

The state of South Carolina  
In The Court of Appeals  
In The Supreme Court

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SC Court of Appeals

Appeal From Dorchester County  
Court of Common Pleas

Maitte Murphy, Circuit Court Judge

Case No. 2023-000920

South Carolina Department of Corrections, Respondent,  
v.

Benjamin Heyward, Appellant.

(INITIAL) BRIEF OF APPELLANT

Benjamin Heyward #165514  
Allendale Corr Inst  
1057 Revolutionary Trail  
Fairfax, SC 29827

# Table of Contents

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of The Case	2-5
Facts	6-8
Arguments	9-16

## Table of Authorities cases

Hackworth v. Greywood, LLC 385 S.C. 110, 115, 1682 S.E.2d 871, 874 (2009),

Doe v. Maribon 373 S.C. 390, 395, 695 S.E.2d 245, 247 (2007),

Conley v. Gibson 355 U.S. 41, 78 S. Ct. 99 2d 80 (1957),

Cook v. Mack's Transfer and Storage 352 S.E.2d 296, 298 (1988),

Estate of Covington by Montgomery v. AT&T Nassau Metal Corp. 505 S.E.2d 393, 399 S.C. (1991),

Richardson v. Hambright 296 S.C. 504, 506, 374 S.E.2d 296, 298 (1988),

Hudson v. Palmer 468 U.S. 517, 526-7 (1984),

Orkman v. LinCare, INC I WL 3549848 (2013),

Berberich v. Jack 392 S.C. 278, 709 S.E.2d 607 (2011),

Meyer v. Anderson WL 17324998 (2022),

## Statutes

S.C. Code Ann 15-78-60 (25) 1976

S.C. Code Ann 15-78-70 (b) 1976

S.C. Code Ann 42-1-160 (A) 1976

S.C. Code Ann 42-1-160 (F) 1976

## Statement of Issues on Appeal

1. Did the trial court err in failing to properly train and supervise their court reporter from tampering with the transcript?
2. Did the trial court err in failing to signed the orders?
3. Did the trial court err in failing to find that Appellant did not state a claim for which relief may be granted against defendant?
4. Did the trial court err in failing to find that Respondent is not immune from liability from the suit?
5. Did the trial court err in failing to find that Appellant's action is not governed by the South Carolina worker's Compensation Act?

## Statement of The Case

In January 2020, while Appellant were at MacDougall Correctional Institution, he started working in the Cafeteria dining area for the Respondent. The Respondent provided and instructed the Appellant to use a two gallon unsafe plastic cut Jug to put hot water in while working. As a result Appellant was burned.

On April 19, 2020, Appellant took about one gallon of hot water from the hot pot machine in the dining area and put it into the cut Jug. He placed the Jug onto the counter top, he then proceeded to clean underneath it, and the cut Jug turned over and the hot water fell on his back. Appellant sustained first and second degree burns to his back.

On April 19, 2020, while being treated by nurse Richard Henry, he lied about the sizes of Appellant injuries. Appellant injuries was much larger than nurse Henry stated in Appellant medical record. Appellant left side back with second degree burn about three inches long and three inches wide. At the Flank baseball sized burns and three golf ball sized burns at the lower back. First degree burn at bilateral mid back about four inches long and three inches wide. The Appellant suffered physical and mental pain for twenty-one days.

On March 10, 2022 Appellant brought this action alleging gross negligence against defendants Lisa Carrington and Gary Finch, who were employees of South Carolina Department of Corrections.

on April 19, 2022, Respondent filed a motion to dismiss defendants Lisa Carrington and Gary Finch from this action on the grounds that defendants Lisa Carrington and Gary Finch is an employees of South Carolina Department of Corrections (SCDC) and SCDC is an agency of the state, and is protected by the South Carolina tort claim Act.

on October 20, 2022 Appellant filed a motion for leave to file an Amended Complaint adding SCDC as defendant in this action.

on January 5, 2023 The court granted Appellant's motion to amend the complaint to name SCDC as a defendant. The court also granted Respondent motion to dismiss defendants Lisa Carrington and Gary Finch from the action.

The court then order Appellant to file an Amended Complaint naming SCDC as the sole defendant in this action, and removing defendants Lisa Carrington and Gary Finch from the action.

on January 23, 2023, Appellant filed an Amended Complaint naming SCDC as the defendant in this action and removing defendants Lisa Carrington and Gary Finch from this action.

on February 6, 2023, Respondent filed a motion to dismiss Appellant's Amended Complaint on the grounds that Appellant failed to state a claim for which relief may be granted against defendant.

on March 20, 2023 The court scheduled Appellant for jury trial, and Appellant's was placed on the Jury Trial Roster for April 10, 2023.

The court ordered Appellant to file a trial brief, motion to limine, Turf charges and voir dire by April 5, 2023.

on April 5, 2023, Respondent Attorney Evan Sobocinski came to Alledale Correctional institution to talk to Appellant about settle but Appellant refused to settled.

on April 10, 2023, Appellant went to court thinking he was going to have a Jury Trial. Instead, the Court had a hearing for the Respondent. The Respondent Attorney Ganes didn't brought any documents regarding the hearing. Instead, Attorney Ganes read from her cell phone that Appellant's action is governed by the South Carolina workers Compensation Act.

The Appellant then informed the Court that on April 5, 2023 the Respondent Attorney came to see him wanting to settle but he refused. The Court asked Attorney Ganes if she came to settle with the Appellant and Attorney Ganes said no, but when the Court asked Attorney Sobocinski he said yes. The Court then give Appellant 30 days to answer Respondent motion to dismiss Appellant's Amended Complaint.

on April 20, 2023 Appellant Received a copy of the order granting Respondent motion to dismiss Appellant's Amended Complaint from Respondent Attorney. In the order the Respondent stated that Appellant's Amended Complaint fails to state a claim for which relief may be granted against Respondent, that Respondent is immune from liability pursuant to the South Carolina tort claims Act, and that Appellant's Action is governed by the South Carolina workers Compensation Act.

on May 11, 2023 the Court granted Respondent order granting Respondent motion to dismiss Appellant's Amended Complaint. The court failed to signed the order, therefore, the order is nonofficial.

on 10-23-23 Appellant received A copy of the transcript from court reporter, MS. MISSY Brown. As Appellant read the transcript, he learned that the transcript were tampered with by MS. Brown.

## Facts

1. The trial Court erred in failing to properly train and supervise their Court reporter from tampering with the transcript. See record on Appeal, transcript page 4, Line 2 where Court reporter stated the hearing was held on May 11, 2023, when the hearing was held on April 10, 2023, see page one of the defendant's memorandum in support of motion to dismiss plaintiff's Amended Complaint Exhibit-A.
2. The Appellant informed the trial court that Respondent Attorney Mr. Evan M. Sobocinski came to the prison wanting to settle this suit out of court on Wednesday (4-5-23) and he refused. The trial court asked Mr. Sobocinski if he went to speak to Appellant about settling, and Mr. Sobocinski told the trial court yes. The Court reporter failed to state what Mr. Sobocinski <sup>said</sup> in the transcript. See transcript page 7, Lines 14-24, and page 8 Lines 1-4.
3. The Respondent Attorney Ms. Ganes stated during the hearing Appellant used a plastic cut Jug to put hot water in, and the Court reporter stated Appellant used a "milk Jug." See transcript page 8, Line 13. If Ms. Ganes had stated Appellant used a "milk Jug" Appellant would have had objection to it. Also, see Exhibit-B, the unsafe plastic cut Jug.

4. ms. Canes stated during the hearing Appellant placed the Jug on the Counter Top, and Appellant went under the Counter Top to Clean and the plastic Jug turned over and the hot water Fell on Appellant back.

The court reporter stated the Appellant put the Jug on the table, and he leaned down to clean the bottom of the table and the Jug fell somehow and burned him, see transcript page 8, Lines 16-18. Also, IF ms. Canes had stated Appellant put the Jug on the table, he would had objection to it.

5. The trial Court erred in failing to signed the orders, see record on Appeal, Exhibits C, D and E.

6. The trial Court erred in failing to find the Appellant did not state a claim for which relief may be granted against Respondents. See Appellant's Answer to Respondent motion to dismiss Appellant's Amended Complaint, pg 1 and 2, Exhibits F and G.

7. The trial Court erred in failing to find Respondent is not immune from liability from the suit, see Appellant's Answer to Respondent motion to dismiss Amended Complaint, page 3, Exhibit - H.

8. The trial Court erred in failing to find Appellant's Action is not governed by the South Carolina worker's compensation Act. see record on Appeal, Exhibit-I.

## Arguments

1. (A) Because the Court reporter tampered with the transcript for Respondent, this Court should reverse the Judgment of the Circuit Court. See record on Appeal, transcript page 4, Line 2, where Court report stated the hearing was held on May 11, 2023. The hearing was held on April 10, 2023, see record on Appeal, Exhibit A, paragraph one of the Respondent's memorandum in support of motion to dismiss Appellant's Amended Complaint. Also, see Exhibit L
- B. Because the Court reporter failed to state in the transcript Respondent Attorney Mr. Evan Sobocinski admitted to the trial court that he went to Appellant to settle this suit out of court, and Appellant refused, this Court should reverse the Judgment of the Circuit Court. See transcript page 7, Lines 14-24, and page 8, Lines 1-4, where there is no response from Mr. Sobocinski.
- C. Because the Court reporter stated Appellant used a "milk Jug" when Respondent Attorney Ms. Ganes stated at the hearing, Appellant used a plastic cut Jug. This Court should reverse the Judgment of the Circuit Court. See transcript page 8, Line 13, where Court reporter stated "milk Jug". Also, see Exhibit B, the unsafe plastic Jug, Also, see Exhibit H. First paragraph, if Ms. Ganes had stated "milk Jug" Appellant would have had objection to it.

1. Because the Court Reporter stated Appellant put the Jug on the table, and he leaned down to clean the bottom of the table and the Jug Fell "Somehow" and burned him. This Court should reverse the Judgment of the Circuit Court. During the hearing MS. Ganes stated the Appellant placed the plastic cut Jug on the counter top and he went under the counter top to clean, and the Jug turned over and Appellant got burned. see transcript page 8, lines 16-18. Appellant would had objection to placed Jug on table.
2. Because the trial court failed in signed the orders, this court should reverse the Judgment of the Circuit court, see record on Appeal, Exhibits-C, D, and E.
3. Because the trial court erred in failing to find Appellant did not state a claim for which relief may be granted against Respondent, This Court should reverse the Judgment of the Circuit court. see record on Appeal, Exhibit-G.

pursuant to S.C. Rules of Civil procedure, Rule 12(b)(6), in evaluating a motion to dismiss for failure to state facts sufficient to constitute a cause of action. The Circuit Court must view the facts alleged in the complaint on any reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff, if those facts and inferences would entitle the plaintiff on any theory, than a dismissal for failure to state a claim is improper. Hackworth v. Greywood, LLC 385 S.C. 110, 115, 682 S.E. 2d 871, 874 (2009),

The Appellant Court applies the same standard of view of the Circuit Court, Doe v. Marion 373, S.C. 390, 395, 645, S.E. 2d 245, 247 (2007),

Furthermore, dismissal for failure to state a claim upon which relief may be granted does not require appearance, beyond doubt, the plaintiff can prove no set of facts in support of claim that would entitle to relief, Conley v. Gibson 355, U.S. 11, 78, Ct. 99 2d 80 (1957),

4. Because the trial court erred in failing to find Respondent is immune from liability from suit, this court should reverse the judgment of the circuit court.

The Respondent is not immune from liability from suit pursuant to South Carolina tort claims Act. Respondent provided and instructed Appellant to use an unsafe plastic cot jug to put hot water in while working. As a result the Appellant were burned, see Exhibit-B, The unsafe Jug, Also, see Exhibit-H.

The Respondent is negligence, grossly negligence in this action because Respondent had actual knowledge of a substantial risk of harm to Appellant and disregards that substantial risk. Therefore, Respondent is not immune from liability from suit. Hudson v. Palmer, 468, U.S. 517, 526-27 (1984)

pursuant to South Carolina tort claims Act S.C. Code 15-78-60(25) An employee of a government entity responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, "inmate," or client of any government entity, "except" when the responsibility or duty is exercised in a grossly negligence manner.

pursuant to South Carolina tort claims Act S.C. Code 15-78-70(b) nothing in this chapter may be construed to give an employee of a government entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties. see record on Appeal, Exhibit-H.

5. Because the trial court erred in finding that this action is not governed by the South Carolina worker's compensation Act, this court should reverse the judgment of the circuit court, see record on Appeal, Exhibit-I.

This action is not governed by the South Carolina worker's compensation Act, pursuant to the worker's Compensation Law.

The worker's Compensation Law states: The Compensation afforded by Workmen's Compensation Act, is statutory in character, and the right of any claimant there-to is dependent upon terms and condition of the Act. Cook v. Mack's Transfer and Storage, 352 S.E. 2d 296, 298. (1988), Estate of Covington by Montgomery v. AT.T. Nassau Metal Corp 405 S.E. 2d 393, 394 S.C. (1991). Also, see record on Appeal, Exhibit - I.

pursuant to S.C. Code 42-1-16d(A) (Injury and personal injury) mean only injury by "Accident" arising out of and in the course of employment.

This was not an Accident that caused Appellant injury, this was negligence, grossly negligence by the Respondent that caused Appellant's injury.

The Respondent did not take reasonable measures to guarantee the safety of Appellant by provided and instructed Appellant to used an unsafe plastic cut Jug daily to put hot water while working. See record on Appeal, Exhibit - B, the unsafe Jug.

The Respondent afore said actions constitute gross negligence per se, and were Attentional, wanton, willful, and Careless. Richardson v. Hambright 296 S.C. 504, 506, 374, S.E. 2d 296, 298, (1988)

pursuant to S.C. Code 42-1-160(F) the word Accident as used in this title must not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously, or at frequent intervals in the course of such employment, over extended period of time; see record on Appeal, Exhibit I

In this case at issue, this was not an Accident, this was a series of events in employment, and grossly negligence by Respondent.

The Respondent provided and instructed Appellant to use an unsafe plastic cut Jug daily to put hot water in while working, as a result Appellant were burned. This is grossly negligence. Hudson v. Palmer, 468 U.S. 517, 526-527 (1984), Richardson v. Hambright 296 S.C. 504, 506, 374 S.E. 296, 298 (1988).

The Respondent ~~is~~ owes a duty of care to Appellant; the Respondent breached that duty by a grossly negligence Act. The Respondent breached was the proximately caused of the Appellant's injuries and damages. Meyer v. Anderson WL 173-24998 (2022), Richardson v. Hambright 296 S.C. 504, 506, 374 S.E. 2d 296, 298, (1988).

The remedy provided by this Chapter is the Civil Remedy available for any tort committed by a government entity, its employee's or its agents as provided in S.C. Code 15-78-70(b), Also see record on Appeal, Exhibits, I and J.

Conclusion

For the reasons stated, this court should reverse  
the Judgment of the Circuit court,

Date October 31, 2023

Respectfully Submitted,  
S/ Benjamin Heyward  
Benjamin Heyward #165514  
Attendale Court ~~2015~~  
1057 Revolutionary Trail  
Fairfax, SC 29827  
pro se Appellant

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SC Court of Appeals

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Maite Murphy, Circuit Court Judge

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South Carolina Department of Corrections, Respondent,

v.

Benjamin Heyward, Appellant.

PROOF OF SERVICE

I certify that I have served the initial Brief of Appellant by depositing a copy of it in the United States Mail, postage prepaid, on October 31, 2023 to Respondent Attorney Ms. Elloree Gaines at Hood Law Firm, LLC, 172 Meeting Street, P.O. Box 1508, Charleston, S.C. 29402.

Benjamin Heyward  
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Fairfax, SC 29827  
Pro Se Appellant

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RE: Heyward v. SCDC  
Case No. 2023-000920

Dear Ms. Kitchens:

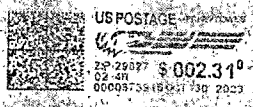
Enclosed for filing please find Appellant's Initial Brief;  
Thank you,

Date October 31, 2023

cc: Elbree A. Games, Esquire

Sincerely,  
S/ Benjamin Heyward #165514  
Attende Cor ~~inst~~  
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pro se Appellant

Benjamin Hegward # 165574-F1-A-2  
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