

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
)
 Tyrone Perry #307793,)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Department of)
 Corrections,)
)
 Defendant.)
)
 _____)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-CP-40-01434

ORDER GRANTING SUMMARY JUDGMENT

RECEIVED
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 SC Court of Appeals

This matter came before the Court via WebEx on December 18, 2024, for a hearing on the Motion for Summary Judgment filed by Defendant South Carolina Department of Corrections (hereinafter “Defendant”). Present and appearing at the hearing was David A. DeMasters for Defendant and Plaintiff Tyrone Perry, appearing *pro se*. Plaintiff is currently incarcerated within the Lieber Correctional Institution.

Defendant’s motion for summary judgment was filed on September 25, 2023. In Defendant’s Memorandum in Support of Summary Judgment and at the motion hearing, Defendant argued that it is entitled to summary judgment pursuant to S.C. Code Ann. §§ 15-78-60(17), and that Plaintiff failed to comply with the requirements of the Medical Malpractice Act, S.C. Ann. §§ 15-79-10, *et seq.*, and/or the affidavit of an expert witness requirement of S.C. Code Ann. § 15-36-100, and therefore any such claim must be dismissed.

Based on the applicable law and the arguments presented by the Parties, the Court finds in favor of Defendant’s motion for summary judgment as a matter of law, as is set out in detail herein, and that Defendant’s pending motion must be, and hereby is, **GRANTED**.

STATEMENT OF FACTS

Taking the facts in a light most favorable to Plaintiff, he alleges that Defendant's employees at Perry Correctional Institution ("Perry CI") were aware of Plaintiff's mental health and exhibited reckless regard toward his medical treatment when he was transferred there on or about September 5, 2018. Plaintiff further alleges that he was assaulted with reckless disregard for his safety on September 14, 2019.

Specifically, Plaintiff alleges that the staff at Perry CI were aware of his "homicidal and suicidal" feelings and about "hearing voices and visual hallucinations" and received no staff assistance leading up to an incident wherein Plaintiff physically harmed himself. Plaintiff next alleges that officials assaulted him while responding to his self-harm and that the injuries from the assault were not treated by medical staff. As a result, Plaintiff alleges in his Complaint that Defendant's employee's actions or omissions were in bad faith, willful, wanton, reckless, negligent and grossly negligent and further alleges that Defendant was responsible for the proper treatment of the plaintiff.

DISCUSSION

I. PLAINTIFF'S MEDICAL CLAIMS

Plaintiff's claims regarding the denial of medical treatment fail as he did not comply with the South Carolina Medical Malpractice Act ("MMA"), S.C. Code Ann. §§15-79-110, *et seq.*, prior to filing this litigation. S.C. Code Ann. § 15-36-100 requires Plaintiff to file, contemporaneously with his pleadings and/or the required Notice of Intent to Sue required by the MMA, an affidavit from a qualified expert setting forth the applicable standard of care, how the standard of care was allegedly violated, and how Plaintiff was damaged by that alleged violation. Plaintiff has failed to comply with that statute, and therefore his claims related to provision of medical care must be

dismissed.

Furthermore, to the extent that medical malpractice claims are made, Plaintiff has failed to establish, by qualified evidence, the duty of care owed to Plaintiff, a breach of that duty by any named Defendant, and damages proximately resulting from such a breach. It follows that Plaintiff's medical claims against Defendant are dismissed.

II. GROSS NEGLIGENCE CLAIMS

Plaintiff alleges that Defendant's officers attempted to assault him while in need of medical care. Under South Carolina law, "[n]egligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care." *Solanki v. Wal-Mart Store No. 2806*, 763 S.E.2d 615, 619 (Ct. App. 2014) (citing *Clyburn v. Sumter Cty. Sch. Dist. # 17*, 451 S.E.2d 885, 887 (1994)). To establish a cause of action in negligence or gross negligence in South Carolina, the plaintiff must prove: (1) a duty of care owed by the defendant to the plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. *Bishop v. S.C. Dep't of Mental Health*, 502 S.E.2d 78, 82–83 (S.C. 1998) (citing *Rickborn v. Liberty Life Ins. Co.*, 468 S.E.2d 292 (S.C. 1996)).

An unreasonable or excessive use of force is actionable as an intentional tort, specifically assault and battery. *See, Moody v. Ferguson*, 732 F. Supp. 627, 632 (D.S.C. 1989). South Carolina law recognizes that intentional torts may not be committed in a grossly negligent manner. *See, State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 530 S.E.2d 132, 137 (Ct. App. 2000). Thus, because Plaintiff is bringing a tort claim for the unreasonable use of force, the cause of action is one for assault and battery, and not for gross negligence. Plaintiff has not alleged a cause of action for assault and battery against Defendant.

Even if Plaintiff had alleged a cause of action for assault and battery against Defendant, Section 15-78-40 of the South Carolina Tort Claims Act (“Tort Claims Act”) provides that a political subdivision is “liable for [its] torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages”. Section 15-78-20(f) provides, “[t]he provisions of [the Tort Claims Act] establishing limitations on and exemptions to the liability of the [government entity or political subdivision], while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the [governmental entity or political subdivision].”

The Tort Claims Act further provides that Defendant is immune from a loss resulting from:

“Employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.”

S.C. Code Ann. § 15-78-60(17). In his response to the motion for summary judgment, Plaintiff asserted that Defendant’s employees’ actions “constituted actual fraud, actual malice, with intent to harm, and of moral turpitude of a criminal nature” further entitling Defendant to sovereign immunity under S.C. Code Ann. § 15-78-60(17). It follows that even if Plaintiff had pled a cause of action for assault and battery, that claim would be barred pursuant to the Tort Claims Act.

CONCLUSION

Therefore, the Court finds that Defendant’s Motion for Summary Judgment is **GRANTED**, and Plaintiff’s Complaint must be, and hereby is, **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED

The Honorable Daniel Coble
Fifth Judicial Circuit

_____, 2025

Columbia, South Carolina

State of South Carolina
County of Richland

Tyrone Perry # 307793
Plaintiff

v

SCDC
Defendants

In the Court of Common Pleas

C/A 2021-CP-40-1434

Rule 59 (e)

RICHLAND COUNTY
FILED
2025 JAN 24 AM 11:31
JEANNETTE W. MORRIS
Clerk, S.C. & F.C.

Pursuant to Rule 59 (e) SCRPC the Applicant hereby moves to alter or amend the judgment of this Court filed on January 7, 2025 and received by the plaintiff on January 17, 2025

Procedural History

The plaintiff initiated this action on March 30, 2021. A summary judgment hearing was held on December 18, 2024. The plaintiff asks the judge to Alter or Amend his judgment for the following:

- 1) Binding Norms of SCDC policy places duties on Prison officials these regulations contain language constraining the discretion of state officials so a duty to act exists
- 2) The entire thrust of discovery involves full and fair disclosure to prevent trial from becoming a guessing game or one of surprise for either party
- 3) The doctrine of fraudulent concealment prevents a defendant concealing a fraud or committing a fraud in a manner that it concealed itself

RICHLAND COUNTY
FILED
2025 JAN 24 AM 11:29
JEANNETTE W. MORRIS
Clerk, S.C. & F.C.

ARGUMENT (i)

The Courts treat SCDC policy documents as a prison regulation. As the South Carolina Court of Appeals recently explained with respect to these documents although SCDC's statement concerning policy are within a document entitled SCDC Policy / Procedure they are binding norms and thus more like rules or regulations than they are true policy statements SEE ACKERMAN -V- SCDC 782 SE2d 757, 761 (2016) And the 4th Circuit court of Appeals has previously classified SCDC policy statements as regulations SEE HINES -V- SCDC 148 F3d 353, 358 (4th Cir 1998). Also see NORTON -V- OPENING BREAK OF AIKEN INC 313 S.C. 508 where the South Carolina Court of Appeals held that regulations authorized by the legislature has the force of law and violating of a regulation could constitute negligence per se 443 SE2d 406 (1994) Summary judgment is improper if the parties dispute the inferences to be drawn from the facts, even if the facts themselves are not in dispute SCRPC 56 (c) Cell products LLC -V- Rozelle 357 S.C. 125 (2004) The plaintiff points to SCDC policies HS 18.13 section 1.1 and 1.1.1, Policy HS 18.15 section 1.1, 2, 2.2, 2-3 3.1, 3.2 and 3.2.1 covers issues 4, 5, 6, 7, 8 and 9 in the plaintiff's complaint. SCDC Policy HS 19.03 section 4.2, 5.1, 5.3, 5.4.1, and 5.4.2 covers issues 9, 10, 11, 12, 13 14, 15, 17, 20, and 22 of the plaintiff's complaint. SCDC policy 22.01 section 1, 2 5.3, 6.1, 9.1 and 9.2 and 12 covers issues 15, 16, 18 and 19 of the plaintiff's complaint. And S.C. Code Ann § 24-5-80 covers bedding in the cold months, and medical care. A liberty interest and duty exists because these written prison regulations display MANDATORY LANGUAGE constraining the discretion of state officials. These mentioned policies are bound by Title 24 § 24-1-130 and § 24-1-140 so the 14th Amendment is attached. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to the rules of statutory interpretation and the Court has no right to look for or impose another meaning, Wynn -V- Due 180 SE2d 96

ARGUMENT (2)

The entire thrust of the discovery rule involves full and fair disclosure to prevent a trial from becoming a guessing game or one of surprise for either party. STATE HWY Dept -v- Booker 195 SE2D 615 (1973) quoting HODGE-V-MYERS 180 SE2D 203, 205 (1971) Essentially the rights of discovery [329 SC. 114] provided by the rules give the trial lawyer means to prepare for trial and when these rights are not accorded prejudice must be presumed. DOWNNEY-V-DIXON 362 SE2D 317, 319 (CtApp 1987) Unless the party who failed to submit discovery can show lack of prejudice reversal is required Id at 46 362 SE2d at 319. Interrogatories and Production is continuing until the time of trial. The plaintiff submitted discovery on Sept 7th and 9th and 13th of 2021. Although Court rules state (30) days it took the defendants over two years to respond and their responses were evasive and incomplete. The defendants responded to admissions on October 13, 2021 and the plaintiff contradicted it with an affidavit and evidence and the defendant's NEUER supplemented their response. The plaintiff filed for Summary Judgment on January 5, 2022. and motion for sanctions on May 31, 2022. The trial judge failed to rule on these motions. The defendant, filed for Summary judgment on September 14, 2023. The plaintiff responded on October 2, 2023. On October 3, 2023 the plaintiff filed his 2nd set of interrogatories and production. On October 9, 2023 the plaintiff filed a 37(c) motion with exhibits and on October 2, 2023 a motion for Contempt. On October 4 the plaintiff filed a motion to compel and on October 11, 2023 another 37(c) motion. On October 30 the plaintiff filed Rule 30 depositions on November 1, 2023 the plaintiff objected to the defendant's witness list and on November 17, 2023 the plaintiff filed his 2nd motion to compel. The non moving party to summary judgment must demonstrate the likelihood that further discovery will uncover additional relevant evidence and not simply a fishing expedition DAWKINS-V-FIELDS 580 SE2D 433, 439 (2003)

The plaintiff explained in his unruly motions the relevancy of the evidence needed to substantiate his claims. In *LANHAM -U- BLUECROSS* 563 SE2d 331 (2002) the Court found that trial counsel erred in ruling on summary judgment without first ruling on motion to produce and motion to compel. The info the plaintiff sought was necessary to respond to a material claim that only the defendants in possession of. A failure to exercise discretion amounts to an abuse of that discretion. *FONTAINE -U- PRIETZ* 354 SE2d 565 when the trial judge is vested with discretion but his ruling reveals no discretion was in fact exercised an error of law has occurred *Balloon Plantation -u- Head Balloons* 399 SE2d 439 quoting *State -u- Smith* 280 SE2d 200. It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.

ARGUMENT (3)

Non disclosure becomes fraud concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party transaction *LAWSON -U- CITIZENS S Natl Bank of SC* 193 SE2d 124, 126 (1972) also *HOLY HILL LUMBER CO -U- M'COY* 23 SE2d 372, 378 (1942) stating that a party MUST limit himself to silence in order to escape the imputation of fraud and if in addition to the party's silence there is any statement even in word or act on his part which tends affirmatively to a suppression of the truth or to be a withdrawal or distraction of the other parties intentions or observation from the REAL FACTS the line is over stepped and the concealment becomes fraudulent. *WILMINGTON COLUMBIA & AUGUSTA R&R Co -U- LING* 18 S.C. 116, 120 (1882). The defendants have concealed the medical records from September 14, 2019 and September 16, 2019 that I payed for. They have produced multiple staff members with NO PERSONAL INVOLVEMENT created a false medical timeline by a security prison official not one from medical, failed to produce depositions or interrogatories of Debra Wilson, Thomas Mussen, nor Nurse Kimberly Weathers, failed to produce

duty rosters, institutional log books, or any video footage although all properly requested since the beginning of this action. They have downplayed the plaintiff's mental illness although he's been diagnosed mentally ill almost his entire 20 years and prior to coming to prison. The plaintiff's admissions are on the record SEE motions for sanctions filed May 31, 2022, motion for contempt filed October 2, 2023, 37(c) motion filed October 9, 2023, Motion to Compel filed October 4, 2023, Rule 37(c) motion filed October 11, 2023, depositions filed October 30, 2023, objection to witness list filed November 1, 2023, 2nd motion to compel on November 17, 2023, motion for directed verdict filed November 22, 2023 and exhibits in support on November 29, 2023 and December 11, 2023. None of which were considered or ruled upon.

Conclusion

For the foregoing reasons the plaintiff requests this court to alter or amend the dismissal and preserve issues for appellate review

This 17th day of January 2025

Tyrone Perry 307793

Tyrone Perry 307793

Lieber C.I CB-48

P.O. Box 205

Rodgewille S.C 29472

State of South Carolina
County of Richland

Tyrone Perry # 307793
Plaintiff

v

SCDC

Defendant

In the Court of Common Pleas

C/A 2021-CP-40-1434

Rule 59 (b)

RICHLAND COUNTY
FILED
2025 JAN 24 AM 11:29
JEANNETTE W. MORRIS
C.C.P., G.S., & F.C.

Pursuant to Rule 59 (b) SCRPC the plaintiff hereby moves for a new trial.

ARGUMENT

LANHAM - v. BLUE CROSS 563 SE2d 331 (2002) The Courts found that trial Court erred in ruling on Summary Judgment without first ruling on motion to produce and motion to compel. The information sought was necessary to respond to a material claim by blue cross and the information was in sole possession of blue cross.

The gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party. SCOTT - v. GREENVILLE HOUS AUTHORITY 579 SE2d 151, 158 (2003) The plaintiff was not given a full and fair disclosure of discovery and the defendants withheld evidence and produced witnesses with no personal knowledge.

CONCLUSION

For the following intrusions on FUNDAMENTAL FAIRNESS the plaintiff requests a new TRIAL

This 17th day of January 2025

Tyrone Perry 307793
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