

Jenny A. Kitchings
Court of Appeals
1200 Senate Street
Columbia, SC 29211

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

RECEIVED

JAN 12 2024
SC Court of Appeals

Dear Ms. Kitchings:

On 1-3-24 the Appellant received the Respondent's motion to Compel to Correct the Record on Appeal. Enclosed is the documents that Appellant included in the Record on Appeal.

Thank you for your time and effort

S. Benjamin Heyward

Date 1-9-24,

CC: Ellore A. Ganes, Esquire

The state of South Carolina
IN The Court of Appeals

RECEIVED

JAN 12 2024

SC Court of Appeals

Appeal From Dorchester County
Court of Common Pleas

Marte Murphy, Circuit Court Judge

Case No. 2023-000920

Benjamin Heyward,
V,

South Carolina Department of Corrections . . .

Appellant under Rule 209 included the following
documents in the Record on Appeal

8. Appellant's Amended Complaint, Filed January 23, 2023.
9. Appellant's motion for leave to file an Amended Complaint
Filed October 20, 2022.
10. Respondent's Answer to Amended Complaint Filed
February 6, 2023.
11. Respondent's motion to dismiss Amended Complaint, Filed
February 6, 2023.
12. Respondent's Memorandum in support of motion to dismiss
Amended Complaint, Filed April 14, 2023 with Exhibit,
13. page 11, of hearing transcript.
14. Appellant's objection to Respondent's motion to dismiss
15. Appellant's Response to Respondent's Answer to Appellant's Amended
Complaint
- ~~16. Appellant's original Complaint~~

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State of South Carolina
County of Dorchester
Benjamin Heyward

v. plaintiff

South Carolina Department
of Corrections

Defendant

IN The Court of Common Pleas

Case No. 2022-CP-18-00442

Amended Complaint

CERTIFIED COPY

2023 JAN -3 PM 4:58:00
2023 JAN 23 PM 4:30
CLERK OF COURT
DORCHESTER COUNTY

Pro se Plaintiff, Benjamin Heyward, pursuant to Rules 15(A) of the South Carolina Rules of Civil procedure, was ordered by the Court to file an Amended Complaint adding a party. 1. on 1-5-23 plaintiff's motion for leave to file an Amended Complaint was granted, adding South Carolina Department of Corrections as defendant in this action. Defendant's motion to dismiss Lisa Carrington and Gary Finch from this action was also granted.

2. plaintiff's add South Carolina Department of Corrections as defendant in this action, and to remove Lisa Carrington and Gary Finch from this action as defendants.

3. The Court should grant leave freely to amend a complaint.
Love v. State 843 S.E.2d. 1961

Date 1-20-23

Respectfully Submitted,
Benjamin Heyward

State of South Carolina
County of Dorchester
Benjamin Heyward
v. plaintiff

South Carolina Department
of Corrections
Defendant

IN The Court of Common Pleas
C/A No. 2022-CP-18-00442

Certificate of Service

FILED OFFICE
2023 JAN 23 PM 4:35
CHERYL BIRKHAM
CLERK OF COURT
DORCHESTER COUNTY

I, the undersigned pro se plaintiff, hereby certify that on 1-20-23, I have served the defendant Attorney Ellore A. Ganes in this Action with a copy of plaintiff's Summons and Amended Complaint at the address below, United States mail, postage prepaid.

Hood Law Firm, LLC
Attorney Ellore A. Ganes
172 Meeting Street
P.O. Box 1508
Charleston, SC 29402

CERTIFIED COPY
2023 JAN -3 PM 1:59
Cheryl Birkham
CLERK OF COURT
DORCHESTER COUNTY

S/ Benjamin Heyward
pro se plaintiff

State of South Carolina
County of Dorchester
Benjamin Heyward

Plaintiff

v.

Lisa Carrington,
Gary Finch,
South Carolina
Department of Corrections
Defendants

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

No. 2022-CP-18-00442

Motion for Leave to File An Amended
Complaint

CERTIFIED COPY
2022 NOV 8 PM 3:23

Cheryl Anderson
CLERK OF COURT
DORCHESTER COUNTY

FILED
2022 OCT 20 AM 11:39

2022 OCT 20 AM 11:39

RECORDED

Pro se plaintiffs, Benjamin Heyward, pursuant to Rule 15(A) of the South Carolina Rules of Civil Procedure, requests leave to file an amended complaint adding a party.

1. on 8-16-22 plaintiff received the defendants memorandum in support of motion to dismiss plaintiff's complaint.
2. The defendants stated in their memorandum the South Carolina Department of Corrections (SCDC) is an agency of the state. Therefore, SCDC is protected by the South Carolina tort claims Act.
3. The plaintiff requests that this court add SCDC as a defendant in this action.
4. A motion to amend a pleading is addressed to the circuit court's sound discretion, and the party opposing the motion has the burden of establishing prejudice. Rules Civil Proc., Rule 15. Patton v Miller 804, S.E. 2d 252, 263, SC.

5. A real party in interest is the party who, by the substantive law, has the right sought to be enforced; it is the ownership of the right which qualifies one as a real party in interest, S.C.R. Civ. P., Rule 17(A).

6. Where the name plaintiff has suffered an actionable loss at the hand of the defendant, he is a real party in interest, S.C.R. Civ. P., Rule 17(A)

7. When issues not raised by the pleadings are tried by express or implied consent of the parties, the trial court may allow pleadings to be amended upon proper motion, S.C.R. Civ. P., Rule 15(b).

8. This court should grant leave freely to amend a complaint, *Love v. State* 843, S.E. 2d 196.

Date 8-19-22

Respectfully Submitted,
Benjamin Heyward
Benjamin Heyward #165514
Evans Court Inst
610 Hwy 9 West
Bennettsville, SC 29512

State of South Carolina
County of Dorchester
Benjamin Heyward
plaintiff

v.

LISA Carrington,
Gary Finch, SCDC

Defendants

In The Court of Common Pleas

YA Nos 2022-CP-18-08442

certificate of service

2022 NOV - 2 11:10:08
CERTIFIED COPY
DORCHESTER COUNTY
CLERK OF COURTS
Benjamin Heyward

I, the undersigned pro se plaintiff, hereby certify that on 8-19-22, I have served the defendants Attorney Ellore A. Ganes in this action with a copy of plaintiffs motion to Amend Complaint herein below, United States mail, postage prepaid, at the following address:

Hood Law Firm LLC
172 meeting street
Charleston, SC 29401

sc Benjamin Heyward
pro se plaintiff

2022 OCT 20 AM 11:39
CLERK OF COURTS
DORCHESTER COUNTY

CERTIFIED COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)

2024 JAN -3 PM 1:57

Benjamin Heyward,

Charles Heyward
CLERK OF COURT
DORCHESTER COUNTY

Case No. 2022-CP-18-00442

Plaintiff,)

Versus)

**DEFENDANT'S ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT
(Jury Trial Requested)**

South Carolina Department of Corrections,)

Defendant.)

The Defendant, South Carolina Department of Corrections (hereinafter "Defendant"), by and through its undersigned attorneys, hereby responds to the allegations in Plaintiff's Amended Complaint, subject to any and all affirmative defenses, qualifications, motions and any other pleadings as follows:

1. Paragraphs 1, 2 and 3 of the Plaintiff's Amended Complaint do not contain allegations and therefore no response is required.
2. The Defendant denies any and all claims against it that could be construed from any filing the Plaintiff has made.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Non-Economic Damage Awards)

3. No award for non-economic damages shall exceed the statutory limits contained in the Non-Economic Damages Awards Act of 2005, South Carolina Code Ann. §15-32-200, et. seq. The Defendant is health care provider or health care institution as defined by S.C. Code Ann. § 15-32-210 and pursuant to § 15-32-220 of the Non-Economic Damage Awards Act of 2005, any potential recovery of non-economic damages is limited to the amounts stated therein.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Failure to State a Claim)

4. The allegations in the Plaintiff's Amended Complaint fail to state a claim upon which relief may be granted against the Defendant. Therefore, this Amended Complaint should be dismissed for all applicable reasons in accordance with Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.
THE DEFENDANT ALLEGES:
(No Constitutional Violation)

5. That alleged actions/inactions claimed by the Plaintiff did not rise to the level of constitutional violations and the Plaintiff did not suffer any infringement of constitutional and/or federal rights, state rights, privileges or immunities.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.
THE DEFENDANT ALLEGES:
(Failure to Exhaust Remedies)

6. That the Plaintiff has failed to exhaust his administrative remedies available to address the grievances included within the Amended Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE.
THE DEFENDANT ALLEGES:
(Assumption of the Risk)

7. The Defendant alleges that the perils and dangers existing at the time of Plaintiff's actions, if any, were open, obvious, and known to the Plaintiff, who nevertheless conducted himself in such a manner so as to voluntarily assume all risks pertaining thereto.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Prison Litigation Reform Act)

8. The Defendant pleads all pertinent parts of the Prison Litigation Reform Act, 42 U.S.C. § 1997, including the limitation on attorneys' fees.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Frivolous/Unreasonable Action)

9. That, upon information and belief, the Plaintiff's action in bringing this suit is frivolous, unreasonable, and without foundation and thus the Defendant is entitled to recover from him reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Three Strikes)

10. That the Plaintiff be charged one strike, out of his allotted three, for filing a frivolous suit.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Eleventh Amendment Immunity)

11. Eleventh Amendment Immunity in accordance with the Constitution of the United States of America and the State of South Carolina bars Plaintiff's claims in totality against the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Qualified Immunity)

12. The Defendant was at all times acting within their official and discretionary capacities and as such, is entitled to qualified immunity.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Reasonableness and Good Faith)

13. The Defendant alleges that they acted reasonably and in good faith at all times material herein, based on all relevant facts and circumstances known by them at the time they so acted. Accordingly, Plaintiff is not entitled to the recovery of any damages whatsoever.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(No Breach)

14. The Defendant did not breach any purported duty owed to the Plaintiff so as to bar Plaintiff from recovery against the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(No Proximate Cause)

15. That any injuries sustained by the Plaintiff were not proximately caused by any actions or inactions of the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Intervening/Superseding Cause)

16. Whatever injuries and damages, if any, may have been sustained by the Plaintiff, were due to the superseding and/or intervening cause beyond the control of the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Comparative Negligence)

17. The Defendant alleges that any injuries suffered by the Plaintiff, as alleged in the Plaintiff's Amended Complaint, were due to and caused by and were the direct and proximate result of acts of negligence on the part of the Plaintiff or a third party, over whom the Defendant has no control so as to bar the claims of the Plaintiff against the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THE DEFENDANT ALLEGES:
(Lack of Foreseeability)

18. That upon information and belief, even if the damages alleged in Plaintiff's Amended Complaint, if any, were proximately caused by the acts and/or omissions of the answering Defendant, which is otherwise denied except for the purpose of the affirmative defenses, the Defendant does not and could not have foreseen that Plaintiff's damages, if any could have proximately resulted from the Defendants' acts or omissions.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Punitive Damages Unconstitutional)

19. The Defendant would plead the requirements for an award of punitive damages as set forth by the Supreme Court of South Carolina in the case of State Farm Mut. Auto Ins. Co. v. Campbell, 538 S.C. 408 (2003) as defenses to this claim and would specifically assert that they are entitled to summary judgment on punitive damages and if denied to bifurcated trial.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Limitation of Punitives and Bifurcation of Trial)

20. The Defendant reserves the right to bifurcate the trial of this case and hereby plead that any punitive damages awarded in this case would be subject to the limitations described in S.C. Code § 15-32-510 et seq.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Reservation and Non-Waiver)

21. The Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint subject to any motions or other pleadings, and having asserted the above affirmative defenses, Defendant, South Carolina Department of Corrections, pray that the Plaintiff's Amended Complaint be dismissed in its entirety with prejudice and the Court award reasonable costs and attorney's fees to the Defendants for defending this matter together with such other relief as the Court deems proper.

HOOD LAW FIRM, LLC
172 Meeting Street / Post Office Box 1508
Charleston, SC 29402
Ph: (843) 577-4435 / Fax: (843) 722-1630

s/ Ellore A. Ganes

Ellore A. Ganes (SC #70509)
elloree.ganes@hoodlaw.com
Evan M. Sobocinski (SC #104259)
evan.sobocinski@hoodlaw.com

*Attorneys for the Defendant
South Carolina Department of Corrections*

February 6, 2023
Charleston, South Carolina

CERTIFIED COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)

2024 JAN -3 PM 1:59

Benjamin Heyward,

Charles M. Ganes
COURT REPORTER
FOR THE COUNTY

Case No. 2022-CP-18-00442

Versus

**DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

South Carolina Department of Corrections,

Defendant.

TO: BENJAMIN HEYWARD, PRO SE PLAINTIFF:

The Defendant, South Carolina Department of Corrections (hereinafter "Defendant"), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place set by the Court, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, for an Order dismissing the Plaintiff's Amended Complaint on the grounds the Plaintiff's Amended Complaint fails to state a claim for which relief may be granted against the Defendants.

This Motion is further supported by the South Carolina Rules of Civil Procedure and all applicable authority, including memoranda or affidavits, or other supporting documentation which the Defendants may file with the Court prior to the Court's hearing of this matter. Further, the Defendants pray for all other relief this Honorable Court deems just and proper.

HOOD LAW FIRM, LLC
172 Meeting Street / Post Office Box 1508
Charleston, SC 29402
Ph: (843) 577-4435 / Fax: (843) 722-1630

February 6, 2023
Charleston, South Carolina

s/ Elloree A. Ganes
Elloree A. Ganes (SC #70509)
elloree.ganes@hoodlaw.com
Evan M. Sobocinski (SC #104259)
evan.sobocinski@hoodlaw.com

*Attorneys for the Defendant
South Carolina Department of Corrections*

CERTIFIED COPY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

Benjamin Heyward,)
C/A No. 2022-CP-18-00442)

Charles A. Heyward
CLERK OF COURT
DORCHESTER COUNTY
Plaintiff,)

Versus)

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

South Carolina Department of Corrections,)
Defendant.)

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.

II. LEGAL STANDARD

Under 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).

III. LEGAL ARGUMENT

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).

As mentioned above, the Plaintiff's Complaint seeks recovery for injuries he allegedly sustained while working in the cafeteria at McDougall Correctional Institution in April 2020. Plaintiff was working as a cafeteria worker when the incident occurred and Plaintiff's sole recovery is governed by the South Carolina Worker's Compensation Act. S.C. Code §42-1-100 *et seq.* Section 41-1-480 of the act specifically addresses the coverage provided to inmates of the Department of Corrections:

Any inmate of the State Department of Corrections, as defined in this section, in the performance of his work in connection with the maintenance of the institution, any department vocational training program, or with any industry maintained therein, or with any highway or public works activity outside the institution, who suffers an injury for which compensation is specifically prescribed in this title, may, upon being released from such institution either upon parole or upon final discharge, be awarded and paid compensation under the provisions of this title. If death results from such injury, death benefits shall be awarded and paid to the dependents of the inmate. The time limit for filing a claim under this section shall be one year from the date of death of the inmate or the date of his release either by parole or final discharge, and no inmate shall be eligible for benefits unless his injury is reported prior to his release from custody of the department. If any person who has been awarded compensation under the provisions of this section shall be recommitted to an institution covered by this section, such compensation shall immediately cease, but may be resumed upon subsequent parole or discharge.

For purposes of this section, the term "inmate" includes any person sentenced to the South Carolina Department of Corrections and who is then in the jurisdiction of the department, or any person sentenced to the county public works who has been transferred to the Department of Corrections for confinement. An inmate who has been sentenced to the Department of Corrections and who is temporarily transferred to the county public works, or to any other South Carolina law-enforcement authority, or to out-of-state authorities, is not considered to be in the "jurisdiction" of the South Carolina Department of Corrections for purposes of this section.

This section shall not apply to patients of the South Carolina Department of Mental Health or those persons who are confined within the jurisdiction of the county prisons, county jails, city jails or overnight lockups or to any inmate injured in a fight, riot, recreational activity or other incidents not directly related to his work assignment.

Mr. Russell Rush, who is employed by the South Carolina Department of Corrections has provided an affidavit related to the action. Exhibit 1. Mr. Rush confirms that SCDC submits claims of inmates' injuries alleged to have been sustained while working in connection with the maintenance of the institution to the State Accident Fund pursuant to S.C. Code §42-1-480. Plaintiff's sole remedy for his alleged injuries is governed by the South Carolina Worker's Compensation Act. Therefore, the Plaintiff has failed to state a claim for which relief may be granted against the Defendant, and the Defendant's Motion to Dismiss should be granted.

HOOD LAW FIRM, LLC
172 Meeting Street / Post Office Box 1508
Charleston, SC 29402
Ph: (843) 577-4435 / Fax: (843) 722-1630

April 14, 2023
Charleston, South Carolina

/s/ Ellore A. Ganes
Ellore A. Ganes (SC #70509)
elloree.ganes@hoodlaw.com
Evan M. Sobocinski (SC #104259)
evan.sobocinski@hoodlaw.com

Attorneys for the Defendant
South Carolina Department of Corrections

CERTIFIED COPY EXHIBIT 1

2023 JAN -3 PM 2:00

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER)
Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

Benjamin Heyward,) CTA No. 2022-CP-18-00442

)
Plaintiff,)

AFFIDAVIT OF RUSSELL RUSH

)
Versus)

)
South Carolina Department of Corrections,)

)
De endant.)

My name is Russell Rush.

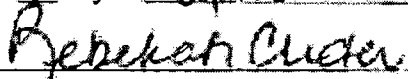
1. I am over the age of 18 and I am employed by the South Carolina Department of Corrections.
2. I have reviewed the Plaintiff's allegations in this case.
3. Plaintiff alleges that on or about April 19, 2020, he was injured when he was burned with hot water while he was working as a cafeteria worker at MacDougall Correctional Institution.
4. I have reviewed Plaintiff's inmate work records and hereby attest that Plaintiff was a cafeteria worker at MacDougall Correctional Institution on or about April 19, 2020.
5. Plaintiff's work as a cafeteria worker was performed in connection with the maintenance of the institution.
6. The South Carolina Department of Corrections submits claims of inmates' injuries alleged to have been sustained while working in connection with the maintenance of the institution to the State Accident Fund pursuant to S.C. Code §42-1-480.

FURTHER THE AFFIANT SAYETH NOT.



RUSSELL RUSH

SWORN TO AND SUBSCRIBED before me
this 7 day of April, 2023.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: Nov. 20, 2030

1 affidavit and let the Court, you know, take it under
2 advisement, and respond after he's had an opportunity to
3 respond. But I don't think there is any dispute that he
4 was working as a cafeteria worker and he was injured in the
5 course of that and he should have a worker's comp claim
6 when he maxes out.

7 THE COURT: All right. So, Mr. Heyward,
8 obviously want to be completely fair to you too and give
9 you an opportunity to look at the motion, to research the
10 issue and respond, so I'll keep the record open for Ms.
11 Gaines to file the affidavit and supplemental brief, to
12 serve you with it so you can look at it, and then if you
13 want to file a written response to the Court, I'll give you
14 time to do that.

15 Would 30 days be sufficient for you?

16 MR. HEYWARD: Yes.

17 THE COURT: Okay. So I'll give you 30 days to
18 respond once you get the written brief and the affidavit.
19 You can respond in writing and file it with the court.
20 I'll take a look at both sides and then I'll issue a
21 ruling. Okay?

22 MR. HEYWARD: Yes, ma'am.

23 THE COURT: All right, sir.

24 All right. Thank you, ma'am.

25 MS. GANES: Your Honor, I can get that brief

State of South Carolina
County of Dorchester
Benjamin Heyward

plaintiff

v.

South Carolina Department
of Corrections

Defendant

IN The Court of Common Pleas

CERTIFIED COPY

Case No. 2022-CP-18-00442

FEB 16 3 21 PM '23

Plaintiff's Objection To Defendant's
motion to dismiss plaintiff's Amended
Complaint

CLERK OF COURT
DORCHESTER COUNTY

2023 FEB 16 PM 3:21

prose plaintiff, Benjamin Heyward object to defendant's motion to dismiss plaintiff's Amended Complaint, pursuant to Rule 12(b) of the South Carolina Rules of Civil procedure. Defendant stated that plaintiff's Amended Complaint fails to state a claim for which relief may be granted against the defendant.

1. under Rule 12(b) of the South Carolina Rules of Civil procedure, when ruling on a defendant's motion to dismiss for failure to state a claim, a judge must accept as true all of the factual allegations contained in the complaint. Furthermore, 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).

prose plaintiff prays for this honorable court to dismiss the defendant's motion to dismiss plaintiff's Amended Complaint.

Date 2-13-23
Fairfax, SC

Benjamin Heyward #165514
Attended Court
1057 Revolutionary Trail
Fairfax, SC 29827

state of South Carolina
County of Dorchester
Benjamin Heyward

v. plaintiff

South Carolina Department
of Corrections

Defendant

IN The Court of Common Pleas

Case No. 2022-CP-18-00442

Certificate of Service

I, the undersigned pro se plaintiff, hereby certify that on February 13, 2023, I have served the defendant attorney in this action with a copy of plaintiff objection to defendant's motion to dismiss plaintiff's Amended Complaint to the following address below, United States mail, postage prepaid.

Hood Law Firm, LLC
Ellore A. Ganes
172 meeting Street
P.O. Box 1508
Charleston, SC 29402

/s/ Benjamin Heyward
pro se plaintiff

FILED
2023 FEB 16 PM 3:21
CHERRIL B. SAHANI
CLERK OF COURT
DORCHESTER COUNTY

CERTIFIED COPY
2024 JAN -3 PM 2:00
Cheryl B. Sahani
CLERK OF COURT
DORCHESTER COUNTY

State of South Carolina
County of Dorchester

Benjamin Heyward,
vi plaintiff,

South Carolina Department
of Corrections,

Defendant.

IN The Court of Common Pleas
CERTIFIED COPY

CA No. 2022-CP-18-00 ~~4/1/23~~ 2/23 PM 2:00

Plaintiff's Response To
Defendant's Answer To Plaintiff's
Amended Complaint

(Jury Trial Requested)

The pro se plaintiff's, Benjamin Heyward, hereby responds to the defendant's Answer to plaintiff's Amended Complaint.

1. paragraph 1, of defendant answer to plaintiff Amended Complaint required no answer.

2. The defendant Alleges and denies any and all claims against any filing the plaintiff has made. IN plaintiff response, All the claims and filing plaintiff has made is true and in good faith and it should not be deny.

3. The defendant Alleges (Non-Economic Damage Awards) should not exceed the statutory limits contained in Non-Economic damages Awards Act of 2005, South Carolina Code Ann 15-32-200, et seq. IN plaintiff response, the Awarding of non-economic damages such as pain and suffering to limit the amount of an Award for noneconomic damages to three hundred thousand dollars for each claimant.

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CLERK OF COURT
DORCHESTER COUNTY
2023 FEB 16 PM 3:21

4. The defendant Alleges (Failure to state A claim), IN plaintiff response under Rule 12(b) of the South Carolina Rules of Civil procedure, when ruling on A defendant's motion to dismiss For Failure to state A claim; A Judge must accept as true all of the Factual allegations contained in the Complaint.

5. The defendant Alleges (No Constitutional Violation), IN plaintiff response, his state rights was violated.

6. The defendant Alleges (Failure to Exhaust Remedies), IN plaintiff response, he Completed his step one and step two grievance with defendant, which is the highest level and the Final answer, "see complaint, Exhibits - C and F."

7. The defendant Alleges (Assumption of the risk) that the perils and dangers existing at the time of plaintiff's actions, were open, obvious, and known to the plaintiff, who nevertheless conducted himself in such A manner so as to voluntarily assume all risks pertaining thereto. See plaintiff's Complaint, paragraph 8 where plaintiff informed food service "Director" Mr. Finch that the plastic cut jug was not safe to put "hot water" in. In paragraph 9 Mr. Finch instructed plaintiff to use the unsafe plastic cut jug to put hot water in. In paragraph 10 plaintiff informed Mr. Finch that the hot water in the dining area was well over 110 degrees, and it was unsafe for the Cafeteria workers and the inmates in general population to use. In paragraph 11 Mr. Finch told the plaintiff he knew about the hot water in the dining area. Therefore, the defendant knew the danger and the risk that the plaintiff's could be burned and suffered damages.

8. The defendant Alleges (Prison Litigation Reform Act), in plaintiff response, the defendant should be deny all pertinent part of the Prison Litigation Reform Act in this action due to the defendant negligence in this Action.

9. The defendant Alleges (Frivolous/unreasonable Action) in plaintiff response, this Action is in good faith and defendant should not be entitled to recover Attorney's Fees.

10. The defendant Alleges, (Three Strikes) that plaintiff be charged one strike, in plaintiff response, That's Fine with him.

11. The defendant Alleges (Eleventh Amendment Immunity) and that Plaintiff claims be bar against defendant, in plaintiff response, The defendant conduct was not within the scope of his official duties and defendant breached that duty and should not be entitled to immunity.

12. The defendant Alleges (Qualified Immunity) and at all times acting within their official and discretionary capacities, in plaintiff response, The defendant failed to maintain safe workplace for plaintiff, defendant provided and instructed plaintiff to use an unsafe plastic cut jug to put hot water in, defendant failed to train plaintiff how to handle hot water in an cut jug, defendant owes a duty of care to the plaintiff, the defendant breached that duty by an negligence Act, the defendant breached was the proximate cause of plaintiff injuries and damages. Therefore, defendant should not be entitled to Qualified Immunity.

13. The defendant Alleges (Reasonableness and Good Faith) and that defendant acted reasonably and in good faith at all times material herein, and plaintiff is not entitled to the recovery of any damages. In plaintiff response, the defendant did not acted reasonable and in good faith at "no" times herein, and plaintiff should be entitled to the recovery of damages requested in complaint,

14. The defendant Alleges, (no Breach) and did not breach any purported duty owed to the plaintiff so as to bar plaintiff from recovery against the defendant. In plaintiff response, the defendant owes a duty of care to plaintiff, defendant breached that duty by a negligent Act, and defendant breached was the actual and proximate caused of the plaintiff's injuries and damages and plaintiff should not be barred from recovery against the defendant,

15. The defendant Alleges (NO proximate cause) that any injuries sustained by the plaintiff were not proximately caused by defendant action. In plaintiff response, the defendant breached of duty was the proximately caused of plaintiff injuries and damages,

16. The defendant Alleges (intervening/superseding cause) and stated, whatever injuries and damages sustained by the plaintiff was beyond the control of the defendant. In plaintiff response, The defendant failed to maintain safe workplace for the plaintiff, the hot water in the dining area was well over 110 degrees and defendant knew about it, defendant provided plaintiff with an unsafe plastic cut jug to put hot water in, defendant failed to train plaintiff how to handle hot water in an unsafe plastic cut jug. Therefore, the Defendant had control herein.

17. The defendant Alleges, (Comparative negligence) and any injuries suffered by plaintiff were the direct and proximate result of acts of negligence on the part of the plaintiff or a "third party". In plaintiff response, defendant failed to maintain safe workplace for plaintiff, the defendant knew that the hot water in the dining area was too hot for the plaintiff to work with, and defendant provided and instructed plaintiff to use an unsafe plastic cut jug to put hot water in, therefore, the defendant is negligence herein.

18. The defendant Alleges and denied the damages of the plaintiff, in plaintiff response, the defendant acts and/or omissions was the proximate cause of the plaintiff injuries and damages.

19. The defendant Alleges that (punitive damages unconstitutional) in plaintiff response, plaintiff requested for \$75000.00 for punitive damages which is in the limitation of the South Carolina tort claim Act, S.C. Code 15-78-10 et seq.

20. The defendant Alleges (Limitation of punitives and Bifurcation of trial), in plaintiff response, let the jury decide on the punitive damages.

21. The defendant Alleges (Reservation and non-waiver) defendant reserves any additional and further defenses. In plaintiff response, so be it, that's fine with plaintiff.

wherefore, having fully response the defendant's answer to plaintiff's Amended Complaint, plaintiff pray that the defendant's motion to dismiss plaintiff's Amended Complaint be dismissed with prejudice and this case be set for trial as soon as possible,

Benjamin Heyward 165514
Allendale Corr inst
1057 Revolutionary Trail
Fairfax, SC - 29827

g. Benjamin Heyward
pro se plaintiff

February 13, 2023

Fairfax, South Carolina

State of South Carolina
County of Dorchester
Benjamin Heyward
plaintiff

v.
South Carolina Department
of Corrections

Defendant

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

Certificate of service

CERTIFIED COPY

2024 JAN -3 PM 2:00

[Signature]
CLERK OF COURT
DORCHESTER COUNTY

I, the undersigned pro se plaintiff, hereby certify that on February 13, 2023, I have served the defendant Attorney in this Action with a copy of plaintiff's Response to defendant's answer to plaintiff's Amended Complaint to the following address below, united states mail, postage prepaid,

HOOD Law Firm, LLC
Ellore A. Ganes
172 meeting street
P.O. Box 1508
Charleston, SC 29402

2023 FEB 16 PM 3:21
CLERK OF COURT
DORCHESTER COUNTY

[Signature]
pro se plaintiff

State of South Carolina
IN the Court of Appeals

RECEIVED

JAN 12 2024

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.

PROOF OF SERVICE

The undersigned Appellant certifies that on 9 day of
January 2024, A copy of the included documents in the record
on Appeal to Respondent Attorney by mailing a copy at the
Address below:

Ellore A. Ganes
HODD Law Firm, LLC
172 meeting street
P.O. Box 1508
Charleston SC 29402

s/ Benjamin Heyward
Attende Corr Inst
1057 Revolutionary Trail
Fairfax, SC 29827
Appellant

Benjamin Heyward #165514-AA-2
Allendale Correctional Institution
1057 Revolutionary Trail
Fairfax, SC 29827

RECEIVED
JAN 12 2024
SC Court of Appeals

THE DEPARTMENT OF CORRECTIONS HAS
NOT CENSORED THIS ITEM. THEREFORE, THE
DEPARTMENT DOES NOT ASSUME
RESPONSIBILITY FOR ITS WRITTEN CONTENTS.
ALLEDALE CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS

Honorable Jenny A. Kitchings, Clerk
S.C. Court of Appeals
1220 Senate Street

Columbia, SC 29211

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AGI

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