

The state of south Carolina
in The Court of Appeals

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DEC 15 2023
SC Court of Appeals

Appeal from Dorchester County
Court of Common Pleas

Maire Murphy, Circuit Court Judge

Case No. 2023-000920

Benjamin Heyward . . . Appellant,

v.

South Carolina Department of Corrections . . Respondent.

Record on Appeal

Benjamin Heyward
Allendale Corr Inst
1057 Revolutionary Trail
Fairfax, SC 29827
pro se Appellant

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Record on Appeal

1. Transcript of hearing held on April 10, 2023, Benjamin Heyward v. South Carolina Department of Corrections, Benjamin Heyward.
2. Respondent's memorandum in support of motion to dismiss Filed on April 14, 2023, Benjamin Heyward v. South Carolina Department of Corrections, Benjamin Heyward.
3. Appellant's Exhibit 1, The unsafe Plastic Cut Jug that Respondent provided for Appellant and instructed Appellant to use to put hot water in, as a result Appellant was burned. Benjamin Heyward v. South Carolina Department of Corrections, Benjamin Heyward.
4. Order granting Appellant's motion to Amend the Complaint, that trial Court failed to signed. Benjamin Heyward v. South Carolina Department of Corrections, Benjamin Heyward.
5. Order granting Respondent's motion to dismiss, that trial Court failed to signed, Benjamin Heyward v. South Carolina Department of Corrections, Benjamin Heyward.
6. Appellant's Answer to Respondent's motion to dismiss, stating Appellant's did not failed to state which claim against Respondent, and Appellant Action is not governed by the South Carolina worker's Compensation Act, Benjamin Heyward v. South Carolina Department of Corrections, Benjamin Heyward.
7. Certificate of Appellant, Benjamin Heyward v. South Carolina Department of Corrections, Benjamin Heyward.

STATE OF SOUTH CAROLINA)
) IN COMMON PLEAS COURT
COUNTY OF DORCHESTER) 2022-CP-18-00442

Benjamin Heyward,)
)
 PLAINTIFF,) TRANSCRIPT OF RECORD
)
 vs.) May 11, 2023
)
 South Carolina Department) St. George, South Carolina
 of Corrections,)
)
 DEFENDANT.)
)
)
)
 _____)

B E F O R E:

THE HONORABLE MAITE MURPHY, Judge

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

BENJAMIN HEYWARD,
Self-represented Litigant

ELLOREE GANES, Esquire
Attorneys for Defendant

Recorded by: DCRP

Transcribed by: MISSY BROWN
Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Motion hearing	4			
CERTIFICATE OF REPORTER	13			

P R O C E E D I N G S

May 11, 2023

1
2
3 (WHEREUPON, Court was in session with all parties
4 present when the following matters were had:)

5 THE CLERK: Judge, the next case is Benjamin
6 Heyward versus Department of Corrections. Mr. Heyward is
7 here, as well as Elloree Gaines for the Defense.

8 THE COURT: Good morning.

9 MS. GANES: Good morning, Your Honor. I filed a
10 motion to continue last week. Mr. Heyward's case has not
11 been mediated. You heard some motions on it. I think he
12 filed an amended complaint and then withdrew it, but we
13 have a pending motion to dismiss and it's quite a
14 dispositive issue. And if the motion to dismiss is not
15 granted, then the parties, I would suggest, should take the
16 time to mediate before burdening the Court and a jury with
17 a pro se case.

18 THE COURT: How about we do this, we can go ahead
19 and put your motion to dismiss on the next non-motion --
20 non-jury roster.

21 MS. GANES: Yes, Your Honor.

22 THE COURT: Madam Clerk, when is that?

23 THE CLERK: That would be ---

24 MR. HEYWARD: Excuse me. Excuse me. Excuse me.

25 OFFICER: Hold up. Let the judge talk, young

1 man. What are you doing?

2 THE CLERK: That would be May 16th or 17th.

3 THE COURT: Okay. So Judge McFadden will be here
4 to do the pretrial motions for May 16th or May 17th.
5 You'll get notice to be here for that. And depending on
6 how that goes, then we can give you time to mediate. Why
7 don't we say put you back on the trial roster by June?

8 MS. GANES: Okay. Your Honor, the Court's not
9 inclined to hear -- the Court's not inclined to hear the
10 motion to dismiss today?

11 THE COURT: I suppose we could. Did you file and
12 was he given notice of it?

13 MS. GANES: Oh, yes. The motion to dismiss has
14 been pending since February. And just because we have him
15 transported today, you know, it does burden the Department
16 to bring him from Allendale. And, you know, the issue is
17 that his injury occurred in the course of his work as a
18 prison worker, and the sole remedy is worker's comp.

19 That's our position. And that's ---

20 THE COURT: How long do you expect your motion to
21 take?

22 MS. GANES: I just argued it, five minutes.

23 THE COURT: All right. Sure. We can do that.
24 Why don't we do this, we can actually, if this is the last
25 case we have we can do it in two seconds.

1 All right. So that's the last on the jury
2 roster?

3 THE CLERK: This is the last one on the jury
4 roster.

5 THE COURT: All right.

6 OFFICER: Judge?

7 THE COURT: Yes, sir?

8 OFFICER: He wanted to say something.

9 THE COURT: Yes, sir.

10 MR. HEYWARD: Yes, Your Honor. My motion -- my
11 motion to amend wasn't granted for SCDC. The Defendant
12 trying to dismiss my case because I didn't have SCDC as the
13 proper defendant, and you granted my motion for that and my
14 trial was set for today.

15 THE COURT: Right.

16 MR. HEYWARD: And you dismissed the two employees
17 and then added SCDC as the proper defendant.

18 THE COURT: I've got to look at the entire file
19 and look at the motions. Honestly, I don't recall off the
20 top of my head. We have so many motions, sir. I don't
21 recall exactly the status of your case. But we're going to
22 look at it here in two seconds. We'll pull up your case
23 file and look at the motions that have been heard, the ones
24 that are properly pending before the Court, and we'll take
25 care of it here in just a second.

1 MR. HEYWARD: Okay.

2 THE COURT: Well we can go ahead and do that.

3 Madam Clerk, can we pull up that case file?

4 Ms. Gaines, are you ready to argue that?

5 Gentlemen, do you mind giving Ms. Gaines a little
6 room? She can come up here and argue her motion.

7 (Pause.)

8 THE COURT: All right. Mr. Heyward, it appears
9 with the record in the clerk's file that the only motion
10 pending right now is the motion to dismiss and the motion
11 to continue. So those are the two matters that will be
12 heard today, to continue the trial and a motion to dismiss
13 that was continued.

14 MR. HEYWARD: This past Wednesday, the
15 Defendant's attorney, Mr. Evans, came to me wanting to
16 settle the court.

17 THE COURT: Pardon me?

18 MR. HEYWARD: Mr. Evans, the SCDC attorney, ---

19 THE COURT: Yes, sir.

20 MR. HEYWARD: --- he came to the prison, wanted
21 to settle this matter out of court. And I refused, tell
22 him I'd see him today at trial. He wanted to settle out of
23 court, and I don't understand what's going on.

24 THE COURT: Well if a settlement was reached,
25 that ---

1 MR. HEYWARD: No, there wasn't.

2 THE COURT: No settlement was reached?

3 MR. HEYWARD: No. I told him no. I didn't want
4 to settle. I didn't want to settle.

5 THE COURT: Okay. Well then we'll go forward
6 with the motions that are properly before the Court.

7 All right. Ms. Gaines, you may proceed.

8 MS. GANES: Thank you, Your Honor. And I'm happy
9 to submit a supplemental brief if the Court needs it. But
10 the pleadings seem very clear in that Mr. Heyward's
11 allegation is that in April of 2020 he was working as a
12 cafeteria worker and there was some communication about a
13 pan and they didn't have a pan so he used a milk jug to put
14 some hot water from a coffee maker in it. And then he put
15 the hot water in the coffee maker -- put the hot water in
16 the jug. He put the jug on the table. And then he leaned
17 down to clean the bottom of the table and the jug fell
18 somehow and burned him.

19 So it does not seem to be in dispute that this
20 injury occurred in the course of his work as a cafeteria
21 worker. And so Section 42-1480 is clear that any inmate of
22 the Department of Corrections, in the performance of his
23 work in connection with the maintenance of the institution
24 or a vocational training program, et cetera, who is
25 injured, their sole remedy is worker's comp.

1 And how that works is if they are injured in the
2 course of their prison work, they have to report it and
3 then when they get out, they can have that settlement if
4 they're entitled to one, or their hearing on it. But
5 that's the sole remedy. If it wasn't, our courts would be
6 completely log-jammed with, you know, potential cases from
7 inmates who are injured in their work maintaining the
8 institutions.

9 So that's our position, that he has got to file
10 his worker's comp case. I have verified -- and I do have
11 an affidavit that I could supplement. I have verified that
12 that paperwork was filed. He reported his injury. I think
13 he's maxing out, you know, not terribly long from now. And
14 then he goes back and he files his comp claim and if
15 payment is due to him, he receives it after he is no longer
16 an inmate.

17 THE COURT: Thank you, Ms. Gaines.

18 Mr. Heyward, do you have a response to that?

19 MR. HEYWARD: Your Honor, -- Your Honor, I came
20 here today for a jury trial. I mean, this is new to me
21 what she's saying. And this jug she's talking about,
22 that's negligent. It should never been used. The reason
23 why the food supervisor was using it because they was short
24 of four by six pans. And the water in the dining room area
25 supposed to be normal temperature, like the water any

1 bathroom you go to on the street. It was too hot. That's
2 -- that's how I got burnt.

3 THE COURT: All right, sir. But you're not
4 responding as far as -- you're representing yourself so
5 you're held to the same standard as if you were an
6 attorney. So you must follow the proper legal channels,
7 the rules of evidence, and the statutory law. So do you
8 have any response to the legal arguments she just made?

9 We're not trying your case today because there
10 was a previous filed pending motion that needed to be
11 resolved before your case goes to a jury trial. So we've
12 got to jump through that hoop first before your case goes
13 to a jury trial. So as far as the argument for the motion
14 to dismiss that your case should have been properly brought
15 through worker's comp, rather than through this lawsuit
16 that you have filed, tell me what your response is to that.

17 MR. HEYWARD: Well I'm going to have to ask for a
18 continuance because I didn't get no paperwork to respond
19 and I need -- I need to study. I need to do some research
20 and everything.

21 THE COURT: Ms. Gaines, was he served with ---

22 MR. HEYWARD: She didn't serve me nothing.

23 THE COURT: --- this motion?

24 MS. GANES: My motion was a basic motion. I am
25 happy to file this in a supplemental brief with my

1 filed by the end of the week.

2 THE COURT: Thank you. And if you'd do a
3 proposed order to that effect. Thanks.

4 ***END OF TRANSCRIPT OF RECORD***

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CERTIFICATE OF REPORTER

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I, the undersigned Missy Brown, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, as recorded by DCRP and transcribed by me, in the Court of Common Pleas for Dorchester County, South Carolina, on the 15th day of August 2023.

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

October 13, 2023

Missy Brown
Court Reporter

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	
)	
Benjamin Heyward,)	C/A No. 2022-CP-18-00442
)	
<i>Plaintiff,</i>)	
)	
Versus)	DEFENDANT'S MEMORANDUM IN
)	SUPPORT OF ITS MOTION TO DISMISS
)	PLAINTIFF'S AMENDED COMPLAINT
South Carolina Department of Corrections,)	
)	
<i>Defendant.</i>)	

TO: BENJAMIN HEYWARD, PRO SE PLAINTIFF:

The Defendant, South Carolina Department of Corrections (hereinafter "Defendant"), by and through its undersigned attorneys, submits this memorandum in support of its Motion to Dismiss, seeking an Order dismissing the Plaintiff's Amended Complaint on the grounds that Plaintiff's Amended Complaint fails to state a claim for which relief may be granted against the Defendant. Defendant submits this memorandum to supplement the arguments made during the hearing held on the motion on April 10, 2023.

I. FACTUAL BACKGROUND

Plaintiff Benjamin Hayward, proceeding *Pro Se*, originally filed this action on March 10, 2022. The Plaintiff is currently incarcerated within the South Carolina Department of Corrections at Allendale Correctional Institution. Plaintiff's original Complaint was dismissed, but Plaintiff was granted leave to amend his Complaint to substitute the South Carolina Department of Corrections as the Defendant.

Plaintiff's Amended Complaint contains only three paragraphs of allegations, none of which assert the facts of his claims, nor any theories of recovery. Contained in Plaintiff's original Complaint are negligence/gross negligence causes of action against the Defendant for injuries sustained when he was burned by hot water while working in the McDougall Correctional Institution as an inmate cafeteria worker in April 2020.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Benjamin Heyward,

Plaintiff,

Versus

South Carolina Department of Corrections,

Defendant.

) IN THE COURT OF COMMON PLEAS

)

)

) C/A No. 2022-CP-18-00442

)

)

)

)

)

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF ITS MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

TO: BENJAMIN HEYWARD, PRO SE PLAINTIFF:

The Defendant, South Carolina Department of Corrections (hereinafter "Defendant"), by and through its undersigned attorneys, submits this memorandum in support of its Motion to Dismiss, seeking an Order dismissing the Plaintiff's Amended Complaint on the grounds that Plaintiff's Amended Complaint fails to state a claim for which relief may be granted against the Defendant. Defendant submits this memorandum to supplement the arguments made during the hearing held on the motion on April 10, 2023.

I. FACTUAL BACKGROUND

Plaintiff Benjamin Hayward, proceeding *Pro Se*, originally filed this action on March 10, 2022. The Plaintiff is currently incarcerated within the South Carolina Department of Corrections at Allendale Correctional Institution. Plaintiff's original Complaint was dismissed, but Plaintiff was granted leave to amend his Complaint to substitute the South Carolina Department of Corrections as the Defendant.

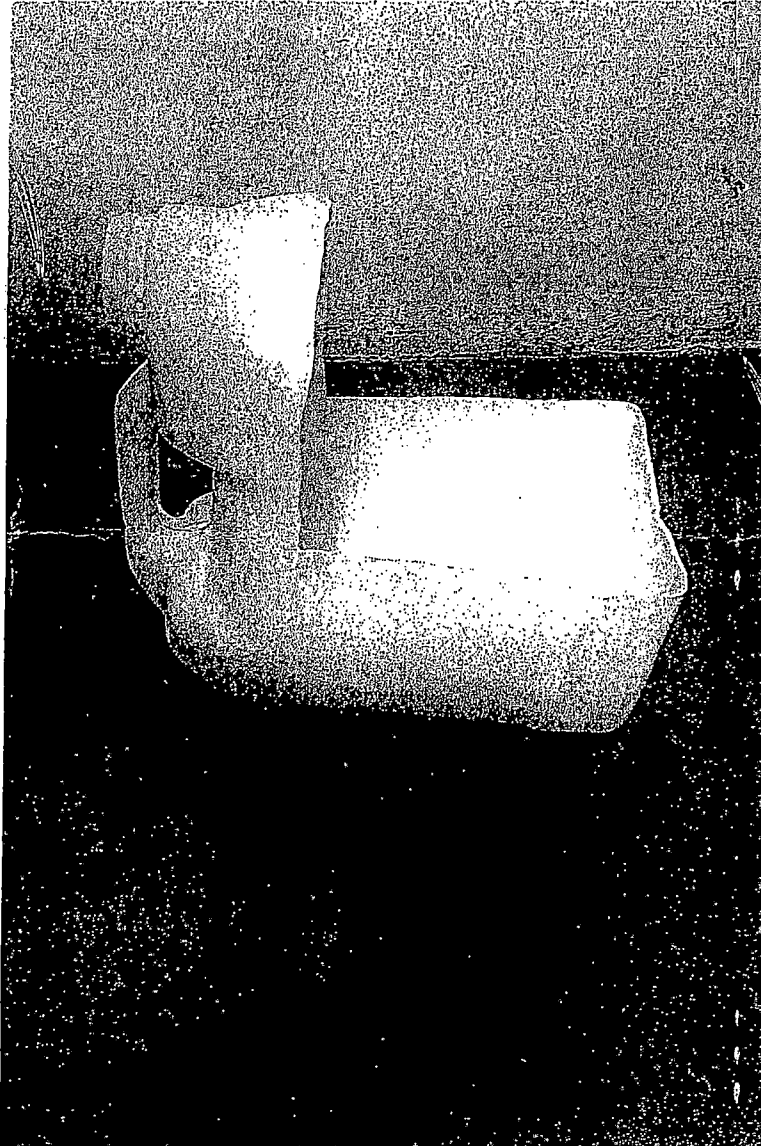
Plaintiff's Amended Complaint contains only three paragraphs of allegations, none of which assert the facts of his claims, nor any theories of recovery. Contained in Plaintiff's original Complaint are negligence/gross negligence causes of action against the Defendant for injuries sustained when he was burned by hot water while working in the McDougall Correctional Institution as an inmate cafeteria worker in April 2020.

Exhibit 1

CERTIFIED COPY

2022 MAR 10 PM 4: 58

Cheryl Mahoney
CLERK OF COURT
DORCHESTER COUNTY



STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS
)
)

Benjamin Heyward,

) C/A No. 2022-CP-18-00442
)
)

Plaintiff,

Versus

ORDER

Lisa Carrington, Gary Finch,

Defendants.

The Court heard Plaintiff's Motion to Amend the Complaint and Defendants' Motion to Dismiss Defendants Lisa Carrington and Gary Finch in this action on October 31, 2022. Based on good cause shown and pursuant to the South Carolina Tort Claims Act, Plaintiff's Motion to Amend the Complaint to name South Carolina Department of Corrections as a Defendant is granted. Defendants' Motion to Dismiss Defendants Lisa Carrington and Gary Finch is also granted, and those Defendants are hereby dismissed from this action. Plaintiff shall file an Amended Complaint within 30 days of the date of this Order removing Defendants Lisa Carrington and Gary Finch and naming South Carolina Department of Corrections as the sole Defendant in the action.

January __, 2023
Charleston, South Carolina

Honorable Maite Murphy

CE RTIFIED COPY
2023 JAN -5 PM 4:26
DORCHESTER COUNTY

CERTIFIED COPY

STATE OF SOUTH CAROLINA 2023 MAY 11 AM 10:43 IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER

Benjamin Heyward,

[Signature]
CLERK OF COURT
DORCHESTER COUNTY

Case No. 2022-CP-18-00442

Plaintiff,)

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

Versus

South Carolina Department of Corrections,

Defendant.)

This matter is before the Court on the Defendant South Carolina Department of Corrections' (hereinafter "Defendant") Motion to Dismiss. The Defendant brought its motion on the grounds Plaintiff's Amended Complaint fails to state a claim for which relief may be granted against the Defendant. Based on the record and the material facts as shown by the Defendant, the Court finds that the Defendant is immune from liability pursuant to the South Carolina Tort Claims Act and that the Plaintiff's action is governed by the South Carolina Worker's Compensation Act. Accordingly, the Court grants Defendant's Motion to Dismiss.

APPLICABLE LAW

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, a motion to dismiss must be granted when the pleadings fail to state facts sufficient to constitute a cause of action as a matter of law. *Bergstrom v. Palmetto Health Alliance*, 596 S.E.2d 42, 45 (S.C. 2004). Furthermore, a court must grant a Rule 12(b)(6) motion to dismiss if the facts alleged and the inferences reasonably deducible from the pleadings would not entitle a plaintiff to relief under any theory of the case. *Brown v. Leverette*, 353 S.E.2d 697, 698 (S.C. 1987); *McCormick v. England*, 494 S.E.2d 431, 433 (S.C. Ct. App. 1997). Thus, the question to be considered is whether the pleadings articulate any valid claim for relief. *Toussaint v. Ham*, 357 S.E.2d 8, 9 (S.C. 1987); *Cowart v. Poore*, 523 S.E.2d 182, 184-85 (S.C. Ct. App. 1999).

DISCUSSION

The Defendant South Carolina Department of Corrections is afforded the protections of the South Carolina Tort Claims act as an agency of the State of South Carolina. S.C. Code Ann. §15-78-30(a), (c), (d), and (h) (1986) (defining “agency,” “employee,” “governmental entity,” and “political subdivision” for purposes of the South Carolina Tort Claims Act) are applicable for any state law claims which may be contained in Plaintiff’s Complaint.

“The remedy provided by [the South Carolina Tort Claims Act] is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in §15-78-70(b).” S.C. Code Ann. §15-78-20(b) (1986).

Further, the South Carolina Tort Claims Act expressly states there is no liability for claims that are governed by the South Carolina Worker’s Compensation Act. S.C. Code §15-78-60 (14).

The Plaintiff’s Complaint seeks recovery for injuries he allegedly sustained while working in the cafeteria at McDougall Correctional Institution. As such, the Court finds that pursuant to S.C. Code §15-78-60 (14) the Defendant is immune from liability, and pursuant to S.C. Code § 41-1-480, the Plaintiff’s sole remedy is governed by the South Carolina Worker’s Compensation Act.

Based on the foregoing, the Defendants’ Motion to Dismiss is hereby GRANTED.

IT IS SO ORDERED.

_____, 2023
St George, South Carolina

The Honorable Maite Murphy

State of South Carolina
County of Dorchester
Benjamin Hequard
v. plaintiff
South Carolina Department
of Corrections
Defendant

IN The Court of Common Pleas
CA No. 2022-CP-18-00442

Plaintiff's Answer To Defendant's motion
To Dismiss Plaintiff's Amended Complaint

FILED
2023 MAY - 1 PM
CLERK OF COURT
DORCHESTER COUNTY

This matter is before the Court on pro se plaintiff's Benjamin Hequard, Answer to the defendant motion to dismiss plaintiff Amended Complaint. The defendant stated in the motion to dismiss, that the plaintiff failed to state a claim for which relief may be granted against the defendant and that defendant are immune from liability and that plaintiff's action is governed by the South Carolina workers compensation Act.

1. Factual Background

On 1-5-23 the plaintiff's motion to Amend the Complaint to name South Carolina Department of Corrections as a defendant was granted. The defendant's motion to dismiss defendants Lisa Carrington and Gray Finch was also granted, and those defendants was dismissed from this action. The court then instructed plaintiff to file an Amended Complaint within 30 days from the date of the order, removing defendants Lisa Carrington and Gray Finch and naming South Carolina Department of Corrections as the sole defendant in the action. The court did not state in the order, that the plaintiff's original Complaint was dismissed, as the defendant stated in its memorandum in support of its motion to dismiss plaintiff's Amended Complaint.

FILED
2023 MAY - 1 PM 1:16
CLERK OF COURT
DORCHESTER COUNTY

2. Applicable Law / Legal standard

pursuant to South Carolina 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 and 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 appellate 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).

pursuant to the South Carolina Rules of Civil Procedure, 12(b)(6), a complaint should not be dismissed merely because doubt exists that the plaintiff's will ultimately prevail.

Further, dismissal for failure to state a claim upon which relief may be granted does not require appearance, beyond doubt, that plaintiff can prove no set of facts in support of claim that would entitle to relief. Conley v. Gibson 355 U.S. 41, 78, S.Ct. 99 2d 80 (1957).

Page 27

The Defendant is NOT immune from liability
3. Under The South Carolina Tort Claim Act

In the case at issue, the defendant provided and instructed the plaintiffs to use an unsafe plastic cut Jug to put hot water in to work with, and as a result the plaintiff was burned, and suffered with first and second degree burns to his back.

pursuant to the South Carolina Tort Claim Act, S.C. Code 15-78-60(5), The exercise of discretion or judgment by the government entity or employee or the performance of failure to perform any act or service which is in the discretion or judgment of the government entity or employee.

pursuant to the South Carolina Tort Claim 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 Claim 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.

4, The plaintiff's Action is not governed by the South Carolina workers' Compensation Act

Legal Argument

Workers' Compensation Law: The Compensation Afforded by workmen's Compensation Act, is statutory in character, and the right of any claimant thereto is dependent upon terms and conditions of the Act, Cook v. Mack's Transfer and Storage, 352, S.E.2d 296, 298, (S.C. App. 1988.) Estate of Covington by Montgomery v. AT&T Nassau Metals Corp., 405 S.E.2d 393, 394, S.C. (1991),

pursuant to S.C. Code 42-1-160(A) (Injury and personal injury) mean only injury by "Accident" arising out of and in the course of employment,

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.

In the case at issue, this was not an "Accident" that caused the plaintiff injury while working for the defendant, this was gross negligence by the defendant that caused plaintiff injury.

The defendant provided and instructed the plaintiff to use an unsafe plastic cut jug to put hot water in to work with. Further, the defendant failed to provide the proper maintenance to the hot pot machine in the dining area. As a result, the plaintiff sustained first and second degree burns to his back. Richardson v. Hambright 296, S.C. 504, 506, 374 S.E.2d 296, 298 (1988).

The defendant must take reasonable measures to guarantee the safety of the plaintiff. The defendant had actual knowledge of a substantial risk of harm to plaintiff and disregards that substantial risk. Hudson v. Palmer, 468 U.S. 517, 526-27 (1984).

The defendant aforesaid actions constituted negligence/gross negligence per se, and were wanton, willful, and careless. Oakman v. Lincare, Inc., WL 3549848 (2013) Richardson v. Hambright 296 S.C. 504, 506, 374 S.E. 2d 296, 298 (1988).

The defendant owes a duty of care to the plaintiff, the defendant breached that duty by a gross negligence act, the defendant breached was the proximately caused of the plaintiff injuries and damages. Meyer v. Anderson, WL 17324998 (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 employees or its agents as provided in S.C. Code 15-78-70(b). The plaintiff requests actual damages for \$500,000 and punitive damages for \$500,000 against defendant.

Conclusion

For the reasons prescribed herein, the defendant's motion to dismiss should be deny, and this case set for trial again.

Dated April 26, 2023

/s/ Benjamin Hayward
pro se plaintiff

Facts

The court reporter stated in the transcript on page three that "no Exhibits" marked during hearing.

Appellant stated at the hearing there was Exhibits. Appellant stated at the hearing it was exhibit-B, which was the unsafe plastic at Jug that Respondent provided for Appellant to put hot water in while working, exhibits-C, D, and E, which is the unsigned orders.

During the hearing Appellant informed trial court that Respondent Attorney MS. Ganes failed to send Appellant a copy of the motion to continue and motion to dismiss Appellant's Amended Complaint.

trial court asked MS. Ganes and MS. Ganes admitted she failed to send Appellant a copy and Court reporter failed to put this information in the transcript.

Trial court then told MS. Ganes that the court would hear this case, and Court reporter failed to put this information in the transcript. Also, trial court lied about hearing this case because this case is on appeal.