

STATE OF SOUTH CAROLINA  
COUNTY OF LEE

) IN THE COURT OF COMMON PLEAS  
) IN THE THIRD JUDICIAL CIRCUIT  
) C.A. NO.: 2011-CP-31-00069

John E. Wilson, Jr., # 295493,

Plaintiff,

v.

South Carolina Department  
of Corrections;

Defendant.

**ORDER**

This matter is before the Court on Defendants' Motion for Summary Judgment. A hearing on the motion was held in the Lee County Court of Common Pleas on June 29, 2012. John E. Wilson, Jr., # 295493 (hereinafter referred "Plaintiff"), a *pro se* litigant, appeared on behalf of himself. Steven B. Johnson appeared on behalf of Defendants South Carolina Department of Corrections (hereinafter referred "Defendants"). After hearing oral arguments and reviewing the briefs submitted on behalf of both the Plaintiff and Defendants, for the reasons state herein below, the Defendants' Motion for Summary Judgment is granted. All other motions currently pending, if any, are denied and this case is dismissed with prejudice.

**FACTS**

Plaintiff is currently incarcerated at Lee Correctional Institution. He filed this lawsuit with the Richland County Court of Common Pleas on or about April 9, 2010. The case was transferred to the Lee County Court of Common Pleas on or about March 23, 2011. A Motion to Dismiss or in the alternative, Motion for Summary Judgment was filed by the Defendants on or about February 2, 2012.

At all times relevant to the Plaintiff's Complaint, Plaintiff was incarcerated at Lee Correctional Institution. Plaintiff's first cause of action alleges Plaintiff suffered injuries to his head, neck and back as a result of a slip and fall injury while on his way to the shower on October 9, 2008. Plaintiff alleges he suffered injuries to his head, neck and back and emotional distress as a result of the fall. Also, Plaintiff alleges Defendants did not provide adequate medical treatment after Plaintiff's alleged injuries. Finally, Plaintiff claims Defendants did not follow its own grievance policies and procedures. The Plaintiff has filed this action pursuant to the South Carolina Tort Claims Act, § 15-78-10, *et seq.* Defendants deny the claims asserted by Plaintiff and move for summary judgment.

### ANALYSIS

#### **I. THE PLAINTIFF IS PRECLUDED FROM PREVAILING IN THIS ACTION UNDER THE SOUTH CAROLINA TORT CLAIMS ACT.**

The South Carolina Tort Claims Act provides the exclusive remedy for any tort committed by an employee of a governmental entity in the State of South Carolina. S.C. Code Ann. § 15-78-70(a). A governmental entity includes political subdivisions and agencies thereof. *See* S.C. Code Ann. §§ 15-78-30(a), (c), (d), (h) (defining "agency," "employee," "governmental entity," and "political subdivision"). However, employees of a governmental entity who commit a tort while acting within the scope of their official duties are not liable, except in cases involving acts against their official duties or those constituting actual fraud, actual malice, intent to harm, or crimes involving moral turpitude. *Id.* and S.C. Code Ann. § 15-78-70(b). Thus, the governmental employee cannot be sued directly unless one of the aforementioned exceptions applies. *See id.* The Act states that its provisions "must be liberally construed" in favor of limiting liability. S.C. Code Ann. § 15-78-20(f).

Here, Defendants, although not specifically named, were employees of SCDC, a governmental entity under the Tort Claims Act. Thus, for an action to be properly brought against them, Plaintiff must allege Defendants' conduct "was not within the scope of [their] official duties or that it constituted fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. Code Ann. § 15-78-70(b). Plaintiff fails to allege any of these grounds by specific reference thereto or by alleging facts tending to support an action on one or more of these grounds. While the Plaintiff alleges that Defendants generally were responsible for his alleged plight, he makes no showing whatsoever that they performed outside the scope of their official duties, that they committed any acts of fraud, were malicious towards him or intended to harm him, or engaged in crimes of moral turpitude. Under the terms of the Tort Claims Act, these individuals clearly have no personal liability to the Plaintiff.

Also, regarding any liability which the Plaintiff would assert against the South Carolina Department of Corrections as an entity, the Department is similarly protected. Pursuant to the South Carolina Tort Claims Act, a governmental entity is not liable to a prisoner or an inmate except in circumstances of gross negligence. Gross negligence is the intentional conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Etheridge v. Richland School District 1, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (S.C. 2000). Plaintiff has failed to allege or meet his burden in showing any South Carolina Department of Corrections' employee acted with gross negligence. Accordingly, there is no intentional or conscious failure to do something necessary, nor was anything intentionally done which should not have been done by the Department or its employees. It cannot be said that prison officials failed to exercise slight care at any time during the Plaintiff's alleged wrongs.

Also, regarding any acts performed by individuals in responding to or processing Plaintiff's

grievances, the Department is protected. Any acts performed by individuals in considering grievances are clearly quasi-judicial in nature. See S.C. Code Ann. § 15-78-60(1) (a governmental entity is not liable for a loss resulting from "...quasi-judicial action."). The Tort Claims Act specifically provides that no liability exists when the exercise of discretion or judgment by the governmental entity or employee for the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee. S.C. Code Ann. § 15-78-60(5).

Moreover, even if any Departmental regulations were not followed, the Department of Corrections has no liability to the Plaintiff for the failure to properly enforce any of its regulations or written policies. S.C. Code Ann. § 15-78-60(4) (a governmental entity is not liable for a loss resulting from failure to enforce or comply with any regulation or written policy). In this action, the Plaintiff makes numerous references in his Complaint to allege failures to follow departmental regulations and policies. Based on § 15-78-60(4), there is no liability for such acts or omissions, even if they occurred.

Finally, Plaintiff has not adequately shown he suffered any damages. Plaintiff was able to walk on his own unassisted after being evaluated by medical staff after his injury. See Defendants Memorandum In Support of Motion For Summary Judgment, Exhibit "B", Dr. Drago Aff. and attached medical notes. Plaintiff has not provided any evidence quantifying his damages suffered. "Even though *pro se* litigants are held to less stringent pleading standards than attorneys the court is not required to 'accept as true legal conclusions or unwarranted factual inferences.'" Morgan v. Church's Fried Chicken, 829 F.2d 10, 12 (6<sup>th</sup> Cir. 1987).

In summary, SCDC nor any named employee in Plaintiff's Complaint has any liability to the Plaintiff pursuant to the South Carolina Tort Claims Act inasmuch as they are protected by the

exceptions to the Tort Claims Act, as enumerated above. The Plaintiff was not treated with any gross negligence whatsoever. Therefore, SCDC nor any named employee in Plaintiff's Complaint has any liability to the Plaintiff and this case must be dismissed as Plaintiff has failed to meet his burden of gross negligence.

## II. PLAINTIFF'S CAUSE OF ACTION REGARDING ALLEGED INADEQUATE MEDICAL TREATMENT FAILS.

Plaintiff alleges he was provided with inadequate medical treatment by Defendants or that the medical treatment amounted to medical malpractice. According to Rule 56(e) of the South Carolina Rules of Civil Procedure, in responding to a Motion for Summary Judgment, a Plaintiff may not "rest upon the mere allegations or denials of his pleadings, but his response ... must set forth specific facts showing that there is a genuine issue for trial." The South Carolina Court of Appeals has further stated that "[t]he party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact ... [t]his initial responsibility 'may be discharged by showing - that is, pointing out to the [in trial] court - that there is an absence of evidence to support the non-moving party's case.'" Richardson v. State - Record. Co., Inc., 330 S.C. 562, 566, 499 S.E.2d 822, 824 (Ct. App. 1998) (quoting Celotex Corp. v. Catrett, 477 U.S. 317 (1986)).

In order to satisfy the burden of proof in a medical malpractice case, the South Carolina Supreme Court has previously held:

The plaintiff uses expert testimony to establish both the required standard of care and the defendant's failure to conform to that standard, unless the subject matter lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.

Pederson v. Gould, 288 S.C. 141, 142, 341 S.E.2d 633, 634 (1986); see also David v. McLeod Regional Medical Center, 367 S.C. 242, 248, 626 S.E.2d 1, 4 (2006).

The principle that experts are generally required in medical malpractice has been affirmed numerous times by South Carolina courts. Additionally, the Court of Appeals clarified the issue, stating “on a defendant’s motion for summary judgment, there will usually be no genuine issue of material fact unless the plaintiff presents expert testimony on a standard of care and its breach by the defendant.” Jernigan v. King, 312 S.C. 331, 334, 440 S.E.2d 379, 381 (Ct. App. 1993). This is in accord with the Supreme Court’s view that in South Carolina, “medical malpractice actions require a greater showing than generic allegations and conjecture.” David, 367 S.C. at 249, 626 S.E.2d at 4. Thus, “summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” Id., 367 S.C. at 250, 626 S.E.2d at 5.

In the present case, the Plaintiff has specifically alleged that Defendants, through its agents, breached the appropriate standard of medical care, yet has failed to provide the court with expert testimony on the standard of care or its breach by the Defendants. Dr. Drago is a medical doctor who reviewed Plaintiff’s medical records. He has filed an affidavit in response to the allegations made within the Plaintiff’s Complaint and has confirmed that Defendants acted appropriately and provided medical treatment in accordance with the acceptable standard of care. The record before the Court shows that Plaintiff was afforded adequate and proper treatment. See Defendants’ Memorandum In Support of Motion For Summary Judgment, See Exhibit “B”, Dr. Drago, Aff. and attached medical records. Id. Treatment included precautionary immobilization, x-rays, MRIs and medication management. Id.

Additionally, the record shows Plaintiff was provided numerous medical examinations and medical attention almost weekly. Plaintiff alleges he was not provided with adequate medical care, yet the record shows Plaintiff has had ample consultations and services. Id. Plaintiff cannot simply

allege in a conclusory fashion that he did not receive adequate medical care or attention, provide no supporting evidence, and expect to survive summary judgment. Papasan v. Allain, 478 U.S. 265, 286, 106 S.Ct. 2932 (1986) (courts need not assume the truth of legal conclusions couched as factual allegations)).

Rather, Plaintiff's Complaint is that medical personnel refused to provide him with the care and treatment he personally desired. Such allegations are not sufficient to allow this lawsuit to proceed. Wright v. Collins, 766 F.2d 841, 849 (4<sup>th</sup> Cir. 1985) (Disagreements between an inmate and a physician over the inmate's proper medical care do not state a claim absent exceptional circumstances.)). Plaintiff's personal opinion notwithstanding, nothing in the evidence and exhibits before the Court give rise to a genuine issue of fact as to whether anyone was deliberately indifferent to Plaintiff's serious medical needs. See Scheckells v. Goord, 423 F. Supp.2d 342, 348 (S.D.N.Y. 2006) (citing O'Connor v. Pierson, 426 F.3d 187, 202 (2d Cir. 2005) ("Lay people are not qualified to determine...medical fitness, whether physical or mental; that is what...medical experts are for.")). While Plaintiff may not agree with the extent and nature of the medical care he received, he cannot simply allege in a conclusory fashion that he did not receive adequate medical care or attention, otherwise provide no supporting evidence other than his own subjective opinion, and expect to survive summary judgment, particularly when the Defendant has submitted documents and evidence from a medical professional which refutes his claims. See House v. New Castle County, 824 F.Supp. 477, 485 (D.Md. 1993).

Given the Plaintiff's failure to identify an expert in support of his allegations in this case, as well as failing to provide an affidavit setting forth how the Defendants' breached the standard of care, Plaintiff fails to state a claim for which relief can be granted.

**THEREFORE**, it is the ruling of this Court that all causes of action alleged as to the South Carolina Department of Corrections and any individual Defendants named therein, in their official and/or individual capacity, are hereby dismissed with prejudice, and the Defendants' Motion for Summary Judgment is **GRANTED**.

**AND IT IS SO ORDERED!**

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R. Ferrell Cothran, Jr.  
Circuit Court Judge,  
Third Circuit of South Carolina

At Chambers,

\_\_\_\_\_, 2012

