

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Kevin J. Daniels, #247291,)
)
Plaintiff,)

Civil Action No. 15-CP-40-3563

v.)

Bryan P. Stirling, Director of)
S. C. Dept. of Corrections, David)
Dunlap, Warden, Kershaw)
Correctional Institution, Lisa)
Engram, Associate Warden,)
Kershaw Correctional Institution,)
Janice Phillips, Administrative)
Coordinator, S. C. Dept. of)
Corrections, Division of Health)
Services, Nurses Ussery and Jane)
Doe, Kershaw Correctional)
Institution, Medical Dept., individually)
and in their official capacities, et. al.,)
)
Defendants.)

ORDER GRANTING SUMMARY)
JUDGMENT IN FAVOR OF THE)
DEFENDANTS)

RICHLAND COUNTY
FILED
2016 MAR 25 PM 2:36
JEANETTE W. NEFF
C.C.P. & O.S. CLERK

RECEIVED
OCT 21 2016
SC Court of Appeals

This matter is before the Court on Defendants' Motion for Summary Judgment. Present at the hearing on March 24, 2016, were Plaintiff, who is acting Pro Se and is an inmate with the South Carolina Department of Corrections (SCDC), and James E. Parham, Jr., Esquire, who represents Defendants.

This is a medical negligence case. Plaintiff alleges in his Complaint that: on March 20, 2013, he informed the medical staff at Kirkland R & E that he had a positive TB test and treatment in the past; in April 2015, the SCDC issued a Memorandum

stating that a mandatory TB test would be administered to all inmates at Kershaw on May 5, 2015; on April 9, 2015, he sent a written Request to Staff to Nurse Ussery requesting to be excluded from all future TB tests, including the one on May 5, 2015, due to his previous positive TB test and treatment; on April 10, 2015, he made a written Request to Staff to Janice Phillips asking to be excluded from all future TB testing; on April 16, 2015, he made a written request via email to Associate Warden Lisa Engram asking to be excluded from any TB testing due to a previous positive TB test and treatment; on May 5, 2015, he reported to the TB test site and made a verbal request to Nurse Jane Doe to be excluded from the TB test, because he had a previous positive TB test and treatment; Nurse Jane Doe threatened him with disciplinary action and detention, if he did not have the injection; he protested, but eventually allowed Nurse Jane Doe to inject a syringe of "milky, looking, liquid substance" into the skin of his left arm; he became sick immediately; "the area around the injection site turned beet red in color, began to swell, eventually swelling to the size of a golf ball"; the "reddish, purplish splotch on the left arm" remains as of the date of the Complaint; he suffered coughing fits, a dry itchy, constricted throat, red eyes and runny nose for days; and he continues to have chronic headaches, suffers nightmares and anxiety or panic attacks and suffers extreme emotional distress

Plaintiff filed his Summons and Complaint on June 18, 2015. Defendants answered the Complaint and served Plaintiff with Interrogatories and Requests for Production on July 13, 2015. On the same date, Defendants filed a Motion for Summary Judgment on the grounds that they should be dismissed from the case as a

matter of law, because (1) there is no evidence of any deviations from accepted standards of medical/nursing/prison/administrative practice by Defendants that are a proximate cause of Plaintiff's alleged injuries and damages, (2) Defendants were not negligent or grossly negligent, and (3) Plaintiff failed to state a claim against Defendants upon which relief can be granted.

Initially, a hearing was held on October 1, 2015, at which time Plaintiff moved for an enlargement of time to respond to Defendants' Motion for Summary Judgment and to hire an attorney. By Form 4 Order dated October 1, 2015, The Honorable Tanya A. Gee granted Plaintiff's Motion and instructed the Clerk of Court not to schedule a new Motion hearing before November 11, 2015.

LAW

Under Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRPC), summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003); Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Sauner v. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003); Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003); McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488

(Ct. App. 1998); see also Laurens Emergency Med. Specialists, 355 S.C. at 108, 584 S.E.2d at 377 (stating that in reviewing summary judgment motion, facts and circumstances must be viewed in light most favorable to non-moving party). If triable issues exist, those issues must go to the jury. Baril v. Aiken Reg'l Med. Ctrs., 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003); Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Rule 56(c), SCRPC. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).

Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank, 354 S.C. at 660, 582 S.E.2d at 438. Rather, the nonmoving party must come forward with specific facts showing there is a

genuine issue for trial. SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRCP. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001).

In a medical malpractice action, the plaintiff must establish by expert testimony 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 or experience, so that no special learning is needed to evaluate the defendant's conduct. Botelho v. Bycura, 282 S.C.578, 320 S.E. (2d) 59 (Ct. App 1984).

DISCUSSION

During the March 24, 2016, hearing, Defendants' attorney informed the Court that Plaintiff did not serve any Answers/Responses to Defendants' July 13, 2015, Interrogatories and Requests for Production. Furthermore, since the initial hearing held on October 1, 2015, Plaintiff did not disclose the name of an expert or produce an expert Affidavit.

In addition, by letter dated September 21, 2015, Defendants served Plaintiff with the Affidavit of John McRee, M.D., in which Dr. McRee describes the medical care provided to Plaintiff at SCDC regarding tuberculosis (TB) and PPD tests. He notes that the "shot" Plaintiff received on May 4, 2015, was a PPD test, not a treatment for TB, and as shown in the medical records, over the next 2 months, Plaintiff did not report

any problems or side effects from the PPD. Dr. McRee further states in his Affidavit that Defendants did not act with deliberate indifference and did not violate any standards of medical/nursing/prison practice in their care and treatment of Plaintiff that are a proximate cause of any alleged injuries and damages, and that there is no evidence that Plaintiff was injured or damaged as a result of the PPD test performed on him on May 4, 2015.

After reviewing all of the pleadings and documents filed by Plaintiff and Defendants, and after considering the arguments of Plaintiff and Defendants' counsel, I find that there is nothing in the medical record to support the allegations in Plaintiff's Complaint that he had physical and mental reactions to the May 4, 2015, PPD test, and that Plaintiff has never had or reported any problems or side effects from the numerous PPD tests performed on him in the past.

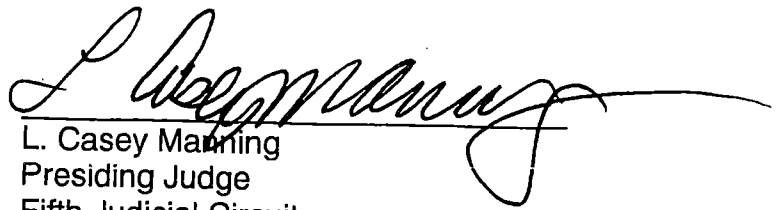
I further find that Plaintiff has not disclosed the name of an expert, has not produced an Affidavit from an expert in opposition to Defendants' Motion for Summary Judgment, and has had more than sufficient time since his alleged injuries began and after filing the lawsuit on June 18, 2015, to name an expert, to produce an expert Affidavit, to produce evidence of his alleged injuries and damages and to obtain an attorney.

Accordingly, viewing the facts and circumstances in the light most favorable to Plaintiff, I conclude that Plaintiff failed to meet his burden of proof to overcome Defendants' Motion for Summary Judgment. Therefore, because there is no genuine issue as to any material fact, Defendants are entitled to judgment as a matter of law.

Now, therefore, for the reasons stated above, it is

ORDERED that Defendants' Motion for Summary Judgment is granted, and the above-entitled action against Defendants is hereby dismissed, discontinued and forever ended with prejudice.

AND IT IS SO ORDERED.



L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

March 24, 2016

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Kevin J. Daniels, #247291,
Appellant,

IN THE COURT OF APPEALS
Appellate Case# 2016-002088

PROOF OF SERVICE

v.

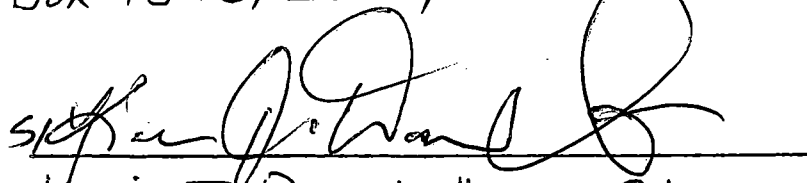
Bryan Stirling, et. al.,
Respondent.

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SC Court of Appeals

I, Kevin J. Daniels, #247291 certify that I have served a copy of the March 24, 2016 Order on Counsel for Respondent, Attorney James E. Parham, Jr. by depositing a copy of it in the United States Mail, postage prepaid, on 10/19/16, addressed to: James E. Parham, Jr., P.A., Attorneys at Law, P.O. Box 1576, Ismo, S.C. 29063.
October 19, 2016.



Kevin J. Daniels, #247291
Turbeville Correctional Institution
1578 Clarence Coker Highway
Turbeville, S.C. 29102
October 19, 2016.

Sworn to and subscribed
before me this 19th
day of October, 2016.


(NOTARY PUBLIC OF SOUTH CAROLINA)

My commission expires 5-18-26

Kevin J. Daniels, #247291
Turbeville C. D., SB- Rm. 170
1578 Clarence Coker Hwy,
Turbeville, S. C. 29162
October 18, 2016

Jenny A. Kitchings, Clerk
S. C. Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

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SC Court of Appeals

Re: Kevin Daniels, #247291 v. Bryan Stirling
Appellate Case #: 2016-002088

Dear Ms. Kitchings:

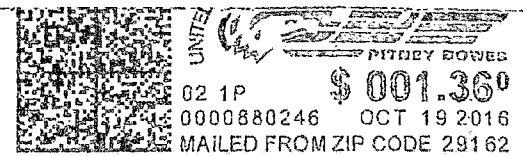
Please note I'm in receipt of your letter dated 10-14-2016 directing me to provide you with a copy of the March 24, 2016 order. I've enclosed the 3-24-16 order which you instructed me to send. Please forgive me oversight in not providing it in the first instance, and I apologise for any inconvenience this has caused you and or your staff.

Sincerely,



Kevin J. Daniels, #247291
Appellate pro se
10/18/2016

CLARENCE COKER HWY.
EVILLE, SC 29162



Kevin J. Daniels, #247291
Turbeville C. I., SB-Rm. 170
1578 Clarence Coker Hwy.
Turbeville, S. C. 29162

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OCT 19 2016

MAILROOM
TURBEVILLE CI

Jenny A. Kitchings, Clerk
S. C. Ct. of Appeals
P. O. Box 11629
Columbia, S. C. 29211