

FORM 13

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Markley Dennis, Circuit Court Judge

Case No. 2015-00-0049

Carolina Center, Respondent,

v.

Jack Powell, Appellant,

[INITIAL] BRIEF OF APPELLANT.

September 10, 2015

Attorney of Record;
Wall, Templeton and Haldrup
145 King St. Ste. 300
Charleston S. C. 29402
(843) 329-9500

Pro se, Jack Powell
1402 Camp Rd. Unit 8-A
Charleston S. C. 29412
(843) 952-4762

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TABLE OF AUTHORITY

CASES

1. Brooker v. Silverthorne (1919)
2. Dawkins v. Union Hospital District (2012)
3. Herring v. Lawrence Warehouse Co. (1992)
4. Papa v. Brunswick General Hospital (Supp. Div. 1987)
5. Hancock v. Mid-South Mgmt. Co. Inc. (2009)

STATUTES

1. SCTCA 15-78-40
2. Rule 60 (b) (3)
3. Rule 407, 51, 51 (2), 51 (c)

OTHER AUTHORITIES

1. Al Cannon Detention Center Jail video.
2. Medical University of South Carolina Doctor Instructions to Patient Jack Powell.
3. Deposition p. 2; Appearances for the Defendant; Pedan Brown Mcleod Jr. of Wall, Templeton & Haldrup – Gordon Wade Cooper of Buyck & Sanders and John A. “Jay” Jones of Barnwell, Whaley, Patterson & Helms.
4. Deposition p. 33; 2 – 9, Q. Well, let’s move on then. So you think he intentionally – you said – revenge was the word used earlier, but you’ll have to agree with me, why would he – he had no purpose in seeking revenge since he didn’t know you, correct?

A. Incorrect. Whether he knew me or not didn’t have anything to do with it.

5. Deposition p. 50; 6 -12, A. It shows me pulled into the jail in a wheelchair, in a defective wheelchair, my foot dragging the ground, I'm yelling in pain. The female jailor stopped briefly, kind of snickers about it and said, "He'll get over it." and nurse Thompson is standing nearby not saying anything about it and didn't really seem to care.

6. Deposition p. 50; 21 – 25, Q. And that's when you were told to get out of the wheelchair, that's when the alleged assault occurred?

A. Yes. That's when the assault occurred.

7. Deposition p 110; 6 – 10, Q. Okay. All right. So then let's get back. Nurse Thompson comes over to you and he asked you to get out of the wheelchair?

A. No. He told me to get out of the wheelchair.

8. Deposition p. 110; 19 – 25, Q. He just said get out of the wheelchair?

A. Right. He said that he had talked to MUSC.

Q. Okay.

A. And basically that, you know, to get out of the wheelchair, because I won't be needing one here.

9. Deposition p. 111, 12; A. He just had a nasty look on his face.

10. Deposition p. 111, 24 – 25; A. No. He angrily told me to get out of the wheelchair because I won't be needing one here.

11. Deposition p. 112, 12 – 16; Q. He just simply, asked you in an angrily – angry voice to get out of the wheelchair?

16. Exhibit E ; Jail Video
17. Exhibit F ; Male Nurse allows abuse
18. Exhibit G ; MUSC Alumni Photo of male Nurse.
19. Exhibit H ; Intentional Harm
20. Exhibit I ; No concern for patient.
21. Exhibit J ; Authority and Power to cause harm.
22. Transcript, Motion for Summary Judgment
23. Deposition - Transcript

A. Yeah. He angrily told me to get out of the wheelchair.

NOTE; Appellant offers only what Respondent submitted as evidence from their Deposition because In forma Pauperis Pro se, doesn't have a complete copy.

12. Exhibit A ; MUSC Doctor Instructions
13. Exhibit B ; Did you see Doctor Instructions to Mr. Powell
14. Exhibit C ; Want be getting any medical attention today.
15. Exhibit D ; Previous surgeries

STATEMENT OF ISSUES ON APPEAL

1. Circuit Court erred when not recognizing the ruling by Judge J.C. Nicholson Jr.
2. Circuit Court erred when not allowing "MUSC Doctor Instructions for Jack Powell"
3. Circuit Court erred when not allowing the jail video.
4. Circuit Court erred when overlooking hostile Deposition and accepting it as the only crucial evidence.
5. Circuit Court erred when allowing Inflammatory Insult by Judge Dennis.
6. Judge Dennis erred when exercising bias.
7. Circuit Court erred when failing to consider Appellant's arguments.
8. Circuit Court erred when failing to recognize angry nurse was behaving like an angry jailor.
9. Circuit Court erred when failing to recognize rudeness, insolence, angry actions by a male nurse as assault.

STATEMENT OF THE CASE

On November 14, 2013 Jack Powell brought this action alleging Intentional Infliction of Emotional Distress, Gross Negligence, Civil conspiracy, Breach of Duty and Assault against the Carolina Center for Occupational Health (CCOH) in Charleston County, South Carolina 9th District of Common Pleas.

On July 21, 2014 Appellant appeared with CCOH for their Motion to Dismiss which was granted by Judge J. C. Nicholson Jr, except for common law assault.

On November 5, 2014 CCOH was granted Summary Judgment by Judge Markley Dennis.

On December 1, 2014 Appellant's Motion for Reconsideration was denied.

On January 2, 2015 Appellant filed the Notice of Appeal.

ARGUMENTS

RULING BY JUDGE J.C. NICHOLSON JR.

1. Because July 21, 2014 Plaintiff appeared before Judge Nicholson during the Respondents Motion to Dismiss, The Respondent was Granted as to all causes except for Assault. Respondent argued the Appellant alleges a cause of action for medical malpractice against a health care provider and the Appellant shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness.

Appellant submitted to Judge Nicholson that he was claiming assault because the male nurse was performing the duties of an angry jailor with complete control and authority and proven when the male nurse did not protect me from other jailors flagrant acts, ignored my cry of pain, ignored my obvious and unattended head injury, ignored the MUSC ER report where I had received a second dose of pain medication less than two hours earlier. Appellant submitted to the court Dawkins v. Union Hospital District (2012).

Judge Nicholson stated in the Conclusion; "IT IS FURTHER ORDERED THAT Defendant's motion to dismiss is DENIED as to Plaintiff's cause of action for common law assault, that being the sole remaining cause of action against the

Defendant. IT IS ORDERED.

MUSC DOCTOR INSTRUCTIONS FOR JACK POWELL

2. Because during the Summary Judgment hearing Judge Markley Dennis erred when he stopped and did not allow the Appellant to introduce to the court his "MUSC Doctor Instructions." Appellant stated the nurse had knowledge of his Dr. Report describing his x-rays and Judge Dennis cut Appellant off with a question and he then Stated; Trans. 4; 1-10 'But that's not anybody hitting you?' and Appellant stated; "No, sir, but it describes how I was susceptible to the hospital because I just Judge Dennis cut in again and was unable to submit he was a "56" year old patient and the Doctor Instructions revealed Appellants medical condition at 3 am and how susceptible he was to the anger of the CCOH male nurse after he was pushed in a wheelchair into the jail with the same angry MUSC police officers.

Judge Dennis then stated; "I understand, but we are not talking about a hospital. We are talking about a jail now. Appellant submits he was attended by nurses at MUSC the angry man at the jail was a nurse who had a nasty look on his face telling his Patient /Appellant to get out of his wheelchair "or else." The nurse was supposed to follow the MUSC Doctors Instructions and he did not, he intentionally failed to properly ask Appellant one question about his condition. Ref: Plaintiff's Motion for Reconsideration, Exhibit A-D patient should call the Doctor or go to the Hospital if he develops severe light headedness or weakness in any extremity or pain radiating down an arm or leg. Also it will impair

your judgment and will make you sleepy and don't do anything requiring mental alertness. Jack Powell's right knee, right shoulder, head and spine had been X-rayed and he received a pain medication injection. Hours later Appellant was given an oral narcotic, about one hour before arriving at the Al Cannon Detention Center AKA Charleston County Jail.

Plaintiff's medical condition and how susceptible he was to the conduct of the angry male nurse is relevant and should have been allowed because circumstances were controlled by the angry male nurse who had the power to control the circumstances and intentionally with his angry conduct placed the Appellant in a reasonable fear of bodily harm while affecting the mind of the Appellant. Therefore influencing his patient, the Appellant to follow his angry order accompanied with his nasty look on his face while behaving like an angry jailor and Appellant painfully got out of his wheelchair and harmed himself physically & mentally while limping through the jail. Lawrence Warehouse co. (1992) Warehouse Co. (1992), Papa v Brunswick (1978) Dawkins v Union Hospital District, (2007) and SCTCA 15-78-40. Brooker v Silvertorne (1992),

JAIL VIDEO OF JACK POWELL

3. Because Judge Dennis erred during the Motion for Summary hearing when he denied the Appellant's request to enter the jail video as evidence. Ref; Dep. 50: 1-25, in the video footage showed him being brought inside, but "the camera stopped right before I was told to get out of the [wheelchair]. Id. To clarify when the alleged assault occurred, Plaintiff was asked "when you were told to get out of the wheelchair, that's when the alleged assault occurred? Id. To which Plaintiff responded 'Yes. That's when the assault occurred.' Id.

Respondent asked that's when the alleged assault occurred and by the question alone creates an issue of facts and it should have been viewed by Judge Dennis, but he did not allow Appellant to enter the jail video after he had to be lifted from the back seat of the patrol car by two MUSC officers because of his medical condition and then brought into the jail by the wheelchair where he was assaulted. Exhibit E

Judge Dennis stated; "Sir that's not the issue. Your medical condition doesn't have anything to do with your cause of assault. That requires some affirmative action on part of the Defendant. Appellant submits the video is relevant evidence. The video displays the angry nurse Thompson walking beside his patient/Jack Powell when entering the jail in the wheelchair which reveals the actual circumstances, medical condition and Plaintiff's frame of mind when under the influence of drugs, given to him by the MUSC ER and the "56" year old Appellant was being wheeled into the jail at 3 a.m. which reveals the obvious medical condition of the Appellant who received a second dose of pain medication less than an hour before his arrival, because he was still suffering in pain from his injuries.

Also the angry nurse first revealed his anger when he said or did nothing when the female jailor injured the Plaintiff's knee with the defective wheelchair when his foot was dragging the concrete and Appellant yelled out in pain. The jailor snickered

“he’ll get over it” and then continued pulling him in the same manner. Ref.;

Plaintiff’s Motion for Reconsideration. Exhibit F

Citings; Brooker v. Silverthorne (1919), Herring v. Lawrence
Warehouse Co. (1992) ; Papa v. Brunswick Gen. Hosp. (1987), Dawkins v Union
Hospital District (2012) SCTCA 15-78-40.

HOSTILE DEPOSITION

4. Judge Dennis made a mistake when he denied the Plaintiff’s Motion for Reconsideration, the Plaintiff had entered on P. 3 that during the Defendant’s Deposition to Plaintiff that the Defendant’s attorney’s Wall, Templeton and Haldrup, engaged in an aggressive and angry manner when Appellant would not disclose where his “21” year old daughter took care of small children and where his family went to church, by leaning towards the Appellant and angrily and loudly barked that “you will answer the question” and Appellant responded; your starting to act like the angry nurse at the jail. Appellant was unable to purchase the video deposition that was used heavily against him during the Motion for Summary Judgment.

Also, attorney Jay Jones of Barnwell & Whaley was at the Deposition and the Appellant was involved in a lawsuit with him representing the Charleston County Detention Center and he was writing notes, giving them to the Defendant’s attorney and then asking questions. Citing, Rule 60 (b) (3) and Rule 407, 51, 51(2), 51(c) misconduct by an attorney. Judge Dennis erred when he denied the Appellant’s

Reconsideration.

DISPLAYED BIAS

5. Because on 7-30-14 Judge Dennis displayed contempt towards Appellant when he made an inflammatory personal attack by making an insulting statement about and to the Appellant in the courtroom which was; "I'm laughing at you too" that caused embarrassment, confusion and apprehension to attempt any furthering of his cases because of the fear of being scrutinized and the Appellant was shut down and not allowed to enter any evidence during two cases that day. Appellant had made a complaint in his Reconsideration concerning Judge Dennis's contempt towards the Pro se. Ref; (P: 3) the Appellant is submitting that Judge Dennis has displayed the same during the Motion for Summary Judgment.

JUDGE DENNIS, 2ND DISPLAY OF BIAS

6. Because Judge Dennis stated; "I mean you can testify that he didn't do anything" Tran. 3: 21-25. Judge Dennis has already made a bias decision. Tran. 4:13-15, Judge Dennis interrupted again and stated; " you never testified they did anything other than speak angrily to you' that's all you testified to. I mean that's it, that's all you said. Appellant submits Response to Motion for Summary Judgment P. 7. When specifically asked whether nurse Thompson "just simply" asked you in an angrily – angry voice to get out of the wheelchair? Plaintiff responded, "Yeah" he angrily told me to get out of the wheelchair.

Judge Dennis did not allow Appellant to argue his case or present evidence that would prove his complaint of assault and considering the actual wording to the cited holding of

Mellen, Supra., engage in some offensive conduct, which is what the angry male nurse with a nasty look on his face told his patient to get out of the wheelchair “or else” because you want be needing one here.

Also, Judge Dennis was biased when he was only referencing the transcript when their multiple entrances of evidence and he knew the Appellant was deposed under hostile circumstances and there were only seven pages submitted for him to read out of over 112 pages because the Appellant was unable to purchase the video deposition. Appellant also submits. Herring v Lawrence Warehouse Co. (1992), Papa v Brunswick General Hosp. (Supp.Div. 1987), Brooker v Silverthorne (1919), Dawkins v Union Hospital District (2012) and SCTCA 15-78-40.

JUDGE DENNIS DID NOT CONSIDER ARGUMENTS

7. Judge Dennis made the mistake of not allowing the Plaintiff to enter any evidence, Doctor Instructions, entering the jail video or citing of law, therefore Judge Dennis did not consider the arguments of counsel & law which in itself created an issue of facts.

In the Order Granting Summary Judgment it states; “The Defendant is entitled to Summary Judgment as to the cause of action for common law assault Pursuant to the holding Mellen, Supra. engage in some offensive conduct. Having considered the Motion, the parties submissions to court and the arguments of counsel, the court grants Defendant’s Motion for Summary Judgment. Judge Dennis signed and granted the Respondents Motion for Summary Judgment after it stated he considered the arguments.

Appellant submits multiple times during the hearing he was interrupted and was not allowed to enter his arguments with the MUSC Doctor Instructions, jail video, cite a case of law and was told he could not testify the angry nurse didn't do anything and the Respondent was allowed to enter Mellen v Lane and to submit Discovery. Therefore, there were relevant issues denied by the Circuit Court Judge.

Also, using an angry voice is a major component of assault which caused the Appellant to be even more apprehensive of harm after the male nurse displayed his angry nasty look on his face while stating I've talked to MUSC and then threatening him out of his wheelchair or else because you want needing one here. Respondent knew Appellant could not stand as much as an ordinary person and he was susceptible to fear and he knew he could take advantage of him. Exhibit B & C

Citing Brooker v Silverthorne (1919), Papa v Brunswick General Hospital (1987), Herring v Lawrence Warehouse Co. (1952) and Dawkins v Union Hospital District (2012).

CONTROLLING CIRCUMSTANCES

8. Because the Respondent admitted the Appellant was waiting to be screened and the male nurse behaving like an angry jailor with his nasty angry look on his face told his patient/Appellant to get out of his wheelchair, Ref; The Order granting Summary Judgment, P; 2:Par. 3 Citing; Dawkins v Union Hospital District (2102) Herring v Lawrence Warehouse Co. (1952)

INJURY CAUSED BY RUDENESS, INSOLENT AND REVENGE

9. Because Judge Dennis failed to recognize the assault after the Appellant arrived inside the jail and the angry male nurse told his patient to get out of his wheelchair. It was obvious Mr. Powell was susceptible because he was just arrested at MUSC because he was unable to get out of his wheelchair and the male nurse had read the MUSC Doctor report. He had complete power and authority over his patient who had received a second dose of medication a little over an hour before his arrival and had an obvious unattended head wound. The Male nurse knew he could harm his patient by making him get out of the wheelchair and walk by himself which was unauthorized violence that the Appellant had to inflict upon himself "or else".

Exhibits Interrogatories; B, C, F, H, I and J

Herring v Lawrence (1952), Papa v Brunswick (App.Div1987), Dawkins v Union Hospital District (2012), Brooker v Silverthorne (1919) and Hancock v Mid-South Mgmt. Co. Inc. (2009).

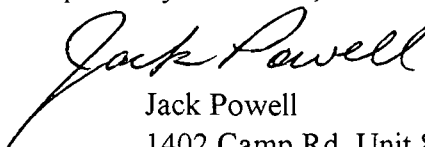
CONCLUSION

For the many relevant reasons stated, the South Carolina Court of Appeals should reverse the judgment of the Circuit Court.

September 10, 2015

Attorney of Record;
Wall, Templeton and Haldrup
145 King St. Ste. 300
Charleston S.C. 29402
(843) 329-9500

Respectfully submitted,



Jack Powell
1402 Camp Rd. Unit 8-A
Charleston S.C. 29412
(843) 952-4762