Hearing held in the case of Terrance J.
7 McLeod versus Jarius Orel English-McMillan, et al., held in
8 the Court of Common Pleas for Horry County, Horry County
9 Courthouse, Conway, South Carolina, on June 14, 2016.

10 I do hereby certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

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14
15 Grace L. Hurley

16 Grace L. Hurley, CVR-CM-M

17 Official Reporter
18
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22
23

24 October 3, 2016.
25

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Terrance J. McLeod,
Plaintiff,

vs.

Jarius Orel English-McMillan,
Roland Shelley, Roland G.
Shelley, II, Scott C. Shelley
and Coastal Carolina University,
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-01048

ORDER OF DISMISSAL
AS TO DEFENDANT
COASTAL CAROLINA UNIVERSITY

HORRY COUNTY
2016 JUL 13 PM 3:19
MELANIE K. MURPHY, CLERK
CLERK OF COURT

THIS MATTER CAME BEFORE the Court on June 14, 2016 pursuant to the Defendant Coastal Carolina University's Notice of Motion and Motion to Dismiss. Coastal Carolina University was represented by Lisa A. Thomas, Esquire, of the law firm of Thompson & Henry, P.A. The Plaintiff was represented by John D. Clark, Esquire, of the Clark Law Firm, LLC.

Coastal Carolina University argued that the Complaint, on its face, failed to state a cause of action against Coastal Carolina University in that the party where Plaintiff was injured in a fight took place off-campus, was not part of a campus function, and, there were no allegations that employees or agents of Coastal Carolina University were involved. The assault clearly appears to be attributable to the acts of a third-party, co-Defendant Jarius Orel English-McMillan. Defendant Coastal Carolina University contends it is entitled to dismissal as to all causes of action specifically, assault and battery, intentional infliction of emotional distress and gross negligence.

Attorney for the Plaintiff argued that it was too early in the process and that gross negligence had been alleged as to the University. Counsel for Coastal Carolina University

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countered that the Plaintiff has failed to show any duty on the part of the University as to a student's activities outside of class, off-campus, and on their own time. No such duty was alleged in the four corners of the Complaint.

As to the Court's finding of fact, I find:

- 1) That the location where this altercation occurred was off-campus and on private property;
- 2) That this was not a function coordinated by or sanctioned by the Defendant Coastal Carolina University;
- 3) That there are no allegations that any employees or agents of the Defendant Coastal Carolina University were involved in the facilitation of this function;
- 4) That Plaintiff failed to articulate any duty owed to the Plaintiff by Defendant Coastal Carolina University or has alleged any breach of duty which proximately caused damages to the Plaintiff.

Based on the Complaint presented and arguments of counsel, it is hereby

ORDERED that Defendant Coastal Carolina University is hereby dismissed with prejudice from the above-captioned matter from the above-captioned matter pursuant to Rules 12(b)(6) of the South Carolina Rules of Civil Procedure, and it is

SO ORDERED.



Benjamin H. Culbertson
Judge for the Fifteenth Judicial Circuit

July 8, 2016
Georgetown, South Carolina

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No.: 2016-CP-26-01048

RECEIVED

JAN 30 2017

SC Court of Appeals

Terrance J. McLeod, Plaintiff, Appellant,

v.

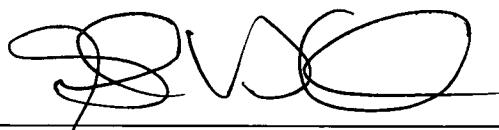
Jarius Orel English-McMillan, Roland Shelley, Roland G. Shelley, II,
Scott C. Shelley and Coastal Carolina University, Defendants,

Of whom Coastal Carolina University is the Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 26 2017



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Sumter, South Carolina 29151-0880
(803) 775-1234
Attorney for Appellant