

The State of South Carolina
IN THE COURT OF APPEALS

RECEIVED

FEB 15 2024

SC Court of Appeals

Appeal From Dorchester County
Court of Common Pleas

Maitte Murphy, Circuit Court Judge

Case No. 2023-000920

Benjamin Heyward, . . . , Appellant,
v.

South Carolina Department of Corrections, Respondent.

Appellant's Supplemental
Record on Appeal

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

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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			

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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No exhibits marked by court reporter during hearing.

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 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

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

1
2 I, the undersigned Missy Brown, Official Court
3 Reporter for the Fourteenth Judicial Circuit of the State
4 of South Carolina, do hereby certify that to the best of my
5 ability the foregoing is a true, accurate, and complete
6 transcript of record of the proceedings had and evidence
7 introduced in the hearing of the captioned case, relative
8 to appeal, as recorded by DCRP and transcribed by me, in
9 the Court of Common Pleas for Dorchester County, South
10 Carolina, on the 15th day of August 2023.

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

13 October 13, 2023

14
15
16 Missy Brown

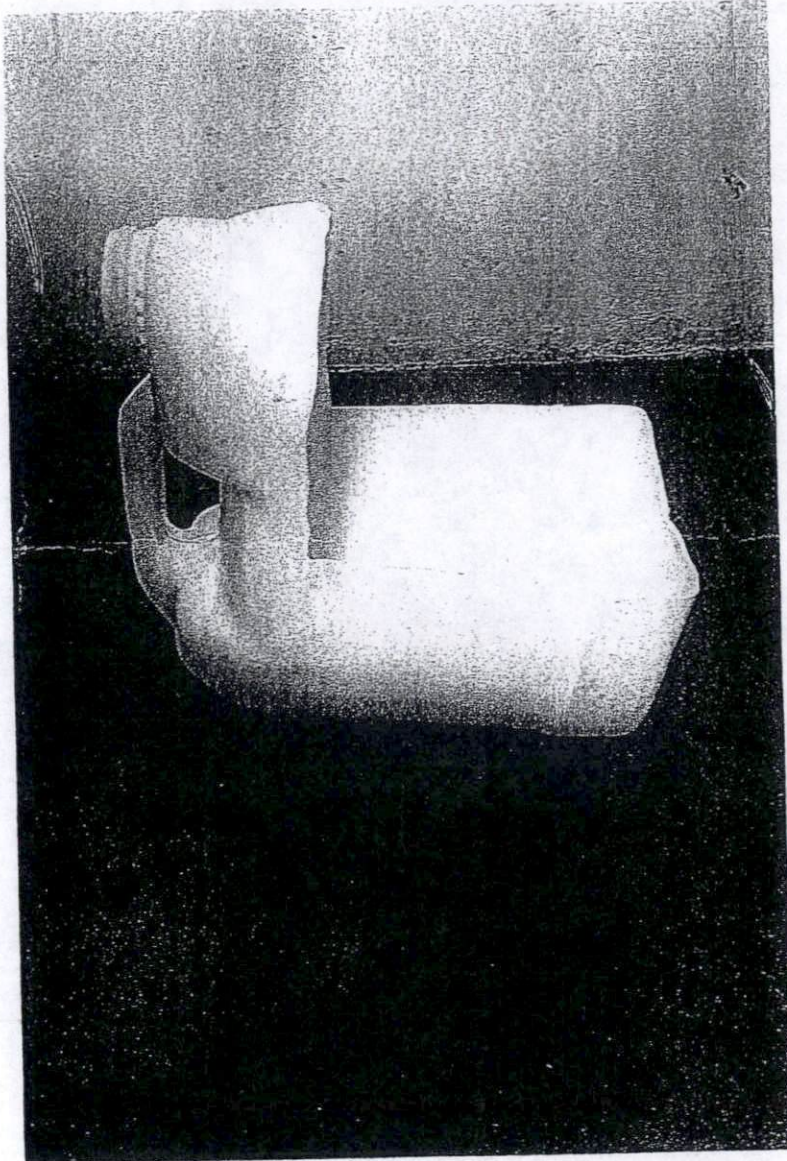
17 Court Reporter
18
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Exhibit-1

CERTIFIED COPY

2022 MAR 10 PM 4: 58

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY



STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	
Benjamin Heyward,)	C/A No. 2022-CP-18-00442
)	
)	ORDER
Versus)	
)	
Lisa Carrington, Gary Finch,)	
)	
)	
<u>Defendants.</u>)	

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

2023 JAN 05 PM 4:26
 ELECTRONICALLY FILED
 CLERK OF COURT
 DORCHESTER COUNTY
 COMMON PLEAS

CERTIFIED COPY

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

Benjamin Heyward,

Charles H. ...
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

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, 68 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. Conkey V. Gibson 355 U.S. 41, 78, S.Ct. 99 2d 80 (1957),

E11-27-11

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 burnt, 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 workers 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 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 \$750,000.00 and punitive damages for \$750,000.00 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.

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 1:15:00 PM

2023 JAN 23 PM 4:30

CLERK OF COURT
DOCTORS

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. 196.

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
2023 JAN 23 PM 4:35
CHIEF CLERK
CLERK OF COURT
DORCHESTER COUNTY

I, the undersigned prose 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

s/ Benjamin Heyward
prose plaintiff

CERTIFIED COPY
2023 JAN 23 PM 1:17
CHIEF CLERK
CLERK OF COURT
DORCHESTER COUNTY

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

Case No. 2022-CP-18-00442

Motion for Leave to File An Amended
Complaint

Cheryl Anderson
CLERK OF COURT
DORCHESTER COUNTY

RECORDED
INDEXED
OCT 20 AM 11:39
2022

Pro se plaintiff, 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 8-19-82

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, SDC

Defendants

In The Court of Common Pleas

CA No. 2022-CP-18-00442

certificate of service

DORCHESTER COUNTY
CLERK OF COURT
DORCHESTER COUNTY

Benjamin Heyward

2022 NOV - 2

CERTIFIED COPY
NH10:08

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

Benjamin Heyward
pro se plaintiff

DORCHESTER COUNTY
CLERK OF COURT

2022 OCT 20 AM 11:39

RECEIVED

CERTIFIED COPY

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

Benjamin Heyward,

2023 JAN -3 PM 1:57
Carol Graham
CLERK OF COURT
DORCHESTER COUNTY

C/A 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)

724 JAN -3 PM 1:59

Benjamin Heyward,

Cheryl L. Baker
CLERK OF COURT
OF SOUTH CAROLINA
DORCHESTER COUNTY

Case No. 2022-CP-18-00442

Plaintiff,)

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) IN THE COURT OF COMMON PLEAS
2024 JAN -3 PM 2:02)

COUNTY OF DORCHESTER)

Benjamin Heyward,)
Caryl Graham)
CLERK OF COURT)
DORCHESTER COUNTY)
Plaintiff,)

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

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) *Coryl. Graham*

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

Plaintiff,)

AFFIDAVIT OF RUSSELL RUSH

Versus)

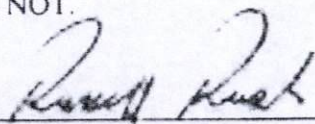
South Carolina Department of Corrections,)

De endant.)

My name is Russell Rush.

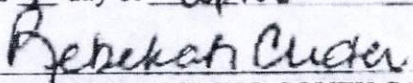
1. I am over the age of 18 and I am employed by the South Carolina Department of Corrections.
2. I have reviewed the Plaintiff's allegations in this case.
3. Plaintiff alleges that on or about April 19, 2020, he was injured when he was burned with hot water while he was working as a cafeteria worker 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

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

JAN -3 PM 2:00

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

2023 FEB 16 PM 3:28
CLERK OF COURT
DORCHESTER COUNTY

prose plaintiffes, 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 allegation 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, vis, 41, 78, S. Ct. 99 2d 80 (1957).

prose plaintiffes pray for this honorable Court to dismiss the defendant's motion to dismiss plaintiff's Amended Complaint.

Date 2-13-23

Fairfax, SC

s/ Benjamin Heyward #165514
Attendale Court inst
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
CLERK OF COURT
DORCHESTER COUNTY

CERTIFIED COPY

2023 FEB 16 - 3 PM 2:00

Ellore A. Ganes
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-18-004423 PM 2:00

Plaintiff's Response To
Defendant's Answer To Plaintiff's
Amended Complaint
(Jury Trial Requested)

The pro se plaintiff, 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.

FILED
CLERK OF COURT
DOUGLASS COUNTY, S.C.
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 proximately caused 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 bared 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.

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

2023 JAN -3 PM 2:00

Clayton E. Heyward
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. Canes
172 meeting street
P.O. Box 1508
Charleston, SC 29402

2023 FEB 16 PM 3:21
GRACE L. AARHUS
CLERK OF COURT
DORCHESTER COUNTY

/s/ Benjamin Heyward
pro se plaintiff

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Dorchester)

CERTIFIED COPY)

Benjamin Heyward)

2022 MAR 10 PM 10:58)

CIVIL ACTION COVERSHEET

Plaintiff(s))

2022-CP-18-442

LISA Carrington,
Gary Finch

vs.

Cheryl Stokem
CLERK OF COURT
DORCHESTER COUNTY)

Defendant(s))

Submitted By: Benjamin Heyward
Address: Evans Correctional Institution
610 Highway 9 west
Bennettsville, SC 29512

SC Bar #: _____
Telephone #: _____
Fax #: _____
Other: _____
E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- JURY TRIAL** demanded in complaint. **NON-JURY TRIAL** demanded in complaint.
- This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Certificate Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) _____ <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) _____ | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20____-NI-____-____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) _____ <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) _____ | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input checked="" type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Libel (380) <input type="checkbox"/> Other (399) _____ <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Incapacitated Adult Settlement (790) <input type="checkbox"/> Other (799) _____ | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) _____ <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) _____ |
|--|--|---|--|
- Special/Complex /Other**
- Environmental (600)
 - Automobile Arb. (610)
 - Medical (620)
 - Other (699) _____
 - Sexual Predator (510)
 - Permanent Restraining Order (680)
 - Interpleader (690)
 - Pharmaceuticals (630)
 - Unfair Trade Practices (640)
 - Out-of State Depositions (650)
 - Motion to Quash Subpoena in an Out-of-County Action (660)
 - Pre-Suit Discovery (670)

Submitting Party Signature: Benjamin Heyward

Date: 1-11-22

541

STATE OF SOUTH CAROLINA

COUNTY OF: Dorchester

IN THE COURT OF COMMON PLEAS

Civil Action No. _____

2022-CP-18- 442

CERTIFIED COPY
2022 MAR 10 PM 4:58

Benjamin Heyward,
Plaintiff,
Vs.

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

COMPLAINT FOR NEGLIGENCE

Lisa Carrington,
Gary Finch,
Defendants.

No _____ Jury Trial Yes X Jury Trial

Jurisdiction/ Venue

1. Plaintiff, pro se, Benjamin Heyward, that this is a civil action pursuant to the South Carolina Tort claims act, S.C. Code 15-78-10 et seq. This court has jurisdiction over this civil action. Plaintiff seeks actual damages and punitive damages, Plaintiff claims negligence against both defendants.

2. Plaintiff Benjamin Heyward, a prisoner of the State of South Carolina in the custody of the South Carolina Department of Corrections, (SCDC). He is currently confined in *Evans Correctional Institution in Bennettsville S.C.*

3. Defendant Gary Finch is a Correctional Food Service Director of SCDC and was assigned to Macdougall Correctional Institution in Ridgeville South Carolina.

4. Defendant Lisa Carrington is a correctional officer of SCDC who held the rank of Captian, who was the environment Helth Safty Officer, who was assigned to Macdougall Correctional Institution in Ridgeville South Carolina.

5. Each Defendant is sued individually and in their official capacity. At all times mentioned in this complaint, each defendant acted negligent under state law.

STATEMENT OF FACTS

6. In January 2020, Plaintiff started working in the cafeteria. He was assigned to work in the dining area.
7. The first day plaintiff worked, inmate Jackson put hot water in an unsafe plastic cut jug and he started cleaning tables and counters. Plaintiff also started cleaning tables and counters.
8. The next day plaintiff went to work, he told defendant Finch the plastic jug was unsafe to put hot water in.
9. Defendant Finch told plaintiff there was a shortage in four by six inch pans. He then instructed plaintiff to "use" the unsafe plastic jug to put hot water in. "see attached exhibit-B".
10. Plaintiff then informed defendant Finch the hot water in the dining area was well over 110 degrees, and it was unsafe for the cafeteria workers and inmates in general population.
11. Defendant Finch told plaintiff he knew about the hot water in the dining area.
12. Defendant Carrington failed to make any safety inspections in the cafeteria.
13. The hot water in the cafeteria was well over 110 degrees.
14. On 4/19/20, approximated 9:35 am, Plaintiff got about one gallon of hot water from the machine that is connected beside the coffee machine. He put the hot water in an unsafe plastic jug.

15. Plaintiff then placed the unsafe plastic cut jug on the counter top. He then proceeded to clean underneath it, and the unsafe plastic cut jug turned over and the hot water fell on his back.
16. Plaintiff had first and second degree burns on his back.
17. The burns on Plaintiff back was larger than nurse Henry stated in plaintiff's medical records.
18. Defendant Finch failed to maintain safe workplace for plaintiff.
19. Defendant Finch failed to provide plaintiff with safe work equipment.
20. Defendant Finch instructed plaintiff to use an unsafe plastic cut jug to put hot water in, and failed to warn plaintiff he could be burned.
21. Defendant Carrington failed to make any safety inspections in the cafeteria dining area.
22. Defendant Carrington failed to speak to plaintiff about handling hot water in an unsafe cut jug.
23. Defendant Carrington failed to train plaintiff how to handle hot water in an unsafe plastic cut jug. "see attached exhibit D and F"

LEGAL CLAIMS

24. The defendants' wanton, willful, reckless, negligence, and gross negligence actions were the actual and proximate cause of the plaintiff's injury and damages.

25. The defendant owes a duty of care to plaintiff, defendants breached that duty by a negligent act. Defendants breach was the actual and proximate cause of the plaintiff's INJURY AND DAMAGES.

INJURIES

26. Plaintiff left side back with second degree burn about three inches long and three inches wide. At the flank baseball sized and lower back baseball sized burns, and three golfball sized burns at the lower back. First degree burn at bilateral mid back about four inches long and three inches wide. Plaintiff suffered physical and mental pain for twenty one days.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays that this court enter judgement granting plaintiff:

27. Actual damages in the amount of \$75000.00 against each defendant.
28. Punitive damages in the amount of \$75000.00 against each defendant.
29. A jury trial.
30. Plaintiff's cost in this suit.
31. Any additional relief this court deems just, proper, and equitable.

SI *Benjamin Heyward*
Benjamin Heyward, #165514
Evans Cory Inst
610 Hwy 9 West
Bennettsville SC 29512

CERTIFIED COPY

2022 MAR 10 PM 4:58

VERIFICATION

Cheryl Adams
CLERK OF COURT
DORCHESTER COUNTY

I have read the foregoing complaint and hereby verify that the matters alleged therein are true. I certify under penalty of perjury that the foregoing is true and correct.

Executed at Bennettville S.C.
on 1-11-22.

Benjamin Heyward
Benjamin Heyward