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NOTICE OF APPEAL IN A CIVIL CASE JUN 19 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Judicial Circuit Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Case No. 2013-CP-10-5351

Jack Powell,

Appellant,

v.

Medical University
of South Carolina

Respondent,

NOTICE OF APPEAL

Appellant Pro se, Jack Powell submits this Appeal because of mistakes made by Judge R. Markley Dennis Jr. during the Respondents Motion for Summary Judgment that was granted on 7-30-14, Order Granting Summary Judgment , Motion for Reconsideration, Motion to Recuse Judge Dennis, Motion to Amend the Motion for Reconsideration and the multiple rulings that revealed the pattern of bias towards Pro se with other associated cases that evolved from the Appellants

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JULIE J. ARMSTRONG
CLERK OF COURT

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injuries, trespassing arrest now ruled a false arrest , assault, intentional infliction of emotional distress and gross negligence that occurred on the night of 6-21-12.

Therefore Appellant Pro se, Jack Powell enters this Appeal because;

1. Judge Dennis erred and made mistakes during the Motion for Summary Judgment that was granted on 7-30-14 to the Medical University of South Carolina “MUSC” in the Charleston County County 9th District Court of Common Pleas and during the Summary Judgment hearing, Judge Dennis erred when he did not allow Appellant enter any evidence or argument of any kind to verify the state entity’s laws and procedures that were unknown to the court, that revealed the Respondents intentional failure to follow and therefore the Appellant wasn’t allowed to cite the following during the hearing that proves their failure to meet these requirements. 56 (d)

In the context of liability by a government entity, is the intentional failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do, it is a failure to exercise slight care Jinks v. Richland County, 355 S.C. 341, 581 S.E.2d 281 (S.C. 2003) and Papa v. Brunswick Gen Hosp. 132 A.D. 2d 601, 517 S. N.Y. 2d 762 (2d Dept. 1987. Also Section 15-78-70 (c) grants a physician-employee of a government entity immunity for tort claims ”as long as the tort was committed within the scope of official duty or was not committed with actual fraud, actual malice, intent to harm or a crime involving moral aptitude” Higgins v. Medical Univ. of S.C. 2 S.C. 592, 602, 486 S.E.2d 269, 274 (Ct. App. 1997) (quoting S.C. Code

Ann.15-78-70 (b) 15-78-40 (1)(2)(3)(4)(5) and Brooker v. Silverthorne (1919)

Mellen v Lane (2008) Herring v. Lawrence Co. (1992)

2. Judge Dennis erred because he was unaware of the proper procedures for a state entity (MUSC) to follow when the medical staff allowed their security guards to attempt to pull the Appellant twice from the ER bed (who was not under arrest) after he was officially discharged and only minutes after he had been given a second dose of pain medication.

3. Judge Dennis erred in his decisions when he didn't allow Discovery to continue so he could become aware of the actual issues of fact concerning laws & procedures during the discharge of the Appellant by MUSC Public Safety who had to physically take him from the ER bed because of his pain and then push him outside in a wheelchair without the supervision of a nurse or doctor, which may legally be required.

In Respondents Memorandum for Summary Judgment they actually admit during their deposition question to the Appellant, that MUSC was negligent when they discharged Appellant. (Note; Appellant hasn't deposed Respondent)

Q: Do you think the health care providers, then, at MUSC were negligent in the care they provided by not properly discharging you?

A: **I think the doctors and the nurses – yes. They had a responsibility to make sure that I was discharged properly.**

Also Admit no. 1 of unanswered 16 Admissions posed to Respondent.

1. Admit; A nurse or Doctor is supposed to assure the proper discharge of the patient that is not under arrest, by taking them directly to the car that is waiting for them, assist them into the car if they ask for help out of the wheelchair so they can leave promptly and freely.

RESPONSE: Defendant MUSC objects to this request pursuant to Rule 36 and states that the Plaintiff exceeds the total number of requests permitted by Rule 36(e), SCRPC

4. Judge Dennis erred when he overlooked the issue that the Respondent knew at the time of filing their Motion for Summary Judgment it was improper because they were aware they had been compelled to properly respond to Admissions, Production and Interrogatories. Judge Dennis did not require the Defendant to respond during the hearing on 7-30-14 because the Appellant did not call them and ask them to respond properly, even though the Appellant had given them a ten day notice to respond. Pursuant 56 (b)

5. (Reversed case # 2013-CP-10-5792) the MUSC Police illegally arrested the Appellant for Trespassing during his discharge because he "loitered in a wheelchair." Then they stated; "he was handcuffed in front due to his medical issues." Therefore, Judge Dennis erred when he didn't know the MUSC's laws & procedures to follow concerning the Appellants medical issues when he still had an open and unattended wound on his forehead, while the MUSC Police had in their possession Appellant's vital;

DOCTORS INSTRUCTIONS FOR JACK POWELL TO FOLLOW

Stating; You should call the doctor or go to the hospital if you develop severe neck, chest or abdominal pain, severe lightheadedness, trouble breathing, numbness or weakness in any extremity, problems with your bladder or bowel or pain radiating down an arm or leg.

You have been given an oral narcotic pain medication. (NOTE; first was an injection) The effects may begin 30 minutes to an hour after swallowing the medicine. This drug is a narcotic – it will impair your judgment, slow your reaction time and make you sleepy. You should not drive or work with machinery and don't do anything requiring mental alertness until the effects of the medication are gone. You should return if there is unexpected worsening or a significant change in your symptoms.

6. Judge Dennis erred when he granted Summary Judgment when there were unanswered and unexplained procedures for the medical staff and security to follow concerning the time span allotted for medication to take effect before their approval of MUSC Security trying to pull the Appellant from the bed while he is yelling in pain to place him into a wheelchair for discharge.

7. Judge Dennis erred when he did not know the MUSC proper procedures when the MUSC Police illegally lifted the Appellant from his wheelchair and placed him lying in the back seat of their patrol car and drove him to their headquarters. Then they intentionally left the Appellant unattended in their parking lot for around thirty minutes after they illegally arrested him and then imprisoned him. MUSC intentionally failed

in their duty to exercise reasonable care and therefore Judge Dennis allowed Gross Negligence to go uncontested by not knowing and acquiring Respondents official procedures.

8. The very first statement by the Appellant during the Motion for Summary Judgment was your honor "so far I have zero Discovery" and then Appellant stated; "the Defendant has made an inflammatory statement" then Judge Dennis interrupted and granted Summary Judgment because the Appellant did not respond to the Defendants Memorandum. Appellant submitted the argument again in his Motion for Reconsideration and Motion to Amend the Motion for Reconsideration because of the untruth statement was an attempt to recreate the incident and create bias toward the Appellant. Judge Dennis erred when he signed the Order Granting Summary Judgment because of Rule 56 (b) 56 (c)(2)(4) Subdivision (c)(2) and 60 (b)(3) fraud, misrepresentation and misconduct.

9. Judge Dennis erred in his decision when should have recognized Rule 56 (c) (1) & Rule 6 (b) that allows the court to extend the time to respond if the Motion seems premature after the Appellant had stated he had zero Discovery and Respondent was Compelled to court that very day, for evasive Admit, Interrogatories & Production.

10. Appellant Pro se, was facing "11" Motions from July 21st 2015 to July 31 and was under extreme pressure and did not know he could motion for more time concerning this Motion for Summary Judgment that was filed on 7-14-2015 and their Memorandum

for Summary Judgment was filed three days later on 7-17. The Memorandum was placed on the schedule last and the Appellant didn't have a reasonable amount of time to prepare for a response because it was less than ten days when the Motion arrived in the mail and

Pursuant Rule 56 Subdivision (e)(4) many courts take extra care with Pro se litigants by advising them of the need to respond and the risk of losing by Summary Judgment if an adequate response is not filed and the court may seek to reassure itself by some examination of the record.

Charleston County 9th District Court whom Judge Dennis is the At Large Seat Number 2 and Julie Armstrong the Clerk of Court and Caroline Leonard on multiple occasions were not forthcoming or helpful on questions and situations posed by the Pro se Jack Powell and they never notified or told Appellant to respond to any motions or to give any Judge a copy of Appellants motions.

CASES ON 7-30-14

MUSC; Motion to Compel Admissions, Interrogatories & Production

MUSC; Defendants Motion for Summary Judgment

Knology #2013-CP-10-6019 Motion to Compel Admissions

Charleston County EMS #2013-CP-10-6566 Motion to Compel Admissions

Marshland Communities #2013-CP-10-5876; Motion to Compel Admissions
& Interrogatories

CASE ON 7-31-14

Charleston County Detention Center #2013-CP-10-7125; Compel Production

CASE ON 7-28-14

MUSC Public Safety #2013-CP-10-5792; Appeal

CASE ON 7-21-14

Carolina Center for Occupational Health #2013-CP-10-6567; Motion to Dismiss

11. Judge Dennis erred when he displayed contempt towards the Plaintiff on 7-30-14 and again exercised his bias during other rulings and denying the Appellants recusals of him in following cases. Judge Dennis's contempt and bias was evident when he made an insulting statement about and to Pro se in the courtroom which was "I'm laughing at you too" that caused embarrassment, confusion and apprehension to attempt any furthering of his cases because of the fear of being scrutinized & insulted again in a public setting that was already intimidating to an inexperienced Pro se.

12. Judge Dennis erred because he did not state on the record for the Order Granting Medical University of South Carolina Motion for Summary Judgment the actual reason for him granting Summary Judgment, which he stated was Appellant's failure to respond to the Memorandum for Summary Judgment.

13. Mistakes were made by Judge Dennis within his Order Granting Summary Judgment when he ignored that MUSC had evasively not answered discovery when there was a preponderance of relevant evidence that was to be heard the same day and Pursuant Rule 56 (d) that reveals there was issues of whether MUSC's actual laws, procedures or

protocols for the medical staff, security guards and their police were properly followed.

14. Judge Dennis made the mistake of signing the Order Granting MUSC Motion for Summary Judgment when it stated he carefully considered the arguments and submissions of council. Appellant wasn't allowed to enter any argument on 7-30-14.

15. Judge Dennis erred when he did not rule on the Appellant's Motion for Reconsideration that was filed on 8-8-14 before he denied the Motion to Amend the same Reconsideration that was filed on 5-6-15. Relief from Judgment or Order Pursuant 60 (a)(b)(1)(4).

16. Judge Dennis erred when he did not rule on the Appellant's Motion to Recuse Judge Dennis that was filed first on 5-6-15 at 3:07 but chose to rule Appellants Motion to Amend Reconsideration that was filed two minutes later at 3:09.

17. Judge Dennis created a negative & hostile relationship with Pro se beginning on 7-30-14. This improper behavior denying two Recusals has prevented Pro se from receiving a full, fair and impartial administration of justice, citing Blankenship v. Smith, 590 So. 2d 245 (Ala. 1991) and citing Relief from Judgment or order; Rule 60 (b)(1) mistake, inadvertence, surprise or excusable neglect and (4) the judgment is void.

18. Judge Dennis erred when he failed to send a Notice that Appellants Reconsideration was premature, as he did in case 2013-CP-10-6019. Judge Dennis has also ruled Appellants Motions to Reconsider during cases 2013-CP-10-5876, 2013-CP-10-6567 and 2013-CP-10-6019 when the Appellant did not know he was to give the

Judge a copy of the Motion. During a telephone call to Caroline Leonard of the Clerks office Appellant had questioned how long does Judge Dennis have to rule on my Motion to Reconsider and the question was never answered, but she asked did you give the Judge a copy of the Motion and Pro se responded I did not know I was supposed to give him one. She then stated she would give him copies of the all the Motions.

Appellant has had multiple heated discussions over the past years with the Clerks office about their procedures and decisions including; why they posted (in this case) on their public index, the Appellants Motion to Amend Reconsideration before the Motion to Recuse that was actually filed first and the Clerks office including Julie Armstrong never answered the question but did have confusing advice like; contact Judge Dennis's office and Appellant questioned why I would ask his office why the Clerks office did this and or get an attorney.

19. Judge Dennis erred when he didn't rule on the Appellants Motion to Recuse him first, that was filed before the Motion to Amend the Motion for Reconsideration that was filed because of the Trespassing Reversal while there was a formal complaint filed by the Appellant to the South Carolina Disciplinary Board concerning his multiple biased rulings of cases and motions.

20. Judge Dennis erred in his decision to deny the Appellant's Motion to Amend the Motion for Reconsideration when the Defendants Supplemental Memorandum in Support of Motions, case no. 2013-CP-10-5792 that was ordered by Judge Nicholson and

was filed by the Clerks office on their Public Index (of this case) on 11-7-14 and Appellant's Response was filed on 11-12-14 right after the Respondents Order/Court Granted Defendants Motion for Summary Judgment and before the Motion to Recuse which was available to Judge Dennis.

The Respondent introduced some of the MUSC procedures to bolster their legal reason for arresting the Appellant at the ER because Judge Nicholson wanted their supplemental memo to prove to him that the Public Safety had the right to arrest Mr. Powell at a public hospital.

21. Judge Dennis erred because he was unaware of MUSC procedures Judge J.C. Nicholson Jr. had the opportunity to investigate properly and then reversed the original case ruling for case 2013-CP-10-5792. Therefore, Appellant was not guilty of Trespassing and was falsely arrested & imprisoned and this vital ruling was also submitted in the Appellants Motion to Amend Reconsideration, Pursuant Rule 60 (b)(2) Newly Discovered Evidence and 60 (b)(5) stating; a prior judgment upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgment should have prospective application.

Rule 60(b) provides leave to make the motion need not be obtained from any appellate court except during such time as an appeal from the judgment is actually before the appellate court. This permits the motion to be made before the trial court. The United States Supreme Court approved a similar result in Standard Oil Co. v. U.S. 17, 97 S.Ct.

31, 50 L.Ed.2d 21 (1976). S.C. Supreme Court Rule 24, Motions for New Trial upon After-discovered Evidence, which now requires leave by the Supreme Court before the motion can be made in the trial court.

22. Judge Dennis erred when he didn't know the procedures & protocols to be followed that led to the illegal arrest and imprisonment that were in fact obvious when the Police intentionally did not push Appellant's wheelchair to the side of their patrol car and open the door, then assist him in so he could go freely anywhere he wanted to go or to Roper Hospital since the Appellant had "requested a second opinion" after he had stated "he would sue."

A dispute about a material fact, "if the evidence is such that a reasonable jury could return a verdict for the non-moving party" and the court found MUSC falsely arrested the Appellant and therefore they were grossly negligent and do not fall under the protection of SCTCA 15-78-60(12). Steinke v. South Carolina Department of Labor, Licensing and Regulations, 336 S.C. 373, 520 S.E.2d 142 (S.C. 1999)

23. Judge Dennis erred when he failed to recognize the false arrest, gross negligence and intentional infliction of emotional distress. Therefore he failed to recognize the assault by the Police when they angrily threatened him multiple times to leave the premises and "better do so" or be arrested while he was still in pain and wasn't supposed to make any emotional decisions. Also, he was unable to get out of his wheelchair because of his medical issues and was susceptible to their anger. Pursuant

S. C. Code Ann 15-78-60.

24 Judge Dennis made mistakes on 7-30-14 that later were realized to be a pattern of bias towards Pro se Appellant, that began on April 1st 2015 in a separate case, # 2013-CP-10-6019. Judge Dennis and a female assistant met with Appellant and the Defendants attorney. This was only one day before the Defendant's Motioned Summary Judgment hearing and Appellant told Judge Dennis that their attorney just told Appellant outside in the hallway that he had just put their Memorandum for Summary Judgment in the mail, that morning. Then Appellant asked Judge Dennis how am I supposed to respond when we will be in court at 9:30 in the morning? Judge Dennis stated that "it's no big deal because it's just the same issues."

25. The next day on April 1st 2015, about ten minutes before the Appellant's hearing against the same case 2013-CP-10-6019, the Appellants second Motion for Summary Judgment that also evolved from the same incident on 6-21-12, Judge Dennis erred when he stated during another Motion to Compel Discovery that he was going to shake up Columbia. He was addressing the failure to respond to Discovery that ties up the court and Judge Dennis also stated attorneys receiving motions on the same day of a hearing was improper and therefore Appellant submits the Memorandum that was stated to be mailed the day before is was improper, but again Judge Dennis exercised bias towards Pro se Appellant. (note; Appellant never received the Memorandum through the mail).

26. Then Judge Dennis made the mistake of exercising his bias when he denied Appellant's 2nd Motion for Summary Judgment in the same case 2013-CP-10-6019 after the Appellant had included in his Memorandum that Judge Jefferson failed to rule on the statement made by the Appellant during the hearing, that the Defendant did not Respond to his Memorandum for Summary Judgment.

27. Judge Dennis again erred when continuing his bias during the next and same case 2013-CP-10-6019 on 4-9-15, Knology's Motion for Summary Judgment. Appellant argued multiple times that he was unable to answer Judge Dennis's question if Knology owned the unburied cable lines, because the Defendant had not properly answered Discovery which had already been compelled and unheard on 7-30-14.

Judge Dennis stated you should have submitted a Supplemental Request and Appellant stated he did because you ordered it on 7-30-14. Then Judge Dennis firmly stated you need to be careful about what you say in my court and he checked on a computer to verify the Appellants statement. Judge Dennis was handed the Supplemental Request and could see the direct question about their ownership was improperly answered a few minutes later Judge Dennis granted the Defendant Summary Judgment

28. On 6-3-15 Judge Dennis again erred and continued to exercise his pattern of bias towards Pro se Appellant when he again denied the Motion to Recuse Judge Dennis from ruling on his upcoming Motion for Reconsideration, case #2013-CP-10-6019.

29. Judge Dennis erred when he did in fact consider a Response no big deal in

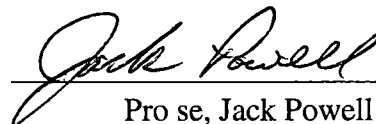
case 2013-CP-10-6019, but during this case 2013-CP-10-5351 he granted the Respondent Summary Judgment because the Pro se didn't respond to the Respondents Memorandum in Support for Summary Judgment and at the time Pro se Appellant didn't even know he was supposed to respond.

30. Judge Dennis erred when the Appellant had submitted in his Motion for Reconsideration that Wall, Templeton and Haldrup deposed the Appellant in an angry, aggressive and improper manner and the Pro se was unaware of his rights and the legal procedure to stop the Deposition.

CONCLUSION

Appellant Pro se, Jack Powell requests the South Carolina Court of Appeals to grant a reversal in this Appeal because of the mistakes, bias and the genuine disputes of material facts.

Signed and Mailed on 6-18-15


Pro se, Jack Powell

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**FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Case No. 2013-CP-10-5351

Medical University of
South Carolina

Respondent,

v.

Jack Powell,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Medical University of South Carolina by Hand Delivery on 6-18-15, addressed to their attorney of record, Wall, Templeton & Haldrup, 288 Meeting St. Charleston, S. C. 29401.



June 18th, 2015
Pro se, Jack Powell
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June 18th 2015

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SC Court of Appeals

The Honorable Julie J. Armstrong
Clerk of Court for Charleston County
100 Broad Street, Suite 106
Charleston S.C. 29401

RE: Jack Powell vs. MUSC
.C/A No.: 2013-CP-10-5351

Dear Julie:

I have hereby submit my Appeal to the Honorable Court for the above matter that will be forwarded to the South Carolina Court of Appeals.

Thank you for your assistance,

Dated & Signed on 6-18-15

A handwritten signature in cursive script that reads "Jack Powell". The signature is written above a horizontal line.

Pro Se; Jack Powell

C Powell
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