RECEIVED
Jun 01 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Daniel Coble, Circuit Court Judge

Appellate Case No. 2025-002478
Case No. 2018-CP-40-4850

Randle Jackson as the Personal Representative of the
Estate of Dashaun Simmons, ... Respondent,

v.

South Carolina Department of Corrections,.. Appellant.

INITIAL REPLY BRIEF OF APPELLANT

ANDREW F. LINDEMANN
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

WILLIAM H. DAVIDSON, II
DAVIDSON & WREN, P.A.
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
(803) 806-8222

Counsel for Appellant

TABLE OF CONTENTS

Table of Authorities ii

Arguments 1

I. The trial court erred in granting partial summary judgment to the Respondent on the issue of gross negligence and Tort Claim Act defenses where there are genuine issues of material fact that preclude summary judgment on those issues. 1

II. The Respondent failed to present any meaningful analysis of the interplay of Sections 15-78-60(17) and 15-78-60(25) and further fails to recognize that the appellate decisions which he cites as dispositive have never addressed the issue.... 4

III. The Respondent, like the trial court, continues to ignore that a finding of gross negligence as a matter of law for policy violations requires consideration of the element of proximate cause, which is missing from the trial court's orders and from the Respondent's brief.. 4

IV. The Respondent's characterization of his second motion for summary judgment is inaccurate, as is his assertion that opposing counsel made "an egregious and boldfaced misrepresentation" to the Court.......... 10

Conclusion 12

TABLE OF AUTHORITIES

Cases

Baker v. Sanders,
301 S.C. 170, 391 S.E.2d 229 (1990).

Ballenger v. Bowen,
313 S.C. 476, 443 S.E.2d 379 (1994).

Chakrabarti v. City of Orangeburg,
403 S.C. 308, 743 S.E.2d 109 (Ct. App. 2013).

Faile v. South Carolina Department of Juvenile Justice,
350 S.C. 315, 566 S.E.2d 536 (2002).

Kennedy v. South Carolina Retirement System,
349 S.C. 531, 564 S.E.2d 322 (2001).

Pridgen v. Ward,
391 S.C. 238, 705 S.E.2d 58 (Ct. App. 2010).

Repko v. County of Georgetown,
424 S.C. 494, 818 S.E.2d 743 (2018).

State v. Austin,
306 S.C. 9, 409 S.E.2d 811 (Ct. App. 1991).

Steinke v. South Carolina Labor, Licensing & Regulation,
336 S.C. 373, 520 S.E.2d 142 (1999).

Wright v. Colleton County School District,
301 S.C. 282, 391 S.E.2d 564 (1990).

Statutes, Rules, and Other Authorities

S.C. Code Ann. § 15-78-20(f).

S.C. Code Ann. § 15-78-60(17).

S.C. Code Ann. § 15-78-60(25).

Rule 7(b), SCRCP.

Rule 30(b)(6), SCRCP.

ARGUMENTS

I. The trial court erred in granting partial summary judgment to the Respondent on the issue of gross negligence and Tort Claim Act defenses where there are genuine issues of material fact that preclude summary judgment on those issues.

The trial court granted summary judgment as a matter of law to the Respondent Randall Jackson, as the Personal Representative of the Estate of Dashaun Simmons, as to all Tort Claims Act defenses asserted by the Appellant South Carolina Department of Corrections ("SCDC"). The trial court also granted partial summary judgment finding that "as a matter of law that Defendant SCDC was grossly negligent." (Order, p. 10).

In opposing that ruling, SCDC has recited substantial evidence in the record supporting the conclusion that Officer Anthony Hall acted intentionally in opening the cell door where Simmons was located so that several inmates affiliated with the Bloods gang could enter the cell with weapons (including what was described as an "axe type weapon") while he stood by and took no further action to stop the assault that he deliberately set into motion by opening the cell door. As indicated in the opening brief, the Respondent cannot deny this account as to what transpired in the Marion Unit on July 17-18, 2017. That is because in his Amended Complaint, the Respondent alleges that "an officer facilitated the assailants' attack on the plaintiff, witnessed the attack, and did not attempt to prevent the assailants from injuring the plaintiff." (Amended Complaint, ¶ 24).

Yet, remarkably, in attempting to maintain a partial summary judgment, the Respondent seeks to backtrack from his own pleadings. He now claims that "[t]here is no allegation that Hall opened the cell doors with the intent to cause harm to Respondent or that Hall had knowledge of the intention of other inmates at that time." *See*, Respondent's Brief, p. 25. He further insists

that "there is no allegation that [Hall] participated in the assault." *See*, Respondent's Brief, p. 25. But then, after downplaying what the "allegations" are regarding Officer Hall's conduct, the Respondent comes clean and states: "What Hall did do was open a cell door in violation of SCDC policy and stand aside as an overwhelming force of armed assailants attacked another prisoner." *See*, Respondent's Brief, p. 25. That admission or stipulation by the Respondent is enough to show that there exists a genuine issue of material fact as to actions of Officer Hall and whether his conduct constitutes either an "intent to harm" or a crime of moral turpitude or (most likely) both, which, if proven, will entitle SCDC to sovereign immunity under Section 15-78-60(17) of the Tort Claims Act. It defies logic to argue that, as inmate Timothy Rainey reported, Officer Hall was at the cell door with four armed inmates and then opened the door to allow the assault to take place, and he did so with no intent to cause harm to Simmons.[1] At the very least, that evidence gives rise to a reasonable inference that a jury may draw that Officer Hall did act with the requisite intent to harm and very well knew that his actions would result in harm to Simmons. As mentioned above, the actions of Officer Hall, based on record evidence, was *the* proximate cause of the assault that transpired. If the cell door had not been opened, the assault would not have occurred. It was the opening of the cell door, with knowledge of what would occur between the armed inmates and Simmons, that proximately caused the assault and the resulting harm to Simmons. Again, there are not only allegations that Hall "facilitated" the assault (to use the verbiage from the Amended Complaint), but there is also substantial record evidence that Hall set in motion that assault. Based on that evidence, a jury could reasonably

[1] Inmate Timothy Rainey reported as follows: "He [Rainey] was living on the right side of the Marion Unit on July 18, 2017. He observed Cpl. Hall standing in front of inmate Simmons' cell with four inmates that had weapons. He observed Cpl. Hall open the door to allow the inmates to assault Simmons. He observed Cpl. Hall lock the door back after the assault had ended." (Ex. 9, Investigative Report).

conclude that Hall was an active participant in the assault.

In 2023 and early 2024, the trial court heard and denied the Respondent's motion for summary judgment on liability issues, including the Section 15-78-60(17) immunity defense.[2] Indeed, the trial court found "that there is a genuine issue of material fact as to whether Officer Hall acted intentionally. Officer Hall's actions were the direct cause of the Plaintiff's injuries, and if Officer Hall acted intentionally, summary judgment is not appropriate as to vicarious liability." (Order filed January 2, 2024, p. 1). As SCDC argued in its opening brief, the factual record did not substantially change between the two summary judgment motions, and certainly, there was no evidence developed that conclusively absolved Officer Hall of what certainly appears to be intentional conduct and deliberate participation in the assault.

Nonetheless, the Respondent takes the position that the Order filed January 2, 2024, does not constitute the law of the case. SCDC does not dispute that and, in fact, never took the position that the prior order established the law of the case. It is well settled that the denial of summary judgment is not the law of the case, and the moving party may later file a successive motion for summary judgment or move at trial for a directed verdict. That is clear. *See*, *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379, 380 (1994) ("[a] denial of a motion for summary judgment decides nothing about the merits of the case").

However, while not having any *preclusive* effect on the second motion for summary

[2] The Respondent claims that the summary judgment motions filed on April 7, 2023 and again on May 27, 2025 are not the same. As a prime example of the alleged differences, he specifically states that a Section 15-78-60(17) immunity defense was not at issue in the earlier motion. In fact, he insists that he did "not cite to Section 15-78-60(17) a single time." *See*, Respondent's Brief, p. 21. That is a bit disingenuous. Indeed, the April 7, 2023 motion states that "SCDC cannot raise any criminal act exception under the Tort Claims Act" and "cannot raise an intentional act defense." (MSJ, p. 5). Those are obviously references to Section 15-78-60(17) immunity defense. Certainly, that issue was litigated in that first motion for summary judgment, and the trial court's January 2, 2024 Order also makes that obvious.

judgment, SCDC points to the Order filed January 2, 2024, and the findings made therein, as *persuasive authority* particularly where the core facts of the case, and certainly the Respondent's allegations, had not changed. Again, the Respondent claims that the evidentiary record changed between motions, but what is key is that the core facts of the assault itself *did not change*, and as indicated above, no facts were developed to conclusively establish that Officer Hall did not open the cell door so that armed inmates could attack Simmons. Those core facts were the same in 2025 as they were in 2023. It is those core facts that mandate a reversal of the partial summary judgment so that a jury may determine if Hall's conduct constitutes an "intent to harm" or a crime of moral turpitude or both or whether such conduct rises only to the level of gross negligence and not intentional acts.

In sum, as the record clearly reflects, there remain genuine issues of material fact as to the conduct of Officer Hall and whether that conduct satisfies the "intent to harm" prong or crime of moral turpitude prong of Section 15-78-60(17). There also remain genuine issues of material fact on the question of gross negligence. Accordingly, the partial summary judgment should be reversed.

II. The Respondent failed to present any meaningful analysis of the interplay of Sections 15-78-60(17) and 15-78-60(25) and further fails to recognize that the appellate decisions which he cites as dispositive have never addressed the issue.

The Respondent, nonetheless, appears to argue that Officer Hall's conduct may have been intentional or even morally reprehensible or criminal, and that makes no difference. He bases that position, like the trial court, on a misreading and misapplication of the interplay of Sections 15-78-60(17) and 15-78-60(25). The Respondent insists that South Carolina law is well

developed that the gross negligence exception of Section 15-78-60(25) must be interpolated upon every exception in Section 15-78-60, including Section 15-78-60(17).

Not surprisingly, the Respondent fails to engage in any meaningful analysis to explain how a gross negligence exception was intended by the General Assembly to override or negate an immunity for purely intentional conduct – particularly in light of the public policy that underlies the Tort Claims Act in two keys respects. First, as the Supreme Court has keenly observed, the "legislative objectives" of the Tort Claims Act are "relieving the government from hardships of unlimited and unqualified liability and preserving the finite assets of governmental entities which are needed for an effective and efficient government." *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564, 570 (1990). There are numerous examples where sovereign immunity was preserved by the General Assembly for intentional torts and intentional acts, including nuisance, actual malice, intent to harm, actual fraud, and others. That was done to preserve the finite assets of governmental entities. Second, the Tort Claims Act includes its own rules of statutory construction, including Section 15-78-20(f), which states: "The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, *must* be liberally construed *in favor of limiting the liability of the State*." S.C. Code Ann. § 15-78-20(f). (Emphasis added). Thus, the limitation on liability based on the interplay of Sections 15-78-60(17) and 15-78-60(25) must be liberally construed in favor of limiting the liability of the State as mandated by Section 15-78-20(f) and the supporting case law. *See, Faile v. South Carolina Department of Juvenile Justice,* 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"); *Baker v. Sanders,* 301 S.C. 170, 391 S.E.2d 229 (1990) (same).

As SCDC full conceded in its opening brief, there is no South Carolina appellate decision that "interpolates" the gross negligence exception of Section 15-78-60(25) into Section 15-78-60(17) or that even discussed the issue. Most likely the reason for that is such an interpolation is both illogical and unworkable. Section 15-78-60(17) is designed to provide immunity to the government for intentional acts, crimes of moral turpitude, acts of actual malice, and acts of actual fraud. Those constitute intentional conduct by a governmental employee. From a logical and legal standpoint, intentional conduct may not be committed in a grossly negligent manner – a point that the Respondent does not dispute in his brief.

Instead of engaging in a meaningful analysis to demonstrate how a "gross negligence" exception may be interpolated into the pertinent provisions of Section 15-78-60(17) which involves only intentional conduct, the Respondent cites three appellate decisions that do not address the interplay of Sections 15-78-60(17) and 15-78-60(25). Nonetheless, the Respondent insists that SCDC is "ignoring" those decisions. That is not the case. The Respondent references the Supreme Court's decision in *Repko v. County of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018), but that case is a land use case and does not involve a custodial relationship nor any other relationship encompassed within Section 15-78-60(25). Section 15-78-60(17) is not cited, let alone addressed, in *Repko*. The same is true for this Court's decision in *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 743 S.E.2d 109 (Ct. App. 2013). *Chakrabarti* does not involve a custodial relationship nor any other relationship encompassed within Section 15-78-60(25), and Section 15-78-60(17) is not cited, let alone addressed, in the case. Lastly, the same is true for *Steinke v. South Carolina Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999), which is not a custodial case and does not even include a citation to Section 15-78-60(25) or Section 15-78-60(17) for that matter. *Steinke* involved a bungee jump amusement ride. In sum,

none of those decisions that the Respondent insists are dispositive are even remotely helpful in analyzing the interplay of Sections 15-78-60(17) and 15-78-60(25) and whether a gross negligence exception should be or is interpolated into Section 15-78-60(17).

The Respondent's argue that the *Repko, Chakrabarti,* and *Steinke* cases say that a gross negligence exception is interpolated into all other Section 15-78-60 immunity provisions regardless of content. Quite frankly, that takes those cases to an extreme – suggesting that the appellate courts have already decided this issue which has never been presented to them in any reported case. That logic is at odds with the basic premise of appellate jurisprudence best explained by former Chief Judge Alex Sanders when he so aptly stated, "appellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *State v. Austin*, 306 S.C. 9, 409 S.E.2d 811, 817 (Ct. App. 1991). *See also*, *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 564 S.E.2d 322, 323 (2001) (same). Clearly, the South Carolina appellate courts have not addressed the key issue in this appeal, and it is frankly nonsense to suggest that the issue is "well settled" by the *Repko, Chakrabarti,* and *Steinke* decisions.

Logically speaking, if the Respondent (and the trial court) are correct and the gross negligence exception is to be interpolated into every Tort Claims Act immunity provision including Section 15-78-60(17), an absurd result occurs. To recap, Section 15-78-60(17) provides that a "governmental entity is not liable for 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). If the Respondent and the trial court are correct, and if the *Repko, Chakrabarti,* and *Steinke* decisions are already dispositive, then a gross negligence exception is also applicable where an employee acts outside

the scope of his official duties. That is untenable. If true, that will make governmental entities liable for the acts of employees who are acting outside the scope of their official duties so long as that employee's personal conduct rises to the level of gross negligence. That is certainly not a limitation on the liability of the State – if anything, it represents an expansion of that liability beyond the intent of the General Assembly in enacting Section 15-78-60(17) or the Tort Claims Act as a whole.

The reality should be clear: the General Assembly did not intend governmental entities, including SCDC, schools, universities, hospitals, law enforcement agencies, and other entities to which Section 15-78-60(25) may apply, to be liable for the torts of their employees when they act outside the scope of their official duties and when their conduct constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. To interpolate a gross negligence exception into an intentional tort immunity provision is illogical and unworkable, and even more so, it is directly counter to the public policy rationales that underlie the Tort Claims Act. This case presents a good example. Dashaun Simmons would not have been harmed during the night of July 17-18, 2017, if he had remained locked in the cell he was occupying in Marion Unit. However, substantial evidence in the record indicates that Officer Anthony Hall unlocked the cell door to allow several armed inmates to enter and assault Simmons. That is precisely the type of conduct that Section 15-78-60(17) was designed and intended to provide immunity for the governmental entity – not the employee but the entity. *See*, *Pridgen v. Ward*, 391 S.C. 238, 705 S.E.2d 58 (Ct. App. 2010) (recognizing that SCDC officials – not the entity but the individual employees -- are not entitled to immunity under Tort Claims Act for conduct committed outside of their official duties and with the intent to harm).

In sum, the Court is urged to find that the gross negligence exception cannot be interpolated into Section 15-78-60(17). Moreover, the Court is asked to reverse the partial summary judgment that has stricken all Tort Claims Act defenses.

III. The Respondent, like the trial court, continues to ignore that a finding of gross negligence as a matter of law for policy violations requires consideration of the element of proximate cause, which is missing from the trial court's orders and from the Respondent's brief.

The foregoing discussion highlights an additional fallacy that undergirds the Respondent's position and the rulings by the trial court. In his brief, the Respondent repeatedly argues that the trial court found gross negligence as a matter of law by SCDC because of a violation of agency policies. As SCDC argued in its opening brief, the trial court's order does not address how violations of any of the SCDC policies failed to prevent or otherwise caused the attack. The trial court spoke only in generalities in its order. The trial court did not specifically identify any SCDC policies that were violated as a matter of law and also never addressed how any violated policies proximately caused the harm to the decedent.

Notably, the Respondent has no response to those pertinent points. Like the trial court, he speaks only in generalities, which makes it impossible to conduct a meaningful review on a liability determination made as a matter of law. For instance, the Respondent insists that "Appellant has numerous policies in place to ensure the safety of the guards and the prisoners in the institution, as well as supervision of guards, and many of those policies were completely ignored." *See*, Respondent's Brief, p. 27. The Respondent, like the trial court, then makes the leap that "[t]his alone is grounds to rule as a matter of law the Appellant was grossly negligent." *See*, Respondent's Brief, p. 27. That "leap," however, is unsupportable and frankly contrary to

basic negligence law. Like the trial court, the Respondent does not identify a single policy that was violated, nor is there any evidence that a policy violation proximately caused the assault of Simmons. To the contrary, if the jury were to conclude that Officer Hall intentionally and deliberately opened the cell door to a cell where Simmons was safe and by doing so subjected him to the assault, that scenario does not support the conclusion that a policy violation proximately caused Simmons' harm – rather it was the deliberate opening of the cell door to allow the attack to proceed that proximately caused Simmons to be harmed. As SCDC has argued, Officer Hall's conduct was the superseding, but-for cause of the attack on Simmons.

That issue should not be decided by way of a partial summary judgment simply finding that some unidentified policy violation proves SCDC was grossly negligent as a matter of law. Importantly, proximate cause is a critical component of a gross negligence finding; yet, the trial court makes no mention at all of proximate cause in its orders and the Respondent makes no mention of it in his brief. Literally, the words "proximate cause" do not appear in any of the orders or in the Respondent's brief. That should speak volumes, and quite frankly, that alone warrants the reversal of the partial summary judgment so that the question of gross negligence, like Section 15-78-60(17) immunity defense, may be decided by a jury.

IV. The Respondent's characterization of his second motion for summary judgment is inaccurate, as is his assertion that opposing counsel made "an egregious and boldfaced misrepresentation" to the Court.

Finally, the Respondent chastises the undersigned counsel for making "an egregious and boldfaced misrepresentation" regarding the nature of his second summary judgment motion filed May 27, 2025. In its opening brief, SCDC described that motion as seeking "primarily what may be described as discovery sanctions based on grievances related to a Rule 30(b)(6) deposition of

SCDC." *See*, Appellant's Opening Brief, p. 3. The Court is invited to read the motion. That is a fair and accurate characterization of a two-page motion which was not supported by the contemporaneous filing of a memorandum nor any record evidence. The motion alleges shortcomings regarding the Rule 30(b)(6) designees, and as to one such witness, the Respondent complained that "[t]he SCDC witness made available to testify about evidence supporting defenses had no idea what SCDC's defenses were and could not point to any evidence to support them." (MSJ II). As for the actual "grounds" for that summary judgment motion, the Respondent writes: "Because SCDC cannot offer any evidence in support of its defenses, and because many or all of them are impossible as a matter of law, the plaintiff respectfully requests that summary judgment be granted on those defenses." (MSJ II). SCDC submits that its characterization of the motion was accurate, despite the Respondent's desire to spew inflammatory accusations.

What is also accurate is SCDC's point that a grant of partial summary judgment as a matter of law on the issue of gross negligence *goes far beyond* what the Respondent actually sought in his motion for summary judgment. Indeed, Rule 7(b), SCRCP, using the mandatory term "shall," requires that motions "shall state with particularity the grounds therefor." Rule 7(b), SCRCP. Certainly, the motion does not state with the requisite particularity that the Respondent was asking the Court to rule that SCDC was grossly negligent as a matter of law.

In sum, what should be obvious from the briefing in this case is that the grant of partial summary judgment on the question of gross negligence and the Tort Claims Act immunities, particularly the Section 15-78-60(17) immunity defense, were prematurely granted. Respectfully, the partial summary judgment should be reversed and case remanded for trial on liability and damages – rather than damages alone.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant South Carolina Department of Corrections respectfully renews its request that the Court reverse the orders issued by Circuit Court Judge Daniel Coble granting partial summary judgment as to liability, including his finding as a matter of law that the Appellant is liable for gross negligence and his ruling as a matter of law as to all Tort Claims Act immunity defenses, including Section 15-78-60(17) immunity.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

WILLIAM H. DAVIDSON, II #1558
DAVIDSON & WREN, P.A.
1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
(803) 806-8222

Counsel for Appellant South Carolina Department of Corrections

June 1, 2026