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The State of South Carolina
IN THE COURT OF APPEALS

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MAR 29 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

Final Reply Brief

Benjamin Heyward
Sheriff Al Cannon Detention Center
3871 Leeds Ave
North Charleston, SC 29405

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Statement of Issues on Appeal

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

Statement of Case

Appellant Benjamin Heyward, filed the action on March 10, 2022. Appellant was granted leave to file Amended Complaint to substitute South Carolina Department of Corrections as the defendant.

Appellant's Case involves A cause of action against Respondent for injuries sustained when he was burned by hot water while working for Respondent.

The Circuit Court erred in granting Respondent motion to dismiss the action pursuant to SC RCP 12(b)(6) base on Appellant's claims being governed by the South Carolina worker's Compensation Act, due to injuries sustained while serving in An employment function during incarceration.

Appellant now Appeals that order.

Statement of Facts

The Appellant was working for the Respondent and the Respondent provided Appellant with an unsafe two gallon plastic cut Jug, and instructed Appellant to put hot water in while working, AS A result Appellant was burned.

The Respondent is negligence/Gross negligence because Respondent had actual knowledge of A substantial risk of harm to Appellant and disregards that substantial risk. S.C. Code 15-78-60(25), S.C. Code 15-78-70(b), S.C. Code 42-1-160(F).

The Respondent owes A duty of care to Appellant and the Respondent breached that duty by A grossly negligence Act. The Respondent breached was the proximately caused of Appellant's injuries and damages. Meyer v. Anderson WL 17324998 (2022), Richardson v. Hambright 296 S.C. 504/506 374 S.E 2d 296, 298 (1988).

Standard of Review

under 12(b)(6) of the South Carolina Rules of Civil Procedure, 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 these facts and inferences would entitle the appellant on any theory, than a dismissal for failure to state a claim is improper. *Hackworth v. Greywood, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (2009).

The Appellate Court applies the same standard of view of the Circuit Court. *Doe v. Madison*, 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, that appellant can prove no set of facts in support of claim that would entitle to relief. *Conley v. Gibson*, 355 U.S. 11, 78 Ct. 99 Sd. 80 (1957).

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

Under South Carolina Tort Claims Act, S.C. Code 15-78-70(b), The remedy provided by this chapter is the civil remedy available for any "Tort" committed by a government entity, its employees or its agents.

Under worker's Compensation Law, the Appellant action is not governed by the South Carolina Worker's Compensation Act.

Worker's Compensation Law states: The Compensation afforded by workmen's Compensation Act, is statutory in character, and the right of any claimant thereto is dependent upon terms and conditions of the Act.

under 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.

Under 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 this case at issue, Respondent provided Appellant with a two gallon unsafe Plastic cut Jug, and instructed Appellant to use the Jug daily to put hot water in while working, As a result, Appellant was burned, see Exhibit B

Therefore, this was not an "Accident" that caused Appellant injuries, This was gross negligence by Respondent that caused Appellant's injuries. Richardson v. Hambright 296 S.C. 504, 506, 374 S.E. 2d 296, 298 (1988)

Answer TO Respondent Initial Brief

1. Respondent stated on page two (1) that Appellant failed to identify/clarify the issues raised on Appeal.

Answer: Appellant did identify/clarify the issues raised on Appeal, under Rule 208(b)(1), see page one of Appellant's initial Brief.

2. Respondent stated on page two (1) by its order, the Circuit Court granted Defendant's motion to dismiss plaintiff's sole claim for negligence/gross negligence.

Answer: The Circuit Court erred in granting Respondent's motion to dismiss due to the fact that Respondent was negligence/gross negligence for providing a unsafe Plastic Cot Jug to Appellant and instructed Appellant to use it daily to put hot water in while working, as a result, Appellant was burned. See page 15 of Appellant's Record on Appeal, Richardson v. Hambright 246 S.C. 504, 506, 1374 S.E. 2d 296, 298 (1988)

3. Respondent stated on page three (2) that the Circuit Court properly granted the defendant's motion to dismiss.

Answer: The Circuit Court improperly granted defendant's motion to dismiss under the South Carolina tort Claim Act.

under 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
and government entity, "Except" when the responsibility or duty
is exercised in a grossly negligence manner.

The remedy provided by this chapter is the civil remedy
available for any tort committed by a government entity, its
employees or its agents, S.C. Code 15-78-70(b).

4. Respondent stated on page four that Appellant's sole remedy for
his alleged injuries is governed by the South Carolina worker's
Compensation Act, Respondent also stated on page eight lines
21-25, of the transcript that Appellant's sole remedy is worker's
Comp.

Answer: Appellant's sole remedy for his alleged injuries is not
governed by the Carolina worker's Compensation Act.

under worker's Compensation Law: The Compensation afforded
by workmen's Compensation Act, is statutory in character, and
the right of any claimant thereto is dependent upon terms
and conditions of the Act, Cook v. Mack's Transfer and
Storage 352, S.E. 2d 296, 298, (1988).

under 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.

under 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.

This is not an "Accident" that caused Appellant's injuries, this is negligence/gross negligence by the Respondent that caused Appellant's injuries.

In January 2020 Respondent provided Appellant with a unsafe Plastic Cut Jug, and instructed Appellant to use it daily to put hot water in while working.

on April 19, 2020 the Appellant put hot water in the Jug, he placed the Jug on the counter top, he then went under the counter top to clean, and the Jug turned over and fell on his back and he was burned.

The Respondent had actual knowledge of a substantial risk of harm to Appellant and disregards that substantial risk.
#s.c code 15-78-60(25)

The Respondent afore said actions constitute gross negligence per se, and were attentional, wanton, willful, and careless, Richardson v. Hambright 296 S.C. 584, 586, 374 S.E. 2d 296, 298 (1988)

The Respondent owes a duty of care to Appellant, the Respondent breached that duty by a grossly negligence Act.
Meyer v. Anderson WL 173 24998 (2022)

5. Respondent stated on page Four and Five Appellant has not provided any arguments to dispute the above. Therefore, Appellant Failed to state A claim for which relief may be granted against Respondent.

Answer: The Appellant provided evidence and arguments to dispute in this action. Therefore, Appellant has stated A claim for which relief may be granted against Respondent.

6. The circuit court erred in failing to signed the order granting Appellant's motion to Amend the Complaint. See record on Appeal page 16.

7. The circuit court erred in failing to signed the order granting Respondent's motion to ~~the~~ dismiss Appellant's Amended Complaint, see record on Appeal page 17 and 18.

Conclusion

For the reasons stated, this Court should reverse the Judgment of the circuit court or any relief just and proper.

Respectfully submitted
S Benjamin Heyward
Sheriff At Cannon Detention Center
3841 Leeds Ave
North Charleston, SC 29405

Date 3-26-24

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Proof of Service

I certify that I have served the final Reply Brief of Appellant by depositing a copy of it in the United States Mail, postage pre-paid, on 3-26-24 to the Respondent Addressed to Mrs. Ellore Ganes Hood Law Firm, 172 Meeting Street, P.O. Box 1508, Charleston, SC 29402.

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S.C. Court of Appeals
1220 Sanate Street
Columbia, SC 29201

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

MAR 29 2024
SC Court of Appeals

Dear Ms. Kitchings:

Hi and good day, enclosed for filing please find Appellant's Final Reply Brief, and I thank the Court for giving me the time to file it.

Date 3-26-24

Sincerely
Benjamin Heyward
Appellant

CC: Ellorez A. Eanes, Esquire
Evan M. Sobocinski, Esquire