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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4006650

Reginald #264654 Brown

South Carolina Dept of Correction Health Services

Niccolo Don Emperor #264654

PLAINTIFF(S)

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. No. Suit); 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 (for ~~order to follow~~) Statement of Judgment by the Court:

Defendant's summary and motion of facts

ORDER INFORMATION

This order ends ~~the~~ the case.
Additional Information for the Clerk :

Plaintiff's motion to compel is denied. The plaintiff put nothing on the record to support the motion.

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 [Signature] Judge Code 2143 Date 11/10/16

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 3rd day of Nov, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Reginald #264654 Brown

Niccolo Don Emperor #264654

James E. Parham Jr.

Reginald #264654 Brown

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court [Signature]

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Reginald Brown, #264654,)
)
Plaintiff,)

Civil Action No. 15-CP-40-6650

v.)

Dr. Samuel L. Soltis, John B. McRee,)
)
E. Holcomb, and South Carolina)
Department of Corrections,)
)
Defendants.)

ORDER

RICHLAND COUNTY
FILED
2016 NOV 28 PM 2:25
JEANETTE R. HOBRIDE
Clerk of Court
C.C.P. & G.S.

This matter is before the Court on Defendants' Motion for Summary Judgment. Present at the hearing on November 10, 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/deliberate indifference case. Plaintiff alleges in his Complaint that: on August 17, 2008, his right ear was lacerated during an assault by another inmate; he was taken to Trident Hospital where his ear was sewn back together with numerous stiches; as a result of the surgery, he has a keloid scar behind his right ear that causes chronic and substantial pain; he made numerous requests to medical staff to be seen by an outside doctor to have the keloid scar removed, but a SCDC doctor (not a defendant) repeatedly denied these requests; instead, he was given numerous cortisone steroid injections that were supposed to lessen the pain and

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shrink/flatten the scar, but the injections only made things worse; on November 15, 2010, he made another request for outside medical care to remove the keloid scar, which the SCDC Medical Director approved; on March 29, 2011, he had outpatient surgery at Tuomey Hospital to remove the keloid scar; the surgeon at Tuomey told him that if the keloid scar formed again, he would need another surgery and a stronger steroid injection to keep the scar from forming again; thereafter, he began having serious pain in the right side of his head as well as behind his right ear where another keloid scar had formed; when he complained to the medical staff at Lieber, he was given Ibuprofen, which did not help; his request to be seen again by the surgeon at Tuomey Hospital was denied on September 6, 2012; he was offered more steroid injections, but they affect his memory; and his request for another surgical consultation and laser surgery to remove the keloid scar was denied by Defendant Nurse Practitioner E. Holcomb.

Plaintiff filed his Summons and Complaint on November 9, 2015, and served the original Defendants, Dr. Samuel L. Soltis, John B. McRee and E. Holcomb (SCDC employees), on March 22, 2016. Defendants answered the Complaint and served Plaintiff with Interrogatories and Requests for Production on March 28, 2016.

On the same date, Defendants filed a Motion to dismiss themselves as individual Defendants in the tort cause of action and to substitute the SCDC as the only named Defendant. Defendants also filed a Motion for Summary Judgment regarding the medical negligence and deliberate indifference causes of action on the grounds that they should be dismissed from the case as a matter of law, because (1) there is no

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evidence of any deviations from accepted standards of medical 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.

An initial hearing was held on August 4, 2016. Based on Defendants' Motion to Dismiss and pursuant to the Tort Claims Act, the Honorable G. Thomas Cooper, Jr., issued an Order dated August 4, 2016, dismissing the individual Defendants, Dr. Samuel L. Soltis, John B. McRee and E. Holcomb, in the tort cause of action and substituting the SCDC as the only named Defendant. In addition, Judge Cooper granted Plaintiff's Motion for additional time to respond to Defendants' Motion for Summary Judgment and continued the hearing to the present date.

LAW

Under Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRCP), 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

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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.

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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), SCRPC. 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).

A. Medical Negligence.

In a medical negligence action, 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. Botehlo v. Bycura, 282 S.C.578, 320 S.E. (2d) 59 (Ct. App 1984).

In addition, pursuant to the South Carolina Tort Claims Act, S. C. Code Ann. §§15-78-10, et. seq., Plaintiff must prove that any misconduct on the part of Defendant SCDC in the care and treatment of Plaintiff rose above the level of negligence to the level that Defendant SCDC acted in a grossly negligent manner. Gross negligence is defined as "the failure to exercise slight care" or "the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do."

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B. Deliberate Indifference.

To state a claim under §1983, Plaintiff must show that the individual Defendants deprived him of a right, privilege or immunity secured by the Constitution or Federal law and that in doing so the individual Defendants acted under color of state law. Chiles v. Crooks, 708 F. Supp. 127, 129 (D.S.C. 1989); Gomez v. Toledo, 446 U.S. 635, 640 (1980); Inmates v. Owens, 561 F.2d 560 (4th Cir. 1977). The Eighth Amendment is violated when Plaintiff shows he is incarcerated under conditions posing substantial risk of serious harm, and that Defendants were deliberately indifferent to Plaintiff's health and safety. Farmer v. Brennan, 511 U.S. 825 (1994).

Deliberate indifference may be demonstrated by either actual intent or reckless disregard. Benson v. Cady, 761 F.2d 335, 339 (7th Cir. 1985). A Defendant acts recklessly by disregarding a substantial risk of danger that is either known to Defendant or which would be apparent to a reasonable person in Defendant's position. Id. The test is a subjective one. Farmer v. Brennan, 511 U.S. 825 (1994). Nevertheless, mere negligence does not violate the Eighth Amendment. Estelle, supra, at 106.

Deliberate indifference in the face of pervasive risk of harm or deliberate indifference or callous indifference on the part of prison officials to a specific known risk of harm states an Eighth Amendment claim. Pressly v. Hutto, 816 F.2d 977 (4th Cir. 1987).

Deliberate indifference on the part of prison officials, required to be shown in order to establish an Eighth Amendment violation arising out of failure to prevent harm,



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requires more than ordinary lack of due care for a prisoner's interests or safety. Farmer v. Brennan, 511 U.S. 825 (1994).

A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement, unless the official knows of and disregards an excessive risk to the inmate's health and safety. The official must be aware of facts from which an inference could be drawn that a substantial risk of serious harm exists, and the official must also draw that inference. Id. A prison official's failure to alleviate a significant risk that he should have perceived, but did not, while no cause for commendation, does not constitute infliction of punishment for Eighth Amendment purposes. Id.


A prisoner claiming that prison officials violated his Eighth Amendment duty to protect him against harm need not show that an official acted or failed to act believing that harm actually would befall an inmate. It is sufficient that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. Id.

DISCUSSION

During the hearing, Defendants' attorney informed the Court that Plaintiff did not serve any Answers/Responses to Defendants' Interrogatories and Requests for Production and that Plaintiff did not disclose the name of an expert or produce an expert Affidavit.

In addition, by letter dated July 21, 2016, Defendants served Plaintiff with the Affidavit of Defendant John McRee, M.D., in which Dr. McRee describes the medical care provided to Plaintiff at SCDC regarding his keloid scar. Dr. McRee states that

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Defendants did not violate any standards of medical practice or act with deliberate indifference in the care and treatment of Plaintiff's keloid scar, which is benign and is not a serious medical condition that requires urgent or emergent medical care. Based on the past, Dr. McRee concludes that Plaintiff does not need another surgical consultation, because most likely, if Plaintiff has another surgery to remove the keloid scar, another keloid scar will form quickly. Furthermore, Plaintiff already has confirmed in the past that steroid injections do not help with his pain, so there is no medical reason to refer him to the plastic surgeon for an injection to treat his symptoms. Finally, according to the SCDC medical records, Plaintiff's pain is controlled with the Ibuprofen, and he cannot show any evidence that the keloid scar is affecting his activities of daily living.

CONCLUSION

After reviewing all the pleadings and documents filed by Plaintiff and Defendants, and after considering the arguments of Plaintiff and Defendants' counsel, I find that Plaintiff has not produced any probative evidence (1) to show that Defendant SCDC violated standards of medical practice or was grossly negligent, (2) to show that the individual Defendants were deliberately indifferent, and (3) to show that Defendants' actions and conduct were a proximate cause of Plaintiff's alleged injuries and damages.

I further find that because the subject matter of this case does not lie within the ambit of common knowledge or experience, Plaintiff needs an expert witness. However, 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

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than sufficient time since his alleged injuries began and after filing the lawsuit on November 9, 2015, to name an expert, to produce an expert Affidavit, and to produce evidence of his alleged injuries and damages.

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. 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.



George C. James
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

November 10, 2016

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