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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

SC Court of Appeals

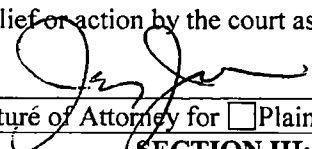
Jack Powell
 Plaintiff

CASE NO.
2013-CP-10-5351

v.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Medical University Of South Carolina
 Defendant.

Plaintiff's Attorney: Jack Powell (Pro Se), Bar No. Address: 1402 8-A Camp Rd., Charleston, SC 29412 phone: 843/952-4762 fax: e-mail: carolineschair@gmail.com other:	Defendant's Attorney: M. Dawes Cooke, Jr./John A. Jones, Bar No. Address: Post Office Drawer H, Charleston, SC 29402 phone: 843.577.7700 fax: 843.577.7708 e-mail: mdc@barnwell-whaley.com other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> 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 <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	
September 5, 2014 Date submitted	
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input 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, SCRPC) <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:	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: 2060 Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) C/A No.: 2013-CP-10-5351

JACK POWELL,)
)
) Plaintiff,)
)
) vs.)
)
) MEDICAL UNIVERSITY OF SOUTH)
) CAROLINA (MUSC),)
)
) Defendant.)
)
)
)

**ORDER GRANTING
MEDICAL UNIVERSITY OF
SOUTH CAROLINA'S MOTION
FOR SUMMARY JUDGMENT**

FILED
2014 SEP 25 PM 3:03
JULIA J. MINISTRONG
CLERK OF COURT
BY _____

THIS MATTER came before the Court on July 30, 2014 pursuant to Defendant Medical University of South Carolina's (MUSC), Motion for Summary Judgment. Present in court was Plaintiff, Jack Powell, appearing *Pro Se*, and Defendant MUSC's counsel, John A. "Jay" Jones. Having carefully considered the arguments and submissions of counsel, this Court grants Defendant's Motion for Summary Judgment as to Plaintiff's claims for (1) reckless and gross negligence, (2) slander and libel, (3) intentional infliction of emotional distress, (4) false arrest and imprisonment, and (5) assault and battery, holding no genuine issues of material fact exist.

Statement of Facts

On June 21, 2012, Plaintiff was transported to the Emergency Department at MUSC by Charleston County EMS after tripping over an exposed and unburied cable line on Folly Road. Plaintiff claims to have suffered injuries to his head, neck, shoulder, and knee as a result of the fall. Upon arrival to the Emergency Department, Plaintiff was evaluated and attended to by the ER staff. X-rays were ordered to evaluate his potential injuries. Pain medication was ordered for the Plaintiff; however, Plaintiff was also to be

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transported to the radiology department for x-rays. When transport arrived to take Plaintiff to x-ray, Plaintiff asked how long it would take and asked to stay in the ER to wait for his pain medication rather than go to x-ray. The doctor asked Plaintiff if he was sure that he wanted to stay in the ER and wait for his pain medication rather than go to the x-ray department. Plaintiff replied in the affirmative and then told the doctor "that is about the stupidest question a doctor has ever asked me." After the x-rays were obtained, Plaintiff contends that the doctor came back into his room, rudely removed his neck brace, and told Plaintiff that he had been discharged. Plaintiff claimed that he could not move because of pain.

Plaintiff refused to leave the Emergency Department despite being discharged because he claimed he was in pain. As a result, MUSC security was called. Plaintiff contends that security tried to pull him from the bed. He contends that the MUSC security continued to try to pull him from the bed and finally stopped because he was "yelling from pain."

MUSC Public Safety was then called and instructed Plaintiff to leave the hospital. Plaintiff claimed that he could not move, was not going to inflict anymore pain on himself, and asked to be helped from the bed. Plaintiff then threatened to sue MUSC. Public Safety then offered to take Plaintiff home, anywhere he wanted to go, or to Roper Hospital.

Plaintiff next claims that MUSC Public Safety removed him from the ER bed and transported him out of the hospital. Once outside of the hospital, Public Safety told Plaintiff to get out of the wheelchair and leave the premises. Plaintiff refused to leave because he claimed that he was in pain. Again, Public Safety asked Plaintiff to leave the

premises and told him that if he failed to leave, he would be arrested for trespassing. Plaintiff refused, stated that he would not inflict anymore pain on himself, and asked the officers to help him get out of the wheelchair. The Public Safety Officers then lifted Plaintiff from the wheelchair and placed him in their police car where he was arrested for trespassing/refusal to leave and transported to jail.

Legal Standard

“Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Wilson v. Moseley, 327 S.C. 144, 146, 488 S.E.2d 862, 863 (1997). In ruling on a motion for summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Id.*

“Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial.” Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). “[A]ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact.” Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009). “[I]n cases applying a preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

“The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder.” Matsell v. Crowfield Plantation Cmty. Servs.

Ass'n, Inc., 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (*citing* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

For the reasons set forth below, Defendant is entitled to summary judgment on all claims made by Plaintiff.

Discussion

I. Reckless and Gross Negligence

Under South Carolina law, medical negligence is the failure of a physician to exercise that degree of care and skill which is ordinarily employed by the profession generally under the same or similar circumstances. Jernigan v. King, 312 S.C. 331, 440 S.E. 2d 379 (Ct. App. 1993)(*citing* Welch v. Whitaker, 282 S.C. 251, 317 S.E. 2d 758 (Ct. App. 1984)). In order to establish the requisite element of negligence in a medical malpractice action, the plaintiff must present (1) evidence of the generally recognized and accepted practices and procedures which would be exercised by average competent practitioners in a defendant doctor's field of medicine under the same or similar circumstances; and (2) evidence that the defendant doctor departed from the recognized and generally accepted standard. See David v. McLeod Regional Medical Center, 367 S.C. 242, 626 S.E.2d 1 (2006); Pederson v. Gould, 288 S.C. 141, 341 S.E.2d 633, 634 (1986)(*citing* Cox v. Lund, 286 S.C. 410, 334 S.E.2d 116 (1985)). In South Carolina, the issue of whether a physician deviated from the applicable standard of care is to be determined by what an ordinary careful prudent physician would have done under the same or similar circumstances. McCourt by and through McCourt v. Abernathy, 318 S.C. 301, 307 457 S.E.2d 603, 607 (1995). In a medical malpractice action, the plaintiff must present evidence, by expert testimony, to establish the required standard of care and

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the physician's failure to conform to that standard, unless the subject matter lies within the ambit of common knowledge and experience such that no special learning is necessary to evaluate the conduct of the physician. See Pederson v. Gould, 341 S.E.2d at 634; Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 254, 487 S.E.2d 596, 599 (1997); Cox v. Lund, 334 S.E.2d at 116; Martisan v. Hilton Head Health System, L.P., 364 S.C. 430, 613 S.E. 2d 795 (Ct. App. 2005), *reh'g. denied* (2005); Botelho v. Bycura, 282, S.C. 578, 320 S.E.2d 59 (Ct. App. 1984).

In support of his negligence claim, Plaintiff alleges that MUSC acted wrongfully and demonstrated willful gross negligence when the physicians and nurses ignored the foreseeable harm taking place when the security guards were recklessly allowed to try and take Plaintiff from his ER bed. Specifically, Plaintiff claims that the reckless act occurred after he was medically discharged, but before pain medication was administered to Plaintiff. He further contends that this occurred because he was unable to move from the ER bed. Plaintiff further claims that the ER physician made an improper and negligent decision when he ordered more medication and then allowed security to take him from the ER bed.

There is no question that, under the circumstances of this case, the decision of whether to discharge a patient and whether to order additional pain medication falls outside the ambit of common knowledge and experience such that no special learning is necessary to evaluate the conduct of the physician. Plaintiff has alleged a cause of action for medical negligence due to the actions of the Emergency Department physician, but has failed to offer expert testimony establishing a deviation from the standard of care. Accordingly, this court grants Defendant's motion for summary judgment as to Plaintiff's

cause of action for reckless and gross negligence to the extent that he asserts that the negligence resulted from the actions of the physician and other medical personnel working in the Emergency Department during his admission.

II. Slander and Libel

Under South Carolina law, the standards governing a claim of defamation are well-established:

The tort of defamation allows a complaining party to recover for injury to his reputation as the result of a false communication to others about him, made by the defendant. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). "Slander is a spoken defamation, while libel is a written defamation or one accomplished through actions or conduct." *Id.* In order to prove defamation, a party must show: (1) a false and defamatory statement was made; (2) the unprivileged publication of the statement to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. Fleming v. Rose, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002).

See Williams v. Lancaster Cty. Sch. Dist., 369 S.C. 293, 302-03, 631 S.E.2d 286, 292-93 (Ct. App. 2006).

Depending upon the nature of the allegedly defamatory statement, Plaintiff will be required to make different showings regarding damages to support his claim:

[A] statement may be actionable *per se* or not actionable *per se*. [Citation omitted.] "The determination of whether or not a statement is actionable *per se* is a matter of law for the court to resolve." [Citation omitted.] When the statement is classified as actionable *per se*, the defendant is presumed to have acted with common law malice, and the plaintiff is presumed to have suffered general damages. [Citation omitted.] When the statement is not actionable *per se*, "the plaintiff must plead and prove both common law malice and special damages." [Citation omitted.] "Common law malice means the defendant acted with ill will toward the plaintiff, or acted recklessly or wantonly, i.e., with conscious indifference of the plaintiff's rights." [Citation omitted.] "Slander is actionable *per se* when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." Goodwin v. Kennedy, 347 S.C. 30, 36, 552 S.E.2d 319, 322-23 (Ct. App. 2001).

See McBride v. School Dist. of Greenville Cty., 389 S.C. 546, 560-61, 698 S.E.2d 845, 852 (Ct. App. 2010) (*citing Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 629 S.E.2d 653 (2006)); see also Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (2012)(statements were not capable of any defamatory construction); Smith v. Phoenix Furniture Co., 339 F. Supp. 969 (D.S.C. 1972)(words spoken were not actionable *per se*). "Special damages are tangible losses or injuries to the plaintiff's property, business, occupation, or profession in which it is possible to identify a specific amount of money as damages." See Erickson, 368 S.C. at 465 n.6, 629 S.E.2d at 664 n.6.

Plaintiff has testified as to what he believes comprised the Defendant's defamatory statements about him. All statements that Plaintiff cites in support of his defamation claim are statements that were made by MUSC medical personnel that were recorded in his medical record. In his deposition Plaintiff admitted that the statements recorded by MUSC medical personnel in his medical record are true.

Under South Carolina law, "truth of the matter is a complete defense to an action based on defamation." See WeSav Financial Corp. v. Forest Hills Homes, Inc., 316 S.C. 442, 450 S.E.2d 580)(*citing Ross v. Columbia Newspaper, Inc.*, 266 S.C. 75, 221 S.E.2d 770 (1976)); see also Fountain v. First Reliance Bank, 398 S.C. 434, 730 S.E.2d 305 (2012)(statements were true, therefore, respondent had a complete defense to defamation and summary judgment was proper). By Plaintiff's own admission, the statements recorded in the medical record by MUSC that serve as the basis for his defamation claim are true. Because truth is a complete defense to defamation, summary judgment as to Plaintiff's slander and libel causes of action is granted.

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III. Outrage (Intentional Infliction of Emotional Distress)

Section 15-78-30(f) of the South Carolina Tort Claims Act specifically excludes a cause of action for intentional infliction of emotional distress against a governmental entity. Section 15-78-30(f) specifically provides:

(f) "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

See S.C. Code Ann. §15-78-30(f)(emphasis added); see also Densmore v. City of Greenville, 2011 WL 11733107 (Ct. App. 2011)(unpublished)(trial court properly granted summary judgment to respondents on the cause of action for intentional infliction of emotional distress under the Tort Claims Act). Therefore, Plaintiff's intentional infliction of emotional distress claim is prohibited by the South Carolina Tort Claims Act and summary judgment is granted in favor of Defendant.

IV. False Arrest and Imprisonment

The decision to arrest Plaintiff was clearly lawful and thus, summary judgment is appropriate as a matter of law. See Densmore v. City of Greenville, 2011 WL 11733107 (Ct. App. 2011)(unpublished).

Plaintiff's false arrest and imprisonment claim centers on the fact that once he was discharged from the Emergency Department at MUSC after being evaluated on June 21, 2012, he had to be escorted from the Emergency Department by MUSC Hospital Security and Public Safety because he refused to leave. Once outside of the hospital, Plaintiff continued to refuse to leave the premises. In fact, in his deposition, Plaintiff

admitted that he did not leave the premises and was therefore arrested and convicted of trespass.

Accordingly, because the arrest was lawful, summary judgment is granted in favor of Defendant.

V. Assault and Battery

A cause of action for assault has two elements. First, it involves conduct on the part of the defendant that puts the victim in reasonable apprehension of a harmful or offensive touching. Second, the defendant must intend the conduct involved. See Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 222, 317 S.E.2d 748 (Ct. App. 1984).

To establish a claim for civil battery, the Plaintiff must establish (1) a harmful or offensive touching without consent, and (2) an intent to commit the touching or to cause an apprehension of such touching. See 6 Am. Jur.2d Assault and Battery § 111 (1963).

Plaintiff bases his claim for assault and battery on the fact that MUSC removed him from the stretcher in the Emergency Department after he refused to leave the hospital once he was medically discharged and MUSC Security had to physically lift him into the police car once outside the hospital because he refused to leave the hospital premises.

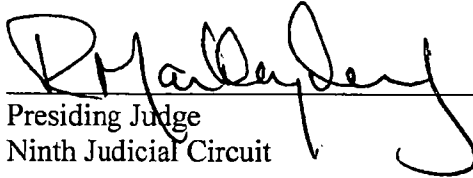
In Plaintiff's Complaint, he asserts that he consented to the touching. Specifically, Plaintiff asked for help in moving off of the bed. Indeed, the undisputed facts demonstrate that Plaintiff was not apprehensive about a harmful or offensive touching or that a harmful or offensive touching occurred such that he suffered harm. Any action by MUSC to remove him from the premises was absolutely necessary and justified and should have been anticipated by Plaintiff. Furthermore, Plaintiff consented to the

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touching. Therefore, summary judgment as to Plaintiff's assault and battery charges is appropriate.

CONCLUSION

Based on the foregoing, this court grants Defendant's Motion for Summary Judgment as to Plaintiff's claims for (1) reckless and gross negligence, (2) slander and libel, (3) intentional inflictions of emotional distress, (4) false arrest and imprisonment, and (5) assault and battery, holding no genuine issues of material fact exist.



Presiding Judge
Ninth Judicial Circuit

September 22, 2014

RMPJ/10

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-5351

Jack Powell

The Medical University of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: M. Dawes Cooke, Jr./Alissa D. Fleming

Attorney for : Plaintiff Defendant,
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

FILED
2014 SEP 25 PM 3:03
JULIE ANN STRONG
CLERK OF COURT

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. FORMAL ORDER TO FOLLOW.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

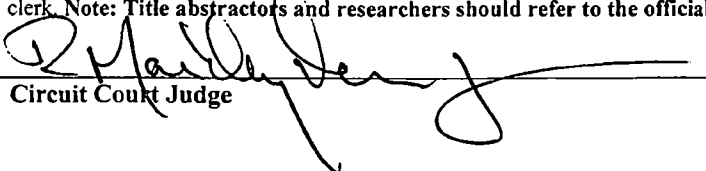
INFORMATION FOR THE PUBLIC INDEX

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

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

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

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


Circuit Court Judge

2060
Judge Code

9/22/2014
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: