C/A No. 2013-CP-35-36

The State Of South Carolina
In the Supreme Court

Appeal From The County Lexington
South Carolina
Court Of Common Pleas
Judge Brian M. Gibbons,
Circuit Judge.

James D. Blakely Plaintiff

Vs.

Leroy Cartledge, et. al. Defendants

Notice Of Appeal

I, James D. Blakely, appeal the Ordered judgment of the Honorable Brian M. Gibbons, dated June 26, 2014. Petitioner received Written Notice of entry of this order on July 08, 2014, the final Order.

Dated: 7/12014

/s/
James D. Blakely
Kirkland Corr. Inst.

C: jgb
smp

C/A No. 2023-CP-35-36

4344 Broad River Rd
Columbia, S.C. 29210

Pro se

Petitioner swear under the penalty of perjury that the above is true to the best of petitioner's knowledge.

The State Of South Carolina
In the Supreme Court

Appeal From The Lexington County
Common Pleas Court - Circuit Judge
Judge Brian M. Gibbons

James D. Blakely ..... Plaintiff

Vs

Leroy Cartledge, et. al. Defendants

Plaintiff's Appeal

Plaintiff is appealing the Order of judgment of the Honorable Judge Brian M. Gibbons for the following reasons:

1. The defendants' attorney Steven M. Pruitt, never gave plaintiff Notice of Change of Venue from McCormick County to Lexington County, where this case was heard.

2. Defendant's Counsel failed to provides Plaintiff with a Copy of the alleged Summary Judgment and all of the Requested discovery. Such as a Copy of SCDC 2011 and 2012 Budget Sheets.

3. Defendants' Counsel argued outside of plaintiff's Complaint. (See Exhibit A and the Court's Order).

4. Defendants' Counsel knowingly falsified information to the Court and Exhibit A Clarify this fact.

5. Plaintiff was entitled to Notice of Change of Venue; Entitled to a Copy of Counsel's summary judgment and was entitled to full discovery.

6. Plaintiff informed Judge

Dibbons that plaintiff had not received notice of Change of Venue, and Judge Dibbons claimed, by having the hearing in Lexington County was not a Change of Venue because he would have been the same judge hearing the case in McCormick County. Plaintiff disagree With Judge Dibbons. Venue is the Changing of location, such as Counties, not the Changing of judges.

7. Plaintiff was denied due process and equal protection of the law.

Plaintiff is entitled to a legal hearing in McCormick, S.C. Plus full discovery and a Copy of the Alleged Summary Judgment.

Respectfully Submitted

Dated: _____

/s/ James D. Blakely

James D. Blakely #255623
Kirkland Corr. Inst.
4344 Broad River Rd.
Columbia, S.C. 29210

Pro se

C/A No. 2013-CP-35-36

The State of South Carolina
In the Supreme Court

James D. Blakely, Plaintiff,

vs.

Leroy Cartledge, et. al. Defendants

Certificate Of Mailing

I, James D. Blakely, have forwarded a copy of the Notice of Appeal, Court's Order, Motion to Proceed in forma Pauperis and Inmate Financial Sheet to the below address:

Ms. Steven M. Pruitt
414 Main Street
Greenwood, S.C. 29646

postage prepaid by plaintiff and Mailed first Class throug the United States Postal Service.

James D. Blakely
#344 Broad River Rd
Kirkland Cor. Inst.
Columbia, S.C. 29210
Pro se

Sworn to under the penalty of perjury

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**ELEVENTH JUDICIAL CIRCUIT**
COUNTY OF MCCORMICK	)	**CIVIL ACTION NO. 2013-CP-35-36**
	)	
James G. Blakely,	)	
	)	
Plaintiff,	)	
	)	**ORDER**
vs.	)	
	)	
Leroy Cartledge, Warden; et. al.,	)	
	)	
Defendants.	)	
	)	
	)	

This matter is before me on Defendant's Motion for Summary Judgment. A hearing was held on this matter on June 17, 2014, at which time Steven M. Pruitt, Esquire, appeared on behalf of Defendant and Plaintiff appeared pro se. For the reasons set forth below, I grant Defendant's Motion for Summary Judgment.[1]

The Plaintiff makes numerous claims, including that he was provided inadequate medical care, that his mail was handled improperly, that he was not provided appropriate clothing, that there were an insufficient number of restrooms in the cafeteria and education buildings, and that certain legal supplies were improperly taken from him. Plaintiff initially filed this action in state court and Defendants removed the action to federal court. Plaintiff moved to remand the action to state court stating that he did not assert any federal claims and only asserted state law claims.

Defendants first argued that the South Carolina Department of Corrections ("SCDC") is the only proper Defendant and should be substituted for the individual Defendants. The Court agrees. Plaintiff dismissed any federal claims in order to have this action remanded and the only remaining

claim is under the South Carolina Tort Claims Act, S.C. Code § 15-78-10 et seq. (2007 & Supp. 2013). Under § 15-78-70 of the Tort Claims Act, an individual suing under this Act must name as a party defendant only the agency or political subdivision of which the employee was acting and is not required to name the employee individually. The Act further states that if any employee is named, the agency or subdivision for which the employee was acting must be substituted as a party defendant. Id. § 15-78-70. The Plaintiff cannot maintain any action against the individual Defendants under the Tort Claims Act and SCDC is the only proper Defendant.

Defendant next argues that Plaintiff's action should be dismissed because he has failed to produce expert testimony. The Plaintiff is attempting to assert a claim for medical malpractice in that he says the medical treatment he has been given is inadequate. However, the Plaintiff has failed to list any expert witness or produce any expert testimony on this matter. The South Carolina Court of Appeals stated "[in] medical malpractice cases, the Plaintiff must establish by expert testimony both the standard of care and the Defendant's failure to conform to the standard . . . ." See Tumblin v. Ball-Incon Glass Packaging Corp., 324 S.C. 359, 478 SE.2d 81, 84 (Ct. App. 1996) (citing Pederson v. Gould, 288 S.C. 141, 341 S.E.2d 633 (1976) and Jernigan v. King, 312 S.C. 331, 440 S.E.2d 379 (Ct. App. 1993)). The Plaintiff has failed to identify any expert in this case as to the appropriate standard of care. The law is clear that the Plaintiff is required to provide expert testimony as to both the standard of care and the Defendant's failure to conform to the standard. The Plaintiff has done neither in this case.

The Plaintiff has also failed to provide expert testimony that any act of the Defendant was the proximate cause of any injury to the Plaintiff. The Supreme Court stated in Tumblin that "[e]xpert testimony is also generally required to establish proximate cause in a medical malpractice case."

[1] Plaintiff previously voluntarily dismissed Defendants Barber and Franklin from this action.

Tumblin, 478 S.E.2d at 84 (citing Bramlette v. Charter-Medical-Columbia, 302 S.C. 68, 393 S.E.2d 914 (1990)). Plaintiff fails to provide any expert testimony establishing that any action or inaction on the part of the Defendant was the proximate cause of any injury to the Plaintiff. The law is clear that expert testimony is required to establish the standard of care, breach of the standard, and proximate causation as to the injury. Plaintiff has failed to establish the appropriate standard of care, that Defendants breached this standard, or that any action of Defendant was a proximate cause of any injury to the Plaintiff. Therefore, Plaintiff's action for improper medical care barred and is dismissed as a matter of law.

Defendant next argues that Plaintiff's action must be dismissed as he is failed to show gross negligence. Section 15-78-40 of the Tort Claims Act states that "[t]he State, an agency, a political subdivision, and a governmental entity are liable for their 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, contained herein." Id. § 15-78-40. Section 15-78-60 of the 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 . . . . Id. § 15-78-60 (25) (emphasis added).

The Court of Appeals has held that the 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.; see also S.C. Code Ann. § 15-78-20(f)

("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.").

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). The Court finds Plaintiff has failed to state facts that rise to the level of gross negligence.

Plaintiff claims that Defendant failed to provide him proper care in relation to complaints of hip pain in March of 2013 and in relation to an alleged heart attack on February 23, 2013. The Court would note that Plaintiff's claims relating to inadequate medical care are dismissed because he failed to name an expert, but the Court will address these matters as Plaintiff also fails to show facts to establish gross negligence. Defendant stated that Plaintiff has been seen on numerous occasions since he has been incarcerated in SCDC and has approximately 3,000 medical encounters in the automated medical records system.

Plaintiff alleges that he did not receive proper treatment on February 23, 2013, in relation to an alleged heart attack. Defendant submitted an affidavit from Dr. John McRee, who is a licensed general practitioner and has been practicing medicine for 35 years. He sees inmates at several

institutions, including McCormick Correctional Institution ("MCCI"), and is also the Acting Medical Director for SCDC. Dr. McRee has reviewed Plaintiff's medical records beginning in January 2013 and has also seen the Plaintiff on a number of occasions. Defendant also submitted Plaintiff's voluminous medical records.

Dr. McRee stated that Plaintiff is a 65-year-old male and has several medical conditions, including diabetes and complaints of chronic back pain. He stated based on his review of the Plaintiff's medical records, along with his personal recollections of the treatment provided to Plaintiff, it is his opinion Plaintiff has been provided appropriate medical care. Dr. McRee initially stated that in his opinion, Plaintiff did not have a heart attack on February 23, 2013. Plaintiff was seen by medical personnel on February 23 due to complaints of chest pain and was brought to the medical department by wheelchair and was examined by medical personnel. Dr. McRee noted that Plaintiff was non-diaphoretic[2], was alert and oriented, and his respirations were even and unlabored. Plaintiff's symptoms were not consistent with a heart attack. When he arrived in medical, Plaintiff was given one nitroglycerin tablet and was also provided aspirin. An EKG was done which showed a normal sinus rhythm. The on-call physician was notified and gave a verbal order to provide Plaintiff with Phenergan and Vistaril. Plaintiff remained in the medical department for observation and was then allowed to return to his cell. He was instructed to call medical if his symptoms worsened and was given meals to the dorm for three days.

Plaintiff was again seen by medical personnel on February 25 complaining of chest pains and stating he had been hurting for approximately 5 days. Plaintiff reported to medical personnel that he walked up the steps in his dorm the prior day and had to sit down and rest before he could go back

[2] Dr. McRee stated in his affidavit that diaphoresis means sweating profusely which is generally associated with an individual having a heart attack.

down the steps. He complained of shortness of breath and stated he also hurt when lying down. Plaintiff described the pain as a sharp pain and stated it was on his left side and shot to the center of his chest. Dr. McRee stated he reviewed the EKG which was completed and scheduled to see the Plaintiff following day.

Dr. McRee saw the Plaintiff on February 26. He noted that there were no acute changes to the Plaintiff's EKG, but he did have tachycardia or a rapid heartbeat and he decided to send the Plaintiff to Palmetto Richland Hospital (the "Hospital") as a precaution. Plaintiff was admitted to the Hospital and a cardiac catheterization was performed. The catheterization revealed a chronic blockage in a small vessel, but medical personnel at the Hospital stated they were unable to put a stent in place. Medical personnel at the Hospital made several recommendations concerning Plaintiff's medications and Dr. McRee approved those recommendations. Plaintiff was also scheduled for a follow-up appointment with a cardiologist.

Dr. McRee stated Plaintiff was seen at the Columbia Heart Center on March 18 with several recommendations that he approved. Plaintiff was again seen by medical personnel on April 15 complaining of chest pains. Plaintiff stated that he had taken one nitroglycerin pill and reported that it did help some with the pain. Plaintiff's blood pressure was 118/76 and his pulse was 102. An EKG was completed, which Dr. McRee reviewed and did not note any acute changes. It was explained to Plaintiff that he could take one nitroglycerin pill every 5 minutes and up to three pills if necessary. Dr. McRee stated in his opinion, Plaintiff was in no acute distress and did not need further treatment at that time.

Plaintiff was again seen by medical personnel on April 25 complaining of chest pains. When Plaintiff arrived in the medical department, he stated that the chest pains had resolved, but he had some numbness in his left arm. Plaintiff's blood pressure was 138/82 and his pulse rate was 92.

Plaintiff's oxygen saturation was 98% and his respirations were even and unlabored without diaphoresis. Dr. McRee noted that in his opinion these findings would be inconsistent with an individual having a heart attack, and Plaintiff also stated while in the medical department that all of his symptoms had resolved.

Dr. McRee stated Plaintiff was again seen by medical personnel on July 18 complaining of chest pains. Plaintiff's blood pressure was 104/62, pulse 72, and respirations were 16. Plaintiff was alert and oriented and was speaking in complete sentences and his oxygen saturation was 98% on room air. These factors would have been inconsistent with an individual having a heart attack, but an EKG was performed and there were some changes noted compared to his last EKG. Therefore, Plaintiff was transported to Self Regional Healthcare. Plaintiff was admitted to Self Regional Healthcare where a cardiac catheterization was performed. Plaintiff was returned to MCCI on July 22.

Dr. McRee noted that Plaintiff has continued to see a cardiologist and it appeared that the recommendations from the cardiologist were followed. Though Plaintiff apparently has some blockage, Dr. McRee stated that in his opinion based on his review of Plaintiff's records, Plaintiff did not have a heart attack on February 23, 2013. He further stated that in his opinion, Plaintiff has been provided with appropriate medical care in relation to complaints and conditions related to cardiac issues. Plaintiff fails to provide any expert testimony to refute Dr. McRee's opinion.

Plaintiff also contends that Mobic, medication he was prescribed, caused him to have a heart attack. As discussed above, Dr. McRee stated it is his opinion that Plaintiff did not have a heart attack. He further stated that in his opinion, there is no indication that Mobic caused Plaintiff to have any type of cardiac issues. NSAIDs, non-steroidal anti-inflammatory drugs, can potentially be associated with heart attacks, but to his knowledge there has been no direct causal relationship

established. In his opinion, Mobic did not cause and was not related to any cardiac issues of the Plaintiff and again Plaintiff presents no expert affidavit or evidence to the contrary.

Plaintiff also complains that he has not been provided appropriate medical care in relation to right hip and back pain. Plaintiff alleges that he began experiencing right hip pain in March of 2013, but was not provided appropriate medical care. Dr. McRee stated Plaintiff was seen on March 15, 2013, complaining of right hip pain that radiated toward his lower back. Plaintiff denied any history of injury. Dr. McRee reviewed the encounter and noted that Plaintiff was already being provided Salsalate and Pamelor in addition to a muscle relaxer and he did not feel there was anything more to offer at that time. He stated Pamelor helps with the diabetic nerve pain and Salsalate is a pain medication, but does not have an adverse effect on the stomach as do some other medications.

Dr. McRee noted that Plaintiff has been seen on multiple occasions with complaints of back and/or hip pain. He stated Plaintiff has been prescribed various medications and has also been seen by specialists in relation to his complaints. Plaintiff was seen on March 29, 2013, complaining of back and hip pain and Dr. McRee increased the dosage of Salsalate, but noted that there was little else that the Plaintiff could take because of his history of ulcers.

Dr. McRee saw the Plaintiff on April 4 with complaints of hip pain. Plaintiff's hip had been x-rayed and showed no acute changes, and Dr. McRee ordered an x-ray of his lumbar spine. In addition, Dr. McRee ordered an intramuscular steroid injection and changed his muscle relaxer. Dr. McRee also prescribed Tylenol #3 twice a day for seven days and ordered that Plaintiff's meals be delivered to his dorm. The x-rays showed old arthritic changes to his back and hip, but essentially there was nothing new that could be done.

Plaintiff was seen on several additional occasions with complaints of continuing hip and back pain and requested that he be provided additional Tylenol #3. Dr. McRee extended the prescription

for Tylenol #3 and ordered the Plaintiff to be seen by an orthopedist. Plaintiff was seen by the orthopedic clinic on May 15 with a recommendation for an EMG. Dr. McRee stated an EMG or Electromyography is a technique for evaluating and recording the electrical activity produced by skeletal muscles. The EMG was completed on May 20 and showed abnormal results, which in Dr. McRee's opinion were most likely due to diabetes. Plaintiff was again seen by the orthopedic clinic on June 19 and they recommended he be sent for an MRI and be seen for a follow-up after it was completed. The MRI was completed on July 1 and showed an L4-5 disc herniation, which was likely compressing and causing symptoms of right nerve root pain. It also showed mild degenerative disc changes at L4-5 and L5-S1.

Plaintiff was then seen by Dr. Raymond Sweet at Palmetto Health Neurosurgery Associates on September 6, 2013. Dr. Sweet stated that he did not feel that the Plaintiff was a surgical candidate and recommended that he be continued on the same medications as he was being prescribed. He stated that the problem appeared to be related to nerve pain. Plaintiff did have an epidural injection on October 21, but Plaintiff stated this did not help relieve his pain.

Dr. McRee stated Plaintiff continued to have complaints of pain, but it does not appear that these can be resolved. He noted that SCDC medical personnel have prescribed numerous medications for the Plaintiff, and have sent him to an orthopedic surgeon, to a neurosurgeon, and also for various diagnostic procedures, including x-rays, an EMG, and an MRI. In addition, Plaintiff has had an epidural injection. Dr. McRee stated that unfortunately, it does not appear that these matters can be resolved. He stated that diabetes is a progressive disease that becomes worse over time. Dr. McRee stated Plaintiff is also 65 years of age and unfortunately as individuals age, they often have an increasing number of medical issues. Diabetes also complicates many health issues and diabetic nerve pain is likely the cause of the pain Plaintiff is experiencing. Though Plaintiff has been

prescribed medications, Dr. McRee stated in his opinion nothing can be done to completely eliminate all pain associated with Plaintiff's conditions. Dr. McRee also noted that Plaintiff has not cooperated in helping to control his diabetes. For example, the Plaintiff was placed on a diabetic diet approved by the American Diabetes Association, but signed a refusal on May 24, 2013, for this diet. According to Dr. McRee, a proper diet is essential for controlling diabetes and Plaintiff has refused to continue on the diabetic diet.

Plaintiff also complained that he had not been provided a wheelchair. Dr. McRee stated that in his opinion Plaintiff did not need a wheelchair on a full-time basis, and in his opinion it would not be beneficial for the Plaintiff to have a wheelchair on a full-time basis. It is beneficial for the Plaintiff to have exercise, but Dr. McRee stated to his knowledge Plaintiff does not attempt to exercise. He stated in his opinion, having a wheelchair on a full-time basis would decrease the amount of exercise Plaintiff receives and would not be beneficial. He also stated that in his opinion, Plaintiff does not need special or diabetic shoes. The procedure in SCDC is that inmates must have a foot deformity in order to obtain special shoes. Plaintiff does not have a foot deformity. He stated that inmates are provided with clogs that have a soft bottom, which is better for individuals with diabetes. Dr. McRee stated that in his opinion, Plaintiff does not need any type of special shoes and what he has are adequate.

Dr. McRee stated it is his opinion that Plaintiff has been provided appropriate medical care while incarcerated in SCDC and Plaintiff fails to provide any affidavit or other evidence to contradict this opinion. Based on the evidence presented by the parties, the Court finds that Plaintiff fails as a matter of law to establish gross negligence in relation to his medical care. Plaintiff has been seen on numerous occasions, has been provided numerous medications in relation to his complaints, has been sent to multiple specialists, and has been sent for numerous diagnostic tests. Plaintiff fails to show

gross negligence, an absence of slight care, and his claim for inadequate medical care is dismissed.

Plaintiff also claims that mailroom personnel at MCCI were grossly negligent in relation to handling his mail. Defendants submitted the affidavit of Jennifer Franklin, the Postal Director at MCCI, in relation to these issues. Ms. Franklin stated that mailroom personnel review all incoming and outgoing regular mail for contraband and will review the content briefly to determine if there are any security concerns. For example, if the inmate is talking about escape, plans to harm another individual, discussions concerning smuggling contraband into the institution, or other matters which raise security concerns.

Ms. Franklin stated she recalls a situation where they reviewed a letter from the Plaintiff which was written to his sister who is also incarcerated in SCDC. The content of the letter was extremely sexual in nature and mailroom personnel had a concern that the letter was being mailed to his sister to be provided to another inmate. Inmates are not normally allowed to send mail to other inmates, but are allowed to do so with other family members who are also incarcerated. In a situation such as this where there is a question whether an inmate's mail can be sent, SCDC policy requires that the letter be sent to the Correspondence Review Committee ("CRC") who will review and determine if the correspondence can either be sent or received. Ms. Franklin stated that several letters from the Plaintiff were sent to the CRC for review because of the concerns discussed above as they were very sexually explicit. Plaintiff acknowledged at the hearing that the letters may have contained explicit sexual content. Ms. Franklin stated based on her recollection and review of Plaintiff's records, each of the letters was ultimately approved by the CRC and was mailed. Plaintiff also acknowledged at the hearing that the letters were ultimately mailed.

Plaintiff also complains that mailroom personnel confiscated 10 envelopes and 10 manila envelopes from him. Ms. Franklin stated she recalls a situation where the Plaintiff received a

package containing 10 envelopes, 2 manila envelopes, and approximately 50 sheets of paper. These items were not initially provided to the Plaintiff as they were uncertain why he had received them, but after looking into this matter, the Plaintiff was provided these items. The Plaintiff was provided the 10 white envelopes, 2 manila envelopes, and 50 sheets of paper. Plaintiff did not dispute at the hearing that he ultimately received these items.

Plaintiff also complains that mailroom personnel refused to give indigent inmates envelopes and debit forms for their legal mail and they must come to the mailroom to fill out the envelope and debit form. Ms. Franklin stated that indigent inmates will be provided postage for legal mail, but she did state that mailroom personnel do not provide indigent inmates debit forms to mail their legal mail. She stated that inmates must come to the mailroom to fill out the envelope and debit forms because they do not have sufficient envelopes and forms to provide them to the inmates. Inmates are still allowed to send legal mail, but must come to the mailroom in order to do so. Plaintiff did not claim that he was not allowed to send legal mail, but instead that he had been required to go to the mailroom to fill out the envelope and debit form.

Plaintiff fails to state a claim for gross negligence in relation to any of the issues associated with the mailroom. Based on their concerns related to Plaintiff's letters, mailroom personnel followed SCDC policy by sending letters to the CRC for review. Further, as acknowledged by the Plaintiff, the letters were mailed. Also, though the legal supplies referenced above were initially confiscated, Plaintiff does not dispute that ultimately he received these items. Finally, Plaintiff does not allege that he was denied the right to send legal mail, but only that he was required to come to the mailroom to fill out the envelope and debit forms. Defendant stated that inmates are required to come to the mailroom to fill out the forms because they did not have sufficient forms to send to the dorms. Plaintiff has failed to state gross negligence in relation to these matters and these claims are

dismissed as a matter of law.

Plaintiff next claims that he was not provided with thermal underwear or shoes in relation to his job in the cafeteria at MCCI. Defendant submitted an affidavit from Warden Cartledge who stated that inmates are provided with thermal underwear, boots, or special shoes if they work in certain specific jobs. As a cafeteria worker, the Plaintiff would not be issued either of these items. Plaintiff referenced in his Complaint that he needed the shoes and thermal underwear because he was required to take out the trash and clean the back loading dock in the cold. Warden Cartledge stated the back door of the cafeteria opens onto the loading dock which is a small, covered area. He stated cafeteria workers who take out trash from the cafeteria simply take it out and leave it on the loading dock, which is again covered. The Plaintiff would only have to go a few feet outside and would only be outside for a very short time, a matter of a few seconds, in order to take the trash outside. Plaintiff did not dispute these facts at the hearing.

Warden Cartledge stated Plaintiff would have a state-issued coat, but would not need thermal underwear or special shoes in order to perform this task. He stated once the trash is outside, there are two inmates assigned to take the trash from the loading dock to the trash bin. These are the only inmates who are allowed to do so and Plaintiff was not assigned to this trash detail. Plaintiff did not have a job which required him to be issued thermal underwear, boots or special shoes, or a raincoat as these items would not be necessary for the job to which he was assigned.

Plaintiff again fails to show gross negligence as to these issues. Defendant was acting in accordance with SCDC policy concerning the issuance of thermal underwear and boots. Plaintiff has conclusively stated he has no federal claims and Defendant cannot be grossly negligent for following SCDC policy. Further, the fact that Plaintiff is provided a coat, is only outside under a covered area, and is only outside for a very short period of time shows that these items were not necessary. Court

finds Plaintiff fails to show gross negligence and his claim on this issue is dismissed.

Plaintiff also complains that there were insufficient restrooms in the cafeteria and educational buildings at MCCI. Warden Cartledge stated that Plaintiff is correct that there is only one restroom for inmates in the cafeteria. However, other than cafeteria workers, inmates are only in the cafeteria for a very short period of time. Inmates are allowed approximately 20 minutes to eat and are therefore only in the cafeteria for a short amount of time. Warden Cartledge stated that inmates know what time they are served meals and should use the restroom before going to the cafeteria, and one restroom is sufficient.

As to Plaintiff's claim concerning inadequate restrooms in the educational building, Warden Cartledge stated that in the educational building there is one staff restroom and one inmate restroom. Warden Cartledge acknowledged that for some period of time the restroom in the educational building remained locked for security reasons. He stated there have been issues where inmates would hide in the restroom and wait for a female officer and then expose themselves or masturbate to the female officer. There was also one situation where an inmate hid in the restroom while the building was being locked. After the educational building was locked, the inmate came out of the restroom and assaulted a female officer. Warden Cartledge stated they began locking the restroom after that incident.

Warden Cartledge stated inmates are allowed to be in the law library for two hours at a time and know that they need to use the restroom before entering the law library. Also, if an inmate needed to use the restroom in an emergency, the officer would unlock the restroom, allow the inmate to use the restroom, and then lock it back. The officer would only allow an inmate to go one time while he was in the law library and if he needed to go a second time, then he would have to return to his dorm. Warden Cartledge stated these procedures were implemented for security purposes.

Plaintiff also fails to show gross negligence in relation to the number of restrooms in the cafeteria and education buildings. As to the cafeteria, inmates are only in the cafeteria for a limited

amount of time and know to use the restroom prior to going to the cafeteria. As for inmate workers, there are a limited number of inmate workers and one restroom is sufficient. As to the education building, these procedures were put in place for security reasons after an officer was assaulted and there is no gross negligence in implementing procedures to protect SCDC staff. In addition, inmates are only in the law library for two hours and know to use the restroom prior to going to the law library. Plaintiff has failed to show gross negligence and these claims are dismissed as a matter of law.

Defendant also argued that Plaintiff's action concerning conditions at MCCI are rendered moot because the Plaintiff is no longer incarcerated at that institution. The Court agrees. Plaintiff acknowledges that he has been transferred to another institution and is not subjected to the conditions at MCCI. The Fourth Circuit Court of Appeals held that the plaintiffs' claims for injunctive relief were rendered moot when the plaintiffs were no longer at the institution where they claimed they were subjected to the alleged treatment. See Inmates v. Owens, 561 F.2d 560 (4th Cir. 1977). In Owens, an action was filed by nine individuals who were incarcerated at the Portsmouth County Jail. Shortly after the case was filed, all of the individuals were released from the jail and the defendants moved for summary judgment on the ground that the claims for injunctive relief were moot. The Fourth Circuit agreed and stated that all claims for injunctive relief were considered moot and would thereby be dismissed. The Fourth Circuit's decision in Owens is analogous to the present situation. Plaintiff's claims concerning the number of restrooms in the cafeteria and education buildings and that he was not provided thermal underwear or shoes for his job in the cafeteria are moot and are dismissed.

Based on the above, Defendants' Motion for Summary Judgment is granted and Plaintiff's action is dismissed, with prejudice, and forever ended.

IT IS SO ORDERED.

The Honorable Brian M. Gibbons
Eleventh Judicial Circuit

6/26, 2014
McCormick, South Carolina

State of South Carolina
County of McCormick

In the Court of Common Pleas

James G. Blakely #255623 Plaintiff,

C/A No. 2013CP3536

vs.

Jeroy Cartledge, Warden; A/W Parker; P. Morton; Librarian; M. Barber, Chaplain; Nurse Andrew, Ms. Franklin and Ms. Young of the Mail room,

Defendants

Complaint

Demand for Jury Trial

I Jurisdiction & Venue

1. Jurisdiction. This Court has jurisdiction over the Complaint because it arised under the laws of this State.

Exhibit A (1)

2. Venue. Venue is appropriate in this Court because all of the defendants resides in this areas or is employed in this County, and a substantial amount of the acts and omissions giving rise to this lawsuit occursed in this County, McCormick.

II Plaintiff

3. Plaintiff, James G. Blakely #255623, is and was at all times mentioned herein a prisoner of the State of South Carolina in the Custody of the South Carolina Dept. of Corrections. Plaintiff is currently confined in McCormick Correctional Inst. in McCormick, South Carolina.

III Defendants

4. Defendant, Leroy Cartledge, is the Warden of McCormick Correctional Institution. He is legally responsible for the operation of McCormick Correctional Institution and for the Welfare of all the inmates of this prison.

5. Defendant A/W Parker is the associate Warden over programs Services and Medical and the Cafeterial here at McCormick Correctional Institution, Who at all times Mentioned in this Complaint held the position of Associate Warden and Was assigned to McCormick Corr. Inst. Associate Warden Parker was legally responsible for all programs and Services at McCormick Corr. Inst.

6. Defendant P. Morton is Spl. Morton with the South Carolina Dept. of Corrections and defendant Morton is assigned to McCormick Corr. Inst., as a librarian and Security for the Educational Building.

Defendant Morton is responsible for the law library, Court-deadlines and Security! Defendant Morton lack Qualification in all fields.

7. Defendant N. Barber is a prison Chaplain at McCormick Corr. Inst. Who at all times Mentioned in this Complaint held the position of Chaplain and was assigned to assist all the religious Communities within McCormick Corr. Inst., equally and fairly.

8. Plaintiff is a diabetic on insulin. Plaintiff request Medical treatment for his right hip, which was extremely painful, especially whenever Plaintiff attempted to Walk.

I Complainted on the 18th, 19th about the pains in my right hip. On March 21, 2013, I was sent to Kirkland to have X-rays of my right hip. Since March 21, 2013, I have been extremely in pain and have not yet seen the doctor or anyone Concerning my right hip. Today is March 25, 2013. (4)

Nurse Andrew, whom is the Head Nurse I have not made any arrangements for me to see the doctor, for my Meals to Come to the unit or for me to be brought to Medical in a Wheelchair.

It I have not received any Medical assistance from Medical.

It is Cruel and unusual punishment. Deliberate Indifference

9. Ms. Franklin and Ms. Young are upset because I have previously filed Civil Action against them for Violating My Constitutional rights.

In Retaliation the two above defendants have confiscated my Mail to My sister, claiming the Mail is Questionable!

My sister and I agreed to not send Contraband, escape plans through the Mail. We have Kept that agreement.

My language, is My First Amendment Right. And it Can be of a sexual Nature. Even incest

is perfectly legal under the First Amendment. Plus, SCDC do not have the authority to dictate my Moral Values.

Nevertheless, defendant Franklin and defendant Young have removed My sister from my Mailing list in retaliation.

I am sure the Court will agree that no individual have the right to attack anyone's Moral Values. Especially, when the law is allowing same sex Marriage.

OR Could it be that defendant Franklin and defendant Young are attempting to keep the news of My heart attack within the prison?

10. Each defendant is sued individually and in his or her official capacity. At all times mentioned in this Complaint each defendant acted

under the Color of state law and against state's laws and the Constitution of South Carolina, and the 14 Amendment as applied to state laws.

10.* Plaintiff is filing a state law claim, in state Court. Plaintiff do object to any removes from state Court jurisdiction, or attempt to enter federal Court.

III. Facts

The facts are Warden Cartledge have been informed of the condition of the Cafeteria and the need for more restrooms fixture in the Cafeteria and the Educational Building. There is only one toilet in the Cafeterial for 40 inmates and only one toilet, operating, in the Educational Building for 50 to 100 inmates.

Warden Cartledge is responsible for his institution, and he must

approve for any repairs to this institution.

Warden Cartledge have ignored the need of inmates and Plaintiff. Plaintiff is a diabetic and have a need for shoes. Plaintiff is an indigent inmate and Plaintiff last had shoes two years ago.

Plaintiff is wearing shoes that offers no protection for his feet. When Plaintiff attempted to speak with Warden Cartledge on this matter, Warden Cartledge ignored Plaintiff and did nothing.

Plaintiff is suffering cruel and unusual punishment, and a denial of a Medical need.

Plaintiff have personally informed Warden Cartledge of the issues in this Complaint.

Plaintiff have also Complainted about his Cell Condition or living Condition. Plaintiff's room Mate smoke and refuse to Close

the Windom. Plaintiff is in a two men Cell. Rather than Move Plaintiff's room mate, Plaintiff Was given a Choice of either live under the present Condition or transfer to another Unit in a three man Cell. And a three men Cell is overcrowded and a Violation of the Constitution.

Warden Cartledge is awares of the issues and the law Concerning these issues. He have refused to order his staff to recognizes Plaintiff's rights and needs.

12. Associate Warden Parker is over program services. A/W Parker is awares of the Cafeteria need, especially, the need of more restrooms. A/W Parker is awares that Plaintiff and other inmates must takes out-trash and Clean the back dock in the Cold. Yet,

A/W Parker have refused to use his authority and order the Manager of the Commissary to provide Plaintiff with thermos wear and shoes for the Cold Weather and rain. Plaintiff work in the Cafeteria and Plaintiff was not given any shoes for the Cafeteria because Plaintiff's old shoes was Worn out and thrown away before Plaintiff took the job in the Cafeteria. Plaintiff was Wearing bobos after his shoes Wornout. The Commissary Manager refused to provides Plaintiff with any shoes because Plaintiff had no shoes to turn in.

Plaintiff's job in the Cafeteria was threatened unless Plaintiff Could Come up With some shoes. A friend of Plaintiff allowed Plaintiff to wear his shoes in the Morning, When he, the friend, was not using his shoes.

(10)

Plaintiff have informed A/W Parker of this need for shoes and for thermowear and A/W Parker have failed to order the Commissary Manager to provide these needs.

A/W Parker have been deliberate indifference to Plaintiff's need. Plaintiff being a diabetic, this is also a Medical need, which Medical is aware of.

A/W Parker is over Medical, the Commissary and the Educational Building, also the Cafeteria.

A/W Parker have failed to order Cpl. Morton in the Educational Building to open up the restrooms to the inmates who are active in the Educational Building, which do consist of the regular library, the law library, and three educational class rooms. This is Cruel and unusual punishment and inhumane.

13. Cpl. Morton is the acting librarian and a security officer.

Cpl. Morton have closed down all the restroom in the Educational Building on the library and the law library side. No inmate have access to the restrooms on that side.

Anyone using the library or law library that need to use the restroom, Must return to his unit, in order to use the restroom.

Once you leave the Educational Building you cannot return that day, With or Without an OTR.

This is designed to hinder inmates with Court deadlines or any inmate who are fighting their Cases. Such hinders are denial of access to the Court.

There are inmates, like Plaintiff, with health problems and have a need for regular uses.

(12)

The Closing of these restrooms are not part of the South Carolina Department of Corrections' policies.

This is done under Cruelty to the inmate and Plaintiff.

On the Educational Building there is only one toilet operating for the workers and students, in the Educational Building.

Plaintiff have urinated on himself Coming from the law library trying to Makes it to his unit, because he was denied the uses of the restroom, which is always locked.

A/W Parker and Warden Cantledge are aware of Cpl. Morton Misconduct toward inmates.

This is deliberate indifference and Cruel and unusual punishment. As well as, denial of access to the Court.

14. Chaplain N. Barber is a Chaplain for the South Carolina

Department of Corrections. Chaplain Barber Kane discriminated against Plaintiff because Plaintiff is a Muslim and believe in Allah and the religion of Islam.

Plaintiff applied for employment with the Chaplain as a Custodian upon the opening of the new Chapel.

Chaplain Barber called me to her's office and told me that she was only going to hire the inmates who assist her, which are only Christians.

This is discrimination against religion. Plaintiff is indigent and Plaintiff requested an indigent package from the Chaplain's office. Plaintiff being a Muslim, Plaintiff was only given one bar of soap.

All Christians receive two bars of soap, toothpaste, deorance and a small comb.

It appears, since the new Chapel have opened, the Warden and Chaplain Barber come up with something every other Friday to cancel the Muslim's Friday Prayer Service. None of the Christians services is cancelled.

Throughout SCDC, the Muslim have been provided with acquire space for prayer in their unit.

Here at McCormick Corr. Inst. Warden Cartledge and Chaplain Barber have taken the Muslim's prayer rooms and made laundry rooms and hobbycraft rooms. Muslims were given small prayer rooms just big enough for three Muslims to pray in.

There was no reason to take the Muslim's prayer room, except, dislike for Islam and the Muslims. Christian do not have a small prayer area.

There are much discrimination coming from Chaplain Barber and Warden Cartledge. Violating Plaintiff first, eighth, and fourteenth Amendments.

15. Nurse Andrew is the head nurse and she has failed to properly supervise her nurses under her. Plaintiff had a heart attack on 02/23/13 and Nurse Holiday said it was not a heartattack and sent Plaintiff back to his cell, untreated.

On February 25, 2013, Plaintiff with to sick Call, Where another Nurse did an EKG and discovered Plaintiff was still showing signs of an heart attack. This nurse scheduled Plaintiff to see the doctor on 02/26/13.

After doctor J. McRee saw Plaintiff he immediately transferred or transported Plaintiff to Palmmetter Heart Hospital, Where he undersent treatment for three days on Plaintiff's heart.

Had defendant Andraw, properly train and test her nurses, then Plaintiff would not have suffered three days before seing a doctor.

Defendant Andraw came to work on Monday, 02/25/13, and she heard about Plaintiff's heart attack and fail to check back her nurse. she got the first EKG of the actual heart attack, which Holiday gave to defendant Andraw came up Missing.

Plaintiff was denied Medical treatment, deliberate indifference, and Eighth Amendment violation, Cruel and Unusual Punishment, and Violations of the 8th and 14th Amendments.

16. Defendant Franklin and defendant Young have violated My First Amendment, denying me the freedom of Speech. It Wrote My sister, whom 48 years old. She is at death Cons. dust.

SCDC have rules that We must follow, such as: Not Writing any one other than that inmate; No talking about escape plans, drugs etc.

My sister and I have adults Conversations about My Kids Mothers and her boyfriends, and We use strong adult language.

Plus, I was telling my sister about my heart attack and what these people, SCDC, told me.

Defendant Franklin and defendant Ulbrang stopped my Mail to my sister, stating "questionable language."

All the above defendants are questioning my language than they are violating my First Amendment Right.

Even if they are attempting to Cry interest, they are violating My First Amendment Right.

Unless the above defendants Can show language that is a threat to security, they are violating

Plaintiff's First and Fourteenth Amendments.

Furthermore, these same two defendants have taken 10 Business envelopes and 5 Manila envelopes from Plaintiff that were part of this legal Supply from Kiber Corr. Inst. Plaintiff had already paid for that legal Supply.

Defendant Franklin and defendant Young do not give indigent inmates Envelopes and debit forms to Mail their legal Mail. Now order for an indigent inmate to Mail his legal Mail he **must** be able to Comes to the Mail room and fill out the envelope there at the Mail room or the Mail's area.

There is no table, Chairs or anything to Write on. You are out doors and subject to Whatever the Conditions are!

Also this is a Mean for the above defendants to Censor one Mail.

IV Legal Claims

17. Plaintiff realleges and incorporates by reference paragraphs 1-16.

18. The deliberate indifference to Medical needs; denial of access to the Court; discriminated and Cruel and Unusual Punishment violated Plaintiff James G Blakely's rights and Constituted Cruel and unusual punishment Under the laws of South Carolina and the Constitution of South Carolina article 15 §§ 2, 3, and 15.

V Prayer For Relief

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment granting Plaintiff:

A. A declaration that the acts and omission described herein violated Plaintiff's rights under

the Constitution and laws of South Carolina.

20. A preliminary and permanent injunction ordering defendants Leroy Cartledge, defendant Parker, defendant Norton, defendant Barber, defendant Bodrow, defendant Franklin and defendant Young to stop discriminating against Muslims or Plaintiff because of Plaintiff's Chosen religion, Al-Islam.

It have been a practice of the Chaplains around SCDC to refuse to hire or employ any one of the Islamic faith.

Often, the Islamic Prayer Service is Cancelled on Friday for a Christian event or other programs, such as a special staff Meeting, etc. These could have been held anywhere.

Plaintiff simply request that that the defendants stop denying

plaintiff and the general inmate population access to the restroom in the Educational Building during library hours and school hours; that the defendants provide plaintiff with shoes and thermowear whenever needed; that the defendants provide more than one toilet for the plaintiff and Cafeteria Workers and that the defendants provide more than two free envelopes and eight sheets of paper per Month for indigent inmates.

20. Compensatory damages in the amount of $10,000 against each defendant jointly and severally.

21. Punitive damages in the amount of $5,000 against each defendant.

22. A jury trial on all issues triable by jury.

23. Plaintiff's Cost in this suit.

24. Any additional relief this Court deems just, proper and

(23)

equitable.

Dated: 03/28/2013

Respectfully Submitted,

James G. Blakely #255623
McCormick Corr. Inst.
386 Redemption Way
McCormick, S.C. 29899

Pro se

LEGAL MAIL

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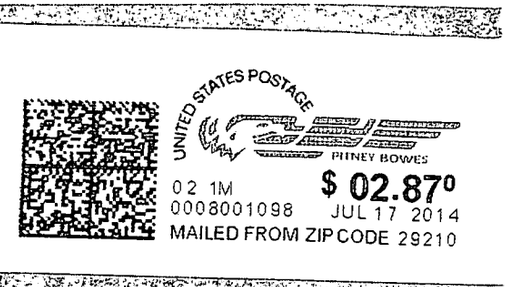
4344 Broad River Rd.
Columbia, S.C. 29210



The Supreme Court of South Carolina
Daniel E. Shearouse, Clerk of Court
P.O. Box 11330
Columbia, S.C. 29211

LEGAL
MAIL