

The State of South Carolina
IN The Court of Appeals

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SC Court of Appeals

Appeal From Dorchester County
Court of Common Pleas
Maite Murphy, Circuit Court Judge

Case No. 2023-000920

Benjamin Heyward Appellant,
v.

South Carolina Department of Corrections . . Respondent.

Amended Final Brief

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Issues Raised on Appeal

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

Statement of The Case

In January 2020, while Appellant were at Macabugall 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 use daily to put hot water in while working. As a result, the 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 in the plastic cut Jug. He placed the Jug on the counter top. He then proceeded to clean underneath it, and the Jug turned over and the hot water fell on his back. Appellant sustained first and second degree burns to his back.

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

On April 19, 2022, Respondent filed a motion to dismiss defendants Lisa Carrington and Gary Finch on the grounds that Lisa Carrington and Gary Finch are employees of SCDC and SCDC is an agency of the state, and is protected by the South Carolina Tort Claims Act.

on October 20, 2022 Appellant Filed A motion For leave to File An Amended Complaint Adding SCDC as defendant in the Action.

on January 5, 2023 The court granted Appellant's motion to Amend the Complaint to name SCDC as defendants. The court also granted Respondent's motion to dismiss defendants Lisa Carrington and Gary Finch.

The court then order Appellant to File An Amended Complaint naming SCDC as the sole defendant in the Action.

on February 6, 2023 Respondent Filed A. motion to dismiss Appellant's Amended Complaint on the grounds Appellant failed to state A Claim against Respondent.

on March 20, 2023 the trial Court scheduled Appellant For Jury Trial, and Appellant was placed on the Jury Roster For April 10, 2023.

on April 5, 2023 Respondent's Attorney Evan Sabocinski came to see Appellant about settle the case out of Court and Appellant refused.

on April 10, 2023 Appellant went to court thinking he was having A Jury Trial, Instead, the trial Court had A hearing For Respondent on the grounds Appellant's Action is governed by the south carolina worker's Compensation Act.

Appellant informed the trial court that he wasn't prepared for the hearing, and trial court give Appellant 30 days to answer Respondent's motion to dismiss Amended Complaint.

On May 11, 2023 Appellant's Answer to Respondent's motion to dismiss Appellant's Amended Complaint was filed with the trial court.

On May 11, 2023 the trial court granted Respondent's motion to dismiss Appellant's Amended Complaint, and the failed to signed the order.

On 10-23-23 Appellant received a copy of the hearing transcript from court reporter MS. MISSY BROWN, and the transcript was tampered with by MS. BROWN.

Facts

1. The trial Court erred in failing to properly train and supervise court reporter from tampering with 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 record on Appeal page 14.
2. Appellant informed the trial Court that Respondent Attorney Mr. Evan M. Sobocinski came to the prison wanting to settle this case out of court on Wednesday (4-5-23) and Appellant refused.
The trial Court asked Mr. Sobocinski if he went to speak to Appellant about ~~re~~ settling, and Mr. Sobocinski told trial Court yes, and court reporter failed to state what Mr. Sobocinski said in the transcript, see record on Appeal, transcript page 7, Lines 14-24, and pages 8, Lines 1-4, where there is no response from Mr. Sobocinski.
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 record on Appeal, transcript page 8, Line 13. Also, see record on Appeal, Exhibit-1, the unsafe plastic cut Jug on page 15.

4. Ms. Ganes 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 Appellant put the Jug on the table and the Jug fell "Somehow" and burned him. see record on Appeal, transcript page 8, lines 16-18.

5. The trial court erred in failing to signed order granting Appellant's motion to Amend the Complaint, see record on Appeal page 16.

The trial Court erred in failing to signed Respondent's motion to dismiss, see record on Appeal pages 17-18.

6. The trial Court erred in failing to find the Appellant did not state a claim for which relief may be granted against Respondent. see record on Appeal, Appellant's Answer to Respondent's motion to dismiss Appellant's Amended Complaint, page 20.

7. The trial Court erred in failing to find Respondent is not immune from liability from suit, see record on Appeal page 21.

8. The trial Court erred in failing Appellant's Action is not governed by the South Carolina worker's Compensation Act, see record on Appeal pages 22-23.

Arguments

1. (A) Because Court reporter tampered with transcript for Respondent, This court should reverse the Judgment of the Circuit Court, see record on Appeal page 4, line 2, where Court reporter stated the hearing were held on May 11, 2023, when the hearing were held on April 10, 2023, see record on Appeal page 14.
 - (B) Because Court reporter failed to stated in the transcript Respondent Attorney Mr. Evan Sobocinski Admitted to trial court he went to Appellant to settle this suit on April 5, 2023 and Appellant refused. This court should reverse the Judgment of the Circuit Court, see record on Appeal pages 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 record on Appeal Exhibit-1, the unsafe plastic Jug, Also, see transcript page 8, Line 13 where Court reporter stated milk Jug.
 - (D) Because 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, see record on Appeal transcript page 8, Lines 16-18. Appellant would have objection to placed Jug on table.
2. Because the trial court failed to signed the orders, this court should reverse the Judgment of the circuit court, see record on Appeal pages 16, 17, and 18.

(3). Because the trial court erred in failing to find Appellant did not state a claim for which relief may be granted against the Respondent, this court should reverse the Judgment of the Circuit Court. See record on Appeal, page 20, and 21.

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 Appellant; if those facts and inferences would entitle Appellant on any theory, then 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).

Furthermore, dismissal for failure to state a claim upon which relief may be granted does not require appearance; beyond doubt, the Appellant can prove no set of facts in support of claim that would entitle to relief. *Conkey v. Gibson* 355, U.S. 11, 78, 499 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 cut jug daily to put hot water in while working. As a result, the Appellant were burned. See record on appeal, Exhibit (1) the unsafe Jug. Also see page 21.

The Respondent is negligent, grossly negligent 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 negligent 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 page 21.

5. Because the trial court erred in failing 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, page 22.

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 to any claimant thereto 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 pages 22 and 23.

pursuant to S.C. Code Ann 42-1-160(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 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 in while working. see record
on Appeal, Exhibit (1) the unsafe Jug on page 15.

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 pages 22 and 23.

In This case at issue, This was not An "Accident," This was A series of events in employment, and gross negligence by Respondent.

The Respondent provided and instructed Appellant to used An unsafe Plastic cut Jug daily to put hot water in while working. As A result, Appellant was burned. This is grossly negligence. Hudson V. palmer, 468 U.S. 517, 526-27 (1984). Richardson V. Hambright 296 S.C. 584, 586, 374 S.E. 296, 298 (1988).

The Respondent 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 17324998 (2022), Richardson V. Hambright 296 S.C. 584, 586, 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, it's employee's or it's agents as provided in S.C. Code 15-78-70(b), Also, see record on Appeal, pages 22 and 23.

under Rule 211(b)(2) ^{*SCAR*} Appellant have corrected the typographical errors and misspellings in his Final Brief that he made in his Initial Brief.

Conclusion

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

Date 2-12-24

Respectfully Submitted,
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