

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Benjamin Heyward, #165514,)
)
 Plaintiff,)
)
 vs.)
)
 Larry Cartledge, Warden;)
 Mr. Williams, Captain; Mr. Church, Lt.;and)
 South Carolina Department of Corrections,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

ORDER

2014-CP-23-4985

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JUL 09 2015

SC Court of Appeals

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2015 JUN 29 AM 10 58

This matter came before me upon the Defendants' Motion for Summary Judgment. Plaintiff is an inmate incarcerated within the South Carolina Department of Corrections. On March 21, 2013, Plaintiff was waiting in line for mail and was charged with public masturbation for having his hand down his pants playing with his genital area in the presence of a female. Plaintiff was convicted of the charge at a disciplinary hearing. As a result, Plaintiff was placed on control cell status. Inmates on control cell status have their property removed with the exception of a pair of underwear and a security blanket. Inmates on control cell status are provided basic necessities during that time. Plaintiff alleges causes of action for negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of trust/fiduciary duty and respondeat superior.

Proper Parties Under the South Carolina Tort Claims Act

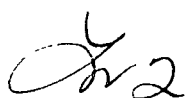
The South Carolina Tort Claims Act (herein after "SCTCA") governs actions against governmental entities under South Carolina law. Under SC Code Ann. § 15-78-70(b) "[t]he

agency or political subdivision for which the employee was acting” shall be named as a party Defendant. I find that the individual Defendants are not proper parties under the South Carolina Tort Claims Act and should be dismissed.

Gross Negligence

For actions involving inmates or prisoners, the SCTCA provides a gross negligence standard. SC Code Ann. § 15-78-60 (25) provides that SC Code Ann. §15-78-60(25) provides that “[t]he governmental entity is not liable for a loss resulting from: (25) responsibility or duty including, but not limited to supervision, protection, control, confinement, or custody of any ... prisoner, inmate ... except when the responsibility or duty is exercised in a grossly negligent manner.” Gross negligence has been defined as “the failure to exercise slight care. For a person who is so indifferent to the consequences of his conduct as to not to give slight care to what he is doing, he is guilty of gross negligence. Gross negligence involves a conscious failure to exercise due care.” Etheredge v. Richland School District One, 330 S.C. 447, 445; 499 S.E.2d 238, 242 (S.C. App. 1998).

In support of their Motion for Summary Judgment, the Defendants have submitted the affidavits of L. Buttrey, Captain Williams, Lieutenant Peay and Lieutenant Bennett with regard to the use of force along with attached incident reports and Reports On The Use Of Force. The affidavits, incident reports and Reports On The Use Of Force show a minimal amount of force was used to gain Plaintiff’s compliance. The Defendants also submitted Plaintiff’s medical records for this time. The records indicate that on the date of the incident that Plaintiff “denies any pain or injury.” However, on March 23, 2013, the records state that the Plaintiff “changed my mind, my neck is hurting now.”



The Defendants also submitted the affidavit of Warden Larry Cartledge. Cartledge states that Plaintiff was convicted of public masturbation for the March 21, 2013 incident. He further states that the Plaintiff was not placed on crisis intervention as alleged in the Complaint, but was placed on control cell status following the incident. During that time, Plaintiff would have been provided with basic necessities and his property would have been removed from the cell with the exception of underwear and a security blanket. Plaintiff alleges that he was naked while on "crisis intervention".

Plaintiff's claims, if true, do not state a cause of action for gross negligence. The evidence argued by the Plaintiff does not show "a conscious failure to exercise due care" or such indifference "as to not give slight care". *Id.* The Defendants are entitled to summary judgment on this issue.

Intentional\Negligent Infliction of Emotional Distress

Although labeled as separate causes of action, both of Plaintiff's claims for intentional infliction of emotional distress and negligent infliction of emotional distress state that "the Defendants' actions were negligent, grossly negligent, willful and wanton. Additionally, their actions directly caused the Plaintiff physical pain and emotional distress." Plaintiff does not state a claim for intentional infliction of emotional distress and that cause of action is not supported by the affidavits and supporting materials before the court. As to negligent infliction of emotional distress, the applicable standard would be gross negligence and the Defendants are entitled to summary judgment under the reasoning cited above.

Handwritten signature or initials, possibly "Jr 3", located at the bottom center of the page.

Breach of Trust\Fiduciary Duty

While prison officials do have certain duties to inmates within their care, such as a duty to provide basic necessities, there is no fiduciary duty. The Defendants are entitled to summary judgment on this issue.

Respondeat Superior

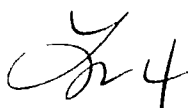
Plaintiff alleges that SCDC is "strictly liable for the negligent acts of its employees, servants acting within the scope of their employment". Under the SCTCA the applicable standard is gross negligence, not strict liability. As discussed above, Plaintiff has not shown gross negligence on the part of any of the named Defendants and Defendants are entitled to summary judgment.

IT IS SO ORDERED.



Letitia Verdin
Presiding Judge

Dated: 6/25, 2015.



The South Carolina Court of Appeals

Benjamin Heyward, Appellant,

v.

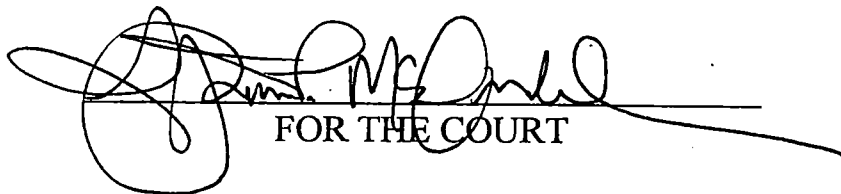
Larry Cartledge, Mr. Williams, Mr. Church, South
Carolina Department of Corrections, Defendants,

Of whom the South Carolina Department of Corrections
is the Respondent.

Appellate Case No. 2015-000978

ORDER

Appellant has filed a Notice of Appeal from a Form 4 order granting Respondent's motion for summary judgment and indicating a formal order will follow. Because the circuit court has not issued its final order, this appeal is dismissed as premature. *See* Rule 201, SCACR (providing an appeal may be taken from any final judgment, appealable order or decision). Remittitur will be sent as provided in Rule 221, SCACR.


FOR THE COURT

Columbia, South Carolina

cc:
Benjamin Heyward, 165514
James Victor McDade, Esquire

FILED
6/2/15

The State of South Carolina
in the Court of Appeals

Appeal From Greenville County
Court of Common Pleas

Leticia H. Verdin Circuit Court Judge

Case No. 2015-000978

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SC Court of Appeals

Benjamin Heyward #165514, Appellant

V.

South Carolina Dept of Corrections, Respondent

Notice of Appeal

Benjamin Heyward #165514

Lieber Corr Inst

P.O. Box 205

Ridgeville, SC 29472

pro se Appellant

DOYLE, DITE, & McDade, P.A.,

J. Victor McDade

P.O. Box 2125

Anderson, SC 29622

Defendant's Attorney

The State of South Carolina
In The Court of Appeals

Appeal From Greenville County
Court of Common Pleas

Letitia H. Verdin Circuit Court Judge

Case No. 2015-000978

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SC Court of Appeals

Benjamin Heyward, Appellant
V.

South Carolina Dept of Corrections, Respondent

Certificate of Service

I Benjamin Heyward, do certify that I have served Appellant's Remittitur, Formal order and Certificate of Service on the Respondent by mailing a copy of the same by United States mail, postage prepaid, to the following address:

Greenville Clerk of Court
305 E. North St.
Greenville, SC 29601

Douglas Tate, Esq. McAdams, P.A.
J. Victor McAdams
P.O. Box 2125
Anderson, SC 29622
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

By: Benjamin Heyward
Benjamin Heyward #165514
Lieber Corr Inst
P.O. Box 205
Kidgewillers SC 29472

Date: July 3 2015

S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Heyward v. SCDL
Case No. 2015-000978

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SC Court of Appeals

Dear Clerk Richstead / Kitchings

Enclosed for filing is the order that the circuit court failed to send before Appellant filed his first notice of appeal. Appellant received the order on July 2, 2015.

Thank you for your assistance and attention to this matter.

cc: James Victor McCrede Esquire

By Benjamin Heyward
Appellant

Dated: July 3, 2015

William Hayward #165514
er Corr Inst - EA-~~4~~31
BOX 205
Columbia, SC 29472

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JUL 09 2015
SC Court of Appeals

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S.C. Court of Appeals
Jenny A. Kitchings, Clerk
P.O. BOX 11629
Columbia, SC 29211