

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Ricardo Fishburne,)
)
 Plaintiff,)
)
 vs.)
)
 South Carolina Department)
 Of Corrections,)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

Civil Case Number: 2018-CP-40-03700

ORDER

RICHLAND COUNTY
 FILED
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 NETTE W. McBRIDE
 JUDGE, C.S. & FC

This matter is before the Court on Defendant’s Motion for Summary Judgment. Plaintiff is an inmate in the custody of the South Carolina Department of Corrections (“SCDC”) and is presently incarcerated at the Lieber Correctional Institution. Plaintiff is proceeding *pro se* in this action and appeared via WebEx at the hearing on the motion on December 18, 2024. The McKay Firm, P.A., by C. E. “Skip” Hardin, Jr. Esquire, appeared on behalf of Defendant SCDC.

Plaintiff’s Complaint alleges negligence under the South Carolina Tort Claims Act. He claims that on June 16, 2017, while housed by SCDC at the Tyger River Correctional Institution, he was attacked and stabbed by his cellmate due to Defendant’s gross negligence. Defendant denied all allegations of fault, wrongdoing, or liability and moved for summary judgment, pursuant to Rules 12(b)(6), and Rule 56, SCRCP, on the grounds that the Plaintiff’s claims fail to state a cause of action upon which relief can be granted and that there is no genuine issue as to any material fact.

Subsequently, Plaintiff filed a flurry of motions over the course of this action, including a motion to amend the complaint, a motion requesting a whistleblower cause of action, a motion for emergency injunction, a motion for an order compelling discovery, a motion for an emergency supplemental complaint, a second motion for summary judgment (his first had been previously

denied) a motion for judgment on the pleadings, a motion for entry of default, and a “Supplement to Summary Judgment”. On December 17, 2024, Plaintiff submitted multiple filings responding in opposition to Defendant’s summary judgment motion, including exhibits, additional documents, and material, many of which are unauthenticated and/or incomplete copies of the referenced material.

After careful consideration of the pleadings, supporting documents, affidavits, depositions, applicable law, and the arguments of the parties, the Court finds that (1) Defendant’s Motion for Summary Judgment should be granted; (2) that all other pending motions, should be denied as moot; and (3) Plaintiff’s Complaint and this action should be dismissed with prejudice.

Summary Judgment Standard

Summary judgment is appropriate where there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. Rule 56, SCRPC. The purpose of summary judgment is to obviate delay where there is no material issue of fact involved. *Hammond v. Scott*, 268 S.C. 137, 232 S.E.2d 336 (1977). Summary judgment is appropriate in those cases in which “plain, palpable, and undisputed facts exist on which reasonable minds cannot differ.” *Trico Surveying, Inc. v. Godley Auction Co.*, 314 S.C. 542, 544, 431 S.E.2d 565, 566 (1993) (quoting *Byerly v. Connor*, 307 S.C. 441, 445 415 S.E.2d 796, 799 (1992)). The party “opposing a properly supported motion for summary judgment . . . may not rest on mere allegations or denials of his pleading but must set forth or point to specific facts showing that there is a genuine issue of material fact.” *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994) (quoting *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C.311, 313, 411 S.E.2d 672, 673 (Ct. App. 1991)).

The South Carolina Supreme Court has recently clarified and re-iterated that the proper standard for a Rule 56, SCRPC motion is the “genuine issue of material fact” standard. *Kitchen*

Planners, LLC v. Friedman, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). To that end, the party opposing a motion for summary judgment is required to show a reasonable inference to be drawn from the evidence, and “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” 304 S.C. at 464-65, 892 S.E.2d at 301 (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)).

Importantly, unsupported speculation by a non-moving party is insufficient to defeat a summary judgment motion. *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126 (4th Cir. 1987) (applying Rule 56, FRCP, which requires the same standards as Rule 56, SCRCF). Similarly, the bald statements of a non-moving party in pleadings, affidavits, or other documents do not demonstrate genuine disputes of material facts. *Stone v. University of Md. Medical Sys. Corp.*, 855 F.2d 167 (4th Cir. 1988) (applying Rule 56, FRCP, which requires same standards as Rule 56, SCRCF).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004).

Once the threshold has been met, the non-moving party must not rest merely on the allegations set forth in the pleadings to survive a motion for summary judgment. Under this standard, the existence of a mere scintilla of evidence in support of the non-movant's position is insufficient to withstand the summary judgment motion. The non-moving party must demonstrate *with evidence* beyond the pleadings that specific material facts give rise to a genuine issue of material fact. Mere conclusory or speculative allegations do not suffice.

Factual Allegations of Plaintiff's Complaint

Plaintiff alleges a single cause of action for gross negligence by Defendant SCDC. He claims that on June 16, 2017, he was stabbed by his cellmate (later identified as Inmate Anthony Williams), following a verbal altercation. According to Plaintiff, SCDC was grossly negligent by placing him in a cell with a gang member. Plaintiff alleges that he requested not to be housed with gang members and asserts this placement violated SCDC policy. He also alleges that the duty officer was not on his post at the time of the assault in violation of SCDC policy, and that the assault was due to a staffing shortage at SCDC.

Findings of Fact and Conclusions of Law

Plaintiff filed his tort claim pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10, et seq. ("SCTCA"). The SCTCA declared, as the public policy of the State of South Carolina, that the State, and its political subdivisions, are "only liable for torts within the limitations of this chapter and in accordance with the principles established herein." S.C. Code Ann. § 15-78-20. SCDC is an agency of the State of South Carolina and is governed by the SCTCA. With limited exceptions in certain circumstances that are inapplicable here, the SCTCA provides immunity from suit to "the State of South Carolina and any of its offices, agencies,

authorities, departments...” S.C. Code Ann. §§ 15-78-20 and -30(e). It is undisputed that SCDC is a state agency as contemplated by the Act.

The SCTCA sets forth several exceptions to the general waiver of immunity regarding the liability of a governmental entity for torts committed by its employees. See S.C. CODE ANN. § 15-78-60.

Under S.C. Code Ann. § 15-78-60(25) a governmental entity, such as defendant SCDC, is not liable for loss resulting from its “responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any . . . inmate . . . except when the responsibility or duty is exercised in a grossly negligent manner.”

Applying this statutory standard, Plaintiff must bring forth evidence beyond the allegations of the Complaint pointing to grossly negligent actions by SCDC that resulted in the assault and injury to Plaintiff. The Motion for Summary Judgment turns on whether Plaintiff has presented evidence showing that Defendant was not merely negligent, but grossly negligent.

The South Carolina Supreme Court and Court of Appeals have interpreted gross negligence as the “failure to give slight care.” See *Etheredge v. Richland Sch. Dist. I*, 341 S.C. 307, 534 S.E.2d 275 (2000); *Jackson v. South Carolina Dept. of Corr.*, 301 S.C. 125, 390 S.E.2d 467 (Ct. App. 1989). (Emphasis added.)

“A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing. Gross negligence involves a conscious failure to exercise due care.” *Jackson v. South Carolina Dep’t of Corrections*, 301 S.C. 125, 126-127 (Ct. App. 1989). (Emphasis added.) Gross negligence represents a significant deviation from the standard of care, and is characterized by willful, wanton, and reckless behavior.

Plaintiff's Complaint contains few specific factual allegations. Broadly construed, Plaintiff alleges that SCDC was grossly negligent by housing him in 2017 in a cell at Tyger River with an inmate who was a member of the gang that attacked him at Broad River Correctional Institution in 2016.

Plaintiff was transferred to Tyger River Correctional Institution following an unrelated incident at Broad River Correctional Institution in 2016. Over the next eleven months at Tyger River, Plaintiff was housed in various dorms and cells, experiencing interpersonal issues with multiple cellmates. Plaintiff's deposition reveals that he had "trouble" with nearly all of his cellmates. He was moved several times due to his behavior, including disciplinary charges and verbal altercations. Plaintiff was ultimately housed with Anthony Williams, with whom he initially had no issues until a verbal altercation the night before the stabbing. Plaintiff never complained to SCDC about being housed with Williams.

Plaintiff states in his deposition that he had had a verbal altercation with cellmate Anthony Williams the night before he was stabbed. Plaintiff testified that it was unexpected behavior from Williams and "I didn't know he was going to stab me...." Plaintiff acknowledged in his deposition that he has no proof of any gang involvement other than his unsupported allegation that his cellmate, Anthony Williams was a member of a gang.

Even though Plaintiff alleges in his Complaint that he was stabbed because his cellmate was a gang member, he testified in his deposition that Williams did not stab him because of that gang relationship. He testified he believes it was related to a "cellphone network" that he believes illegally exists at SCDC.

Plaintiff testified that all the gangs were involved with the cellphone network, and it is their involvement with the network that is the root of the problem. Plaintiff believes that SCDC and

other agencies such as the FBI and the IRS are involved in allowing inmates to have and use cellphones in SCDC institutions. Plaintiff testified that he is being targeted by gangs in SCDC because of this cellphone network. However, Plaintiff fails to set forth evidence regarding the existence of the network, the gangs or members involved, or even his own activities that may have triggered the alleged gang animosity towards him. Although he apparently believes the gangs at SCDC are deliberately attacking him and are a threat to his safety, he fails to identify any record evidence to support this notion. He has not identified any articulated threat by a gang, or a gang member towards him while at Tyger River.

Plaintiff also has not shown that Defendant had prior notice or reason to believe that this incident would occur. Other than his general complaint that he did not want to be housed with a gang member, there is no evidence that Plaintiff made a specific complaint to SCDC about a known and probable threat by a gang to his safety. Without notice of a possible assault by other inmates, it cannot be said that SCDC failed to protect Plaintiff or that it “knew or should have known” of a possible assault. *See Etheredge v. Richland School Dist. 1*, 341 S.C. 307 (2000) (“Gross negligence is 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.”). “Gross negligence involves a **conscious** failure to exercise due care.” *Jackson v. S.C. Dep’t of Corr.*, 301 S.C. 125, 126-7 (Ct.App. 1989) (emphasis added) (“A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing.”). A “conscious failure,” could be shown by evidence that someone at SCDC knew that the assault would occur and chose to do nothing. There is no record evidence to support such a claim.

Beyond these factual allegations of the Complaint addressed above, Plaintiff very generally alleges that there was gross negligence by SCDC in failing to provide enough officers for the

protection and security of the Plaintiff. However, his Complaint has no specific facts set forth in that regard and Plaintiff has pointed to no record evidence to support such an allegation. Plaintiff has not plead any facts nor produced any evidence to show that there was inadequate staffing on June 16, 2017, at Tyger River.

Viewing the record in the light most favorable to Plaintiff the Court finds that Plaintiff has failed to present any evidence that Defendant or its employees failed to exercise slight care. Plaintiff has not established the factual proof necessary to show the possibility of a gross negligence claim as is required by the SCTCA. Defendant is immune from suit pursuant to S.C. Code Ann. § 15-78-60(25) which states that a governmental entity, is immune from liability unless the actions amount to gross negligence.

Plaintiff's Complaint also alleges that his housing assignment and placement in his cell at Tyger River violated SCDC policy. He argues that because he was not a gang member, he should not have been housed with an inmate who was a member of a gang. However, Plaintiff does not point to a specific SCDC policy that would require that analysis, assessment, and action by the classification personnel at Tyger River. Defendant argues that no such policy exists which automatically makes such housing placements improper and that it has not violated any written SCDC housing policy.

Stacey Richardson, SCDC Division Director of Classification testified in her declaration that SCDC has an Inmate Classification Policy OP 21-.04 but that such policy does not automatically require that gang affiliated inmates must be segregated from non-gang affiliated inmates, even when the non-gang inmate may have been previously assaulted by a gang affiliated inmate. Plaintiff produced no evidence disputing that position.

Additionally, Plaintiff's Complaint also alleges that the SCDC duty officer assigned to his dorm, was "nowhere to be found" at the time of the assault, and that his actions were violations of unspecified SCDC policies. Plaintiff testified that he "guessed" the duty officer was in the bathroom at the time of the stabbing but could not confirm this. Other than mere speculation, Plaintiff produced no evidence to show that the officer was not at his post. He also failed to produce evidence that the actions as alleged were in violation of SCDC policy. Plaintiff fails to point to a particular SCDC policy that covers that issue, or any SCDC policy or procedure that may have been violated.

Plaintiff is alleging, very generally and without specifics, that Defendant SCDC, and its employees did not properly follow SCDC policies. Plaintiff's theory that simply failing to follow written SCDC policy is actionable negligence is misplaced. Under the circumstances brought forth by the Complaint, S.C. Code Ann. § 15-78-60(4), provides immunity in the failure to comply with any rule, regulation, or written policies by SCDC staff. A failure to fully comply with a policy is not actionable under the SCTCA under these facts and Defendant is immune from suit for any such claim.

Overall, Plaintiff alleges he was stabbed by his cellmate and that SCDC was grossly negligent by not protecting him from a known danger. He alleges Defendant violated its own policies. Plaintiff has not come forward with evidence to show that SCDC knew or should have known that his cellmate was likely to assault him, and failed to do what is required to protect him. There is no proof that Defendant violated any housing policy, or the duty officer violated policy.

Conclusion.

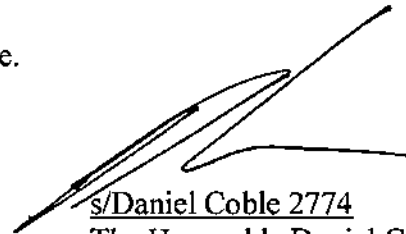
Having reviewed the materials on file in this case and the arguments of the parties, the Court finds that Plaintiff's Complaint fails to state a cause of action against Defendant upon

which relief can be granted and fails to state facts sufficient to constitute a cause of action. There is no genuine issue as to any material fact. Defendant's Motion for Summary Judgment should be granted.

NOW, THEREFORE, IT IS ORDERED:

1. Defendant's Motion for Summary Judgment is Granted,
2. Plaintiff's pending motions are denied as moot, and
3. This action is dismissed with prejudice.

AND IT IS SO ORDERED.



s/Daniel Coble 2774
The Honorable Daniel Coble
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina
January 27, 2025.