

FEB 10 2014

SC Court of Appeals

01/07/2014 15:22

864-277-4376

GANTT SUMMARY COURT

PAGE 02/03

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2304330

Tommy Moore 2013 NOV 11 PM 4 17 Thomas Perkins

PLAINTIFF(S) DEFENDANT(S)
Submitted by: Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:
This is an appeal from a magistrate court trial. After reviewing the file and considering the arguments presented, the appeal is denied. While the appellant presents a good argument and may have convinced another judge of the merits of his claim, the record from below indicates support for the decisions made by the magistrate. This court cannot substitute its judgment on the facts because it may disagree with the facts as viewed by the lower court. Appellant seems to direct most of his argument on the closing section of the magistrate's trial summary. However, the magistrate did not write her summary in a manner that indicates those 3 or 4 listed items were her sole reasons. As the trial judge she was in the better position to observe the witnesses, listen to them and determine which evidence convinced her of the truth. As an appellate court, this court does not lightly discount the trial judge's unique position of determining the truth of the evidence presented to her.

This court appreciates and notes the politeness and respect the parties showed to this court during the arguments.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge *[Signature]* 2132 Judge Code 10/25/2013 Date

For Clerk of Court Office Use Only

This judgment was entered on 11/11/13, and a copy mailed first class or placed in the appropriate attorney's box on 11/11/13, to attorneys of record or to parties (when appearing pro se) as follows:

Timmy Moore 415 North Main St. #14Q Greenville, SC 29601

Thomas Perkins 415 North Main St. #2G Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Magistrate Baybriel Gibson

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Multiple horizontal lines for additional information.

Received by Appellant on 02/05/2014 upon pick-up at time: 1150

RECEIVED NOV 11 2013 Judge Horace Isler, Jr.

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE COURT

COUNTY OF GREENVILLE

OF

GAYBRIEL GIBSON

CIVIL CASE# 2013CV2311002007

APPEAL ANSWER
CASE #2013-CP-23-4330

AUG 20 P 1:25

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER

Thomas Perkins
415 North Main St. #2G
Greenville, SC 29601

PLAINTIFF

vs.

Tommy Moore
415 North Main St. #14Q
Greenville, SC 29601

DEFENDANT

On the 29th day of July 2013, I, Summary Court Judge Gaybriel Gibson, held a bench trial on a Summons & Complaint before the Plaintiff, Thomas Perkins, who was Pro Se and the Defendant, Tommy Moore, who was also Pro Se. A recording of this case is available.

I do not know what Appellant's exceptions to the judgment are because he only indicated he wanted to appeal my ruling, with no other explanation.

The Plaintiff was seeking \$7,500 and 180 days in jail from the Defendant for alleged torts, to include assault & battery and "stare-down" stalkings, committed against the Plaintiff. The Defendant denied the alleged actions and any responsibility to the claim for damages. After hearing all testimony and reviewing the evidence presented, I found that the Plaintiff did not prove his case by a preponderance of the evidence. I, therefore, dismissed the case. There was no counterclaim filed.

I am including a brief summation of the testimony and evidence presented during the trial:

- Both parties live at the Towers East Apartments on Main St.
- Steve, another resident at Towers East, told the Plaintiff and other people that the Defendant has AIDS. The Defendant says he does not have AIDS. There has been no proof of this medical claim by Steve, the Plaintiff, or any other medical personnel. The Plaintiff contends that it is the Defendant's responsibility to

prove to the Plaintiff that the Defendant does not have AIDS. {See Plaintiff's Exhibit 1 – **Gastineau v. Murphy**, 323 S.C. 168, 473 S.E.2d 819 (Ct. App. 1996) The Plaintiff contends that this case surmises that "...The presumption is a rule of law by which a finding of basic fact gives rise to the existence of a presumed fact until the presumption is rebutted by evidence produced by the defendant}. And since 'no proof has been provided to the Plaintiff', he therefore, strongly believes Steve's claim and is fearful of the Defendant because he may pass the AIDS virus to the Plaintiff.

- On August 23, 2012, the Plaintiff reported an assault & battery by the Defendant on the Plaintiff to the Security personnel at Towers East. Daniel Howard from American Security investigated the incident and no action was taken. (See Plaintiff's Exhibit 2 – American Security Incident Report)
- The Plaintiff also called the Greenville City Police and Officer Cagle and Officer Saglimbeni came out to the scene to investigate. The case was closed with no report being done. (See Plaintiff's Exhibit 3 – Incident Report – LCPI120823065821 or 12-65821)
- The Defendant denied assaulting the Plaintiff.
- The Plaintiff presented testimony relating to the Defendant constantly starring the Plaintiff down since August 2012, mostly by the elevator and the front door of Tower's East. There were approximately two 'stare-downs' per month from August 2012 until March 2013. On March 31, the Plaintiff observed the Defendant starring at him through the window of a door. The Plaintiff went to report the incident, but no security officer was there. On June 4, the Plaintiff thinks the Defendant stared at him as he went to Bi-Lo Grocery store on Main St. He is not sure because of his limited vision from the detached retina surgery he had. Upon the Plaintiff's return from the Bi-lo, the Plaintiff was able to overhear the Defendant's conversation with the UPS man. On June 6, the Plaintiff saw the Defendant by the elevator but the Defendant did not stare at the Plaintiff this time. However, the Plaintiff was able to observe that the Defendant seemed angered because the Plaintiff had entered the building. (See Plaintiff's Exhibit 4 – "Stare Down Log")
- On March 2, 2013, the Plaintiff wrote a letter to Officer Cagle informing him that the Defendant had starred at him in a stalking manner so the Plaintiff had motioned for the Defendant to 'flinch.' The Plaintiff let the officer know that he was "...getting sick and "god-damn" tired of his (the Defendant) "bull-shit." He indicated that he was 'afraid for his life, livelihood and peace of mind.' (See Plaintiff's Exhibit 5)
- Officer Cagle came out to talk to the Plaintiff on March 7, 2013 and left a card with the Plaintiff. No report was done. No action was taken. (See Plaintiff's Exhibit 6)
- There was also an allegation of staring that occurred at the ice cream shop on Main St.
- The Defendant denied all the allegations of 'staring down' the Plaintiff. The Defendant said they live in the same building but they live on different floors and he doesn't even see the Plaintiff that much. The Defendant said he delivers meals, with another person, once a month on the 2nd floor (where the Plaintiff lives) but he never sees the Plaintiff on those days.
- The Defendant had two witnesses who indicated that they did not know anything about the "stare-downs" and that the officers did not do anything about

the assault & battery allegation. One witness, Michael Ray, testified that the problems between both parties arose from Steve's AIDS allegation. The Plaintiff has been "afraid" of the Defendant since he was informed of that. The witness says he doesn't believe the Defendant has AIDS and Steve has never provided any proof of such. The Defendant had also requested that his witness help him with the Plaintiff's exhibits because he has difficulty reading and understanding things sometimes.

- The Plaintiff submitted a copy of his psychiatric notes to show that the assault & battery and "stare-downs" have aggravated his mental injuries. The report indicates that the Plaintiff said the Defendant had not stared at him since April 1, 2013. (See Plaintiff's Exhibit 7)
- The Plaintiff said the witnesses to the various incidents would not come to court because everyone is afraid of the Defendant. The Plaintiff said one witness changed his story two weeks ago because he is dating the Defendant's girlfriend, Marie, who was one of the Defendant's witnesses. The Plaintiff did not know why another witness changed her story – only that they are afraid of the Defendant. The Plaintiff had no other corroborating testimony or evidence to his claims.
- The Plaintiff had prepared his testimony for court and submitted the document. (See Plaintiff's Exhibit 8)
- The Defendant contends that he does not have AIDS. He claimed that he regularly gives blood and submitted a printed instruction sheet from the Blood Connection that they give him each time he gives blood. (Nothing that says whether or not he has AIDS.) He also had one of their t-shirts on in court and said he got the t-shirt one time he gave blood recently. (See Defendant's Exhibit 1)

I did not find that the Plaintiff proved his case by a preponderance of the evidence based on several things he presented in his testimony & evidence, to include:

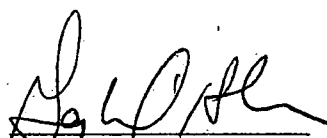
- The lack of action (criminal charges) taken by law enforcement and the Tower's East Security in relation to the assault & battery and the "stare-down" stalking claims.
- No action being taken by Tower's East for violation of the lease or apartment policies
- The lack of corroborating evidence and/or witness(es) to the claims

I also considered the denial by the Defendant of any of the Plaintiff's claims and the witness that was present who did not corroborate any of the Plaintiff's claims.

Respectfully Submitted,

August 19, 2013

Date


 Judge Gaybriel Gibson



**Honorable Gaybriel Gibson
Summary Court Magistrate
1103 White Horse Rd.
Greenville, SC 29605**

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

**IN THE MAGISTRATE'S COURT
CIVIL CASE 2013CV2311002007**

THOMAS PERKINS)
 PLAINTIFF)

 V.)

TOMMY MOORE)
 DEFENDANT)

RULING

The above case, in the form of a Summons and Complaint, was heard on July 29, 2013 before the Honorable Judge Gaybriel Gibson. Both parties appeared Pro-Se.

This case involved an alleged tort and the request for compensation for damages incurred as a result of that tort. A tort is defined as a private wrong or injury done to person or property for which a legal remedy is afforded. A tort arises where there is 1) a duty of due care; 2) a breach of that duty--i.e. negligence; 3) a legally protected injury; and 4) a causal relationship between that injury and the negligence such that the negligence "proximately caused" the injury. An intentional tort is an act committed with a particular state of mind. Intent is defined as the desire to cause certain immediate consequences. Certainty of the harmful consequences is what distinguishes intentional torts from negligent or reckless ones. Common intentional torts include Battery, Assault, False Imprisonment, Intentional Infliction of Emotional Distress, and Trespass to Land. A tort compensates victims, while criminal law punishes wrongdoers.

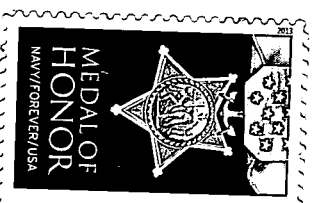
After reviewing the testimony and evidence presented at trial, as a whole, I find that the Plaintiff did not prove his case over the Defendant by a preponderance of the evidence. Therefore, I am dismissing the case.

THE HONORABLE JUDGE GAYBRIEL GIBSON
July 31, 2013

Thomas Perkins
Post Office Box: 4442
Greenville, S. C. 29608

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FEB 1 0 2014



Attention: Amelia, case manager

Cl. Clerk of Court

Post Office Box 11629
Columbia, South Carolina 29211

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