

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No.: 2016-CP-26-01048

Terrance J. McLeod, Plaintiff, Appellant,

v.

Jarius Orel English-McMillan, Roland Shelley, Roland G. Shelley, II,
Scott C. Shelley and Coastal Carolina University, Defendants,

Of whom Coastal Carolina University is the Respondent.

RECORD ON APPEAL

John D. Clark, Esquire, Bar No.: 64296
Clark Law Firm, LLC
22 East Liberty Street
P.O. Drawer 880
Sumter, South Carolina 29151-0880
(803) 775-1234
Attorney for Appellant

Lisa A. Thomas, Esquire
Thompson & Henry, P.A.
1300 Second Avenue, 3rd Flr
Post Office Box 1740
Conway South Carolina 29528
(843) 248-5741
Attorney for Respondent
Coastal Carolina University

Jimmy C. Powell, Esquire
Turner, Padget, Graham & Laney, P.A.
Founders Centre
2411 North Oak St., Suite 301
P.O. Box 2116
Myrtle Beach South Carolina 29578
(843) 213-5502
Attorney for Defendants Roland Shelley,
Roland G. Shelley, II & Scott C. Shelley

RECEIVED

JAN 12 2017

SC Court of Appeals

INDEX

Amended-Complaint	1
Defendant Coastal Carolina University's Notice of Motion and Motion to Dismiss	6
Answer to Plaintiff's Amended Complaint	7
Transcript of Record	16
Order of Dismissal as to Defendant Coastal Carolina University	23

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Terrance J. McLeod,)

Plaintiff,)

-v.-)

Jarius Orel English-McMillan, Roland)
Shelley, Roland G. Shelley, II, Scott C.)
Shelley and Coastal Carolina University,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEEN JUDICIAL CIRCUIT
2016-CP-26-1048

AMENDED-COMPLAINT

(Jury Trial Demanded)

(Assault and Battery)

(Intentional Infliction of Emotional Distress)

(Gross Negligence)

2016 FEB 26 PM 2:03

The Plaintiff, complaining of the Defendants above named, would respectfully show unto this Honorable Court that:

1. Plaintiff is a citizen and resident of the County of Berkeley, State of South Carolina.
2. The Defendant Jarius Orel English-McMillan is a citizen and a resident of the State of Florida, and at the time of the herein occurrence, was a college student at Coastal Carolina University in Conway, SC.
3. The Defendants Roland Shelley, Roland G. Shelley, II and Scott C. Shelley are citizens and residents of the County of Charleston, State of South Carolina, and at the time of the herein occurrence, were the owners of the residence located at 1501 Pace Circle, Conway, South Carolina, said residence being known by the students of Coastal Carolina University as the "Goodyear House."
4. The Defendant Coastal Carolina University is a South Carolina State supported university in the County of Horry, State of South Carolina, and at all times referenced herein,

SECOND CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

12. Plaintiff realleges the allegations of the above paragraphs, and incorporates the same herein and by reference as if fully repeated verbatim.

13. The Plaintiff alleges he has suffered great emotional distress from the outrageous conduct by the Defendant Jarius Orel English-McMillan, in which Defendant Jarius Orel English-McMillan:

- a. Intentionally or recklessly inflicted harm that was certain to result in emotional distress;
- b. Behaved in a manner that was so extreme and outrageous in a nature that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community;
- c. Caused the Plaintiff to suffer from severe emotional distress; and
- d. The emotional distress suffered by the Plaintiff was severe so that no reasonable man could be expected to endure it.

All of which resulted in the Plaintiff suffering emotional and psychological depression as well as other mental disabilities, thus resulting in costly therapeutic attention.

THIRD CAUSE OF ACTION
(Gross Negligence)

14. Plaintiff realleges the allegations of the above paragraphs, and incorporates the same herein and by reference as if fully repeated verbatim.

15. Plaintiff alleges that the Defendants Roland Shelley, Roland G. Shelley, II, Scott C. Shelley and Coastal Carolina University (herein after referenced as "Defendants") were malicious, reckless and grossly negligent in their failure to exercise due care in the following particulars:

THOMPSON
& HENRY, P.A.

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740

CONWAY, SOUTH CAROLINA 29528

TELEPHONE
(843) 248-5741

FACSIMILE
(843) 248-5112

LISA A. THOMAS
LThomas@THOMPSONLAW.COM

April 29, 2016

VIA HAND DELIVERY

The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
Post Office Box 677
Conway, SC 29528

RE: Terrance J. McLeod v. Jarius Orel English-McMillan, Roland Shelley, Roland G. Shelley, II, Scott C. Shelley and Coastal Carolina University
C/A #2016-CP-26-01048
T&H No.: 54601.62

Dear Melanie:

I am enclosing the original and one (1) copy of Defendant Coastal Carolina University's Notice of Motion and Motion to Dismiss in connection with the above-captioned matter along with the Motion Coversheet, Rule 11 Certification, proper filing fee and proof of service on opposing counsel. Upon your filing, please return the clocked copy to me via our assistant who has hand delivered these items to you.

Thank you in advance for your assistance in this regard.

Very truly yours,

THOMPSON & HENRY, PA

L. A. Thomas
Lisa A. Thomas

LAT/lwj

Enclosures

cc: John D. Clark, Esquire
Jackie Patterson [IRF #99372]

5
RECEIVED MAY 01 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Terrance J. McLeod,)
)
 Plaintiff,)
)
 vs.)
)
 Jarius Orel English-McMillan,)
 Roland Shelley, Roland G.)
 Shelley, II, Scott C. Shelley)
 and Coastal Carolina University,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 C/A NO. 2016-CP-26-01048

**DEFENDANT COASTAL
 CAROLINA UNIVERSITY'S
 NOTICE OF MOTION
 AND MOTION TO DISMISS**

**TO: PLAINTIFF, NAMED ABOVE, AND JOHN D. CLARK, ESQUIRE, HIS
 ATTORNEY OF RECORD**

YOU WILL PLEASE TAKE NOTICE that the Defendant Coastal Carolina University, by and through its undersigned attorneys, will move before the Presiding Judge of the Fifteenth Judicial Circuit, Court of Common Pleas, Horry County, Conway, South Carolina, on the tenth (10th) day after service hereof, or on such day and at such time as the court may appoint, for an Order in the above entitled action granting this Defendant's Motion to Dismiss. This motion will be based on Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, S.C. Code Ann. § 15-78-110, and upon such other pleadings and documents in this matter on file in the Horry County Clerk of Court's office, relevant law, and upon such other documents and arguments as may be presented at the hearing of this motion.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Terrance J. McLeod,)
)
Plaintiff,)
)
vs.)
)
Jarius Orel English-McMillan,)
Roland Shelley, Roland G.)
Shelley, II, Scott C. Shelley)
and Coastal Carolina University,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2016-CP-26-01048

CERTIFICATION

I hereby certify that prior to filing the attached Defendant Coastal Carolina University's Notice of Motion and Motion to Dismiss, I have either consulted with the opposing party and attempted in good faith to resolve the matter or that such consultation would serve no useful purpose or that such consultation could not be timely held in this instance.

This Certificate is made in satisfaction of Rule 11(a) of the South Carolina Rules of Civil Procedure.

Lisa A. Thomas, SC Bar #66458
Attorneys for the Defendant
Coastal Carolina University



THOMPSON & HENRY, P.A.
1300 Second Avenue, Third Floor (29526)
P. O. Box 1740
Conway, South Carolina 29528
(843) 248-5741 - voice
(843) 248-5112 - fax
lthomas@thompsonlaw.com

April 29, 2016
Conway, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) Docket No.: 2016-CP-26-1048

TERRANCE J. MCLEOD,)
)
Plaintiff,)

v.)

JARIUS OREL ENGLISH-MCMILLAN,)
ROLAND SHELLEY, ROLAND G.)
SHELLEY, II, SCOTT C. SHELLEY)
AND COASTAL CAROLINA)
UNIVERSITY,)

ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT
(Jury Trial Demanded)

Defendants.

Defendants, Roland Shelley, Roland G. Shelley, II, and Scott C. Shelley
answer and respectfully show unto the Court:

FOR A FIRST DEFENSE

1. These answering Defendants demand a jury trial.
2. Upon information and belief, the allegations of Paragraph 1 of the Amended Complaint are admitted.
3. Upon information and belief, the allegations of Paragraph 2 of the Amended Complaint are admitted.
4. Answering the allegations of Paragraph 3 of the Amended Complaint, it is admitted that the Shelleys are owners of 1501 Pace Circle in Conway, SC. The remaining allegations of Paragraph 3 are denied and strict proof is demanded thereof.
5. Upon information and belief, the allegations of Paragraph 4 of the Amended Complaint are admitted.
6. These answering Defendants are without sufficient inform or knowledge to form a belief as to the allegations of Paragraph 5 of the Amended Complaint, therefore said paragraph is denied and strict proof is demanded thereof.

15. Answering the allegations of Paragraph 14 of the Amended Complaint, these answering Defendants reiterate and reallege their responses to the allegations of Paragraphs 1-13 above as if repeated verbatim herein.

16. The allegations of Paragraph 15 (including subparts) directed towards these answering Defendants are denied and strict proof is demanded thereof.

17. Except as specifically admitted, qualified, or explained, Defendant denies the allegations and demands strict proof of each allegation.

AS AN ADDITIONAL DEFENSE
(Comparative Negligence)

18. FURTHER ANSWERING, any injury and damage sustained by Plaintiff may have been caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, by others. Therefore, the Court should reduce any recovery awarded to Plaintiff for the alleged injuries and damage based upon the percentage of negligence or willfulness attributed to Plaintiff.

AS AN ADDITIONAL DEFENSE
(Punitive Damages)

19. FURTHER ANSWERING, any award of punitive damages would violate the constitutional safeguards provided by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded.

AS AN ADDITIONAL DEFENSE
(Sole Negligence of Terrance J. McLeod)

1 (There were no exhibits marked during the hearing.)
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 against the university, there is no duty for the university to
2 intervene in the actions of adult students after hours engaged
3 in non-university activities to either preclude them for doing
4 this, nor do they have the power to preclude them for doing
5 this or to warn them of going to parties where, as alleged in
6 the complaint, there was excessive consumption of alcohol.
7 So, Your Honor, we put forth that we do not believe there is a
8 cause of action, much less any cause of action for gross
9 negligent, within the four corners of this complaint as to
10 Coastal Carolina University.

11 THE COURT: All right. Mr. Clark.

12 MR. CLARK: May it please the Court, Your Honor. Your
13 Honor, I believe the Defendant's argument is improper at this
14 stage of the proceeding in that we have alleged gross
15 negligence and that the university would be liable under the
16 Tort Claims Act 15-78-60, Subsection 25 if they did not
17 exercise duty of supervision, protection, control, custody of
18 a student if they exercise it in gross, in a grossly negligent
19 manner, and we've alleged that, and whether or not the
20 university had a duty is a factual legal issue that might be
21 addressed at summary judgment, at the summary judgment stage,
22 but to say that the pleadings, which allege gross negligence,
23 does not state a cause of action I think is, is inappropriate
24 at this stage of the proceeding, Your Honor. That's, that's
25 our position on, on that issue.

1 action upon which relief can be granted. I mean, I understand
2 your argument, but the complaint in and of itself basically
3 admits that there is no duty by Coastal Carolina, private
4 property, off campus, and all you've got are two students that
5 went to Coastal Carolina, and that's not sufficient to create
6 any type of duty by the university. So I'm going to grant the
7 motion. All right.

8 MS. THOMAS: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (Adjourned.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 Terrance J. McLeod,)
)
 Plaintiff,)
)
 vs.)
)
 Jarius Orel English-McMillan,)
 Roland Shelley, Roland G.)
 Shelley, II, Scott C. Shelley)
 and Coastal Carolina University,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 C/A NO. 2016-CP-26-01048

ORDER OF DISMISSAL
 AS TO DEFENDANT
 COASTAL CAROLINA UNIVERSITY

HORRY COUNTY
 2016 JUL 13 PM 3:13
 MELANIE ROBERTSON-WATTS
 CLERK OF COURT

THIS MATTER CAME BEFORE the Court on June 14, 2016 pursuant to the Defendant Coastal Carolina University's Notice of Motion and Motion to Dismiss. Coastal Carolina University was represented by Lisa A. Thomas, Esquire, of the law firm of Thompson & Henry, P.A. The Plaintiff was represented by John D. Clark, Esquire, of the Clark Law Firm, LLC.

Coastal Carolina University argued that the Complaint, on its face, failed to state a cause of action against Coastal Carolina University in that the party where Plaintiff was injured in a fight took place off-campus, was not part of a campus function, and, there were no allegations that employees or agents of Coastal Carolina University were involved. The assault clearly appears to be attributable to the acts of a third-party, co-Defendant Jarius Orel English-McMillan. Defendant Coastal Carolina University contends it is entitled to dismissal as to all causes of action specifically, assault and battery, intentional infliction of emotional distress and gross negligence.

Attorney for the Plaintiff argued that it was too early in the process and that gross negligence had been alleged as to the University. Counsel for Coastal Carolina University

1/MHC

COPY 23

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No.: 2016-CP-26-01048

Terrance J. McLeod, Plaintiff, Appellant,

v.

Jarius Orel English-McMillan, Roland Shelley, Roland G. Shelley, II,
Scott C. Shelley and Coastal Carolina University, Defendants,

Of whom Coastal Carolina University is the Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 9, 2017



John D. Clark, Esquire, Bar No.: 64296

Clark Law Firm, LLC

22 East Liberty Street

P.O. Drawer 880

Sumter, South Carolina 29151-0880

(803) 775-1234

Attorney for Appellant

RECEIVED
JAN 12 2017
SC Court of Appeals