

The Honorable Daniel E. Shearouse
P.O. Box 11330
Columbia, SC 29211

RECEIVED

SEP 10 2015

S.C. SUPREME COURT

RE: Heyward v. SDC
Case No.: 2014-CP-04978

Dear MR. Shearouse:

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

- 1.) Declaration in support of motion to proceed in forma pauperis.
- 2.) An order from the South Carolina Court of Appeals.
- 3.) An Remittitur from the South Carolina Court of Appeals.
- 4.) Proof of service of the notice of appeal on the respondent.
- 5.) This appeal is being filed with the Supreme Court pursuant to Rule 203(e) of SCACR.

Date 9-8-15

Other Counsel of Record:
DOYLE/TATE/MCDadey, P.A.
P.O. Box 2125
Anderson, SC 29622
Attorney for Respondent

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

The State of South Carolina
In The Supreme Court

RECEIVED

Appeal from Greenville County
Court of Common Pleas

SEP 10 2015

S.C. SUPREME COURT

Letitia H. Verdin, Circuit Court Judge

Case No. 2014-CP-23-04978

Benjamin Heyward... Appellant
v.

South Carolina Dept of Corrections... Respondent

Notice of Appeal

Benjamin Heyward appeals the order (Judgment) of the Honorable Letitia H. Verdin dated June 25, 2015. Appellant received written notice of entry of this order Judgment on July 2, 2015.

Date 9-7-15

Other Counsel of Record:

DOYLE, JATE, / McDade, P.A.
James V. McDade

P.O. Box 2125

Anderson, SC 29622

Attorney for Respondent

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

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

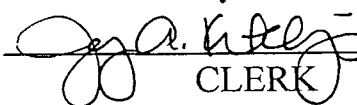
The Honorable The Honorable Letitia H. Verdin
Greenville County
Trial Court Case No. 2014CP2304985

ORDER

Appellant has failed to pay the notice of appeal filing fee as required by Rule 203 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

Benjamin Heyward, 165514
James Victor McDade, Esquire

FILED

August 14, 2015 A



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 01, 2015

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: Benjamin Heyward v. Larry Cartledge
Lower Court Case No. 2014CP2304985
Appellate Case No. 2015-000978

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Benjamin Heyward, 165514
James Victor McDade, Esquire

The state of South Carolina
In The Supreme Court
Appeal From Greenville County
Court of Common Pleas
Letitia H. Verdin, Circuit Court Judge

Case No.: 2014-CP-23-04978

Benjamin Heyward, Appellant
v.
South Carolina Dept of Corrections, Respondant

Proof of service

I certify that I have served the notice of appeal on James
V. McDade by depositing a copy of it in the United States
mail, postage pre paid, on September 7, 2015, addressed to
his Attorney office, Post office Box 205, Anderson,
South Carolina, 29622.

Date: 9-8-15

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

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP2304985

Benjamin Heyward	Larry Cartledge Mr Church	Mr Williams Corrections South Carolina Dept Of
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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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. See Page 2 for additional information.
- 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: _____

2015 APR 8 PM 4:19
 CLERK OF COURT
 JUDICIAL BRANCH
 GREENVILLE COUNTY
 SOUTH CAROLINA

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.
 The Plaintiff's Motion to File an Amended Complaint is denied. The Defendant's motion for Summary Judgment is granted.
ORDER INFORMATION *Attorney for defendant's shall submit a proposed formal order*
 This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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.**

[Handwritten Signature]

[Handwritten Signature]

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on ⁴⁻⁸⁻¹⁵, and a copy mailed first class or placed in the appropriate attorney's box on ⁴⁻⁸⁻¹⁵, to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin Heyward 165514 Lieber Correctional Institute P
O Box 205 Ridgeville, SC 29472

James Victor McDade PO Box 2125 Anderson, SC 29622

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

For 2

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

ENTERED COMPUTER

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2015 JUN 29 AM 10 57

Handwritten initials

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

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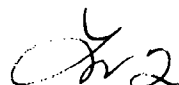
SCANNED

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.

Jr 3

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

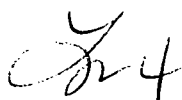
Plaintiff alleges that SCDC is "strictly liable for the negligent acts of its employees, servants acting within the scope of their employment". Under the SCTCA the applicable standard is gross negligence, not strict liability. As discussed above, Plaintiff has not shown gross negligence on the part of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

IT IS SO ORDERED.



Letitia Verdin
Presiding Judge

Dated: 6/25, 2015.



STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2014CP2304985

IN THE COURT OF COMMON PLEAS

Benjamin Heyward vs. Larry Cartledge

FILED-CLERK OF COURT
GREENVILLE CO. SC.
PAUL B. WICKENSIMER
2015 JUN 29 PM 10:57

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and 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: _____

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; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - Letitia H Verdin

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin Heyward 165514 Lieber Correctional
Institute P O Box 205 Ridgeville, SC 29472

James Victor McDade PO Box 2125 Anderson, SC
29622

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

FILED CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL D. WICKENSIMMER

CASE NO. 2014 CP-23-4985

BENJAMIN HEYWARD

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

2015 JUL 16 PM 4 46

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

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 Affirmed; Reversed; Remanded; Other

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:

This matter came before the Court on Plaintiff's Motion for Default Judgment filed June 30, 2015. This Court granted Summary Judgment in favor of Defendant on April 8, 2015. In light of this ruling, Plaintiff's Motion for Default Judgment is respectfully DENIED.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
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		\$
		\$
		\$
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Page 1 

Benjamin Heyward #165514
Lieber Corr Inst - EA-31
P.O. Box 205
Ridgeville, SC 29472

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SEP 08 2015

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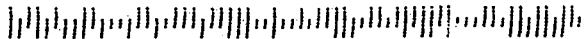
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S.C. Supreme Court
Clerk of Court
P.O. Box 11330
Columbia, SC 29211



THE DEPARTMENT OF CORRECTIONS HAS NOT
INSPECTED OR CENSORED THIS ITEM; THEREFORE,
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

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S.C. DEPARTMENT OF CORRECTIONS

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