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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Commons Pleas

G. Thomas Cooper Jr., Circuit Court Judge

Appellate Case No.: 2016-002582

Larry Edward Hendricks,

Appellant,

v.

South Carolina Dept. of Mental Health,

Respondent,

MOTION FOR LEAVE TO AMEND THE NOTICE OF APPEAL

The Appellant, above named, asks leave of this Honorable Court to Amend his Notice of Appeal to include an order, from the same case, 2014-CP-40-03397, that the lower court failed to Rule on Through Appellant's Rule 59(e) SCRPC, before the closing of the Case.

On November 2, 2014, Appellant filed a Motion for a ruling to show cause. It involved a sub-issue of harassment and retaliation by the Respondent

that occurred after a motion hearing had been heard by the Court on another issue. On October 15, 2015, a hearing was had on the motion for a Ruling to show cause and subsequently on October 29, 2015, the Honorable DeAndrea G. Benjamin, Judge, Fifth Judicial Circuit, signed a proposed Order of the Respondent that included judicial precedent and procedure that applies to an inmate within the Dept. of Corrections, not an involuntarily committed individual, in the Dept. of Mental Health.

A Motion to Alter or Amend that Order was filed. Respondent filed a Response to Appellant's motion and agreed with the Appellant's Motion to Alter or Amend, in part, on February 10, 2016. Though both parties concurred that the Order was based on a legal precedent that was in error, the Court had failed to Alter or Amend the Order before the closing of the case. As such it is ripe to be included in the subject being appealed.

Therefore, the Appellant humbly asks this Court to allow the Notice of Appeal be amended to include the enclosed Order filed November 4, 2015.

January 19, 2017

Respectfully submitted,
~~Larry Edward Hendricks~~
Larry Edward Hendricks
Appellant, Pro-se

THE STATE OF SOUTH CAROLINA

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IN THE COURT OF APPEALS

JAN 8 2017

APPEAL FROM RICHLAND COUNTY

SC Court of Appeals

Court of Commons Pleas

G. Thomas Cooper Jr., Circuit Court Judge

Appellate Case No.: 2016-002582

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JAN 8 2017

Larry Edward Hendricks,

SC Court of Appeals

Appellant,

v.

South Carolina Dept. of Mental Health,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Appellant, above named, humbly comes before This Appellate Court to request Leave to proceed in Forma Pauperis because of him being a ward of the state, through his involuntary commitment to the care and treatment of the Respondent.

As such, The Appellant does not have the funds available to pay the cost to proceed in this action. The only funds received are a stipend amount for rehabilitation, which does not

Change the Appellant's poverty.

As a ward of the state and pursuant to Ex-parte; John W. Rice, 415 S.E.2d 819 (SC 1992), and Lane v. Brown, 83 S.Ct. 768 (1963); Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 586 (1956); The Appellant ask for this motion to be granted and be allowed to proceed in Forma Pauperis.

THIS THE APPELLANT HUMBLY PRAYS!

January 19, 2017

Respectfully Submitted,
Larry Edward Hendricks
Larry Edward Hendricks
Appellant, Pro-se
1700 St. Andrews Terr, Bld A.
Columbia, SC 29210-5412

CERTIFICATE OF SERVICE

I, the Appellant, by signing above, certifies that he has sent a copy of the above and his motion for leave to amend the Notice of Appeal, to Respondent's Counsel, Matthew G. Gerald, P.O. Box 8448, Columbia, SC 29202, via the U.S. Postal Service, on the above date.

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SC Court of Appeals

Larry Edward Hendricks, 2959

Correct Care

1700 St. Andrews terr., Bldg A

Columbia, SC 29210-5412

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Clerk, S.C. Court of Appeals

Columbia, SC

JAN 30 2017

SC Court of Appeals

January 19, 2017

Re: Hendricks v. SCDMTH, App. Case # 2016-002582.

Dear Madam Clerk,

Please find enclosed two motions. I have sent a copy of same to the Respondent's Counsel.

I appreciate your time and assistance in this matter.

Sincerely,
Larry Edward Hendricks

cc: Matthew G. Gerald, Esq.

File

Rec'd 11/21/15

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Larry Edward Hendricks,

Civil Action No. 2014-CP-40-03397

Plaintiff,

v.

RECEIVED ORDER

South Carolina Department of Mental Health,

JAN 30 2017

Defendant.

SC Court of Appeals

2015 OCT 29 AM 8:50
CLERK OF COURT
COURT OF COMMON PLEAS
RICHLAND COUNTY

This matter came before me on October 15, 2015, for a hearing on two motions: (1) Plaintiff's Motion for a Ruling to Show Cause, served on or about November 2, 2014; and (2) Defendant's Motion for More Definite Statement, served on or about June 10, 2015. Appearing at the hearing were Matthew G. Gerrald of Barnes, Alford, Stork & Johnson, LLP on behalf of the Defendant and Plaintiff Larry Edward Hendricks, *pro se*. After carefully reviewing the record, the materials submitted by the parties, and the applicable law, I hereby enter this order awarding the relief set forth herein.

FACTUAL AND PROCEDURAL BACKGROUND

The Plaintiff is a resident of the Sexually Violent Predator Treatment Program (the "SVPTP"), which is administered by the South Carolina Department of Mental Health ("SCDMH") and located on the grounds of the Broad River Correctional Institution in Columbia. In his pleadings, he alleges that SCDMH is violating various rights allegedly afforded to him pursuant to South Carolina law and the United States Constitution. He filed his initial Complaint on May 23, 2014, alleging violations primarily pertaining to the amount and quality of the food provided to him by SCDMH pursuant to an agreement with the South Carolina Department of Corrections. SCDMH filed its Answer to the Complaint on July 28, 2014. Thereafter, on

MB

August 8, 2014, the Plaintiff filed his Reply to Defendant's Answer and Motion to Strike, in which he challenged various averments in SCDMH's Answer. On August 25, 2014, the Plaintiff filed a pleading—purported to be an Amended Complaint—adding additional allegations to his Complaint pertaining to SCDMH's alleged failure to properly accommodate the dietary preferences dictated by his Islamic faith. SCDMH's Motion to Strike Plaintiff's Amended Complaint, filed on September 9, 2014, asserted this pleading was not actually an amendment pursuant to Rule 15(a), SCRCF, but was in the nature of a supplemental pleading pursuant to Rule 15(d), SCRCF, and must be stricken because it was filed without leave. Finally, on September 18, 2014, the Plaintiff filed a Motion for Leave to File Supplemental Complaint questioning whether he may be forced to room with another sexual predator.

All of the aforementioned motions were heard by The Honorable Deadra L. Jefferson on October 14, 2014. At the hearing, the Plaintiff and counsel for SCDMH signed a consent Order directing the Plaintiff to file a Second Amended Complaint within twenty-one (21) days after the entry of the Order. The Order was subsequently entered on December 1, 2014, and thus the Second Amended Complaint was due no later than December 22, 2014. The consent Order directed the Plaintiff to “file a Second Amended Complaint incorporating all of—but no more than—the allegations contained in his Complaint, Amended Complaint, and proposed Supplemental Complaint into a single pleading.” It further ordered that “no further amendments to the Plaintiff's pleadings will be permitted absent substantial justification.”

Between the October 14, 2014 hearing and the consent Order's entry, the Plaintiff filed a Motion for a Ruling to Show Cause, in which he alleged that SCDMH retaliated against his filing of this lawsuit by suspending his computer privileges and confiscating several floppy disks used to store his files. Subsequently, on December 29, 2014, one week after the deadline for filing his Second Amended Complaint had passed, the Plaintiff filed a Motion to Stay, in which

he requested that the court stay the time for him to file his Second Amended Complaint until his Motion for a Ruling to Show Cause is decided. That motion came before me for a hearing on May 4, 2015, at which time I denied the motion and entered an Order giving the Plaintiff until May 29, 2015 to file his Second Amended Complaint. The Plaintiff subsequently filed his Second Amended Complaint on May 27, 2015. However, SCDMH asserts the Second Amended Complaint does not comply with Rule 10(b), SCRPC. Accordingly, SCDMH filed a Motion for More Definite Statement requesting that the Plaintiff be ordered to re-file his Second Amended Complaint in a form that complies with all requirements of the South Carolina Rules of Civil Procedure, specifically Rule 10(b).

DISCUSSION

The Plaintiff's Motion for a Ruling to Show Cause is based on his assertion that SCDMH suspended his computer privileges and confiscated floppy disks from him in retaliation against his filing of this lawsuit. The Court finds that the Circuit Court does not have jurisdiction over this matter. Grievances should be taken through the SCDMH of the SCDC. Decisions should be appealed to an Administrative Law judge. Accordingly, the Plaintiff's Motion for a Ruling to Show Cause is **DENIED**.

As for SCDMH's Motion for More Definite Statement, a review of the Second Amended Complaint reveals it is written as an eight-page narrative. This plainly does not comply with Rule 10(b), SCRPC, which requires that "[a]ll averments of the facts of a cause of action or defense and demands for relief shall be made in consecutive numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances." Moreover, the Second Amended Complaint does not appear to comply with the consent Order entered December 1, 2014, which provided that the Second Amended Complaint should "incorporat[e] all of—but no more than—the allegations contained in [the Plaintiff's]

Complaint, Amended Complaint, and proposed Supplemental Complaint into a single pleading” (emphasis added). The Plaintiff responds that his ability to properly draft the Second Amended Complaint, which is hand-written, was impeded by his inability to access a computer due to SCDMH’s suspension of the SVPTP residents’ computer privileges. However, as noted herein and pursuant to the consent Order, the Second Amended Complaint is merely intended to be a compilation of the allegations contained in the Plaintiff’s Complaint, Amended Complaint, and proposed Supplemental Complaint, all of which were properly separated into consecutively numbered paragraphs in compliance with Rule 10(b). All the Plaintiff need do—indeed, all the consent Order permitted the Plaintiff to do—is combine those pleadings into one single pleading. Accordingly, and because I find that SCDMH cannot be reasonably be required to frame a responsive pleading to the Second Amended Complaint as currently drafted, SCDMH’s Motion for More Definite Statement is **GRANTED**, and the Plaintiff is directed to re-file his Second Amended Complaint in a form that complies with Rule 10(b) within twenty-one (21) days after the entry of this order.

Finally, I note that this action has been pending since May 2014 and, despite numerous extensions and second chances, the Plaintiff still has not finalized his pleading. The court’s patience is wearing thin. The Plaintiff is admonished that any further delays or failures to comply with the Rules of Civil Procedure will result in the immediate dismissal of this action.

IT IS, THEREFORE, ORDERED, that the Plaintiff’s Motion for a Ruling to Show Cause is **DENIED**.

IT IS FURTHER ORDERED that the Defendant’s Motion for More Definite Statement is **GRANTED**.

IT IS FURTHER ORDERED that the Plaintiff shall, no later than twenty-one (21) days after the entry of this order, re-file his Second Amended Complaint in a form that complies

with the Rules of Civil Procedure, specifically Rule 10(b). The re-filed Second Amended Complaint shall incorporate all of—but no more than—the allegations contained in the Plaintiff's Complaint, Amended Complaint, and proposed Supplemental Complaint.

AND IT IS SO ORDERED.



DeAndrea G. Benjamin
Judge, Fifth Judicial Circuit

10.27

, 2015

Columbia

, South Carolina

Larry Edward Hendricks, 2959
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1700 St. Andrews Terr., Bldg. A
Columbia, SC 29210-5412

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