

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
C/A NO.: 2013-CP-10-6567

Jack Powell,

Plaintiff,

vs.

Carolina Center for  
Occupational Health

Defendant.

**RECEIVED**

JAN 02 2015


**SC Court of Appeals**

Plaintiff's Response to  
Motion for Summary  
Judgment

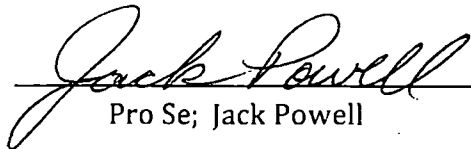
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TO: CAROLINA CENTER FOR OCCUPATIONAL HEALTH,

Pro Se, Jack Powell hereby Responds to the Motion for Summary Judgment by the  
Defendant, Carolina Center for Occupational Health.

FILED  
2014 OCT 24 AM 10:16  
JULIE ARMSTRONG  
CLERK OF COURT  
BY 

Dated & Signed on 10-24-14

  
Pro Se; Jack Powell

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
C/A NO.: 2013-CP-10-6567

Jack Powell,

Plaintiff,

vs.

Carolina Center for  
Occupational Health

Defendant.

PLAINTIFF'S  
Response to Motion  
for  
Summary Judgment

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2014 OCT 24 AM 10:16

FILED

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TO : CAROLINA CENTER FOR OCCUPATIONAL HEALTH

Plaintiff Pro se; Jack Powell Responds to the Motion for Summary Judgment entered by the Defendant, Carolina Center for Occupational Health that claims the CCOH's nurse's actions were mere words without any actual offer of violence. ALSO stating there can be no claim for common law assault.

Plaintiff enters the following relevant evidence that will in act fulfill the burden of proof and surpass the required scintilla of evidence needed to withstand the Motion for Summary Judgment. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2<sup>nd</sup> 801, 803 (2009)

#### FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed this action on November 14, 2013, asserting five causes of action against CCOH while the Plaintiff was detained in the Al Cannon Detention Center aka Charleston County Detention Center (CCDC). The five causes of action were for: (1) assault (2) gross negligence (3) breach of duty (4) intentional infliction of emotional distress and (5) civil conspiracy.

On July 21, 2014, Judge J.C. Nicholson Jr. filed an order dismissing all causes of action except the common law "assault." Plaintiff had entered to the court that Nurse Thompson did not attempt any medical attention and that he was behaving like an angry jailor.

Defendant gave the Plaintiff a video Deposition on August 27, 2014 and the Plaintiff has not given the Defendant a Deposition at this time but, will enter into evidence multiple Defendant Summary Judgment entrances from the Deposition, including the discussed CCDC video of Mr. Powell's entering the jail in a wheelchair.

#### SUMMARY JUDGMENT STANDARD

For Plaintiff to withstand Summary Judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence Hancock v. Mid-South Mgmt. Co.Inc., 381 S.C. 326,330, 673 S.E.2d 801, 803(2009).

In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment Id, at 330-31, 673 S. E. 2d at 803 (2009).

#### LAW AND ANALYSIS

The Defendants conduct must be of such nature and made under such circumstances as to effect the mind of a person of ordinary reason and firmness, so as to influence his conduct; or it must appear the person against whom the threat is made was

peculiarly susceptible to fear and the person making the threat knew and took advantage of the fact he could not stand as much as an ordinary person" Id, (citing Brooker v. Silverthorne, 111 S.C. 553, 559, 99 S.E. 350, 351 (1919); In re Mcgée, 278 S.C. at 508, 299 S.E. 2d at 335; Herring, 222 S.C. at 241, 72 S.E. at 458

### HISTORY

Mr. Powell was knocked unconscious after tripping over an unburied cable line around 9:00 PM in front of the Folly Oaks Center located at 930 Folly Road. The Plaintiff injured his head, neck, shoulder and knee and was transported to MUSC by the Charleston County EMS. At 2:09 AM 6-22-12, the Plaintiff was arrested for Trespassing: Refusal to Leave.

THEN transported by the MUSC Public Safety and was met outside of the Al Cannon Detention Center by a female jail employee and a male nurse from the Carolina Center for Occupational Health (CCOH). Mr. Powell had to physically be helped out of the patrol car and placed into a wheelchair that did not have any leg supports. When the wheelchair was being "pulled" into the Al Cannon jail instead of pushed because of the defective wheelchair (no leg supports) the Plaintiff yelled in pain because his leg was dragging the pavement. The female jailor stopped for a few seconds and then stated he'll get over it, laughed and then continued pulling the Plaintiff. The nurse from (CCOH) said nothing to stop the pain or abuse being inflicted upon the Plaintiff.

WHEN inside the jail the Carolina Center for Occupational Health nurse angrily told

Mr. Powell he just talked to the MUSC Dr. and then threatened Mr. Powell to get out of the wheelchair or else because you want be needing one here. Mr. Powell was fearful of what may happen next if he didn't do what he said. The (CCOH) nurse then told the Plaintiff to go over to the desk/intake officer and Mr. Powell painfully hobbled over to the desk and gave his information.

THEN the plaintiff was told to walk across a large room through some doors. When the Plaintiff reached a large holding area for the people who had been arrested, he sat down in front of the nurse station/office so he could request to have his wheelchair returned, access to a bed and medication because of the pain he was still suffering.

THEN the same male (CCOH) nurse told the female jailor to tell Mr. Powell to go sit down somewhere else because he want be receiving any medical attention today. Then the Plaintiff had to limp to another small hard chair and sit there for about "6" hours until another (CCOH) nurse came on duty.

THEN another Carolina Center for Occupational Health female nurse came on duty and replaced the male nurse. Mr. Powell entered the nurse station and told the nurse about what had happened and how he was treated. She eventually began cleaning and medicating Mr. Powell's injured forehead where he had injured it about "12" hours earlier. Then the Plaintiff requested a wheelchair and a bed but the nurse said we don't have wheelchairs down here. They are in the infirmary and the Plaintiff was not given either one. Mr. Powell was forced to sit in a small hard chair (no padding) in pain through the night for about "15"

torturous hours. Also the Plaintiff was not given his pain medication.

## CONCLUSION

The Defendant tries to insinuate that when Mr. Powell was threatened out of his wheelchair that this was just another friendly day at the jail and this wasn't assault because Nurse Thompson didn't raise his hand or hit him with anything. Mr. Powell found out in less than ten minutes after arriving at the jail that the nurse did have many powerful and dangerous **WEAPONS** beginning with EXHIBIT "A" & "B."

**KNOWLEDGE** of the MUSC Dr. Instructions to Mr. Powell that Nurse Thompson intentionally did not follow. Also nurse Thompson **KNEW** that he had a visible forehead injury and had undergone extensive X-Rays of his injured head, neck, shoulder and knee. Nurse Thompson **KNEW** he had been given pain medication twice at the ER and he would also have Impaired Judgment.

It was after 3:00 am in the morning when Mr. Powell was lifted from the back seat of the patrol car by two officers, in front of Nurse Thompson. Nurse Thompson **KNEW** he could take advantage of the fact that he was vulnerable because he was "56" years old. Nurse Thompson **KNEW** when he heard Mr. Powell complaining of pain and he was susceptible to fear. Nurse Thompson **Knew** he could affect him psychologically and influence his conduct.

**WEAPON #2, POWER**, the apparent ability to take advantage of the circumstances and angrily threaten the "56" year old Mr. Powell out of his wheelchair.

EXHIBIT "C"

To nurse Thompson; Did you read the Doctor Instructions to Mr. Powell that stated; This drug is a narcotic - it will impair judgment, slow reaction time, make sleepy and don't do anything requiring mental alertness until the effects of the medication are gone. You should call the Doctor or go to the hospital if you develop severe neck pain, severe light headedness, numbness in any extremity or pain radiating down an arm or leg.

**BEFORE** you told him to get out of the wheelchair?

His answer was;

**YES**

EXHIBIT "D"

To nurse Thompson; were you concerned about Mr. Powell having to sit in an unpadded chair without an examination or screening for many hours until the next nurse came on duty, especially since he had an obvious head wound that was not cleaned and examined?

His answer was:

**NO**

EXHIBIT "E" VIDEO ENTERING JAIL

**WEAPON #3. INTIMIDATION**, first happened when Mr. Powell was being brought into the jail and he was painfully complaining about his leg dragging the floor because of the defective wheelchair and the female jailor stopped briefly and laughed "he'll get over it." Then she continued with nurse Thompson standing nearby and he said or did nothing about it. This is when Mr. Powell became fearful and realized he was very vulnerable & susceptible to bodily harm.

EXHIBIT "F"  
Deposition, Paragraph "3"

When specifically asked whether Nurse Thompson "just simply, asked you in an angrily – angry voice to get out of the wheelchair?" Plaintiff responded, "Yeah. He angrily told me to get out of the wheelchair.

EXHIBIT "G"

**WEAPON #4. Authority**, to engage in an unsupervised angry conduct to threaten Mr. Powell and also order jailors to do what he wanted.

Nurse Thompson; Did you see the Doctors Instructions for Mr. Powell before you told the African American Female CCDC jailor to tell Mr. Powell to sit down somewhere else because he want be getting any medical attention today?

ANSWER; Plaintiff was asked to move away from the screening desk and to wait for his screening. NOTE; The question wasn't answered but, it is obvious he ordered

the jailor to tell Mr. Powell to sit down somewhere else instead of asking Mr. Powell

**HIMSELF.**

EXHIBIT "H" MUSC ALUMNI PHOTO

**WEAPON #5. ANGER & RETALIATION,** because of Nurse Thompson's close ties with MUSC, he angrily threatened Mr. Powell get out of his wheelchair and any person of ordinary reasoning would not force a patient that is complaining of pain out of their wheelchair unless they were angry.

Nurse Thompson intentionally used all of his **WEAPONS** to control the circumstances and create a hostile environment that did affect Mr. Powell emotionally when he was susceptible to fear after being distraught from being arrested at MUSC because he couldn't get out of his wheelchair and leave during his discharge. Then Mr. Powell was confronted with this man at the jail with his hair pulled back into a pony tail, who was obviously mad and he angrily told Mr. Powell to get out of his wheelchair "**OR ELSE.**" because you want be needing one here. It was very imminent to Mr. Powell that he would be, **ASSAULTED.**

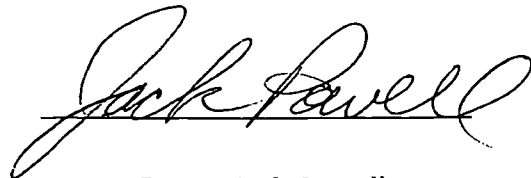
Mr. Powell had no choice but to force himself out of his wheelchair and inflict harmful pain to himself, to evade being **ASSAULTED.** This was an unusual circumstance and unfortunately sometimes angry statements are more than just mere words and this is one of those times. Mr. Powell was in **FACT; ASSAULTED**

The Plaintiff requests the Honorable Court to deny this Motion for Summary Judgment pursuant;

“The conduct must be of such nature and made under such circumstances as to affect the mind of a person of ordinary reason and firmness, so as to influence his conduct; or it must appear the person against whom the threat is made was peculiarly susceptible to fear, and the person making the threat knew and took advantage of the fact he could not stand as much as an ordinary person.” Id. (citing Brooker v. Silverthorne, 111 S.C. 553, 559, 99 S.E. 350, 351 (1919); In re McGee, 278 S.C. at 508, 299 S.E.2d at 335; Herring, 222 S.C. at 241, 72 S.E.2d at 458).

(citing Herring v. Lawrence Warehouse Co., 222 S.C. 226, 241, 72 S.E.2d 453, 458 (1952); Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct.App.1995))

DATED AND SIGNED ON 10-24-14



Pro se; Jack Powell

2013-CP-10-6567

CERTIFICATE OF SERVICE

I Pro Se; Jack Powell hereby certify that on 10-24-14, the Plaintiff's  
Response to the Defendant's Motion for Summary Judgment, Case no: 2013-CP-  
10-6567 was hand delivered, addressed as follows;

Wall, Templeton & Haldrup  
145 King St. Ste. 200  
Charleston, S.C. 29402

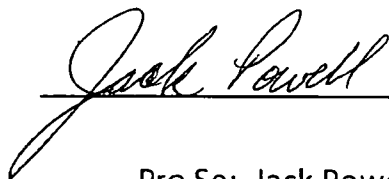
BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2014 OCT 24 AM 10:16

FILED

Dated & Delivered on 10-24-14

  
\_\_\_\_\_  
Pro Se: Jack Powell

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Charleston )  
 )  
 Jack Powell )  
 \_\_\_\_\_ )  
 Plaintiff, )  
 vs. )  
 )  
 Carolina Center for Occupational Health )  
 \_\_\_\_\_ )  
 Defendant. )

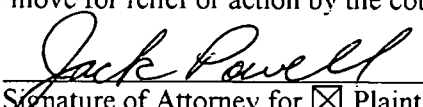
IN THE COURT OF COMMON PLEAS  
 9th JUDICIAL CIRCUIT  
 CASE NO.: 2013-CP-10-6567

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: Pro Se; Jack Powell, Bar No. _____ Address: 1402 Camp Rd. Unit 8-A Charleston, S.C. 29412 Phone: (843)952-4762 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Wall, Templeton & Haldrup, Bar No. _____ Address: 145 King St. Charleston S.C. 29402 Phone: _____ Fax _____ E-mail: _____ Other: _____
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**  
 Nature of Motion: RECONSIDERATION  
 Estimated Time Needed: 15 MINUTES Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**  
 Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.  
  
 Signature of Attorney for  Plaintiff /  Defendant 11-6-14  
 Date submitted

**SECTION III: Motion Fee**  
 PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)
 

<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support
<input type="checkbox"/> Domestic Abuse or Abuse and Neglect
<input checked="" type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party
<input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief
<input type="checkbox"/> Motion for Stay in Bankruptcy
<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)
<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____
<input type="checkbox"/> Other: _____

<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--	---------------------------------

**CLERK'S VERIFICATION**  
 Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
C/A NO.: 2013-CP-10-6567

Jack Powell,

Plaintiff,

vs.

Plaintiff's Motion  
For  
Reconsideration

Carolina Center for  
Occupational Health

Defendant.

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TO: CAROLINA CENTER FOR OCCUPATIONAL HEALTH,

Pro Se, Jack Powell hereby submits this Motion for Reconsideration to the  
Honorable Court and to the Defendant, Carolina Center for Occupational Health.

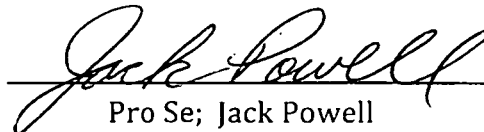
BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2014 NOV -6 PM 4:34

FILED

Dated & Signed on 11- 6 -14

  
Pro Se; Jack Powell

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

#2013-CP-10-6567

Jack Powell,

Plaintiff,

vs.

Carolina Center for  
Occupational Health

Defendant.

MOTION  
FOR  
RECONSIDERATION

FILED  
2014 NOV -6 PM 4:34  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

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Pro se, Jack Powell hereby enters to the Honorable Court a Motion for Reconsideration for case #2013-CP-10-6567. The hearing for Motion for Summary Judgment by Defendant was held on 10-27-14. Defendant was granted their Motion and the Plaintiff has entered this Motion because of the following; Rule 60 (b) (1) mistakes made by Judge Dennis and for his exercising contempt towards Plaintiff, Jack Powell. Also for Rule 60 (b) (3), misconduct during Defendant's Deposition by Attorney's Wall, Templeton and Haldrup.

### SUMMARY JUDGMENT STANDARD

"entered by Defendant" in MSJ

Defendant enters South Carolina courts have announced the rule in numerous cases that in the absence of statute, mere words, no matter how abusive, insulting, vexatious or threatening it may be, will not justify an assault or battery, unless accompanied by an actual offer of physical violence. Plaintiff notes; numerous means most cases do not agree.

Plaintiff argues; Judge Dennis cut Jack Powell off while he was entering the following citings of cases that the Defendant had also entered with their MSJ and then Judge Dennis

stated; "you can enter these during your appeal." The following cases A & B, also entered by the Defendant in their MSJ which explains exactly why Jack Powell was susceptible to fear and bodily harm because of the conduct exercised by the people in control of the circumstances beginning at 9:00 pm, 6-21-12 through 3:30 am, 6-22-12.

A. An assault occurs when a person has been placed in a reasonable fear of bodily harm by the conduct of the defendant. The elements of assault are: (1) Conduct of the defendant which places the plaintiff, (2) in reasonable fear of bodily harm. Herring v. Lawrence Warehouse Co. 222 S.C. 226, 241, 72 S.E. 2d 433, 458 (1952) AND Jones by Robinson v Winn-Dixie Greenville, Inc., 318 S.C. 171, 175, 456 S.E. 2d 429, 432 (Ct.App.1995)

B. Brooker v. Siverthorne, 111 S.C. 553, 559, 99 S.E. 350 351 (1919), in re McGee, 278, S.C. at 508, 299 S.E. 2d at 355; Herring, 222 S.C. at 241, 72 S.E. 2d at 458) which states; "The conduct must be of such nature and made under such circumstances as to affect the mind of a person of ordinary reason and firmness, so as to influence his conduct; or it must appear the person against whom the threat is made was peculiarly susceptible to fear, and the person making the threat knew and took advantage of the fact he could not stand as such as an ordinary person.

## MISTAKES - CONTEMPT - MISCONDUCT

At the video Deposition given to Plaintiff, Jack Powell the Defendant's

Attorney's Wall, Templeton and Haldrup engaged in an aggressive and angry response to Jack Powell when he would not disclose which church his "21" year old daughter took care of small children and where his family went to church. One of their attorney's leaned toward Jack Powell, then loudly and angrily barked that you will answer the question. Jack Powell stated no I want and eventually told the attorney your starting to act like that angry nurse at the jail. Mr. Powell who is not an attorney was surrounded by attorney's and he was already intimidated. Also there was another attorney there (Jay Jones of Barnwell & Whaley) whom Jack Powell was already engaged in a lawsuit with and should be considered a conflict of interest because the CCOH was contracted by the jail that Mr. Jones was defending in the same incident. Mr. Powell feels he should not have been allowed to attend and slip questions on paper to the CCOH attorney, to ask. This aggressive attitude caused Mr. Powell to be uncomfortable, nervous and he felt like he had been ambushed and was unable to respond to their questions with a sharp and clear mind.

#### PATTERN OF CONTEMPT & MISTAKES DURING MOTIONS ON 7-30-14

Judge Dennis made an inflammatory and insulting remark about & to Jack Powell, "I'm laughing at you too" after he accused Jack Powell of making a smirking sound after one of his rulings during the "15" Motions for Evasive Answers and non-responses of Discovery.

A. During case # 2013-CP-10-5351 "MUSC," Motion for Summary Judgment, Jack Powell entered; I have zero Discovery and the Defendant has entered an inflammatory

untruth in their Motion and then Judge Dennis cut Jack Powell off and granted their Motion.

B. During case # 2014-CP-10-5876, Marshland Communities Motion for Dismissal, Jack Powell was not allowed to enter any citing of law or ordinances that were violated by the Defendant or even speak before Judge Dennis dismissed the case.

PATTERN OF CONTEMPT & MISTAKES DURING MOTIONS ON 10-27-14

A. Case # 2014-CP-10-3819, Folly Oaks Center. Again, Judge Dennis did not allow Jack Powell to enter any citing of law or ordinances violated because of their negligence and he dismissed the case.

B. Case # 2013 CP-10-6567, Carolina Center for Occupational Health for common law assault, which this Motion for Consideration was filed. Judge Dennis again exercised a contemptuous attitude towards Pro se, Jack Powell by not allowing him to enter any evidence, cite any similar cases or even make the argument of counsel that Judge Dennis had stated he had considered before signing the Motion. Judge Dennis stated; having considered the motion, the parties submissions to the Court and the arguments of counsel, the Court grants Defendant's Motion for Summary Judgment.

RELEVANT EVIDENCE NOT ALLOWED TO BE ENTERED, BY JUDGE DENNIS

A. Plaintiff also argues he was not allowed to enter his jail video that revealed his

medical condition which is in fact relevant. Plaintiff was transported to MUSC at 9:00 pm by ambulance after being knocked unconscious from a fall over a cable line in the dark and was given "4" x-rays of his injured head, neck, shoulder and knee. Then given a second dose of pain medication and arrested after being threatened with jail for about "30" minutes if he didn't get out of his wheelchair and walk from the premises, even after being told by the MUSC Public Safety they would take him to Roper hospital or home.

(Jack Powell v Medical University of South Carolina case # 2013-CP-10-5351)

Then the jail video begins with "56" year old Mr. Powell being wheeled backwards in a defective wheelchair towards the entrance of the jail at "3" o'clock in the morning, "6" hours after being knocked unconscious. Mr. Powell began yelling and complaining of pain because his foot was dragging the floor. Then the female jailor stopped briefly and said he'll get over it. She then just continued with the male nurse not stopping her or checking him for additional injury which demonstrated the frame of mind & conduct of the "angry" nurse, Thompson.

Plaintiff argues; citing *Papa v Brunswick Gen. Hosp.*, 517 N.Y. S. 2d 762, 763-64 (Spp. Div. 1987). However, at all times the medical professional must "exercise ordinary and reasonable care to ensure no unnecessary harm [befalls] the patient.

After entering the Al Cannon Detention Center, the video reveals "56" year old Jack Powell with his head & shoulder slumped over to one side, looking very despondent, exhausted and very susceptible to fear and harm. With the same MUSC Public Safety

Officers who had harassed him for about thirty minutes with arrest if he did not get out of his wheelchair and walk from the premises during his discharge from the ER and then arrested him for Trespassing; Refusal to Leave because they stated "he loitered about the premises" after Jack Powell had told them he could not get out of the wheelchair because of pain and needed help. Then driving to their office to do paper work and forcing Jack Powell to lay in their back seat for about thirty minutes, even after they had stated; "handcuffed him in the front because of his medical issues." Also with the "angry" female jailor nearby in a large room with other jailors.

ALSO, the jail video and EXHIBIT "A" which states; Jack Powell should call the Doctor or go to the hospital if he develops severe lightheadedness or weakness in any extremity or pain radiating down an arm or leg. Also it will impair your judgment, make you sleepy and don't do anything requiring mental alertness and EXHIBIT "B" the photos of his "4" previous surgeries demonstrate how peculiarly susceptible to fear he was because of the circumstances of the male nurse knowing he could take advantage of the fact he would not be able to stand as much as an ordinary person. Jack Powell was in fact subjected to the "angry" conduct of the male nurse when he angrily told Jack Powell to get out of his wheelchair "OR ELSE" because you want be needing one here. Nurse Thompson did in fact have very close ties with MUSC and he continued the same aggressive and angry conduct because he also, had the power to do so. Note; EXHIBIT "C" MUSC Alumni Photo.

BUT, Judge Dennis stated, paraphrasing without (court reporter statements) your

medical condition is irrelevant. Plaintiff enters because of his physical pain and his emotional frame of mind he felt extremely vulnerable and there was an intentional threat that created an apprehension of harm by the "angry" nurse. His ruling is a legal mistake.

#### EXHIBITS "D" - "J" DEPOSITION

In the Conclusion of the Defendants Memorandum in Support of the Motion for Summary Judgment a specific Deposition question was asked and Jack Powell answered specifically the way the question was asked. Defendant states; When specifically asked whether Nurse Thompson "just simply asked you in an angrily - angry voice to get out of the wheelchair?" Plaintiff responded, "Yeah. He "angrily" told me to get out of the wheelchair."

But, in the Defendants Order Granting Summary Judgment they state; "Plaintiff admits that the Defendant's male nurse simply angrily told Plaintiff to get out of the wheelchair without any actual offer of physical violence. Depo. of Jack Powell, 109:6 - 12:16 and Plaintiff did not answer with "simply."

Plaintiff enters he did not state in the same sentence "without any offer of physical violence" and the Defendant fabricated and pieced together an answer to bolster their legal position, to ask for MSJ. Plaintiff & Defendant do admit the nurse did in fact "angrily" tell Jack Powell to get out of his wheelchair, which is a component of assault.

Jack Powell admitted during Depo. p. 111:6 - 11, Question;. Okay. He didn't raise his

arm or anything like that, like he was going to punch you, did he? Answer; No.

Q; Okay. Ans.; He just had a nasty look on his face.

Depo. p.111:22 - p. 112:1, Q; Okay. He just asked you to get out of the wheelchair?

Ans.; No. He angrily told me to get out of the wheelchair because I won't be needing one here.

Depo. p. 112:19 - 25, Q. Okay. And then how long was it between him asking you or telling you to get out of the wheelchair did it take for you to get out of the wheelchair?

Ans.; I don't know. I mean, it took a while to get out of it and then limp over there. It might have taken a minute or two.

Plaintiff enters Nurse Thompson who had very close ties with MUSC had a nasty, angry look on his face and then he angrily told his "56" year old patient who earlier had been to the ER and arrested, to get out of his wheelchair "OR ELSE" (entered in the original Complaint) at 3:00 am and he eventually and painfully had to get out of his wheelchair and limp across the room to be checked into the jail. The Plaintiff had to inflict pain upon himself to himself because of the fear of being assaulted.

Plaintiff enters that Mellan v Lane (2008) which is entered in the last paragraph of the Defendants Order Granting Summary Judgment states; An assault is an attempt or offer, with force or violence, to inflict bodily harm on another or engage in some offensive conduct. The elements of assault are: (1) conduct of the defendant which places the defendant, (2) in reasonable fear of bodily harm. Id, The conduct must be of such nature

J

and made under such circumstance as to affect the mind of a person of ordinary and firmness, so as to influence his conduct, and the person making the threat knew and took advantage of the fact he could not stand as much as an ordinary person. Id.

Then Judge Dennis stated; the Defendant is entitled to summary judgment as to the cause of action for common law assault pursuant to the holding Mellan, supra. Having considered the motion, the parties submissions to the court, and the arguments of counsel, the Court grants Defendant's motion for summary judgment.

Plaintiff argues again, Judge Dennis did in fact deny and not allow the Defendant, Jack Powell to enter any argument which included; the jail video, MUSC Doctor Instructions to Jack Powell (note; the nurse never allowed him to see) and citings of cases.

#### MELLEN; AND ENTRANCES FROM DEPOSITON

"1" Assault is an attempt or offer, with force or violence.

- A. asked you in a angrily- angry voice to get out of the wheelchair?
- B. Plaintiff answered; He just had an angry look on his face.
- C. Plaintiff also stated in Complaint and discussed during Deposition; Threatened to get out of his wheelchair "OR ELSE" but Defendant chose not to enter those answers.

"2" to inflict bodily harm on another or engage in some offensive conduct.

- A. Plaintiff answered. He angrily told me to get out of the wheelchair
- B. Defendant asked; How long was it between him asking you or telling you to get out of the

. wheelchair did it take you to get out of the wheelchair? Answer; a minute or two

"3" conduct of the Defendant which places the Plaintiff in reasonable fear of bodily harm.

A. He had an nasty look on his face.

B. Angrily tells Jack Powell to get out of his wheelchair "OR ELSE."

C. Jack Powel out of fear had to force himself to inflict bodily harm to himself; a minute or two to get out of the wheelchair. Patient Jack Powell had to assault himself.

"4" The conduct must be of such nature and made under such circumstances as to affect the . mind of a person of ordinary reason and firmness, so as to influence his conduct.

A. nasty look on his face, angrily told to get out his wheelchair by a nurse.

B. in a jail after being arrested at MUSC because Jack Powell could not get out of his . wheelchair and walk from the premises.

C. How long did it take you to get out of your wheelchair?

D. it took a while to get out of it and limp over there.

E. Again the patient had to inflict pain upon himself because there was an Imminent threat . of harm, "OR ELSE" you want be needing one here.

"5" or it must appear the person whom the threat is made is peculiarly susceptible to fear

A. Again the video that was not allowed to be played does in fact reveal the medical and . emotional condition and how peculiarly susceptible Jack Powell was.

B. EXHIBIT "A" again also demonstrates Jack Powell's condition and the angry nurse

Johnson knew of his documented condition and he did in fact not allow his patient to read the MUSC Doctor Instructions that were written for his own personal use.

"6" and took advantage of the fact he could not stand as much as an ordinary person.

A. The jail video reveals exactly what the angry nurse Thompson saw when his patient arrived.

B. Nurse Johnson knew of his patient's condition because he stated he had read the Doctor Instructions for Jack Powell and along with his complaining of pain and looking despondent, exhausted and complaining of pain. Then the angry nurse exercised an aggressive out of control conduct as described by Plaintiff Jack Powell to Judge NicholSEN who did not dismiss the same common laws assault, because the nurse was acting like an angry jailor. (CCOH Motion to Dismiss)

EXHIBITS : "K" INTERROGATORY  
Reveals angry conduct by nurse/jailor

8. Did you read the Doctors Instructions to Mr. Powell that stated: This drug is an narcotic - it will impair judgment, slow reaction time, make sleepy and should not drive or work with machinery including blenders, knives, lawn mowers or sewing machines for six to eight hours. Don't do anything requiring mental alertness until the effects of the medication are gone. Do not take any alcohol or sedatives, and don't use any other medication without checking with your physician, you should call the doctor or go to hospital if you develop severe neck pain, severe light headedness, numbness in any extremity or pain radiating down an arm or leg. BEFORE you told him to get out of the wheelchair?

ANSWER:

Yes.

//

EXHIBIT "L" INTERROGATORY  
Reveals angry conduct by nurse/jailor

16. Were you concerned about Mr. Powell having to sit in an unpadded chair without an examination or screening for many hours until the next nurse came on duty, especially since he had an obvious head wound that was not cleaned and examined?

ANSWER:

The Defendant objects to this Interrogatory to the extent that it is argumentative and assumes facts not in evidence. Without waiving these objections, and specifically reserving them, no.

CONCLUSION

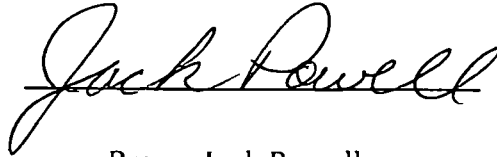
Judge Dennis stated; "having considered the arguments of counsel." Judge Dennis made the mistake of not allowing Pro se, Jack Powell to enter relevant evidence that reveals the angry nurse's frame of mind, his power and control of the circumstances to pursue a conduct of retaliation towards a patient whom was in fact susceptible to fear and harm.

Therefore, there can't be a proper conclusion by Judge Dennis because he did not allow any argument by the Plaintiff or inferences to be drawn from the facts that were in fact incomplete and within itself creates an genuine issue of material fact.

At any trial, with any person on a jury, they would have to hear more to determine why this would not be considered assault when it is obvious his anger is the major component of an assault, especially if this had happened to them or a family member.

Plaintiff request his Motion for Reconsideration be granted.

DATED & SIGNED ON 11-6-14

A handwritten signature in cursive script that reads "Jack Powell". The signature is written in black ink and is positioned above the typed name.

Pro se, Jack Powell

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 JACK POWELL, )  
 )  
 Plaintiff, )  
 )  
 -versus- )  
 )  
 CAROLINA CENTER FOR )  
 OCCUPATIONAL HEALTH, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 C.A. NO.: 2013-CP-10-6567

DEFENDANT CAROLINA CENTER  
 FOR OCCUPATIONAL HEALTH'S  
 MEMORANDUM IN SUPPORT OF ITS  
 MOTION FOR SUMMARY JUDGMENT

**RECEIVED**  
 JAN 02 2015

**SC Court of Appeals**

FILED  
 JAN 15 PM 3:11  
 CLERK OF COURT

TO: JACK POWELL, *PRO SE*:

Defendant, Carolina Center for Occupational Health (hereinafter "CCOH"), by and through the undersigned counsel, respectfully submits this memorandum in support of its motion for summary judgment as to Plaintiff's remaining claim for common law assault. The basis of Defendant's motion for summary judgment is that Plaintiff testified that CCOH's nurse's actions giving rise to the alleged common law assault claim were mere words without any actual offer of physical violence. Accordingly, without an actual offer of violence, there can be no claim for common law assault.

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff filed this action on November 14, 2013, asserting five causes of action against CCOH arising out of the medical care CCOH provided to Plaintiff while detained in the Charleston County Detention Center.<sup>1</sup> Plt. Compl. ¶ 3. The five causes of action were for: (1)

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<sup>1</sup> Plaintiff also filed seven (7) other similar lawsuits arising from the same alleged events that occurred on June 21 and 22, 2012, against Charleston County Detention Center, Charleston County EMS, Folly Oaks Center Condominium Unit Owners Assoc., Knology of Charleston, Marshland Communities, and the Medical University of South Carolina (two cases).

“gross negligence;” (2) “assault;” (3) “breach of duty;” (4) intentional infliction of emotional distress;” and (5) “civil conspiracy.”

Plaintiff alleges that on June 21, 2012, “Plaintiff was knocked unconscious after tripping over an unburied cable line around 9:00 pm in front of the Folly Oaks Center located at 930 Folly Road.” Plt. Compl. ¶2. As a result, Plaintiff injured his head, neck, shoulder, and knee, and was transported by Charleston County EMS to the Medical University of South Carolina. Id. Plaintiff further alleges that he was subsequently arrested for “Trespassing; Refusal to Leave” MUSC. Id. Plaintiff goes on to allege that he was transported by MUSC Public Safety to the Al Cannon Detention Center and was met by a male nurse from CCOH. Id. at ¶ 3. Plaintiff alleges that the CCOH nurse “angrily told Mr. Powell he just talked to MUSC Dr. [sic] and then threatened Mr. Powell to get out of the wheelchair or else because you want be needing one here.” Id.

On February 28, 2014, CCOH filed a motion to dismiss on the grounds that Plaintiff failed to file a Notice of Intent to File Suit and an expert Affidavit per South Carolina Code Sections 15-36-100 and 15-79-125 for medical malpractice claims. CCOH’s motion to dismiss came before Judge J.C. Nicholson, Jr. on July 21, 2014. Judge Nicholson filed an Order dismissing all causes of action except for common law assault. See Exhibit “A”. Thus, the sole remaining claim against CCOH is common law assault.

Plaintiff’s video deposition was taken on August 27, 2014. During the deposition Plaintiff was asked about the contents of lowcountrylawsuits.com that contained “pictures and stories on a website about my injuries and the cable lines in the middle of the right-a-way.” Depo. of Jack Powell, 33:10 (Aug. 27, 2014). Plaintiff stated that the DVD mentioned on the

website contained footage from the jail. Id. at 49:21 - 50:25. He also stated that the video footage showed him being brought inside, but “the camera stopped right before I was told to get out of [the wheelchair]. Id. To clarify when the alleged common law assault occurred, Plaintiff was asked “when you were told to get out of the chair, that’s when the alleged assault occurred?” Id. To which Plaintiff responded “Yes. That’s when the assault occurred.” Id.

Plaintiff was asked more specifically about what transpired between Nurse Thompson and Plaintiff when the alleged common law assault occurred. Id. at 109:6 - 112:16. Plaintiff was asked whether “Nurse Thompson comes over to you and he asked you to get out of the wheelchair?” Plaintiff responded stating “No. He told me to get out of the wheelchair.” Id. Plaintiff was further asked, “[h]e just said get out of the wheelchair?” Plaintiff responded, “[r]ight, he said that he had talked to MUSC . . . and basically that, you know, to get out of the wheelchair, because I won’t be needing one here.” Id. Plaintiff admitted that Nurse Thompson did not raise his hand when he asked Plaintiff to get out of the wheelchair. Id. Plaintiff admitted that Nurse Thompson did not touch Plaintiff. Id. Plaintiff admitted that Nurse Thompson was not carrying anything that he could have thrown at Plaintiff. Id.

When specifically asked whether Nurse Thompson “just simply asked you in an angrily - angry voice to get out of the wheelchair?” Plaintiff responded, “Yeah. He angrily told me to get out of the wheelchair.” Id.

#### **SUMMARY JUDGMENT STANDARD**

“Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed.” Etheredge v. Richland School Dist. One, 534 S.E.2d 275, 277 (S.C. 2000). “In ruling on a

motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.” Id. “When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted.” Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008).

“The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Richardson v. The State Record Co., Inc., 499 S.E.2d 824-25 (S.C. Ct. App. 1998). “With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility ‘may be discharged by “showing” – that is, pointing out to the [trial] court – that there is an absence of evidence to support the nonmoving party’s case.’” Id. at 825. “The moving party need not ‘support its motion with affidavits or other similar materials negating the opponent’s claim.’” Id.; see Milligan v. Liberty Life Ins. Co., 443 S.E.2d 381, 382 (S.C. 1994) (nothing that where record is devoid of evidence, moving party is entitled to summary judgment as a matter of law). “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.” Singleton, 659 S.E.2d at 203.

“It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine.” Thompkins v. Festival Centre Group, I, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In cases requiring a heightened burden of proof, the non-moving party

must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. Id. at 330–31, 673 S.E.2d at 803.

### LAW AND ANALYSIS

Plaintiff's remaining claim for common law assault fails because Plaintiff admits the actions of CCOH from which Plaintiff asserts that he was assaulted were mere words without any actual offer of physical violence. "An 'assault' is an attempt or offer, with force or violence, to inflict bodily harm on another or engage in some offensive conduct." Mellen v. Lane, 377 S.C. 261, 276, 659 S.E.2d 236, 244 (Ct. App. 2008)(citing In re McGee, 278 S.C. 506, 507, 299 S.E.2d 334, 334 (1983); Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 220, 230, 317 S.E.2d 748, 754-755 (Ct.App.1984) ("[A]n assault occurs when a person has been placed in reasonable fear of bodily harm by the conduct of the defendant.")). "The elements of assault are: (1) conduct of the defendant which places the plaintiff, (2) in reasonable fear of bodily harm. Id. (citing Herring v. Lawrence Warehouse Co., 222 S.C. 226, 241, 72 S.E.2d 453, 458 (1952); Jones by Robinson v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 175, 456 S.E.2d 429, 432 (Ct.App.1995))

"The conduct must be of such nature and made under such circumstances as to affect the mind of a person of ordinary reason and firmness, so as to influence his conduct; or it must appear the person against whom the threat is made was peculiarly susceptible to fear, and the person making the threat knew and took advantage of the fact he could not stand as much as an ordinary person." Id. (citing Brooker v. Silverthorne, 111 S.C. 553, 559, 99 S.E. 350, 351 (1919); In re McGee, 278 S.C. at 508, 299 S.E.2d at 335; Herring, 222 S.C. at 241, 72 S.E.2d at 458).

South Carolina courts “have announced the rule in numerous cases that in the absence of statute, mere words, no matter how abusive, insulting, vexatious or threatening they may be, will not justify an assault or battery, unless accompanied by an actual offer of physical violence.” Mellen v. Lane, 377 S.C. 261, 277-78, 659 S.E.2d 236, 245 (Ct. App. 2008)(citing City of Gaffney v. Putnam, 197 S.C. 237, 242, 15 S.E.2d 130, 131 (1941); Nauful v. Milligan, 258 S.C. 139, 146, 187 S.E.2d 511, 514 (1972)).

Plaintiff’s remaining claim for common law assault fails because Plaintiff admits that Nurse Thompson just simply “angrily told me to get out of the wheelchair.” Powell Depo. at 112:12 - 112:16. Furthermore, Plaintiff admits that Nurse Thompson did not raise his hand and admits that Nurse Thompson was not carrying anything to throw at Plaintiff. Id. at 112:7 - 112:11. Nurse Thompson’s order to Plaintiff to get out of the wheelchair was mere words without an actual offer of physical violence. Therefore, Nurse Thompson’s orders to Plaintiff do not justify a claim for common law assault.

Based on Plaintiff’s own testimony and the law of South Carolina, there is no genuine issue of material fact as to whether CCOH or its staff assaulted Plaintiff because there was no actual offer of physical violence. Accordingly, CCOH is entitled to summary judgment as a matter of law as to Plaintiff’s remaining claim of common law assault.

### **CONCLUSION**

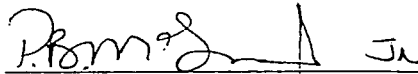
Plaintiff admits that CCOH’s nurse simply “angrily told [Plaintiff] to get out of the wheelchair” without any offer of physical violence. South Carolina courts have announced on numerous times that mere words alone, without any threat of violence, cannot justify a claim for common law assault. There is no genuine issue of material fact; therefore, Defendant Carolina

Center for Occupational Health is entitled to Summary Judgment as to Plaintiff's remaining claim for common law assault.

Dated this 15 th day of October 2014.

Respectfully submitted,

WALL TEMPLETON & HALDRUP, P.A.



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**Attorneys for Defendant Carolina Center for  
Occupational Health**

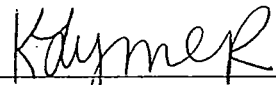
**CERTIFICATE OF SERVICE**

The undersigned employee of WALL TEMPLETON & HALDRUP, P.A. hereby certifies that on this 15<sup>th</sup> day of October 2014, she mailed a filed copy of **DEFENDANT CAROLINA CENTER FOR OCCUPATIONAL HEALTH'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** by placing a copy in a postpaid envelope for collection and processing for mailing, following this business's ordinary practice, with which she is readily familiar to Jack Powell. On the same day correspondence is placed for collection and mailing, it is deposited with the United States Postal Service in the ordinary course of business and addressed to Jack Powell, at the place and address stated below, which is the last known address, in Charleston, South Carolina:

**ADDRESSEE(S)**

Jack Powell  
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Charleston, South Carolina 29412  
**PRO SE**

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**ATTORNEYS FOR CAROLINA  
CENTER FOR OCCUPATIONAL  
HEALTH**

  
\_\_\_\_\_  
Kristyn Lynne Robertson

FILED  
2014 OCT 15 PM 3:11  
JULIE J. ARMSTRONG  
CLERK OF COURT