

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4907045

RECEIVED

JUN 23 2016

SC Court of Appeals

Jason Mark Carter H10147671

State Of South Carolina

PLAINTIFF(S)

John H Magill

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

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.
- 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 (formal order to follow) Statement of Judgment by the Court

ORDER INFORMATION

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
		\$
		\$
		\$

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.

Circuit Court Judge _____ Judge Code 2061 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of June, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Matthew Martin McGuire

R. Alan Powell

Monique Danielle Montgomery

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Janette W. McBride

SCANNED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Jason Mark Carter,)
 Petitioner)
)
 vs.)
)
 State of South Carolina, South Carolina)
 Department of Mental Health, and)
 John H. Magill, Director of the South)
 Carolina Department of Mental Health,)
 Respondent)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2015-CP-40-02045

**ORDER GRANTING RESPONDENT'S
 MOTION TO DISMISS PETITIONER'S
 WRIT OF MANDAMUS**

RICHLAND COUNTY
 FILED
 2016 JUN 15 AM 9:20
 JEANETTE H. MORRIS
 C.C.P. & G.S.

This matter comes before this Court upon Motion of Respondents State of South Carolina, John H. Magill, and South Carolina Department of Mental Health (SCDMH) to dismiss Jason Mark Carter's Writ of Mandamus pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure, §17-24-40 S.C. Code.

On October 16, 2009, Mr. Carter was found Not Guilty by Reason of Insanity (NGRI) for two murders in Oconee County, by the Tenth Judicial Circuit. Judge Macaulay ordered Mr. Carter committed to SCDMH for up to one hundred twenty (120) days. As attached to Respondent's Motion to Dismiss, Judge Macaulay, then the Chief Administrative Judge of the Tenth Judicial circuit, held a hearing on April 28, 2010 and found that Mr. Carter was still in need of hospitalization and ordered him to remain hospitalized at SCDMH.

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A Hearing on Respondents' Motion to Dismiss was held on July 30, 2015 at the Richland County Courthouse. Present and participating at the hearing were: R. Alan Powell, and Monique Lee, Attorneys for SCDMH on behalf of Respondents; Petitioner Mr. Carter and his counsel Matthew M. McGuire. Also present were Lindsey Simmons, Assistant Solicitor 10th Judicial Circuit and Anna Orr, Investigator, Office of the Solicitor 10th Judicial Circuit.

As provided for in §17-24-40, S.C. Code, the discretion to determine whether a person adjudicated as Not Guilty by Reason of Insanity (NGRI) is in need of hospitalization, or continued hospitalization, vests with the Chief Administrative Judge of the Circuit in which the trial was held. Specifically, once the person is adjudicated as NGRI and committed to SCDMH the Chief Administrative Judge of the Circuit in which the trial was held retains jurisdiction on all matters pertaining to the person's continued hospitalization, § -17-24-40, S.C. Code **(emphasis added):**

(C)(2)(c) **if at a later date it is determined by officials of the State Hospital [i.e. SCDMH as successor to "the State Hospital"] tht the person is no long in need of hospitalization, the officials must notify the chief administrative judge, the solicitor, the person, and the person's attorney.** Within twenty-one days after the receipt of this notice, the chief administrative judge, upon notice to all parties, must hold a hearing to determine whether the person is in need of continued hospitalization pursuant to the standard of Section 44-17-580. . . .

SCANNED

(E) The chief administrative judge of the circuit in which the trial was held at all times has jurisdiction over the person for the purposes of this chapter . . .

Mr. Carter's Counsel argued and attached to his Reply (first provided at the hearing) to Respondent's Motion to Dismiss that "The Supreme Court of South Carolina's Administrative Order Number 2014-04-24-01 (Interagency Protocol for Respondents Found Not Guilty by Reason of Insanity)" was applicable in this case. However, Page 3 of that Order supports Respondent's position: *(emphasis added)*

Henceforth, all future decisions as to the care of the Respondent shall be made by the then serving Chief Administrative General Sessions Judge for the circuit [SC Code Ann. 17-24-40 (E)].

The plain language of §17-24-40 (C)(2)(c) and (E), S.C. Code, indicates that the South Carolina General Assembly intended that the Judicial Circuit where the person was adjudicated NGRJ retain jurisdiction over the person, specifically decisions related to continued hospitalization, discharge or release. If the terms of a statute are clear, the court must apply those terms according to their literal meaning. Holly v. Mount Vernon Mills, Inc., 312 S.C. 320, 440 S.E.2d 373 (1994); State v. Uj Sun Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

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Therefore, this Court finds, in accord with § 17-24-40 and Judge Macaulay's April 28, 2010 Order, that the Chief Administrative Judge of the Tenth Judicial Circuit has continuing jurisdiction over Mr. Carter and any matter related to this case for the rest of Mr. Carter's life.

Mr. Carter, in his Reply to the Motion to Dismiss (first presented to this Court and Respondents' counsel at the hearing), and as argued during the hearing, asks that this Court, pursuant to Mr. Carter's Writ of Mandamus, order Respondent SCDMH to notify the Chief Administrative Judge of the 10th Circuit of SCDMH's determination that Mr. Carter no longer needs hospitalization. However, as argued by SCDMH counsel, SCDMH has not made that determination. SCDMH argued that the Writ of Mandamus is premature and flawed in that such notification is not a ministerial duty, unless and until, SCDMH makes a determination (a discretionary duty) that Mr. Carter no longer needs hospitalization.

Mr. Carter's counsel argued that Mr. Carter's treatment providers believe that he no longer needs hospitalization. However, that evidence is not before this Court, and even if it were, it would likely not meet the requirements of §17-24-40 (C)(2)(c) **[Emphasis added]**:

(C)(2)(c) **If at a later date it is determined by officials of the State Hospital [i.e. SCDMH as successor to "the State Hospital"]** that the person is no longer in need of hospitalization, the officials must notify the chief administrative judge, the solicitor, the person, and the person's attorney . . .

SCANNED

However, an opinion by one of more of Mr. Carter's providers is not the same as required by the statute: "If at a later date it is determined [by SCDMH officials]" that Mr. Carter "is no longer in need of hospitalization". Further, the SC Supreme Court Administrative Order Number 2014-04-24-01 supports that the SCDMH's officials determination is not a ministerial duty, but rather one that requires discretion to determine when someone no longer requires hospitalization (*emphasis added*):

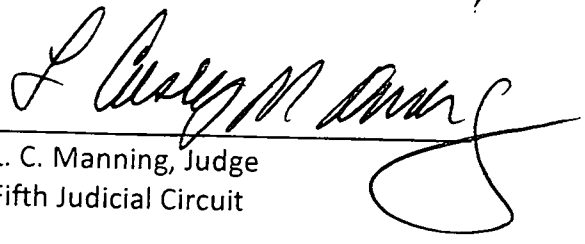
At a later time, if hospital officials charges with the care of the Respondent believe that he is no longer in need of hospitalization and is capable of being released to a less restrictive treatment environment, the hospital director shall notify the Chief Administrative Judge in writing of a request to release the Respondent from hospital care.

As argued by SCDMH counsel, SCDMH officials have not yet determined that Mr. Carter no longer requires hospitalization. If later, SCDMH officials do make such determination, then SCDMH will have a ministerial duty to notify the Chief Administrative Judge of the 10th Circuit, the solicitor, Mr. Carter and Mr. Carter's attorney. At this time ordering SCDMH to make such notification would ignore and take away SCDMH's fundamental discretion as required by § 17-24-40. Petitioner retains the ability to himself petition the Chief Administrative Judge of the 10th circuit in this matter or any other matter related to Mr. Carter's continued hospitalization, discharge or release.

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Therefore, as required by § 17-24-40, S.C. Code; Judge Macaulay's April 28, 2010 Order, the fundamental requirements to support a Writ of Mandamus, and arguments presented at the hearing, this Court finds that it lacks jurisdiction over this case and grants Respondent's Motion to Dismiss Petitioner's Petition for Writ of Mandamus. This Court further finds that the Chief Administrative Judge of the 10th Judicial Circuit has jurisdiction over Mr. Carter regarding his commitment to, or release from, the South Carolina Department of Mental Health. Since this Court lacks jurisdiction, and the Writ of Mandamus is flawed or at best premature in that SCDMH officials have not made a determination (a discretionary duty), as to Mr. Carter's continued hospitalization, this Court will not further address the substance of the Petitioner's Writ of Mandamus or Respondent's Motion to Dismiss.

IT IS ORDERED that Respondent's Motion to Dismiss Petitioner's Writ of Mandamus is granted based on lack of Jurisdiction of this Court.


L. C. Manning, Judge
Fifth Judicial Circuit

this 10 *June* 2015
th day of August, 2015

SCANNED