

STATE OF SOUTH CAROLINA
COUNTY OF MCCORMICK

) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2012-CP-35-84

Richard L. Coleman,
Plaintiff,

vs.

South Carolina Department of
Corrections,
Defendant.

ORDER

2013 AUG 22 PM 4:11
CLERK OF COURT
MCCORMICK COUNTY, SC
GENERAL

This matter is before me on Defendant's Motion for Summary Judgment. A hearing was held on this matter on May 20, 2013, at which time Steven M. Pruitt, Esquire, appeared on behalf of Defendant and the Plaintiff appeared pro se. The Court grants Defendant's Motion on the grounds set forth below.

The Plaintiff claims that he was stabbed by another inmate on July 15, 2010. Plaintiff claims that the inmate who stabbed him was from another dorm and was not supposed to be in the Plaintiff's dorm where the Plaintiff was stabbed. Plaintiff claims Defendant was negligent for allowing the other inmate to be in the dorm so that he could stab the Plaintiff. Defendant moved for summary judgment arguing that Plaintiff failed to state a claim for gross negligence. Section 15-78-60 of the South Carolina Tort Claims Act states:

The governmental entity is not liable for a loss resulting from: . . . (25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner. . . . S.C. Code Ann. § 15-78-60 (25) (emphasis added).

The Court of Appeals has held that the South Carolina Tort Claims Act "removes the common law bar of sovereign immunity in certain circumstances, but only to the extent mandated by the Act." Summers v. Harrison Constr., 298 S.C. 451, 454, 381 S.E.2d 493, 495 (Ct. App. 1989). The Court went on to state that "the provisions relating to limitations on and exemptions to liability are to be liberally construed in favor of

limiting the liability of the state." Id.

Gross negligence has been defined as, "'the failure to exercise slight care'; 'the intentional, conscious failure to do something which it is *incumbent* upon one to do or the doing of a thing intentionally that one ought not to do'; and 'a relative term' meaning 'the *absence of care that is necessary under the circumstances.*'" Duncan v. Hampton County Sch. Dist. No. 2, 335 S.C. 535, 544, 517 S.E.2d 449, 453 (Ct. App. 1999) (emphasis in original) (quoting Hollins v. Richland County Sch. Dist. One, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993)). When the evidence regarding gross negligence supports but one reasonable inference, the question becomes a matter of law for the court to resolve. Clyburn v. Sumter County Sch. Dist. No. 17, 317 S.C. 50, 53, 451 S.E.2d 885, 887-88 (1994).

Defendant submitted with its Memorandum the affidavit of Anthony Wright, a Lieutenant at the McCormick Correctional Institution (hereinafter referred to as "MCCI"). Lt. Wright stated that he recalls an incident with the Plaintiff that occurred on July 15, 2010. He stated he was the Dorm Lieutenant for Unit F-2 where the Plaintiff was housed on July 15, 2010. He was notified that an inmate had been stabbed and immediately proceeded to the Unit. When he arrived, an inmate approached him and informed him of the identity of the inmate who had stabbed the Plaintiff and where the inmate was hiding. He stated that the inmate who stabbed the Plaintiff was Demetrius Spencer and he was hiding in cell 251. Lt. Wright stated the Unit was locked down so that there was no way anyone could enter or leave and they searched the Unit. Lt. Wright stated he located inmate Spencer and observed that he had blood on him. Inmate Spencer was placed in handcuffs without incident and taken to medical to be checked and then escorted to lock up.

Lt. Wright stated that Unit F-2 is separated into two Wings, A and B, with approximately 120 inmates on each Wing. There is one common entrance to the Unit and then a person can go to the left or right to enter into the A Wing or B Wing. The doors to each Wing stay locked except for activities on controlled movement schedule such as meals, outside recreation, religious activities, canteen, education, or other similar activities. Inmates from other Units could be in these activities at the same time so that for

example, inmates from the Plaintiff's dorm could be in the cafeteria at the same time as inmates from another dorm. He stated that based on his review of the incident report, the incident involving the Plaintiff occurred around mealtime. Lt. Wright speculated that inmate Spencer may have been able to enter Unit F-2 when inmates were returning from the cafeteria. He stated there would be 100 or more inmates from Unit F-2 who would go to the cafeteria and they would return together as a group. Lt. Wright stated it appeared likely that inmate Spencer was able to mix in with the other inmates returning to Unit F-2 and enter the Unit.

Lt. Wright stated that inmates have ID cards which set forth their name and SCDC number and they also have a colored sticker on the ID card. The colored stickers are used to show the dorm where an inmate is housed. However, the stickers are not permanent because dorm changes are made on a routine and regular basis, and stickers are used so that inmate IDs would not have to be changed each time an inmate was sent to a new dorm. Unfortunately, inmates can remove the stickers from their IDs or can alter them in some manner to make them appear to be another color. Inmates can also take a sticker from another inmate or possibly use an ID from another inmate who looks similar.

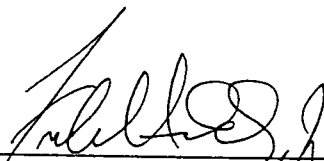
Lt. Wright stated dorm officers attempt to monitor the inmates coming and going from the Wing where they are stationed, but it is extremely difficult and it is possible for an inmate to slip through. As discussed above, there are 100 or more inmates returning to the Unit at one time and it is not possible for the officer to know the faces of every inmate in the Wing. Lt. Wright stated inmates are regularly moved from one dorm to another, and further that officers do not work at the same post every day. In addition, there is generally one officer working on each Wing, and they may not be standing at the door when the inmates return as they may be dealing with other matters in the dorm. For these reasons, inmates may be able to slip into a dorm undetected and it is virtually impossible to completely prevent inmates from slipping unnoticed into other living Units.

In order to state a claim for negligence, a plaintiff must show "(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage

proximately resulting from the breach.” Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 714 S.E.2d 869, 873 (2011). However, as shown above in order to establish gross negligence Plaintiff must show “the failure to exercise slight care.” Though Plaintiff has arguably stated a claim for simple negligence, he has failed to establish gross negligence.

Defendant places colored stickers on inmate IDs in order to help officers determine in which Unit an inmate is supposed to be, but inmates have been able to find ways around this by altering the IDs or they could use the ID of another inmate who appears similar to them. This in itself is the exercise of slight care. As stated by Lt. Wright, there are 100 or more inmates returning to the Unit at one time and it is not possible for the officer to know the faces of every inmate in the Wing, and it is virtually impossible to completely prevent inmates from slipping unnoticed into other living Units. Plaintiff has failed to establish gross negligence as Defendant exercised at least slight care. Therefore, Plaintiff’s action is **DISMISSED**.¹

IT IS SO ORDERED.



Frank R. Addy, Jr., Eleventh Judicial Circuit

June 27, 2013
McCormick, South Carolina

¹ In addition, Plaintiff fails to point to any specific act of alleged negligence as to the Defendant, but simply argues that because inmate Spencer was in his Unit that Defendant was negligent. Plaintiff appears to be attempting to argue the doctrine of *res ipsa loquitur* which has not been adopted in South Carolina. See Snow v. City of Columbia, 305 S.C. 544, n. 7, 409 S.E.2d 797, n. 7 (Ct.App. 1991) (noting that South Carolina does not recognize the rule of *res ipsa loquitur*). Therefore, Plaintiff’s action must also be dismissed on this basis.

GWENDOLYN D. CHILES
McCormick Co. Clerk of Court
133 S. Mine St. • Room 102
McCormick, SC 29835

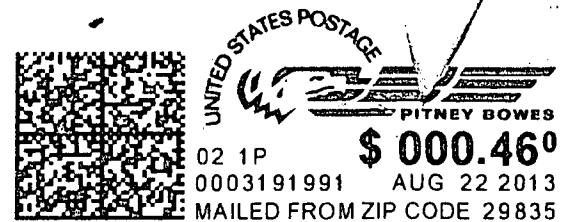


*Chris
2118*

RECEIVED

AUG 27 2013

LEE CI MAIL ROOM



Richard Coleman #186795
LCI
990 Wisacky Hwy
Bishopville, SC
29010

29010\$1775

