

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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JUN 28 2016

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS  
PAUL M. BURCH, CIRCUIT COURT JUDGE

CASE NO. 2015 - CP - 23 - 03211

Dennis Temple . . . . . Appellant,

v.

South Carolina Department of Corrections, Respondent,

BRIEF OF APPELLANT

St. Dennis Temple

Dennis M. Temple # 274802  
PERRY CORR. Inst Q3A220  
430 OAKLAWA Road  
Pelzer, South Carolina 29669

June 23, 2016  
Pelzer, South Carolina

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## STATEMENT OF ISSUE ON APPEAL

whether the trial court abused its discretion in granting Respondent summary Judgment because there was genuine issues of material facts present in the case?

whether the trial Court abused its discretion in granting Respondent Summary Judgment, when discovery had not yet accrued in the case?

## STATEMENT OF THE CASE

1. Appellant is a inmate incarcerated at Perry Correctional Institution of the South Carolina Department of Corrections. He alleges in a verified Complaint that on February 13, 2015 he was walking back from the afternoon pill line at Perry, when he slipped and fell on the sidewalk yellow painted lines and injured his left hand. Appellant left hand became swollen; painful and unable to use for several months.

2. On May 20, 2015 appellant filed a civil action in the court of Common Pleas, thirteenth Judicial Circuit for Gross Negligence and cruel and unusual Punishment, seeking \$ 150,000 compensatory and \$ 20,000 punitive damages.

3. On July 22, 2015 the Respondent filed a answer to the civil Action.

4. On August 3, 2015 the Appellant filed his first Request for Production of documents on the Respondent.

5. On September 2, 2015 the Respondent filed a response to appellants request for production of documents.

6. On September 14, 2015 appellant received a letter in the mail from Mr. Stephen Lopez (Non Jury Coordinator) of the court. Informing him that Judge Stilwell reviewed appellant request for production of documents and directed that it not be set for a hearing. A hearing was scheduled for October 29, 2015 at 9:30 a.m. before Judge Derham Cole. In addition, the letter stated that Judge Stilwell declined the hearing because appellant have not communicated with the opposing counsel as required under Rule 11 certification.

7. On September 28, 2015 appellant mailed a letter to the Respondent's attorney attempting in good faith to resolve the matters contained in the discovery motion as required by Rule 11. Appellant did not receive any response from Respondent's attorney.

8. On November 4, 2015 appellant filed another Request for Production of documents on the Respondent, which they failed to respond.

9. On December 17, 2015 appellant filed a Notice of motion, a motion for order compelling Discovery and a affidavit in support of motion for order compelling Discovery on Respondent.

10. On December 31, 2015 appellant received a notice of (ADR) Alternative Dispute Resolution from this court and over this case.

11. On January 4, 2016 appellant received a letter from the respondents attorney, Mr. McDADE addressed to the court declaring that he waive the mediation requirement and that he is filing a motion for summary Judgment in this case.

12. On January 11, 2016 appellant received a letter from Judge Stilwell informing him that the Judge has received (defendant's attorney) Mr. McDADE letter

dated January 4, 2016 requesting an exemption from mandatory ADR for unique and particularized circumstances he waived the requirement for mediation in this case.

13. In addition, On January 11, 2016 appellant filed a letter with Judge Stilwell informing him that he was injured on February 13, 2015, due to the South Carolina Department of Corrections Gross Negligence Conduct. He is an inmate in the South Carolina Department of Corrections and is unable to pay for half the cost of mediation. Appellant requests that the scheduling order for disclosure be issued and do not believe that this case could be resolved at mediation. As a result, appellant requests that mediation requirement be waived.

14. On February 12, 2016 a hearing was held at the Greenville County Court of Common Pleas regarding the appellant motion for order compelling discovery and respondent's motion for Summary Judgment. Respondent's attorney argued that, "The respondent was not Grossly Negligence" and submitted the affidavit of officer Butler who is

employed by the (Respondent) the South Carolina Department of Corrections. Appellant argued that respondent is grossly negligent; submitted an affidavit from inmate Keith Threadgill and an unsigned affidavit from inmate Bobby Hembree; and argued that respondent have not disclosed any of the requested documents involving discovery.

Both parties was advised by Judge Burch to submit proposed orders within 10 days. On March 28, 2016 Judge Burch issued a order accepting the respondent's proposed order granting respondent's motion for summary judgment and denying appellant's motion to compel discovery. Appellant received a copy on March 31, 2016.

On April 7, 2016 appellant filed a motion to Reconsider with the Court, which was denied on May 2, 2016.

Appellant appealed. This brief follows.

## ARGUMENT

### I.

Whether the trial court abused its discretion in granting Respondent Summary Judgment, because there was genuine issues of material facts present in the case?

During the February 12, 2016 hearing, within the verified Complaint, appellant's proposed order and motion to Reconsider the appellant alleges and showed that the Respondent (1) owe him a duty of care and treatment, (2) Breaching that duty by failing to exercise a slight degree (3) that appellant was injured and (4) the Respondent breach of duty proximately caused the injury. See appellant's verified complaint. P. 3-56 and at P. 13 # 59). The Respondent denied these genuine issue of material facts in there answer. see (Respondent's Answer, P. 7 at XXXVII).

## LEGAL DISCUSSION

Both the South Carolina Supreme Court and the South Carolina Court of Appeals have held consistently that the initial burden of showing the absence of any genuine issue of material fact. Brandt vs Gooding, 630 S.E.2d 259 (S.C. 2006) ("The party seeking summary judgment has the initial burden of clearly establishing the absence of a genuine issue of material fact"); Sides vs. Greenville Hosp. System 607 S.E.2d 362 (S.C. App. 2004) (same).

IN fact, the courts hold that the nonmoving party does not have to come forward or make any showing unless and until the moving party first carry its initial burden of clearly establishing the absence of a genuine issue of material fact. see 756 F.2d at 184 ("the party opposing the motion for Summary Judgment bears the burden of responding "only after" the moving party has met its burden of coming forward with proof of the absence of any genuine issues of material fact") (emphasis in original); Sides vs. Greenville Hosp. System, supra.

The Respondent in this case, has not shown a clear absence of a genuine issue of material fact, the South Carolina Department of Corrections has not met its initial burden and summary Judgment must be denied. see Baird vs. Charleston County, 511 S.E.2d 69 (S.C. 1999) ("In general, if the [moving party fails to] establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented").

## ARGUMENT

### II

whether the trial Court abused its discretion in granting Respondent Summary Judgment, when discovery had not yet accrued in the case?

### SUMMARY JUDGMENT PREMATURE

Since it is a drastic remedy, summary Judgment "should be cautiously invoked so that

NO person will be improperly deprived of a trial of the disputed factual issues". Watson v. Southern Ry. Co., 420 F. Supp. 483, 486 (D.S.C. 1975). See also Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986). (an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. see e.g. First Chicago Intl v. United Exchange Co., 836 F.2d 1375 (D.C. Cir. 1988); Gary Plastic Packing Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 756 F.2d 230 (2d Cir. 1985).

### CONCLUSION

Based on the following argument, appellant request that the trial court's order granting Respondent Summary Judgment to be vacated and his case remanded for trial after discovery is completed in this case.

June 23, 2016  
Pelzer, South Carolina

s/ Dennis M. Temple  
Dennis M. Temple # 274802  
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CASE NO. 2015-CP-23-03211

DENNIS TEMPLE . . . . . Appellant,

v.

South Carolina Department of Corrections, Respondent,

CERTIFICATE OF SERVICE

I hereby certify that on this day I have served a hand written copy of the foregoing BRIEF of Appellant upon the Respondent's attorney by depositing a hand written copy of the same in the United States mail postage prepaid at Perry Correctional Institution addressed as follows:

DOYLE, TATE & MCDADE, P.A.  
Attorneys at Law  
Post office Box 2125  
Anderson, South Carolina 29622

51 Dennis M Temple  
Dennis M Temple # 274802  
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Pelzer, South Carolina

South Carolina Court of Appeals  
Jenny ABBOTT KITCHINGS, Clerk  
Post office Box 11629  
Columbia, SC 29211

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SC Court of Appeals

IN RE: Dennis Temple v. SCOC  
CIVIL ACTION NO: 2015-CP-23-03211

Dear Ms. Kitchings:

Enclosed please find a hand written copy  
of Appellant's Brief, along with our  
certificate of service on Respondent's  
attorneys.

Yours very truly,

June 23, 2016  
Pelzer, South Carolina

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