

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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JUL 27 2015

SC Court of Appeals

Benjamin Heyward, Appellant
V.

South Carolina Dept of Corrections, Respondent

Notice of Appeal

Benjamin Heyward #165514
Lieber Corr Inst
P.O. Box 205
Ridgeway SC 29472

DOYLE, TATE & McDade, P.A.
J. Victor McDade
P.O. Box 2125
Anderson SC 29622
Respondent's Attorney

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JUL 27 2015

IN THE COURT OF COMMON PLEAS
SC Court of Appeals

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.)
_____)

ORDER

2014-CP-23-4985

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."

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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.

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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.

Fr 4



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 17, 2015

Benjamin Heyward, 165514
Lieber Correctional Institution-EA-46
P.O Box 205
Ridgeville SC 29472

Re: Benjamin Heyward v. Larry Cartledge
Appellate Case No. 2015-000978

Dear Counsel:

Upon again reviewing your motion to file *in forma pauperis*, the following deficiency under the South Carolina Appellate Court Rules (SCACR), has not yet been corrected after the Court's May 5, 2015, letter and must be corrected within fifteen (15) days of the date of this letter or your motion will not be considered:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: James Victor McDade, Esquire

The South Carolina Court of Appeals

Benjamin Heyward #165514, Appellant,

v.

Mr. Larry Cartledge, Warden; Mr. Williams, Captain;
Mr. Church, Lieutenant; and South Carolina Department
of Corrections, Defendants,

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

Appellate Case No. 2015-000978

ORDER

For good cause having been shown, this matter is reinstated.

 J.
FOR THE COURT

Columbia, South Carolina

cc:
Benjamin Heyward, 165514
James Victor McDade, Esquire

FILED

7/17/2015 AP

The state of South Carolina

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Appeal from Greenville County

JUL 27 2015

Court of Common Pleas

SC Court of Appeals

Leticia H. Verdin Circuit Court Judge

Case No. 2015-000978

Benjamin Heyward, Appellant

V.

South Carolina Dept of Corrections, Respondent

Proof of Service

I certify that I have served the notice of appeal on James Victor McCardle by depositing a copy of it in the United States mail, postage prepaid, on July 22, 2015, addressed to his office, Post Office Box 2125, Anderson South Carolina 29622, on July 22, 2015.

Date July 22, 2015

Benjamin Heyward
Benjamin Heyward #165514
Lieber Corr Inst
P.O. Box 205
Ridgville, SC 29472

The Honorable V. Claire Allen
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

July 22, 2015

RE: Heyward v. SCDC
Case No. 2015-00978

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SC Court of Appeals

Dear Clerk Allen:

Enclosed for filing is a notice of appeal in the above case.
Also enclosed are the following:

- (1) A copy of the order (Judgment) which is (are) to be challenged on appeal.
- (2) A copy of South Carolina Court of Appeals letter and order.
- (3) proof of service of the notice of appeal on the respondent Attorney, Mr. James Victor McDade.

cc: James V. McDade, P.A.
P.O. Box 2125
Anderson, SC 29622
Attorney for Respondent

~~Benjamin Heyward~~
Benjamin Heyward #1655124
Lieber Corp Inst
P.O. Box 205
Ridgeway, SC 29472

Benjamin Heyward #165514

Lieber Corr Inst - EA-31

inter-agency

P.O. Box 205

Ridgeville, SC 29472

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SC Court of Appeals

S.C. Court of Appeals
vs. Claire Allen, Clerk

P.O. Box 11629

Columbia, SC 29211

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JUL 22 2015

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