

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4007176

Reginald Brown #264654

Samuel L Soltis

Niccolo Don Emperor #264654

South Carolina Dept of Corrections Health Services

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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), SCRCP; Rule 41(a), SCRCP (Vol. No. suit); Rule 43(k), SCRCP (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; 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 _____

RICHLAND COUNTY
 FILED
 JAN 6 2016
 2:28 PM
 JAMES E. PARHAM JR.
 CLERK OF COURT

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 (~~format order to follow~~) Statement of Judgment by the Court:

ORDER INFORMATION

Defendant's Motion for summary judgment granted

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

Reginald #264654 Brown
Niccolo Don Emperor #264654

Reginald #264654 Brown

Samuel L Soltis

James E. Parham Jr.

Reginald #264654 Brown

Samuel L Soltis

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

RECEIVED
Clerk of Court

Jeanette W. McBride

SCANNED

JAN 03 2017

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-40-7176

v.)

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

ORDER

Defendant.)
_____)

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JAN 03 2017

SC Court of Appeals

RICHLAND COUNTY
FILED
2016 NOV 28 PM 2:31
JEANETTE M. McBRIDE
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: in May 2010, he was assaulted by another inmate during which the tail of his pancreas was punctured causing internal bleeding and requiring open-wound surgery; starting in July 2010, he started complaining about chronic abdominal pain and left chest pain that made it difficult for him to eat a full tray of food and drink fluids; he had an examination done which revealed adhesion scar tissue and loop bowels in his pancreatic duct caused by the surgery; he was prescribed several medications that did not cure his chronic pains; he requested surgery to remove the adhesion scar tissue

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and loop bowels from his pancreatic duct; he was told to request outside medical care at his cost, because SCDC determined that his condition did not warrant a surgery; his request for surgery was denied by Defendants, because they said nothing was found to indicate the need for further surgery; and he requested another ultrasound and a referral to a gastroenterologist, but it was denied again, because Defendants said there is no objective data showing pain.

Plaintiff filed his Summons and Complaint on December 1, 2015, and served the original Defendants, Dr. Samuel L. Soltis and John B. McRee (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 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.

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Samuel L. Soltis and John B. McRee, in the tort cause of action and substituting 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 (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).

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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), SCRCP. 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), SCRCP, 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).

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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. Botelho 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."

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).

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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, 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.

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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 abdominal and chest problems and in which Dr. McRee states that Defendants did not violate any standards of medical practice or act with deliberate indifference in the care and treatment of Plaintiff's abdominal and chest problems. For several years, Plaintiff's lab work and radiology studies were normal and did not support a medical reason for his constant complaints of abdominal and chest pain. Because Plaintiff's most recent CT scans did not show any adhesions or scar tissue around his bowels, this cannot be a reason for his abdominal problems and pain. Plaintiff continues to have lab work performed and continues to receive medications for his stomach complaints.

Dr. McRee concludes that Plaintiff does not have a serious medical condition regarding his left upper quadrant and chest pain that requires urgent or emergent

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medical care and that based on the lab reports and numerous radiology studies, Plaintiff does not need another surgical and/or GI consultation. Plaintiff's abdominal problems are treated and controlled with medication.

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 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 than sufficient time since his alleged injuries began and after filing the lawsuit on December 1, 2015, to name an expert, to produce an expert Affidavit, and to produce evidence of his 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

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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 12, 2016

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