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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEALED FROM THE RICHLAND
COUNTY COURT OF COMMON PLEAS
ORDER OF HONORABLE G. THOMAS
COOPER, JR., CIRCUIT COURT
JUDGE :

Case No.: (s) 2013-CP-40-03078
2007-CP-40-03742

SUBSEQUENT INTERLOCUTORY ORDERS
OF (FORMER) CIRCUIT COURT JUDGE,
HONORABLE J. MICHELLE CHILDS:

Case No. (s): 2007-CP-40-03742
2009-CP-40-02442

SUBSEQUENT INTERLOCUTORY ORDER
OF CIRCUIT COURT JUDGE,
HONORABLE DE ANDREA GIST
BENJAMIN :

Case No.: 2009-CP-40-02442

I.

RECEIVED

MAY 25 2017

SC Court of Appeals

Clarence S. Gregory ... Appellant,

Verses

Riley Pope And Laney, LLC, Law Firm, Attorney(s) and Counselors at Law; Individually and Individually named; Theodore D. Riley; T. Lowndes Pope; LeRoy Free Laney; Nikole H. Boland; of whom; all are sued in their individual and Professional capacities; Riley Pope and Laney, Limited Liabilities Contractors (LLC);

AND

Heath McALvin Stewart, III, Individually and Individually named, of whom Formerly employed with Riley Pope And Laney, LLC, Law Firm, an agent attorney is Sued in his Individual and Professional capacities, et al.,

II.

All of whom are named as,
..... Respondent.

"Petition for re-hearing and
re-hearing en-banc, Rule
219, and Rule 221, S.C.
Appellate Court Rules"

YOU WILL PLEASE TAKE NOTICE,
that Appellant by way of Pro'se,
do hereby, respectfully request
this Honorable Court, pursuant
to Rule 219, and Rule 221, of
the South Carolina Appellate Court
Rules, for "re-hearing and
re-hearing en-banc," as set-
forth herein.

This petition has outlined and
stated grounds in particularity
pointing out how this Court has
"erred" by "overlooking" material
facts on Record.

III.

I. ARGUMENT.

The Petitioner hereby,
contends as to Issue I., of
Appellant's, "Statement of Issues
On Appeal;"

I., "Whether the Presiding Judge
(Circuit Court Judge) "erred"
in his Findings in, time barring
Appellant's Claims or causes of
action, under the statutory of
Limitation, When Appellant Filed
Notice AND Motion under the
Doctrine of Equitable Tolling
and Equitable Estoppel?

The Petitioner asserts, on March,
09, 2016, Respondent "Filed"
their "Final Brief," replying to
Appellant's Issue one (1),
"Holding,"

"The Trial Court correctly dismissed
claims barred by the statute of
Limitations?"

①

LEGAL MAIL

On April 03, 2017, as to Appellant Issue One (1), the Court of Appeals "Affirmed" the circuit court's Findings, citing the S.C. Code of Laws, under § 15-3-530 (5), (Holding, "setting a three (3) year Statute of Limitation period for an injury to a person not arising out of a contract;

Petitioner contends, under Rule 221, S.C.A.C.R, it states, the petition for rehearing shall state with "particularity the points" supposed to have been "overlooked" or "misapprehended" by the reviewing Court.

The Petitioner contends, the reviewing Court did "not" make any references to the Petitioner's Facts, material Facts, argument

and Statement of the Facts,
which reflects Petitioner's
"Final Briefs," (See, Appellant
Statement of the Facts, page 04,
paragraph 03; page 05, 06;
(See, App. ROA Vol. I, pages 139-141;

Furthermore, Petitioner contends
the record reflects, on/or about,
October 15, 2012, Petitioner Filed
his summons and Complaint with
Broad River Correctional Institution
mailroom staff, Ms. Susan H.
Frye, an State official Notary
Public, by way of an "Sworn
Affidavit of mailing Service,"
(See, App. ROA Volume I, page
141;

Petition contends, under the
authorities cited by Respondent
in their "Final Brief," page 08,

Houston vs. Lack, 487 U.S.
266, 276 (1988); (Holding, "A
pleading is considered "Filed" by
an Inmate when it is delivered
to prison authorities for mailing;
Id.,)

The Petition contend and argues,
under the authorities cited in,
Houston vs. Lack, Court supra:
as this Court, by the S.C. Code
of law, ANN. section 15-3-530
(5) (2005), (setting a Three (3)
years statute of Limitation
period for an injury to a person
"not" arising out of a contract,
"Petitioner's Claims or complaint"
is "within" the statute, before
the time expired;

According to Respondent, the
Petitioner claims or causes of
action begin to accrue,

on/or about, May 14, 2010, the last
"deposition." (see, Respondent's
"Final Brief," Argument I., page 07,
Lines 01; page 07, paragraph 03,
Lines 05-07;

According to Respondent, in their
"Final Brief," Lines 04-06, provided
in pertinent parts:

"However, Inmate indicates
that the issue was "resolved" in
a letter from Larry C. Smith of
the Richland County Attorney's
Office dated February 27, 2013,
approximately three (3) months
prior to the running of the
"statute of limitations."

Petitioner contends, according to
Respondent's May 14, 2010, begin
to accrues the limitation period,
expired on May 14, 2013;

According to the record on Appeal, the records shows, Petitioner Filed his "Complaint" on October 15, 2012, (See, App. ROA Vol. I., page 141);

just (7) seven months, prior to the "Statutory of limitation period," which computes to (2) years and (5) Five months;

(See, Affidavit of Service; App. ROA Vol. I., page 141);

Based on this evidence, the Court, in this respect, "erred" overlooked the record on Appeal, under Rule 221 of the S.C. Appellate Court Rules, applying the authorities cited in, Houston vs. Lack, 487 U.S. 266, 276, (1988); S.C. Code of Law, ANN. § 15-3-530 (5) (2005); Hooper vs. Ebenezer Sen., Services Ctrs., 687 SE2d 29, 32 (2009);

In regard to the record, which shows the conduct of Ms. Davis, at

Richland County Clerk of Courts
Office; (see, Appellant's ROA
Volume II., pages 256 - 259)1

Petitioner contends, Respondent
"erred" by trying to establish
the Fact when Richland County
Clerk of Court, accepted and
Filed Petitioner's Summons and
Complaint on/or about, May 22,
2013;

That, as a result of May 22,
2013, under the statute of 15-3-
530 (5) (2005), Petitioner's Claims
or Complaint was barred by the
limitation period of Three (3)
years;

Contrary to Respondent assertion,
Petitioner's Complaint would be
"Equitably Tolloed" as a result
of Ms. Davis' action; Id., at
687 SE.2d 29, 32 (2009) Hooper

VS. Ebenezer Sen., Services Ctr.
687 SE 2d (2009);

(Holding, "Equitable tolling typically applies in cases where a litigant was "prevented" from filing suit because of an extraordinary circumstance or event beyond his or her control"); Id.

The Petitioner contends, under statutory ministerial duties of The Clerk of Court, § 14-17-510, et seq., it required the clerk and staff to have full knowledge and understand their duties as to filing cases and other documents; Id.

The Clerk's staff, Ms. Davis, Civil Record Manager, should have known of the statutory provisions of § 24-27-100-150, which gives or allows a prisoner

to exercise his statutory right to file a complaint, even if he does not have "sufficient funds" in his Trust Fund account;

(See, App. ROA Vol. II., pages 256-257); Letter of Disposition From S.C. Supreme Court, Chief Justice Honorable Jean H. Toal;)

Furthermore, the Record on Appeal shows and demonstrates, the Clerk's office ask the Richland County Attorney, Larry C. Smith, to assistant, Ms. Judy N. Davis, because, Ms. Davis did "not know" how the "in forma pauperis" status function, as a Civil Record Manager of Richland County Court, Judicial Center;

(See, App. ROA Vol. II., pages 258-259);

Petitioner argues and contends, based on the evidences presented in the "record on appeals" (App. ROA VOL. II., pages 256, 257, 258 and 259);

And citing from the authority held in, Hooper vs. Ebenezer Sen. Services Centers., 687 S.E.2d 29, 32 (2009);

As a matter of law, Richland County Clerk of Court's staff, Ms. Davis, Civil Record Manager, "Created" the "delay" to effect the statutory "timely Filing" Petitioner's Complaint, as to Respondent's "reply" contention asserted in their "Final Brief," (S.C. Code of law, §14-17-510 et seq., Statutory Duties of Clerk of Court ministerial Duty);
(also see Respondent's Final Brief, Argument I., page 07 and 08);

In instance, Hooper vs. Ebenezer Senior Services Center, 687 S.E.2d 29, 32 (2009);

(Held), "Because of Ebenezer's "Failure" to properly list its registered agent for service with the Secretary of State, as required by state law, "Created" "delay" to effect service on administrator of Entity who purchased "Ebenezer Nursing" entitled Hooper to "equitably toll" statutory limitation period, who in pursuit, spent diligent time to search for "non-existent" agent; § 15-3-530(5)

Likewise, applying this to the Petitioner's Appeal on record, it shows, because of the Clerk of Court's staff, Ms. Judy N. Davis, lack knowledge and did not understand how to perform her

statutory ministerial duties, as to how the "informa pauperis status" Function, under the provisions of § 24-27-100 thru 150, regarding the Petitioner's insufficient Funds of his Trust Account, rest solely on The Clerk's staff, responsibilities & duties to know; and not The Petitioner (§ 14-17-510, Duties of The Clerk of Court); Id., Hooper vs. Ebenezer, Court supra;

Petitioner was in pursuit to Forward Complaint with SDC mail-mailroom staff, October 15, 2012, (see, App. ROA Vol. I., page 141);

As a matter of law, it was considered "Filed" under authorities cited in, Houston vs. Lack, Court supra, and the Clerk's staff, Ms. Davis, "Created" the delay by Failure to Follow her "ministerial duties" as required by the statutory law;

Under the authorities held in, Hooper vs. Ebenezer Sen. Serv. Center, Court supra, the clerk of Court's staff Ms. Davis, "Failure to know how the in-Forma pauperis status functioned, caused Petitioner's delay, which hindered and prevented the effect of timely filing complaint, which was received on/or about, May 22, 2013; (See App. ROA VOL. II, page 259); page 68;

Petitioner contends, under these facts, if the Court should accept, the Petitioner is entitled to have his complaint "Equitably tolled"; Id., Hooper vs. Ebenezer, Court supra;

Under Rule 221, SCACR The Court "erred" by overlooking these facts;

The Clerk's staff, Ms. Judy N. Davis, Failure to perform her ministerial duties as a Civil Record Manager, is held accountable and should be responsible for knowing and understanding her ministerial duties and functions as a public official in a public office, in the Richland County Judicial Court; § 14-17-510 et seq.;

Petitioner contends, to ensure fundamental practicality and fairness the Respondent and the Circuit Court "erred" and "Failed" to establish sufficient facts to justify that Petitioner's claim or complaint is statutorily "barred" by the limitation period, § 15-3-530 (5) (2005), Three (3) years limitation;

In these contention and material facts, supported by evidence on

Record on Appeal, Petitioner's
Claims or Complaint should be
"equitably tolled" because it appears
that this Court "erred" as a
result of, "overlooking" the
evidence presented on record,
and "misapprehended" the Facts
and Authorities, Held in, Hooper
vs. Ebenezer, Court supra. and
Houston vs. Laek, supra. Id.

END, I. ARGUMENT

II. ARGUMENT.

The Petitioner contends, as to Issue VI (06), of Appellant's, "Statement of Issues on Appeal;"

VI (06).

"Whether The Subsequent Presiding Courts, Judge J. Michelle Childs (Former) Circuit Court Judge, "Lacked The Jurisdiction of subject matter, to review, and to reverse The Original "Unappealed" Findings of Judge G. Thomas Cooper, Jr.,

"And Whether Judge De Andrea Gist Benjamin, "Lacked Jurisdiction of subject matter, to review and reverse The Original "Unappealed" Findings of (Former) Circuit Court Judge, J. Michelle Childs?"

Petitioner contends that, on/or about, March 09, 2016, Respondent did not respond to Appellant's Issue VI., (6),

However, on/or about, April 03, 2017, as to Appellant's Issue VI., the reviewing Appellate Court "erred" by "overlooking" Respondent's act of "a banding" reply to Appellant's (Issue VI.) "Lack of Jurisdiction,"

In addition, this respectfully reviewing Appellate Court of Appeals, "Failed" and overlooked, Appellant's Issue 06, which were pled on the Issue on Appeals; (see, App. "Final Brief", page 01, and page 40-42;

The Petitioner shows evidence on the record on Appeals as follows, as a burden of proof:

(see, App. ROA Vol. I, pages 63-64; The First Original Order of Honorable G. Thomas Cooper, Jr., dated, March 26, 2008;

The First Original Order, decided the issues of the causes of action, of The S.C. Workers Compensation Act "exclusive remedy," Affirmative defense pled by Respondent;

§ 14-3-330 (1) (2); Respondent "Failed" to appeal, Judge Cooper March 26, 2008, Order; (Case 2007-CP-40-03742);

The Petitioner shows evidence on The Record on Appeal; ■

Finally, Petitioner contends, as to Issue 06, this Court denied and deprived Petitioner of a meaningful manner, of a ~~■~~ partial and ~~■~~ bias appellate review; as such is demanded of protection of safeguard procedural due process of law; U.S.C.A. Const., Amend. 14th;

This Court, in this Petition for "re hearing and rehearing en banc, may reverse or modify, if from viewing the facts as to a result of "error" in "overlooking or misapprehend" the material facts as shown and demonstrated herein, because of substantial rights

of the Petitioner, appeared to have been "prejudice" as a result of error of overlook, under Rule 221, of the S.C. Appellate Court Rules;

The Petitioner argues, lack of jurisdiction of the subject matter and the parties, can be raised at any time, and "cannot" be "waived" even by consent and may be "raised" in this Court, for the first time without an exception; (Citing From authorities held in, Blanton vs. Stathos, C.S.C App. 2002); (Holding, "A judgment by a Court "without" jurisdiction of both parties and of the subject-matter is "nullity and

void," and without legal effect;
and must be treated by the
Courts whenever and for what-
ever purposes it is presented
and "relied" on; Blanton vs.
Stathos, (S.C. App. 2002); State
vs. Brown, 570 SE.2d 559 (S.C.
App. 2002);

The Petition contends, that he
is prejudiced by this reviewing
Appellate Court;

The burden is
on Petitioner to show this
Court either "erred" through
overlooked material facts or
from a review and evasively
avoided, in a willful act;

Petitioner's Record on Appeal
in his Complaint demonstrates;
(See, App. ROA VOL. I., page 75, par. 32);

a burden of proof as follows:

(see, App. ROA Vol. I., pages 32, 44, 53, and 54; Exhibits (see, The Subsequent Interlocutory Order of (Former) Circuit Court Judge J. Michelle Childs, dated, June 10, 2010, (Case, 2007-CP-40-03742));

The Petitioner contends, the Respondent "induced and deceived" respective, Judge Childs, by stating on the record, "Respondents did not" "address" the S.C. Worker's Compensation Act "exclusivity remedy" before the proceedings of Judge G. Thomas Cooper, Jr., during the term of March 26, 2008, Order; (see, Exhibit, App. ROA Vol. II., pages 261-267); (Case, 2007-CP-40-03742);

Contrary to Respondents, based on the evidence presented on the record on Appeal (see, App. ROA

Vol. I., pages 194, 198, and 199),
it (the records), Shows and
proves that, Respondent "induced
and deceived" the (former) presiding
subsequent Court, Honorable J.
Michelle Childs; and,

(Citing from the authorities held in,
Mario vs. Lewis, 389 S.C. 697 SE.2d
684 (S.C. App. 2010);

(Holding, "A
Fraudulent act element is met by
any act characterized by knowingly
being dishonest in fact, and in
unfair dealings; Id.

The Petitioner argues and contends,
the "reviewing appellate Court"
"erred" by specifically "Overlooked"
these Facts, and materials, which
are established on the record on
Appeal, Rule 221, SCACR;

As a result of the Findings of
the reviewing Appellate Court and

by "aFFirming" the Circuit Court's Findings, on these grounds without adequately and properly "viewing" the records, such as, (App. ROA Vol. II., pages 261-267; App. ROA Vol. I., pages 194, 198, and 199); as an "Overlooked" error, the Petitioner is substantially prejudiced and did not received a substantial and meaningful Appellate review, as a matter of law; Rule 221, S.C.A.C.R.; § 14-3-330, S.C. Const'L Art I., sec. 3, 22, 14th Amend; U.S. C.A. Const'L;

Furthermore, in case, 2009-CP-40-02442, this reviewing Court "erred" by "Overlooking" the Facts and materials established and presented on record of Appeal (see, App. ROA Vol. I., 32, 36, 37 and 38);

Petitioner contends and argues, The First "Original Findings of

(Former) Circuit Court Judge J. Michelle Childs, dated April 05, 2010;

Such Order/Findings of (Former) Circuit Court Judge, Childs, determined the Facts, and the "merits" of the issues of the Causes of action, of the Petitioner Claims, (Holding, "that there are genuine issue of material Facts and "denied" Respondent's motion For Summary judgment; (See, App. ROA VOL. I., page 32, 36, 37, 38); § 14-3-330 (1) (2), Appealability Statute;

Citing From authorities held, in Baril vs. Aiken Regional Med. ctrs., 573 SE 2d 830 (Ct. App. 2002); (Holding, "The merits of the issues of the Causes of action "Found" by a trial court should be determine by a jury; Under the S.C. "appealability

statute, § 14-3-330 (1), (2),
(1) a party may appeal, an inter-
-mediate Order or decree in a
action "involving the merits" in
actions commenced in the Court
of Common Pleas, brought there
by original process;

(2) an Order which
affected a substantial right made
in an action where, such Order
in effect "determined/decided"
the issue of the causes of action
in that action and that Order
"prevented judgment," from which
a party has a "right or standing"
to appeal; Id., at § 14-3-330
(1) (2); Rule 201, (b), SCACR;

The Petitioner contends, under
Rule 201 (b), SCACR, and statute
of law, § 14-3-330, The
Respondent had standing To
"appeal" the Findings in the

(Former) original First Order
of Judge Childs, but "Failed"
to appeal;

(see, App. ROA Vol. I, pages 32,
36, 37, 38); Judge Childs
Findings;

The Petitioner contends, on the
contrary, Respondent "Circumvented"
to a respective subsequent
another Judge, rather than to
appeal; Judge Childs Order
dated, April 05, 2010; (see, App.
ROA Vol. I, pages 20-24);

There are evidence of material
Facts on the record of Appeals
before the "viewing appellate
Court" that, subsequent Judge
De Andrea Gist Benjamin,
"reviewed, and Overruled"
the "merits" of the Findings of
(Former) Circuit Court Judge

J. Michelle Childs, on/or
about, October 17, 2011; (see,
App. ROA Vol. I, pages 20-24);

This respective reviewing
Appellate Court held in, State
ex Rel. Medlock vs. Love Shop,
LTD., 334 S.E. 2d 528 (1985);
(Holding, "IT was 'impermissible
error'" For the subsequent hearing
judge, to 'dismiss' Findings of
the First Original hearing Judge,
after the First hearing Judge
decided on the merits, and
entered default judgment, which
amount to 'abuse of discretion;'
Id., Love shop, LTD., Court supra;

The S.C. Supreme Court, did
"reversed and remanded" (Holding,
"One Circuit Court judge does
'not' have authority, power and
jurisdiction, to review, modify,

revise, "affirm" alter, "overrule" reverse the Findings or decision of another circuit court Judge;

There is "no appeal" From one Circuit Court Judge to another judge, such acts of individual Courts demonstrates "conflicts," in the judicial legal system and thus, such acts are in violation with the S.C. Constitutional provisions, Article 4, 5; Id.

Finally, Petitioner contends, this respective, reviewing Appellate Court "erred" in "overlooking" and "misapprehended" these Facts, material Facts, which was evidence presented on the record; (see, App. ROA Vol. I, page 32, 36, 37, 38); App. ROA Vol. I, page 20-24); Rule 221, SCACR;

Petitioner contends, it's has been a "long time rule of law," citing From the authorities held in, Anderson vs. Anderson, Court, Supra, State vs. Brown, 570 SE2d 559 (2002); Holding, "Lack of jurisdiction of the subject matter and of both parties can be "raised at any time" and cannot be "waived" even by consent and may be raised in "this Court," for the "First time" without an exception; Id, State vs. Brown, Court supra;

CONCLUSION

For these reasons set forth herein, under Rule 221, S.C. Appellate Court Rules; Petitioner has pointed out, "particularity" of Facts, and material Facts

that has been presented as evidence on record of Appeal, and as a result, Petitioner Claims that, the "reviewing respective, Appellate Court" "erred" by "overlooking" the record on these grounds, Rule 221, SCACR;

Based upon these Facts, the Petitioner, respectfully request this reviewing Appellate Court, to take these Facts, materials and the authorities cited in support, under a review, and under Consideration, without bias, capricious, and arbitration, as an "overlooked error" and "modify" its Affirmed Opinion, by "reversing and remand" for further proceedings.

Wherefore, the Petition should be granted, Rule 221, SCACR.

Respectfully Submitted,
S/ le & j

CLARENCE S. GREGORY,
SCDC NO. #227394
C/o BRCI, Murray Unit, B
Wind Rm. 208
4460 Broad River Road,
Columbia, S.C. 29210-4012

Petitioner's, Petition For
Re-Hearing AND Rethearing
En Banc, Rule 219, 221-
S.C.A.C.R.

Richland County,
Columbia, South Carolina
Zip Code 29210-4012

May 15th, 2017

(32)

Final
Brief
EXHIBIT
9-pages

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Richland County
Court of Common Pleas From Orders of
Honorable G. Thomas Cooper, Jr.,
Fifth Judicial Circuit Court Judge

Appellate Case No.: 2015-000740

Case No.(s): 2013-CP-40-03078
2007-CP-40-03742

Subsequent Interlocutory Order of (Former) Circuit Court Judge,
Honorable J. Michelle Childs:

Case No.(s): 2007-CP-40-03742
2009-CP-40-02442

Subsequent Interlocutory Order of Circuit Court Judge,
Honorable De Andrea Gist Benjamin:

Case No.: 2009-CP-40-02442

Clarence S. Gregory, ... Appellant,

Verses

Riley Pope & Laney, LLC, Law Firm, Attorney(s) and Counselor(s)
at Law; Individually and Individually named, Theodore D. Riley,
T. Lowndes Pope, Leroy Free Laney, Nikole H. Boland, Of Whom
All are sued In Their Individual and Professional Capacities,
Riley Pope & Laney, Limited Liability Contractor(s)(LLC);

AND

Heath McAlvin Stewart, III, Individually and Individually named
Of Who, Formerly Employed with, Riley Pope & Laney, LLC, Law
Firm, An Agent Attorney Is Sued In His Individual and
Professional Capacities, Et Al.,

All Whom are named as Defendants,
Of Which, Riley Pope & Laney, LLC, Is The Respondent.

FINAL BRIEF OF APPELLANT

CLARENCE S. GREGORY
SCDC NO.: 227394

APPELLANT PRO'SE

BROAD RIVER CORRECTIONAL
INSTITUTION (BRCI)
MURRAY UNIT, B-WING RM.
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DAMON CHRISTIAN WLODARCZYK
ESQUIRE FOR RESPONDENT

RILEY POPE & LANEY, LLC
C/O MR. DAMON C. WLODARCZYK
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STATEMENT OF ISSUES ON APPEAL

I.

"Whether The Presiding Judge "erred" In His Findings In, Time Barriing Appellants' Claims or Causes of Action, Under The Statutory of Limitation, When Appellant Filed Notice And Motion Under The Doctrine of Equitable Tolling And Equitable Estoppel?"

II.

"Whether The Presiding Judge "erred" In Denying And Not Permitting Appellant, By Motion For Leave To Amend His Complaint Before Defendants' were Served, Appellants' Summons And Complaint?"

III.

"Whether The Two (2), Original Prior Unappealed Orders Are Binding Upon Respondents' In Subsequent Motion Proceedings, Under Doctrine of The Law of Case, As A Result For The Lack of Jurisdiction?"

IV.

"Whether One (1) Circuit Court Judge Has The Power, Authority , Jurisdiction To Review, Modify, Reverse or Overrule The Finding of Another Circuit Court Judge, Involving The Same Stated Facts, Issues, Defense or The Same Subject Matter, In The Same Action?"

V.

"Whether The Presiding Judge "erred" In His Findings, In Raising "Case Law," Dorrell verses South Carolina Department of Transportation," Absent From Implied-Consent Pleadings, Which Was Not Before Him, And Plead, "Case Law," Hill verses York County Sheriff Department, Was Implied-Consent Before The Court?"

VI.

"Whether The Subsequent Presiding Courts, Judge J. Michelle Childs (Former) Circuit Court Judge, "Lacked The Jurisdiction of Subject Matter, To Review And To Reverse The Original "Unappealed" Findings of Judge G. Thomas Cooper, Jr., And "Whether Judge De Andrea Gist Benjamin, "Lacked Jurisdiction of Subject Matter, To Review And Reverse The Original "Unappealed " Findings of (Former) Circuit Court Judge, J. Michelle Childs?"

VII.

"Whether The Respondents' Action In Both Cases, In 2007--CP-40-03742, And In, 2009-CP-40-02442, Pleading The Same Stated Facts, Issues, Defenses, And Arguments In A Subsequent Proceeding In The Same Action, "Gave Rise" To Causes of Action of "Abuse of Legal Process?"

Pg. 01-0750

The lower Court in the case, 2013-CP-40-03078, also dismissed Appellant's action with prejudice; (See, Volume I, ROA pp. 43-55).

STATEMENT OF THE FACTS, IN THE MATTER OF, 2013-
-CP-40-03078:

This case 03078, surrounds and involves two (2), previous cases, case 2007-CP-40-03742, and case, 2009-CP-40-02442.

In this present case 03078, the Respondents' pled a defense against appellants' cause or causes of action, under the statutory limitation period, Rule 8 (c), of the S.C. Rules of Civil Procedure, on/or about, June 13, 2013; (See, Volume II, ROA pp. 272-274).

The Appellant asserts, that on/or about, October 15, 2012, he filed a summons and complaint under the statutory provisions of § 24-27-100 through 150, of the S.C. Code of Laws, in the "In forma pauperis status," against the Respondents', under the provisions of § 15-3-530, et seq., for claims or causes of action of Fraud, Fraudulent conduct, civil conspiracy, abuse of legal process, bad-faith, doctrine of unclean-hands, judge shopping, under the doctrine of duplicity and breach of solemnly oath of office; (See, Volume I, ROA pp. 66-141, pp. 212-229; and Volume II, ROA pp. 258-259);

Under the provision of filing in-forma-pauperis status, § 24-27-100 thru 150, it allows a party to file their complaints and debit their accounts (as an incarcerated person) even if

Pg. 04 OF 50

a party does not presently have sufficient funds in their account (While being incarcerated within the prison system);

Contrary to Appellants' filing and request as permitted by the aforesaid statute provision, on/or about, October 27, 2012, (See, Returned Legal Correspondance Letter from Ms. Judy N. Davis, Civil Manager Record Division, Richland County, Court of Common Pleas), Ms. Davis, interferred with the process of in-forma-pauperis, not understanding and knowing how it function, and did not permit Appellant to file his summons and complaint, and returned the summons and complaint to the Appellant on many occasion; (See, Volume I, ROA pp. 212-229; Volume II, ROA pp. 258 and 259;

That, as a result, of any success of filing with the Court, as aforesaid (Richland County Court of Common Pleas, Fifth Judicial Center), because of Ms. Davis' inactions.

That, on/or about, January 31, 2013, Appellant filed a "Petition For A Writ of Mandamus," with the S.C. Supreme Court, against the respective Ms. Judy N. Davis, Clerk of Court's in-action; (See, Volume I, ROA pp. 230-259, Writ of Mandamus).

That, as a result of filing the aforesaid "writ," on/or about, February 21, 2013, the Chief Justice, Honorable Jean H. Toal, of the S.C. Supreme Court, returned a letter of disposition, and asked the respective Clerk of Court, Jeanette W. McBride, to return a response, specifically addressing why she (Ms. McBride, Clerk of Court), did not allow Appellant to file his summons and complaint under the statutory provision of § 24-27-100 thru 150, within five (5) days of the letter; (See,

Volume II, ROA pp. 256 and 257; Letter of Honorable Jean H. Toal, Chief Justice of The S.C. Supreme Court, Dated February 21, 2013).

In response to the aforesaid letter, Mr. Larry C. Smith, from the Richland County Attorney's office, on/or about, February 27, 2013, sent a letter to the Honorable Jean H. Toal, Chief Justice, to the S.C. Supreme Court in behalf of respective Jeanette W. McBride, Clerk of Court, Richland County and to the Appellant, apologizing for Ms. Davis' inaction; (See, Volume II, ROA pp. 258 and 259); Letter of Mr. Larry C. Smith, Attorney for Richland County;

Mr. Smith, asked the Appellant, in behalf of the Clerk of Court, to return his summons and complaint for filing purposes (See, Volume II, ROA pp. 258 and 259);

That, on/or about, May 22, 2013, the Clerk of Courts' office filed Appellant's summons and complaint, even so, the circumstance was outside of Appellant's control; (See, Volume I, ROA pp. 67 and 68; pp. 139-141; Appellant's Filed Summons and Complaint);

That, on/or about, June 13, 2013, Respondents' returned their disposition, filing a Notice and Motion to Dismiss, under Rule 12 (b)(6), of the S.C. Rules of Civil Procedure; (See, Volume II, ROA pp. 272-274; pp. 275-291; Volume IV, ROA pp. 606-635); And on/or about, June 26, 2013, Appellant served and filed upon Respondents' a Notice and Motion to Oppose, under the doctrine of Equitable Tolling, Equitable Tolling and Gap Tolling; (See, Volume II, ROA pp. 275-291; Volume IV, ROA

Appellant argues, that both case laws, Ballenger vs. Bowen, and Dorrell vs. South Carolina Department of Transportation, was not pled by Respondents' counsel Wlodarczyk, on any notice and motion, neither was the two (2), aforesaid case laws, were verbally presented by "implied-consent, during the motion proceeding, on/or about, April 24, 2014;

For these foregoing reasons, the Appellant respectfully request this Court to "reverse" the lower respective presiding Court's Findings.

ARGUMENT VI.

"Whether the subsequent Presiding Courts, (Former) Judge J. Michelle Childs, Lacked the jurisdiction of subject matter, to review, and to reverse the "Original" Unappealed Findings of Judge G. Thomas Cooper, Jr., And whether Judge De Andrea Gist Benjamin, Lacked jurisdiction of subject matter, to review and reverse the "Original" Unappealed Findings of (Former) Judge J. Michelle Childs?"

The Appellant argues and asserts, that in, Appellant's Volume I., ROA p. 07, ¶ 03. lines 01-03, Titled, I. Facts Relative To Case No.: 2007-CP-40-03742 provided in pertinent parts, held:

"Following a hearing on the second motion for summary judgment, Judge Michelle Childs issued an Order on, June 10, 2010, which in part granted the defendant's motion for summary judgment.

The Order was not appealed.

7 40 OF 50

Furthermore, the respective lower presiding Court ruled in it's Order, Respondents' counsel Facts II., Relative to Case No.: 2009-CP-40-02442, Volume I., ROA p. 07, ¶ 06, lines 01-03; provided in pertinent parts, held:

"Following a hearing on, August 31, 2011, Judge Benjamin issued an Order granting to the Defendants' summary judgment."

"The Order was not
"appealed."

The Appellant argues and asserts, while it is a fact, and is true that, Appellant did "not" appeal "both" previous subsequent Orders, 2007-CP-40-03742 and 2009-CP-40-02442;

Citing from
Authorities held in, McCain vs. Brightharp, 399 S.C. 240, 730 S.E.2d 916 (S.C. App. 2012); (Which held, "Because and while it is true, "Brightharp" did not appeal "both" Orders, but as a matter of law, subject matter of jurisdiction can be raised at any time;"

Lack of jurisdiction of the subject matter can be raised for the "first-time" on appeal, and can be raised "sua-sponte" by the Court; (See, State vs. Brown, 570 S.E.2d 559 (S.C. App. 2002); and citing from authorities held in, Blanton vs. Stathos, 570 S.E.2d 565 (S.C. App. 2002); (Which held, "A judgment by a Court "without" jurisdiction of both parties and of the subject matter is "nullity and void," and without legal effect, and must be treated by the Courts whenever and for whatever purposes it is presented and relied on;"

Appellant argues, that both subsequent respective Courts, (former) presiding Honorable J. Michelle Childs in the previous case, 2007-CP-40-03742, and presiding Honorable De Andrea Gist Benjamin, in the previous case, 2009-CP-40-02442, did "not" have jurisdiction of the subject matter to review, reverse, modify the findings of another Circuit Court Judge of the same concurrent jurisdiction, of the same privities, between the same party; unappealed findings.

Citing from authorities held in, Long vs. Carolina Baking Co., 8 S.E.2d 326 (S.C.1926); (Holding, "Where there is competent and relevant evidence on factual issue found by a Court, to take to the jury, the Supreme Court or any other party or any other Courts "cannot" lawfully interfere with such verdict;

For the foregoing reasons herein and based upon the record, Appellant respectfully request this Court to reverse the lower Court's previous findings, as a result of prior unappealed Orders for the lacked of jurisdiction;

ARGUMENT VII.

"Whether The Respondents' action in Both Cases, in 2007-CP-40-03742, and in, 2009-CP-40-02442, in pleading the same stated facts, issues, defenses and arguments in a subsequent proceedings, in the same action, gave rise to causes of action of abuse of legal process?"

The Appellant argues that, Respondent, LeRoy Free Laney, drafted the pleadings in Defendants' filed "Answer" on/or about,

⑨ Exhibit

pg. 42 of 50

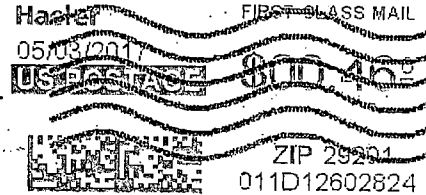


South Carolina Court of Appeals

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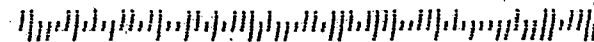
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CLARENCE S. GREGORY #227394
BROAD RIVER CORRECTIONAL INSTITUTION
MURRAY UNIT, B WING RM-~~234~~ **208**
4460 BROAD RIVER ROAD
COLUMBIA SC 29210

2921034047



**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Clarence S. Gregory, Appellant,

v.

Riley Pope & Laney, LLC, Law Firm, Attorney(s) and
Counselor(s) at Law; Individually and Individually
named, Theodore D. Riley, T. Lowndes Pope, LeRoy
Free Laney, Nikole H. Boland, of whom, all are sued in
their individual and professional capacities, Riley Pope &
Laney, Limited Liability Contractor(s) (LLC);

and

Heath McAlvin Stewart, III, Individually and
Individually named, of who, formerly employed with
Riley Pope & Laney, LLC, law firm, an agent attorney is
sued in his individual and professional capacities, et al.,

All whom are named as Defendants,

Of which Riley Pope & Laney, LLC is the Respondent.

Appellate Case No. 2015-000740

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-183
Submitted April 1, 2017 – Filed May 3, 2017

AFFIRMED

Clarence Gregory, pro se.

Damon Christian Wlodarczyk, of Riley Pope & Laney,
LLC, of Columbia, for Respondent.

PER CURIAM: Clarence Gregory appeals the circuit court's order dismissing his claims pursuant to a motion to dismiss filed by Riley Pope & Laney, LLC; Theodore Riley; T. Lowndes Pope; Leroy Laney; Nikole Boland; and Heath Stewart (collectively, Respondents). On appeal, Gregory argues the circuit court erred by (1) finding his claims were barred by the statute of limitations; (2) denying his motion to amend his complaint; (3) finding the circuit court's previous orders were binding in subsequent proceedings; (4) finding it had the power to review and modify the findings of another circuit court judge; (5) relying on case law that was not presented at the hearing; (6) finding a judge had jurisdiction to modify another judge's findings; (7) dismissing his abuse of legal process claim; (8) dismissing his bad faith claim; (9) dismissing his duplicity claim; (10) dismissing his unclean hands claim; and (11) dismissing his civil conspiracy claim. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Issue 1: S.C. Code Ann. § 15-3-530(5) (2005) (setting a three-year statute of limitation for an injury to a person not arising out of a contract); *Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009) ("Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period 'to ensure fundamental practicality and fairness.'" (quoting *Rodriguez v. Superior Court*, 98 Cal.Rptr.3d 728, 736 (2009))); *id.* at 117, 687 S.E.2d at 33 ("[E]quitable tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use."); *id.* at 116, 687 S.E.2d at 32 ("[E]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." (quoting *Ocana v. Am. Furniture Co.*, 91 P.3d 58, 66 (N.M. 2004))).

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

2. As to Issue 2: Rule 15(a), SCRCP (providing a party may amend his complaint "at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served"); Rule 15(c), SCRCP ("Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading."); *Pruitt v. Bowers*, 330 S.C. 483, 489, 499 S.E.2d 250, 253 (Ct. App. 1998) ("It is well established that a motion to amend is addressed to the sound discretion of the [circuit court] . . .").

3. As to Issues 3, 4, 5, and 6: *Crosswell Enters., Inc. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992) ("The denial of a motion for summary judgment does not bar a party from making a later motion for summary judgment based on matters not involved in the decision on the first motion."); *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 325, 605 S.E.2d 12, 18 (2004) (holding the fact a different circuit court judge previously denied a motion for summary judgment did not preclude the defendant from renewing its motion "once new evidence came to light"); *Hill v. York Cty. Sheriff's Dep't*, 313 S.C. 303, 305, 437 S.E.2d 179, 180 (Ct. App. 1993) (holding an earlier denial of a summary judgment by another circuit court did not dispose of the issue so as to preclude summary judgment).²

4. As to Issue 7: *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010) ("In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the [circuit] court."); *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) ("In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the [circuit] court must base its ruling solely on allegations set forth in the complaint."); *id.* ("If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper."); *Johnson v. Painter*, 279 S.C. 390, 391, 307 S.E.2d 860, 860 (1983) ("The essential elements of abuse of process are: (1) an ulterior purpose; and (2) a wilful act in the use of the process not proper in the regular conduct of the proceeding."); *Whitfield Constr. Co. v. Bank of Tokyo Trust*

² Gregory argued the circuit court erred in not citing to *Hill* in its order; however the court cited to *Dorrell*, which supports the same proposition. 361 S.C. at 325, 605 S.E.2d at 18 (stating if a first summary judgment motion is unsuccessful, the court may allow a second summary judgment motion prior to trial).

Co., 338 S.C. 207, 222 n.18, 525 S.E.2d 888, 896 n.18 (Ct. App. 1999) (stating abuse of process claims are subject to a three-year statute of limitations).

5. As to Issue 8: *In re Berger*, 408 S.C. 313, 322, 759 S.E.2d 716, 720 (2014) ("Pursuant to Rule 3(b), RLDE, Rule 413, SCACR, the Commission on Lawyer Conduct . . . has jurisdiction over all allegations that a lawyer has committed misconduct.").

6. As to Issue 9: *State v. Samuels*, 403 S.C. 551, 553, 743 S.E.2d 773, 774 (2013) ("While commonly understood to be synonymous with deceitfulness and double-dealing, when used in the law, duplicity means '[t]he charging of the same offense in more than one count of an indictment.'" (quoting *Duplicity*, Black's Law Dictionary (8th ed. 2004))).

7. As to Issue 10: *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107 n.2, 531 S.E.2d 287, 292 n.2 (2000) (explaining unclean hands is an equitable defense and does not give rise to an independent cause of action).

8. As to Issue 11: *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) ("The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage."); *id.* ("Moreover, because the quiddity of a civil conspiracy claim is the special damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.").

AFFIRMED.

GEATHERS, MCDONALD, and HILL, JJ., concur.

expedite the disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The party seeking summary judgment carries the burden of clearly establishing the absence of a genuine issue of material fact. "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." Penny Creek Assoc., LLC, 375 S.C. at 271, 634 S.E.2d at 620 (citing Osborne ex rel. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001)). The opposing party, however, may not rest upon the mere allegations or denials of the pleadings, but his response...must set forth specific facts showing there is a genuine issue for trial. Midland Mutual Life Ins. v. Harrell, 331 S.C. 394, 503 S.E.2d 189, 190-191 (Ct. App. 1998); Bravis v. Dunbar, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994).

→ A. Failure to state a cause of action for which relief can be granted

In their motion, Defendants allege that Plaintiff's complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to the rules, laws, and statutes of the State of South Carolina. In Plaintiff's Motion in Objection to Defendants' Counsel[s] Summary Judgment Motion, he contends that genuine issues of material fact exist regarding his claim such that summary judgment is inappropriate. More specifically, Plaintiff claims that Butler, while employed as the Food Service Supervisor in the cafeteria at Lieber Correctional Institution, ordered Plaintiff to rush to wash several trash cans and barrels. After Plaintiff refused, Butler allegedly struck Plaintiff twice in the back with a stainless steel serving spoon.

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The SCTCA governs all tort claims against governmental entities and provides the exclusive civil remedy in tort actions against the government. S.C. Code Ann. § 15-78-10, *et seq.*; Murphy v. Richland Memorial Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995). Defendant SCDC is a governmental entity, as defined by S.C. Code Ann. § 15-78-30(d). The SCTCA provides that the State, its agencies, and other governmental entities are liable for their torts to the same extent as private citizens. S.C. Code Ann. § 15-78-40. The SCTCA defines "loss" as:

Bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

S.C. Code Ann. § 15-78-30(f). The Court finds that Plaintiff has properly pled a cause of action for gross negligence.

Defendant also claims that Plaintiff's action is barred from recovery under the South Carolina Workers' Compensation Act as the Act provides the exclusive remedy for injuries such as Plaintiff allegedly sustained, and, at the time of the alleged incident herein, Plaintiff worked as an inmate in the cafeteria at Lieber Correctional Institution. The South Carolina Supreme Court has determined that a common law cause of action is not barred by the South Carolina Workers' Compensation Act if the employer acted with a deliberate or specific intent to injure the employee. Peay v. U.S. Silica Co., 313 S.C. 91, 437 S.E.2d 64 (1993). In Peay, the Court also found that the standard regarding employers "also would apply to injuries intentionally inflicted by a co-employee." Id. at 94 n.1, 437 S.E.2d at 66 n.1. Therefore, the Court finds that Plaintiff has stated a cause of action upon which relief can be granted regarding his claim for intentional

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assault and battery. Thus, Defendants' Motion for Summary Judgment on the ground that Plaintiff has failed to state a claim for which relief can be granted is **DENIED**.

B. Relief under the South Carolina Tort Claims Act

Plaintiff alleges that he sustained an injury and damages resulting from Defendants' gross negligence in failing to properly supervise Butler and allowing her to commit an assault and battery against Plaintiff. Defendants argue that Plaintiff is not entitled to relief under the SCTCA because, at all time relevant herein, they were exercising their duties and responsibilities to supervise, control, confine and maintain custody of Plaintiff and other prisoners within SCDC.

S.C. Code Ann. § 15-78-60(5) provides that a governmental entity is not liable for any loss resulting from "the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee." Likewise, a governmental entity is immune from liability for any loss resulting from a "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. § 15-78-60(25).

South Carolina courts have recognized that "gross negligence" is a relative term, generally meaning "the absence of care that is necessary under the circumstances." Doe v. Greenville County School Dist., 375 S.C. 63, 71, 651 S.E.2d 305, 309 (2007). "Gross negligence is 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." Jinks v. Richland County, 355 S.C. 341,

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345, 585 S.E.2d 281, 283 (2003). It is the failure to exercise even slight care. Etheredge v. Richland County School Dist. 1, 341 S.C. 307, 534 S.E.2d 275 (2000). While gross negligence, for purposes of the gross negligence exception to the SCTCA, is ordinarily a mixed question of law and fact, when the evidence supports but one reasonable inference, the question is solely a matter of law. Id. at 310, 534 S.E.2d at 277.

Plaintiff is an inmate who alleges an injury resulting from SCDC's alleged lack of supervision and control over him; therefore, Defendants' conduct must rise to the level of gross negligence for Plaintiff to state a claim within the SCTCA. In his complaint, Plaintiff states SCDC's employee, Butler, intentionally struck him two times with a large serving spoon and then threatened him, thus causing physical and emotional injury to him. Plaintiff supports these allegations with several documents including: the Affidavits of Plaintiff, Christopher A. Jones, Raymond Allen White, and Donnie M. Malpass; an SCDC Inmate Grievance Form, dated May 21, 2008, describing the alleged incident; an SCDC Inmate Grievance Form, dated May 21, 2008, in which Butler provided the following written statement: "I/M Gregory, you got what you deserve." In response, Defendant submitted the affidavit of Jennifer Butler in which she states that she never threatened, used vulgar and/or derogatory language, or physically abused or threatened to physically abuse or mistreat Plaintiff; and Plaintiff's medical records. Based on the foregoing, both Plaintiff and Defendants have alleged facts that create a genuine issue of material fact as to Defendants' alleged gross negligence and intentional assault and battery against Plaintiff. Therefore, both motions for summary judgment are **DENIED** on these grounds.²

² Defendants also argue that Plaintiff wrongfully sued Director Ozmint in his individual capacity, having made no allegations against Director Ozmint in his individual capacity. At the hearing, Plaintiff admitted that he is suing

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP4003742

Clarence S #227394 Gregory

vs.

Jonathan E Ozmint

Plaintiff

Defendant

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):**
- SCRCP (Vol. Nonsuit); ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
☐ 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

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this _____ day of June, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Clarence S #227394 Gregory

LeRoy Free Laney

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

CP APP-24/FORM 4

33 exhibit



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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2009-CP-40-03742

Clarence S. Gregory, #227394,

Plaintiff,

v.

Jonathan E. Ozmint, Commissioner of
South Carolina Department of Corrections,
et al., and South Carolina Department of
Corrections; Stanley Burt, Warden
Of Lieber Correctional Institution;
Morris Elmore, Lieutenant & Environmental
Health & Safety Officer; Claude
Hilton, and John Sawadske, Maintenance
And Repair Engineering, Director(s), at
Lieber Correctional Institution; S.C.
Department of Corrections; each sued in
their Individual and official capacity, et al.,

Defendants,

ORDER

JEANETTE W. McERID
C.C.P. & C.S.

2010 JUN 10 PM 3: 51

RICHLAND COUNTY
FILED

This matter came before the Court for a hearing on Defendants' Motion for Summary Judgment (filed May 11, 2009); Plaintiff's Motion to Barr [sic] Defendants' Counsel Summary Judgment Motion (filed June 16, 2009); and Plaintiff's Motion for an Order to Conduct Inspection Upon Entry of Facility Premise(s) (filed November 19, 2009). Present at the hearing were Plaintiff, appearing *pro se*; and Heath M. Stewart, III, Esquire, on behalf of Defendants.

Plaintiff is an inmate in the custody of the South Carolina Department of Corrections ("SCDC") and is confined at the Lieber Correctional Institution. On July 5, 2007, Plaintiff filed

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Exhibit

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the Court finds that Plaintiff's action is barred by the exclusivity provision of the Workers' Compensation Act. *Def. Counsel pled the same in their Sept. 86 2007 answer, See 15th Defense. para. 36.*

Finally, Plaintiff's contention that his shift had not yet started at the time of his injury does not remove his claim from coverage under the Act: "[T]he general rule that 'an injury sustained by an employee on his way to or from work and away from the premises of the employer does not arise out of and in the course of employment'... is inapplicable" when the injury occurs on the employer's premises. Evans v. Coat & Clark, 328 S.C. 467, 469, 492 S.E.2d 807, 808 (Ct. App. 1997). Thus, Defendants' Motion for Summary Judgment is **GRANTED**.

II. Plaintiff's Motion to Barr [sic] Defendants' Counsel Summary Judgment Motion

Plaintiff filed his motion in response on the grounds that Defendants submit the same arguments previously ruled upon in their prior summary judgment motion before the Honorable G. Thomas Cooper, Jr. By Order, dated March 26, 2008, the Court denied Defendants' motion for summary judgment on the grounds that there are material issues of fact for trial. Based on this ruling, Plaintiff argues that Defendants' are legally estopped by the doctrines of res judicata, collateral estoppels, laches, waiver and statutory [sic] limitation.

Since the time of the Court's previous Order, the parties have engaged in extensive discovery in this case and have further developed the facts to support their legal contentions. See Middleborough v. Montedison, 320 S.C. 470, 465 S.E.2d 765, 771 (Ct. App. 1995) ("Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law."); S.C. Property and Cas. Guar. Ass'n v. Yensen, 345 S.C. 512, 517, 548 S.E.2d 880, 883 (Ct. App. 2001). As the "purpose of summary judgment is to obviate delay

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Judge Childs exceeded her authority as subject matter jurisdiction and parties, S.C. Const. Art. V. Sect 11, & State Ex. Rel. Med. Soc. 15.

Rave Shop, LTD. 334 SE 26 528
when there is no material issue of fact involved," Defendants' second motion for summary

judgment is properly before the Court. Manley v. Manley, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987); see also Williams v. Lancaster County School Dist., 369 S.C. 293, 301, 631 S.E.2d 286, 292 (Ct. App. 2006) ("The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder."). Moreover, because the denial of a summary judgment is not final, it does not have preclusive effect. See Ballenger v. Bowen, 313 S.C. 476, 443 S.E.2d 379, 380 n.2 (1994) ("[I]t is clear the denial of a motion for summary

judgment never finally determines anything."). Finally, Defendants did not raise workers' *Def. Counsel raised the same in their Sept. 2007 answer 15th*
compensation exclusivity in their previous summary judgment order. Therefore, Plaintiff's *Defense*

Motion to Barr [sic] Defendants' Counsel Summary Judgment Motion is **DENIED**.

mag 36.

III. Plaintiff's Motion for an Order to Conduct an Inspection upon entry of Facility Premise(s)

Plaintiff requests that the Court allow him "to be transported to and upon the premises of the Lieber Correctional Facility, Cafeteria area, specifically, back-dock area, entry of inspection" claiming that Defendants' counsel refused to provide Plaintiff photograph pictures of the original tray-room door alleged to have injured him and that in September 2009, Plaintiff located and identified such door in the Lieber Correctional Facility. Plaintiff also provided sworn statements of inmate Christopher Jones, Willie Young, Roy Chico Johnson and himself claiming the existence and location of the tray-room door. However, the Court's ruling on Defendants' Motion for Summary Judgment means that further discovery in this case shall no longer be had; and therefore, Plaintiff's motion is now moot. Therefore, Plaintiff's Motion for an Order to Conduct an Inspection upon Entry of Facility Premises is **DENIED**.

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EXHIBIT

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Clarence Gregory, #227394,

Civil Action No. 07-CP-40-03742

Plaintiff,

vs.

ORDER

Jonathan E. Ozmint, South Carolina
Department of Corrections, et. al,

Defendants.

2008 MAR 27 AM 11:07

THIS MATTER COMES BEFORE THE COURT upon the Motion of Defendants'

Motion for Summary Judgment. A hearing was held on January 10, 2008, at which both the Pro Se Plaintiff and Defendants' counsel were present.

Under Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRCF), 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, 335 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). If triable issues exist, those issues must go to the jury. Baril v. Aiken Reg'l Med. Ctrs., 352 S.C.

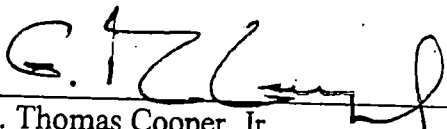
SC

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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).

After considering the submissions of the Pro Se Plaintiff and counsel for Defendants, the Court finds that there are issues of fact to be resolved at trial. Therefore, Summary Judgment is inappropriate and Defendants' Motion is hereby DENIED.

IT IS SO ORDERED.


G. Thomas Cooper, Jr.
Presiding Judge, Fifteenth Judicial Circuit

March 26, 2008

C/A NO: 2013-CP-40-03078

68

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH (5TH) JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

Plaintiff,

C/A NO.: 2013-CP-40-03078

vs.

Riley Pope & Laney, LLC, Law Firm,
Attorney(s) And Counselor(s) at Law;
individually And individually named,
Theodore D. Riley, T. Lowndes Pope,
LeRoy Free Laney, Nikole H. Boland,

OF WHOM, ALL ARE SUED IN THEIR INDIVIDUAL
AND PROFESSIONAL CAPACITIES, RILEY POPE &
LANEY, LIMITED LIABILITY CONTRACTOR(S)
(LLC);

AND

Heath McAlvin Stewart, III, individually,
And individually named,

OF WHO, FORMERLY EMPLOYED WITH RILEY POPE
& LANEY, LLC, LAW FIRM, AN AGENT ATTORNEY, IS
SUED IN HIS INDIVIDUAL AND PROFESSIONAL
CAPACITIES, ET AL.,

ALL WHO ARE NAMED AS,

Defendant(s).

COMPLAINT

JEANETTE W. McBRIDE
CL. P. & G.S.

2013 MAY 22 PM 12:16

RICHLAND COUNTY
FILED

(JURY TRIAL-DEMANDED)

Plaintiff, herein named in the above-captioned, Complaining
of the Defendant(s) would respectfully allege and show unto this
Court:

(1). That, said Plaintiff brings this civil-right action against
the Defendant(s) for damages, alleging the causes of action of
abuse of legal process, civil conspiracy, bad-faith, under the
doctrine of unclean hands, judge shopping, fraud, under the doctrine

of duplicity, and pursuant to the South Carolina Civil Remedies and
Procedure, for intentional torts, § 15-3-530, et seq., acting out-
side and beyond the standards and scope of Professional responsibilities
duties, and ethical conduct as duly licensed attorneys, in violation
of § 40-5-520, et seq., and § 40-11-110, et seq;

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are issues of facts to be resolved at trial," (holdin) "therefore, summary judgment is inappropriate and Defendants' counsel motion is denied;"

(29). That, on or about, July 29, 2008, subsequent motions hearing was held at the Richland County, Court of Common Pleas, before the presiding Judge J. Ernest Kinard, Jr., and both parties appeared, Plaintiff as pro'se and Defendant Defendant Stewart, III, AS counsel for SCDC, et al.,;

(30). That, during the hearing, the presiding Court (Judge Kinard, Jr.,) Orally ruled, from the bench, "Judge Cooper, Jr., has already made his decision for this case (2007-CP-40-03742) to go to trial, and I'm (Judge Kinard, Jr.,) not going to go against it;"

(31). That, said Defendant Stewart, III, as counsel for the S.C. Department of Corrections, et al., asked the presiding Court for a copy of the said Order of March 26, 2008, and the presiding Court ordered the Clerk of Court to make cop(ies) of the Order, and give the Counsel (Heath M. Stewart, III) and the Plaintiff a copy of it (the March 26, 2008, thepresiding Judge Cooper, Jr.);

(32). That, Defendant Stewart, III, failed to file motion to amend or reconsider Judge Cooper, Jr., March 26, 2008, Order, under the provisions of Rule 59 (e), SCRCP, nor did said Defendant Stewart, III, File an appeal, from an "unfavorable" ruling, that effected Defendant Stewart, III, pecuniary interest:

(33). That, rather than Defendant Stewart, III, choosing to file an appeal of said denial, said Defendant Stewart, III, chose to go judge shopping, to obtain a favorable summary judgment ruling;

12

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139

(276). WHEREFORE, said Plaintiff respectfully request this Court to grant a jury trial on all issues, herein alleged in the Complaint, and grant any further relief ~~deems~~ necessary just and proper and equitable, as a matter of law.

RICHLAND COUNTY,

COLUMBIA, SOUTH CAROLINA 29210

THIS 15th DAY OF October, 2012.

Respectfully Submitted,

SI. Clarence S. Gregory

CLARENCE S. GREGORY, #227394
C/o BROAD RIVER CORRECTIONAL
INST., MURRAY UNIT, B-WING
RM. 234

4460 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA
ZIP CODE 29210-4012

PRO'SE PLAINTIFF'S COMPLAINT
INVOLVING TWO (2) PREVIOUS CASES
2007-CP-40-03742, 2009-CP-40-02442

(13)

140

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

VERIFICATION

PERSONALLY APPEARED before me, Plaintiff, CLARENCE S. GREGORY, #227394, who first being duly Sworn, deposes and says that he is the Plaintiff in the foregoing action; that he has read the said factual allegations made within his Complaint and such claims so asserted therein, are believe to be true of his own knowledge, except those matters therein stated to be alleged base upon such information and belief and to those matters they believe them to be true.

SWORN to and Subscribed before me,)
this 18th day of October, 20 .)
Susan H. Drye)
Notary Public for State of South Carolina)
My Commission Expires)
My Commission expires: March 5, 2018 .)

S/ Clarence S. Gregory
CLARENCE S. GREGORY, #227394

144

141

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH (5TH) JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,
Plaintiff,

C/A NO.: _____

vs.

Riley Pope & Laney, LLC, Law Firm,
Attorney(s) And Counselor(s) at Law;
individually And individually named,
Theodore D. Riley, T. Lowndes Pope,
LeRoy Free Laney, Nikole H. Boland,
OF WHOM, ALL ARE SUED IN THEIR INDIVIDUAL
AND PROFESSIONAL CAPACITIES, RILEY POPE &
LANEY, LIMITED LIABILITY CONTRACTOR(S)
(LLC);

AFFIDAVIT OF SERVICE
BY VIA U.S. REGULAR
MAIL

AND

Heath McAlvin Stewart, III, individually,
AND individually named,
OF WHO, FORMERLY EMPLOYED WITH RILEY POPE
& LANEY, LLC, LAW FIRM, AN AGENT ATTORNEY,
IS SUED IN HIS INDIVIDUAL AND PROFESSIONAL
CAPACITIES, ET AL.,

ALL WHO ARE NAMED AS,

Defendant(s).

PERSONALLY APPEARED before me, CLARENCE S. GREGORY, #227394,
who first being duly Sworn, depose and says:

That, I am the Pro'se Plaintiff and Affiant in the above-captioned
entitled matter, and I hereby, have served/mailed an original Summons, Complaint
motion and Verification, with this Affidavit of Service forward to: The Honorable
Jeanette W. McBride, Clerk of Court, Fifth Judicial Center, 1701 Main Street,
Post Office Box 2766, Richland County, Columbia, South Carolina Zip Code 29202-
2766, from the Broad River Correctional Institution (BRCI), Mailroom, 4460
Broad River Road, Richland County, Columbia, South Carolina 29210-4012, bearing
proper Via Regular United States Mail as postage as it appears on this
day of October, 2012.

SWORN and Subscribed to and before me,
This 18th day of October, 2012.
L Susan A. Lyle
Notary Public, State of South Carolina

Clarence S. Gregory
CLARENCE S. GREGORY, #227394

My Commission Expires: March 5, 2013

24

194

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Clarence Gregory, #227394
Plaintiff,

Civil Action No.: 2007-CP-40-03742

v.

Jonathan E. Ozmint, Commissioner,
of South Carolina Department of
Corrections (SCDC); Morris
Elmore, Lieutenant &
Environmental Health & Safety
Officer (EHSO); Claude Hilton and
John Sawadske, Maintenance &
Repair Engineering, Director(s), at
Lieber Correctional Institution
(LCI); South Carolina Department
of Corrections; each sued in their
individual and official capacity, et
al.,
Defendants.

ANSWER

Defendants Jonathan E. Ozmint, Commissioner, of South Carolina Department of
Corrections (SCDC); Morris Elmore, Lieutenant & Environmental Health & Safety Officer
(EHSO); Claude Hilton and John Sawadske, Maintenance & Repair Engineering, Director(s), at
Lieber Correctional Institution (LCI); South Carolina Department of Corrections; each sued in
their individual and official capacity, et al., by and through their undersigned counsel and by way
of answer to Plaintiff's Complaint, herein allege as follows:

FOR A FIRST DEFENSE

1. All allegations of Plaintiff's Complaint not hereinafter specifically admitted are
denied.
2. By way of response to Plaintiff's Complaint, Defendants only admit that Plaintiff
is an inmate and deny the material allegations contained in Plaintiff's Complaint
or that Plaintiff is entitled to any relief as requested in said Complaint. Defendants
further submit that at all times their actions were consistent with South Carolina

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Exhibit

- 4
36. The Plaintiff is barred from recovery under the South Carolina Workers' Compensation Act as the Act provides for an exclusive remedy for injuries such as Plaintiff allegedly sustained.
- 193

WHEREFORE, having fully responded to Plaintiff's Complaint, Defendants request that the same be dismissed with fees and costs awarded to Defendants, and for such other and further relief as this Court may deem just and proper.

RILEY POPE & LANEY, LLC

Roy F. Laney, Esquire
Post Office Box 11412
Columbia, South Carolina 29211
Telephone: (803) 799-9993
Facsimile: (803) 239-1414

Attorneys for Defendants

Columbia, South Carolina
September 6, 2007

26

199

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)

Clarence Gregory, #227394
Plaintiff,

) Civil Action No.: 2007-CP-40-03742
)

v.

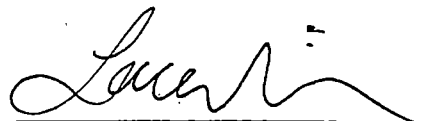
)
) Jonathan E. Ozmint, Commissioner,
) of South Carolina Department of
) Corrections (SCDC); Morris
) Elmore, Lieutenant &
) Environmental Health & Safety
) Officer (EHSO); Claude Hilton and
) John Sawadske, Maintenance &
) Repair Engineering, Director(s), at
) Lieber Correctional Institution
) (LCI); South Carolina Department
) of Corrections; each sued in their
) individual and official capacity, et
) al.,

Defendants.

CERTIFICATE OF SERVICE

This is to certify that I, Lacey E. Fisher, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached the Defendants' Answer in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Clarence S. Gregory, #227394
C/O Lieber Correctional Institute
Cooper Unit, A-Wing Room 55
P.O. Box 205
Ridgeville, South Carolina 29472-0205



Lacey E. Fisher

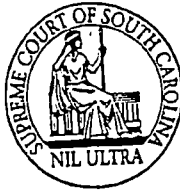
Columbia, South Carolina

September 6, 2007

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Exhibit

EXHIBIT



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256

The Supreme Court of South Carolina

JEAN HOEFER TOAL
CHIEF JUSTICE

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1584
FAX: (803) 734-1167

February 21, 2013

The Honorable Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, SC 29202-2766

RE: *Clarence S. Gregory, Petitioner, v. The Honorable Jeanette W. McBride, Clerk of Court, Richland County and The Honorable James R. Barber, III, Fifth Judicial Circuit, Chief Administrative Judge, Respondents.*
Appellate Case No. 2013-000024

Dear Ms. McBride:

Mr. Gregory has filed a petition for a writ of mandamus with this Court in which he maintains that since October 2012, he has attempted on several occasions to initiate a civil action - *Clarence Gregory, #227394, v. Riley Pope & Laney, LLC, Law Firm Attorney(s) and Counselors at Law; Individually and Individually Named, Theodore D. Riley, T. Lowndes Pope, LeRoy Free Laney, Nikole H. Boland and Heath Alvin Steward, III, Individually, Defendants* - using his inmate trust account pursuant to S.C. Code Ann. §§ 24-27-100 and -150 (2007). Despite the fact that petitioner did not file a motion to proceed *in forma pauperis*, each time, petitioner has been informed by your office that his motion to proceed *in forma pauperis* was denied; that in order to proceed, the \$150 filing fee will be taken in installments from his Cooper Trust Account; and that he must re-send the original documents for filing along with a copy of his trust account statement. In response to each notification from your office, petitioner has re-submitted the original documents and a copy of his trust account statement, asking in his last letter that if there is something further he needs to do, that your office please explain it to him so that he can proceed with the filing of his action.

By letter dated January 17, 2013, the Clerk of this Court requested that you file a

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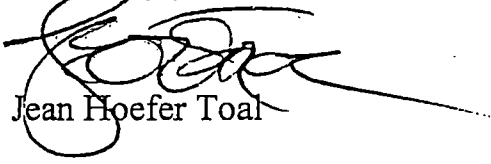
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29

response to the petition and that the response specifically address the applicability of §§ 24-27-100 and -150. A response was provided in the form of a letter from Judy N. Davis, Civil Records Manager for the Richland County Clerk of Court; however, that letter simply stated the case had been reviewed by Judge Barber and the motion to proceed *in forma pauperis* was denied. The letter did not address the applicability of §§ 24-27-100 and -150, and why petitioner's action has not been filed in light of those statutory provisions.

Accordingly, I am requesting that you provide a response to the petition for a writ of mandamus that specifically addresses why petitioner's action has not been filed pursuant to §§ 24-27-100 and -150.¹ Please provide this response within five days of the date of this letter.

Very truly yours,


Jean Hoefer Toal

cc: Clarence S. Gregory, 00227394

61) Exhibit

¹ Section 24-27-150 states that even if a prisoner's trust account does not contain sufficient funds to make the first-time payment required by section 24-27-100, the civil action *may still be filed*, and payments of ten percent of the preceding month's income in the prisoner's trust account shall be made from that account as soon as funds are available.

Exhibit

258
25

The County of Richland



Office of the County Attorney

February 27, 2013

VIA HAND DELIVERY

The Honorable Jean Hoefer Toal
Chief Justice
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: *Clarence S. Gregory, Petitioner v. The Honorable Jeanette W. McBride, Clerk of Court, Richland County and the Honorable James R. Barber, III, Fifth Judicial Circuit, Chief Administrative Judge, Respondents.*
Appellate Case No. 2013-000024

Dear Judge Toal:

This morning my office received notice; from the Richland County Clerk of Court, of the above Petition for Writ of Mandamus and your letter of February 21, 2013. That office has asked for my office's assistance in responding to this matter. I apologize that the response has not been timely thus far, but it appears that Ms. Judy Davis, Civil Records Manager for the Richland County Clerk of Court did not fully understand the connection between the *in forma pauperis* denial and the relevant statutes, and unfortunately, she failed to request assistance once she received the above Petition for Writ of Mandamus. It seems that Ms. Davis did not understand that even though the *in forma pauperis* was denied that Mr. Gregory still had the right to avail himself of the statutory provisions outlined in your letter.

Richland County Clerk of Court agrees that S.C. Code Ann. §§24-27-100 and -150(2007) do apply to the instant case and that the Richland County Clerk of Court should have accepted filing of Mr. Gregory's civil action. Richland County Clerk of Court agrees to immediately contact Mr. Gregory in order to notify him that he needs to initiate payment to the Richland County Clerk of Court, from his Cooper Trust Account, of the sums provided for in S.C. Code Ann. §24-27-100, or in the alternative, that if he has insufficient funds in his Cooper Trust Account, that the action will be filed and the funds collected as provided in S.C. Code Ann. §24-27-150. Richland County Clerk of Court will accept Mr. Gregory's civil action for filing with proper payment under S.C. Code Ann. §§24-27-100 or -150.

I hope that this response is sufficient to resolve the matter. Again I apologize for any delay. Please feel free to contact me if you have any questions or concerns.

With kindest regards,

259

26

RICHLAND COUNTY ATTORNEY'S OFFICE

By: Larry C. Smith
Larry C. Smith
Richland County Attorney

LCS:eam

Cc: Jeanette McBride, Richland County Clerk of Court
Anne Kelly, Richland County Chief Deputy Clerk of Court
Daniel Shearouse, Clerk of Court, SC Supreme Court
Clarence S. Gregory, 00227394

63) Exhibit

261

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Clarence Gregory, #227394
Plaintiff,

Civil Action No.: 2007-CP-40-03742

v.

Jonathan E. Ozmint, Commissioner,
of South Carolina Department of
Corrections (SCDC); Morris
Elmore, Lieutenant &
Environmental Health & Safety
Officer (EHSO); Claude Hilton and
John Sawadske, Maintenance &
Repair Engineering, Director(s), at
Lieber Correctional Institution
(LCI); South Carolina Department
of Corrections; each sued in their
individual and official capacity, et
al.,
Defendants.

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S RULE 60, SCRCP,
MOTION FOR RELIEF FROM
JUDGMENT**

STATEMENT OF THE CASE

On July 5, 2007, Plaintiff Clarence Gregory ("Gregory"), appearing *pro se*, filed suit against Jon Ozmint, Morris Elmore, Claude Hilton, John Sawadske, and the South Carolina Department of Corrections ("SCDC") (herein collectively referred to as "Defendants") in the Richland County Court of Common Pleas. All individuals were named in their individual capacities and collectively in their official capacities as employees of the SCDC. Gregory alleged violations of state law for gross negligence under the South Carolina Tort Claims Act and of his constitutional rights. On September 6, 2007, Defendants filed and timely served an Answer to Gregory's Complaint.

On October 30, 2007, Defendants filed and served a Notice and Motion for Summary Judgment without supporting affidavits. [Exhibit A]. A hearing was held on January 8, 2008, before the Honorable G. Thomas Cooper, Jr. On March 27, 2008, the

102 Exhibit

262

personal jurisdiction existed as to the Defendants. Therefore, the Plaintiff's "void for lack of jurisdiction" arguments are without merit.

Plaintiff also argues that since Defendants previously filed a motion for summary judgment, which was denied in 2008, that Judge Childs violated the S.C. Constitution by issuing an Order granting Defendants' second Motion for Summary Judgment.

The denial of a motion for summary judgment does not bar a party from making a later motion for summary judgment based on matters not involved in the decision on the first motion. If the first motion for summary judgment is unsuccessful the court has the power to permit a second motion for summary judgment prior to trial.

Crosswell Enterprises, Inc. v. Arnold, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992).

As previously set forth, the first summary judgment motion and the denial thereof was based solely on the pleadings in the case. However, the second summary judgment motion was based on Plaintiff's sworn deposition testimony. Moreover, the first Order denying summary judgment did not address whether the Plaintiff's negligence/gross negligence claims were barred by the exclusivity provision of the South Carolina Worker's Compensation Act, which was the sole basis for judgment in favor of the Defendants in Judge Child's Order. "yes it did!" See Def. Answer

Sept-06-2007

Based upon the record before this Court on Plaintiff's motion, there is no

evidence that the second summary judgment motion and Order granting said motion was

based solely on the same facts presented to Judge Cooper two years previously. (See, Def. Counsel Sept. 06. 2007, Answer para. 15th Defense. Accordingly, Plaintiff's allegation that the Order granting summary judgment is "void"

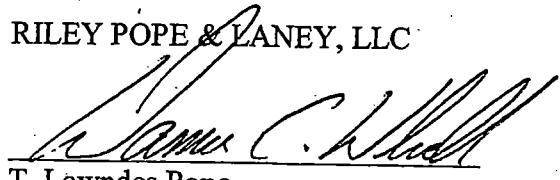
for lack of due process is also without merit and Plaintiff's motion should be dismissed.

263

CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court deny Plaintiff's Motion for Relief from Judgment pursuant to Rule 60(b)(4), SCRPC.

RILEY POPE & LANEY, LLC



T. Lowndes Pope
Damon C. Wlodarczyk
Post Office Box 11412
Columbia, South Carolina 29211
Telephone: (803) 799-9993
Facsimile: (803) 239-1414

Attorney for Defendants Jonathan E.
Ozmin, Commissioner, of South Carolina
Department of Corrections (SCDC); Morris
Elmore, Lieutenant & Environmental Health
& Safety Officer (EHSO); Claude Hilton
and John Sawadske, Maintenance & Repair
Engineering, Director(s), at Lieber
Correctional Institution (LCI); South
Carolina Department of Corrections

Columbia, South Carolina
January 29, 2013

34

RILEY POPE & LANEY, LLC
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET
POST OFFICE BOX 11412 (29211)
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE
(803) 799-9993

FACSIMILE
(803) 239-1414

January 29, 2013

VIA Hand Delivery

The Honorable Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

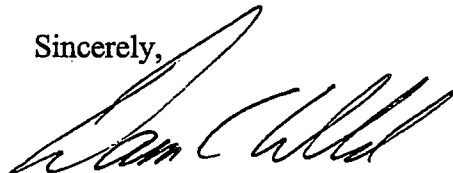
Re: Gregory, Clarence #227349 v. SCDC
IRF Claim #: 53541
Date of Loss: 05/15/08
C.A. No.: 09-CP-40-02442

Dear Ms. McBride:

Enclosed for filing please find the original and one copy of the Memorandum in Opposition to the Plaintiff's Rule 60, SCRCF, Motion for Relief from Judgment in connection with the above-referenced matter. Please file the original and return the clocked in copy to my courier

By copy of this letter I am this date serving a copy of the same upon Plaintiff Clarence Gregory. Thank you for your assistance in this matter.

Sincerely,


Damon C. Włodarczyk

DCW
Enclosures

(92) Exhibit

COPY

265

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442
)

Plaintiff,

)
)

v.

)
)

Jonathan E. Ozmint, Commissioner
of South Carolina Department of
Corrections, et al., and South
Carolina Department of
Corrections, et al.,

)
)
)
)
)
)
)
)

Defendants.

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
RULE 60, SCRCP, MOTION FOR
RELIEF FROM JUDGMENT**

STATEMENT OF THE CASE

On April 2, 2009, Plaintiff Clarence S. Gregory ("Gregory"), appearing *pro se*, filed suit against Defendants Jonathan E. Ozmint ("Ozmint"), Commissioner of South Carolina Department of Corrections and South Carolina Department of Corrections ("SCDC") (herein collectively referred to as "Defendants") in the Court of Common Pleas of the Fifth Judicial Circuit. Defendant Ozmint was named in his official capacity as Director of the SCDC. Gregory alleges a violation of state law for gross negligence under the South Carolina Tort Claims Act. Defendants filed and timely served an Answer to Gregory's Complaint on May 18, 2009.

On October 7, 2009, Defendants filed a Notice and Motion for Summary Judgment on October 8, 2009. [Exhibit A]. A hearing was held before the Honorable Michelle Childs and on April 5, 2010, a Order was filed denying the Motion for Summary Judgment. [Exhibit B].

Subsequent to the Order being issued, Gregory was deposed. Defendants then filed a second Motion for Summary Judgment on or about February 23, 2011, supported

36

93 Exhibit

266

personal jurisdiction existed as to the Defendants.² Therefore, the Plaintiff's "void for lack of jurisdiction" arguments are without merit.

Plaintiff also argues that since Defendants previously filed a motion for summary judgment, which was denied in 2008, that Judge Childs violated the S.C. Constitution by issuing an Order granting Defendants' second Motion for Summary Judgment.

The denial of a motion for summary judgment does not bar a party from making a later motion for summary judgment based on matters not involved in the decision on the first motion. If the first motion for summary judgment is unsuccessful the court has the power to permit a second motion for summary judgment prior to trial.

Crosswell Enterprises, Inc. v. Arnold, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992).

As previously set forth, the first summary judgment motion and the denial thereof was based solely on the pleadings in the case. However, the second summary judgment motion was based on Plaintiff's sworn deposition testimony.

Based upon the record before this Court on Plaintiff's motion, there is no evidence that the second summary judgment motion and Order granting said motion was based solely on the same facts presented to Judge Cooper two years previously. Accordingly, Plaintiff's allegation that the Order granting summary judgment is "void" for lack of due process is also without merit and Plaintiff's motion should be dismissed.

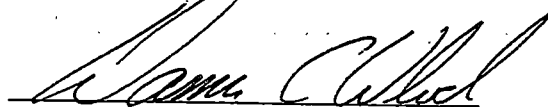
CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court deny Plaintiff's Motion for Relief from Judgment pursuant to Rule 60(b)(4), SCRPC.

² The Defendant Butler was dismissed from the case in Judge Benjamin's Order as the Summons was deficient and, therefore, the Court lacked jurisdiction over her.

267

RILEY POPE & LANEY, LLC



T. Lowndes Pope
Damon C. Wlodarczyk
Post Office Box 11412
Columbia, South Carolina 29211
Telephone: (803) 799-9993
Facsimile: (803) 239-1414

Attorneys for Defendants Jonathan E.
Ozmint, Commissioner of South Carolina
Department of Corrections, et al., and South
Carolina Department of Corrections, et al.

Columbia, South Carolina
January 29, 2013

(97) Exhibit

*Brief, Respondent
Exhibit
3 pages*

COPY

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge
Trial Court Case No.: 2013-CP-40-03078

RECEIVED

OCT 23 2015

Court of Appeals

Appellate Case No.: 2015-000740

Clarence S. Gregory, #227394,.....Appellant,

v.

Riley, Pope & Laney, LLC,.....Respondent,

INITIAL BRIEF OF RESPONDENT

RILEY, POPE & LANEY, LLC

DAMON C. WLODARCZYK
P.O. Box 11412
Columbia, South Carolina 29211
(803) 799-9993 – Office
(803) 239-1414 – Facsimile
damonw@rplfirm.com

Counsel for the Respondent

The trial court ruled that, to the extent Inmate was seeking relief under any of the enumerated causes of action in the Complaint relating to allegations that he was intimidated or threatened with intimidation during his depositions taken in October 18, 2008 and May 10, 2010, the claims would be barred by the applicable statute of limitations as the Complaint was filed on May 22, 2013. [Order on Appeal].

The statute of limitations for personal injury actions and actions for the injury to the rights of another is three (3) years. S.C. Code § 15-3-530(5). Accordingly, Inmate's Complaint was filed more than three (3) years after the statute of limitations expired as to the last deposition taken.

Inmate argues the statute of limitations should be equitably tolled due to the Clerk of Court's failure to accept and file Inmate's Summons and Complaint in 2012. [Inmate Brief, pp. 5-7].

The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness *to a diligent plaintiff* ... [and] is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights....

Ross v. Ross, 394 S.C. 261, 264, 715 S.E.2d 359, 360 (Ct. App. 2011) (emphasis added).

Inmate contends he was forced to seek relief from the Supreme Court of South Carolina in the form a Writ of Mandamus in order to get the Richland County Clerk of Court to accept and file his Summons and Complaint. [Inmate Brief, p. 6-7]. However, Inmate indicates that the issue was resolved in a letter from Larry C. Smith of the Richland County Attorney's Office dated February 27, 2013, approximately three (3) months prior to the running of the statute of limitations. [Inmate Brief, pp. 6-7].

Exhibit Respondent Brief

Inmate offered no evidence to the trial court explaining his three (3) month delay in resubmitting the Summons and Complaint to the Richland County Clerk of Court for filing, said Summons and Complaint being re-dated and sent for filing on May 15, 2012 as evidenced by the notarized Certificate of Mailing, after the statute of limitations expired.¹ [Complaint Certificate of Mailing].

The Summons and Complaint were already drafted in 2012 and the only changes to the document appears to be the re-dating of the Certificate of Mailing. The issue regarding the Writ of Mandamus was resolved on February 27, 2013. Inmate offered no evidence or explanation to the trial court regarding his two and one-half month delay in remailing the Summons and Complaint to the Clerk of Court. Moreover, Inmate has offered no argument to this Court to explain the delay the re-filing of the Summons and Complaint. As Inmate failed in his diligence to timely file the Complaint before the statute of limitations expired even though there was ample time to do so, the trial court's ruling should be affirmed. Ross, 394 S.C. at 264, 715 at 360

Even if the trial court erred in not equitably tolling the statute of limitations in this action, the Order simply indicated to the extent Inmate sought to use the alleged conduct of counsel during depositions to support any of the fifteen (15) causes of actions in the Complaint, the allegations were time barred. The only claims to which the allegation of attorney conduct would apply was the claims for breach of "solemnly oath of duties of office." As stated by the trial court, both the trial court and this Court lack subject matter jurisdiction to entertain matters related to a lawyer's ethical and

¹ A pleading is considered "filed" by an inmate when it is delivered to prison authorities for mailing. See Houston v. Lack, 487 U.S. 266, 276 (1988).

CONCLUSION

For the reasons set forth, Respondent respectfully requests the Court affirm the Order on Appeal.

RILEY POPE & LANEY, LLC



Damon C. Włodarczyk, SC Bar #70460
Post Office Box 11412
Columbia, South Carolina 29211
Telephone: (803) 799-9993
Facsimile: (803) 239-1414

Columbia, South Carolina

October 23, 2015

(VOLUME I., OF IV)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Richland County
Court of Common Pleas From Orders of
Honorable G. Thomas Cooper, Jr.,

Appellate Case No.: 2015-000740

Case No.(s): 2013-CP-40-03078
2007-CP-40-03742

Subsequent Interlocutory Orders of (Former) Circuit Court Judge,
Honorable J. Michelle Childs:

Case No.(s): 2007-CP-40-03742
2009-CP-40-02442

Subsequent Interlocutory Order of Circuit Court Judge,
Honorable De Andrea Gist Benjamin:

Case No.: 2009-CP-40-02442

Clarence S. Gregory, ... Appellant,

Verses

Riley Pope & Laney, LLC, Law Firm, Attorney(s) and Counselor(s)
at Law; Individually and Individually named, Theodore D. Riley,
T. Lowndes Pope, LeRoy Free Laney, Nikole H. Boland, Of Whom
All are sued In Their Individual and Professional Capacities,
Riley Pope & Laney, Limited Liability Contractor(s)(LLC);

AND

Heath McAlvin Stewart, III, Individually and Individually named,
Of Who, Formerly Employed with Riley Pope & Laney, LLC, Law
Firm, An Agent Attorney Is Sued In His Individual and

Professional Capacities, Et Al.;

All Whom are named as Defendants,

Of Which, Riley Pope & Laney, LLC, Is The Respondent.

RECORD ON APPEAL

VOLUME I OF IV

CLARENCE S. GREGORY, #227394
C/O BROAD RIVER CORRECTIONAL INST.,
MURRAY UNIT, B-WING RM. 234
4460 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA
ZIP CODE 29210-4012

APPELLANT PRO'SE

RILEY POPE & LANEY, LLC
C/O DAMON C. WLODARCZYK, ESQUIRE
ATTORNEY(S) AND COUNSELOR(S) AT
LAW, 2838 DEVINE STREET
POST OFFICE BOX 11412
COLUMBIA, SOUTH CAROLINA
ZIP CODE 29211-1412

RESPONDENT.

DAMON C. WLODARCZYK, ESQUIRE FOR
RESPONDENT.

(20)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442
)

Plaintiff,

)

v.

)

ORDER

Jonathan E. Ozmint, Commissioner
of South Carolina Department of
Corrections, et al., and South
Carolina Department of
Corrections, et al.,

)

)

)

)

)

)

Defendants.

)

RICHLAND COUNTY
FILED
2011 OCT 17 PM 12:12
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter is before the Court on Defendant Jonathan E. Ozmint's ("Ozmint") and the South Carolina Department of Corrections' (the "SCDC") (herein collectively referred to as the "Defendants") Motion for Summary Judgment, and Plaintiff Clarence S. Gregory's ("Gregory") Motion to Oppose Summary Judgment and Amended Motion Opposing Summary Judgment.

The Court has reviewed the pleadings in this action, the Motions, the prior Order in this case, and other materials submitted by the parties. This Court further conducted a hearing on this matter on August 31, 2011. After considering the materials submitted to this Court and arguments presented by the parties, for the reasons set forth in this Order, this Court grants Defendants' Motion for Summary Judgment and denies Plaintiff's Motion to Oppose Summary Judgment and Amended Motion Opposing Summary Judgment.

STANDARD OF REVIEW

Rule 56 of the South Carolina Rules of Civil Procedure provides that a party is entitled to judgment as a matter of law when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Thus, summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be

SCANNED

(21)

drawn from the facts are undisputed. Etheredge v. Richland School District One, 341 S.C. 307, 534 S.E. 2d 275 (2000). When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "However, if the evidence is susceptible of only one reasonable inference, the question is no longer one for the jury but one of law for the Court." Ward v. Zelinski, 260 S.C. 229, 232, 195 S.E.2d 385, 387 (1973).

FACTS AND PLEADINGS

On April 2, 2009, Gregory, appearing pro se, filed the present action. In summary, Gregory alleges that SCDC employee, Jennifer Butler ("Butler") struck him in the back with a spoon while Gregory was in the cafeteria at Lieber Correctional Institution. Gregory alleges two causes of action in his Complaint. First, Gregory alleges a cause of action against the SCDC for breach of "duty of reasonable care" and "grossly negligent supervising". In Gregory's second cause of action, Gregory references a "cause of action" of "intentional tort or assault and battery".

Although Gregory refers to Ozmint in the facts of his pleadings, Gregory does not allege either of his two causes of action against Ozmint. Further, while Gregory refers to Butler in his Complaint, Butler was not identified as a party in the caption on either the Summons or the Complaint. Finally, the Court notes that Gregory's prayer for relief requests actual damages against the SCDC only and does not request damages from Ozmint or Butler.

This case involves the application of the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et. seq.* (the "Tort Claims Act"). The Tort Claims Act is the exclusive remedy for tort suits brought against the State of South Carolina and its political subdivisions. S.C. Code Ann. §15-78-20. The Tort Claims Act does not create causes of action; rather it removes the common law bar of sovereign immunity in certain situations, but only to the extent mandated by

(72)

the Tort Claims Act. Summers v. Harrison Constr., 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989).

Applying the Tort Claims Act to the facts which Gregory alleges in his Complaint, Ozmint is entitled to Summary Judgment. The Tort Claims Act provides that when bringing an action against a governmental entity, the Plaintiff shall name as the party defendant only the agency or political subdivision for which the employee was acting. S.C. Code Ann. §15-78-70(c). Because the facts giving rise to this suit pertain to Ozmint in his capacity as the SCDC's Director, Ozmint is not a proper party to this suit. Additionally, the two causes of action which Gregory alleges do not even identify Ozmint as a party to such claims. As such, Ozmint is entitled to Summary Judgment in this matter.

Furthermore, the SCDC is entitled to Summary Judgment in this action. The SCDC has denied that its employee, Butler, struck Plaintiff with a spoon. However, assuming such facts to be true for purposes of Summary Judgment, then such actions would amount to intentional conduct. The Tort Claims Act provides that the governmental entity is not liable for a loss resulting from employee conduct which constitutes actual malice or an intent to harm. S.C. Code Ann. §15-78-60(17). Thus, while the SCDC denies that its employee took such actions as Gregory alleges, taking the allegations in the light most favorable to Gregory, the SCDC would not be responsible for such acts. Accordingly, the SCDC is entitled to Summary Judgment to the extent that Gregory has alleged any acts that constitute actual malice or intent to harm.

Moreover, the SCDC is entitled to Summary Judgment to the extent that Gregory has alleged a cause of action for negligent supervision. The Tort Claims Act provides that a governmental entity is not liable for a loss resulting from the "responsibility or duty, including, but not limited to, supervision, protection, control, confinement or custody of any ... prisoner of any governmental entity, except when the responsibility or duty is exercised in a grossly

(23)

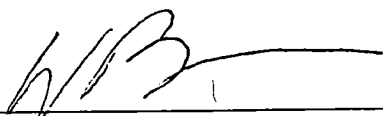
negligent manner. S.C. Code Ann. §15-78-60(25). Gross negligence means the failure to exercise even a slight degree of care. Moore v. Berkeley County School District, 326 S.C. 584, 486 S.E.2d 9 (Ct. App. 1997). While Gregory's Complaint uses the words "grossly negligent" and "grossly negligent supervising", Gregory has failed to set forth any facts which establish SCDC's gross negligence in the supervision of any person.

Finally, this Court notes that while Gregory has mentioned Butler within the text of his Complaint, Butler was not identified in the Summons nor in Gregory's prayer for relief. S.C.R. Civ. P. 4(B) provides that the Summons shall contain the names of the parties. This Court finds that owing to the defect in the Summons, Butler is not a party to this suit. This Court further is on notice that Gregory filed another suit captioned Clarence S. Gregory, #227394 v. Jennifer Butler, FoodService Supervisor, IV, at Lieber Correctional Institution, Sued In Her Individual Capacity; of South Carolina Department of Corrections, which named Butler as a party and which pertains to the same facts as the present action.

CONCLUSION

For the foregoing reasons, this Court grants Defendants' Motion for Summary Judgment and denies Plaintiff's Motion in Opposition to Summary Judgment and Amended Motion in Opposition to Summary Judgment.

IT IS SO ORDERED.



The Honorable DeAndrea Gist Benjamin
Judge of the Fifth Judicial Circuit

Columbia, South Carolina
October 13, 2011

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 -CP- 40 - 02442

Clarence S. Gregory

Jonathan E. Ozment, et al

PLAINTIFF(S)

DEFENDANT(S)

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. Nonsuit); ☐ 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 _____

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. (Formal order to follow)

☒

Statement of Judgment by the Court:

Motion to Amend, Alter, or Reconsider is Denied

Dated at Columbia, South Carolina, this 29 day of Sept, 2011.

WJB
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 3 day of OCT, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeannette W. McBride
CLERK OF COURT

24

RICHLAND COUNTY
FILED
2011 OCT -3 AM 10:15
JEANNETTE W. MCBRIDE
C.C. & G.C.

1

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Clarence S. Gregory, #227394,
Plaintiff,

v.

Jonathan E. Ozmint, Commissioner of
South Carolina Department of Corrections,
et al. and South Carolina Department of
Corrections, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-40-02442

ORDER

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 APR -5 PM 2:41

RICHLAND COUNTY
FILED

This matter came before the Court pursuant to Defendants' Motion for Summary Judgment; and Plaintiff's Motion to Proceed *In Forma Pauperis*, Motion for Production of Documents, Motion to Compel Production of Discovery, Motion for An Order for a Hearing and A Order, Motion in Objection to Defendants' Counsel['s] Summary Judgment Motion, and Supplemental Notice and Motion in Opposition to Defendants' Summary Judgment Motion, and Motion for Sanctions against Defendant's Counsel.¹ Present at the hearing were Plaintiff, appearing *pro se*; and Mr. Heath M. Stewart, III, Esquire, on behalf of Defendant.

Plaintiff is an inmate in the custody of South Carolina Department of Corrections ("SCDC"). Plaintiff was previously housed at Lieber Correctional Institution and is now housed

¹ At the hearing, Plaintiff informed the Court that his Motion for an Order for a Hearing and A Order had been resolved. By separate Order, the Court granted, in part, Plaintiff's Motion to Compel Production of Discovery.

at Evans Correctional Institution. On April 2, 2009, Plaintiff filed this action against Defendant SCDC, a governmental entity; Defendant Jonathan E. Ozmint, in his capacity as Director of SCDC; and Jennifer Butler ("Butler"), the Food Service Supervisor for Lieber Correctional Institute. Plaintiff alleges causes of action under the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, *et seq.* ("SCTCA"). Specifically, Plaintiff alleges that Defendant Butler acted in a grossly negligent manner by failing to exercise reasonable care towards Plaintiff in performing her job duties and responsibilities in violation of the SCTCA, S.C. Code Ann. § 15-78-60(25). Furthermore, Plaintiff claims that Defendant Butler committed the intentional tort of assault and battery when she used excessive force to strike him with a large serving spoon while Plaintiff worked under her supervision in the kitchen. On or about April 15, 2009, Plaintiff was terminated from his position in the cafeteria.

I. Plaintiff's Motion to Proceed In Forma Pauperis

On April 2, 2009, Plaintiff timely filed a Motion to Proceed *in Forma Pauperis*. Plaintiff seeks to proceed without the payment of the required filing fee. Defendants did not oppose Plaintiff's application to proceed *in forma pauperis* until they filed their Motion for Summary Judgment in October 2009. As of the date of the hearing, Plaintiff's motion had not been granted.

Relying on Martin v. South Carolina Dept. of Corrections, 350 S.C. 196, 565 S.E.2d 756 (2001), Defendants argue that South Carolina law is clear that motions to proceed *in forma pauperis* may be granted only when specifically authorized by statute or required by constitutional provisions. However, the Court finds that Plaintiff has timely filed the appropriate

2009

documentation indicating that he is an indigent, incarcerated individual, and his case would essentially be discontinued if not allowed to proceed *in forma pauperis* because of his inability to pay the court costs. See Lakes v. State, 333 S.C. 382, 510 S.E.2d 228 (Ct. App. 1998). Therefore, Plaintiff's Motion to Proceed *in Forma Pauperis* is **GRANTED**.

II. Defendant's Motion for Summary Judgment and Plaintiff's Objection to Defendants' Counsel[s] Summary Judgment

Defendants move for summary judgment pursuant to Rule 56, SCRPC, on the grounds that there are no genuine issues of material fact in this matter. They claim they are entitled to judgment as a matter of law for the following reasons: (1) Plaintiff has failed to state a cause of action for which relief can be granted; (2) Plaintiff is not entitled to relief under the SCTCA; and (3) Plaintiff has failed to properly serve Defendant.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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." See Rule 56(c), SCRPC; Singleton v. Sherer, 377 S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008). Summary judgment is not appropriate "where there is no dispute as to the facts but the parties dispute inferences to be drawn from those facts." Penny Creek Assoc., LLC v. Fenwick Tarragon Apartments, LLC, 375 S.C. 267, 271, 651 S.E.2d 617, 619 (Ct. App. 2007); Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005). "However, if the evidence is susceptible of only one reasonable inference, the question is no longer one for the jury but one of law for the Court." Hancock v. Mid-South Mgmt., Inc., 370 S.C. 131, 135, 634 S.E.2d 12, 14 (Ct. App. 2006). "The purpose of summary judgment is to

39mc

AFFIDAVIT IN SUPPORT OF
PETITIONER'S, Clarence S. Gregory
227394,

RECEIVED

MAY 25 2017

SC Court of Appeals

Petition For Re hearing &
Re hearing En banc, Rule 219,
Rule 221, S.C. Appellate Court
Rules

Now Comes, The Petitioner,
Who, First duly depose and says:

1). Pursuant to Rule 219, and Rule
221, of The S.C. Appellate Court
Rules;

2). That, I (Clarence S. Gregory, #227394)
asserted by virtue of This Petition,
and Notice are true and correct to
the best of my knowledge and
belief;

Furthermore, Affiant sayth naught!

sk 

CLARENCE S. GREGORY, #227394

Appellant CASE NO.: 2015-000740

[SWORN TO NOTARY PUBLIC]
NEXT PAGE

Petitioner's Affidavit IN Support
CONT'd, page Two (2)

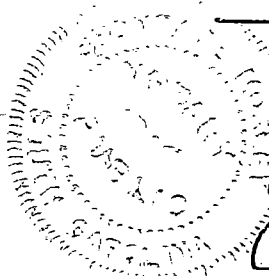
Dated May 19, 2017

Respectfully submitted,
Sl [Signature]

Sworn to and subscribed to and
before me, This 16 day of
May, 2017:

NOTARY PUBLIC FOR STATE OF
SOUTH CAROLINA

My Commission Expires on: 9/14/2020

 RICHLAND COUNTY,
COLUMBIA, SOUTH CAROLINA
29210-4012

LEGAL MAIL

CERTIFICATE OF COMPLIANCE

The Petitioner, Clarence S. Gregory, 227394, do hereby at this time, certify that this "Petition For Rehearing And Rehearing En banc" complies with Rule 219 and Rule 221, of the South Carolina Appellate Court Rules (SCACR), Rule 224, SCACR;

Respectfully Submitted,
I am, Clarence S. Gregory

CLARENCE S. GREGORY
SCDC NO. # 227394, MURRAY Unit,
B-WING Rm. 208, at 4460
Broad River Road, Columbia,
S.C. 29210-4012

Petitioner, Pro Se Case
No.: 2015-000740

May 15, 2017

LEGAL MAIL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEALED FROM THE RICHLAND
COUNTY COURT OF COMMON PLEAS
ORDER OF HONORABLE G. THOMAS
COOPER, JR., CIRCUIT COURT

JUDGE:

MAY 25 2017

SC Court of Appeals

CASE NO.(S): 2013-CP-40-03078
2007-CP-40-03742

SUBSEQUENT INTERLOCUTORY ORDERS
OF (FORMER) CIRCUIT COURT JUDGE,
HONORABLE J. MICHELLE CHILDS:

CASE NO.(S): 2007-CP-40-03742
2009-CP-40-02442

SUBSEQUENT INTERLOCUTORY ORDER
OF CIRCUIT COURT JUDGE,
HONORABLE DE ANDREA GIST
BENJAMIN:

CASE NO.: 2009-CP-40-02442

Clarence S. Gregory ... Appellant,
verses

Riley Pope and Laney, LLC, Law Firm, Attorney(s) and Counselors at Law; Individually and Individually named, Theodore D. Riley, T. Lowndes Pope, LeRoy Free Laney, Nikole H. Boland, OF whom, all are sued in their individuals and Professional capacities; Riley Pope and Laney, Limited Liabilities Contractors (LLC);

AND

Heath McAlvin Stewart, III, Individually and Individually named, of whom formerly employed with Riley Pope and Laney, LLC, Law Firm, an agent attorney is sued in his Individual and Professional capacities, et al.

All of whom are named as
..... Respondent ..

②

CERTIFICATE OF SERVICE

The Petitioner, Clarence S. Gregory, # 227394, hereby says that he certifies and have served and mailed, an Original Cover Letter, Notice, a Petition For Rehearing And Rehearing En Banc, page one (1) thru page, thirty two (32), Affidavit In Support, (2) pages, "Attached" Record on Appeal, as Petitioner's Exhibit(s), pages one (1), thru page thirty eight (38), Petitioner's Final-Brief, Exhibits pages one (1) thru nine (9), and Respondent's Brief, Exhibits, pages 07, 08, and conclusions; The "Unpublished Opinion NO. 2017-UP 183", OF Court OF Appeals, Dated May 03, 2017, Received at BRCI, Mailroom on May 08, 2017, and this Certificate of Service by

(3)

LEGAL MAIL

United States First Class mail,
served upon, The Honorable
Jenny Abbott Kitchings, Clerk
of the S.C. Court of Appeals,
at, Post Office Box 11629,
Richland County, Columbia,
South Carolina, 29211-1629;
And served the same upon;
Riley Pope And Laney, LLC,
Law Firm, c/o Damon C. Wlodarczyk,
Respondent's Counselor,
Attorney(s) And Counselors at
Law, at 2838 Devine Street,
Post Office Box 11412, Columbia,
South Carolina 29211-1412;
mailed from, SCDC, Broad River
Correctional Institutional mailroom,
at, 4460 Broad River Road, in
Columbia, South Carolina 29210-
-4012; Bearing via proper United
States' First Class postage, as
it appear on this 15th day of

(4)

LEGAL MAIL

May, year of 2017;

Respect Fully Submitted,
~~SL Jan Sr July~~

CLARENCE S. GREGORY, #

SCDC NO.: #227394, C/O BRCI

MURRAY Unit, B-WING Rm. 208

4460 Broad River Road,

Columbia, S.C. 29210-4012

Certificate of Service By
U.S. Mail,

Appellant, Pro'se, CASE NO.:
2015-000740

Petition For Rehearing
And Rehearing En banc,
Rule 219, 221, SCACR

RICHLAND COUNTY,
COLUMBIA, SOUTH CAROLINA
29210-4012

(5)

83512

Clarence S. Gregory, #227394
C/o BRCI, Murray Unit, B-WING Rm. 208
4460 Broad River Road
Columbia, S.C. 29210-4012

VIA U.S. Regular Mail

RECEIVED

Dated: May 15, 2017

MAY 25 2017

To: The S.C. Court of Appeals SC Court of Appeals
C/o Honorable Jenny A. Kitchings,
Clerk, Post Office Box 11629
Columbia, S.C. 29211-1629

Re: GREGORY #227394 vs. Riley Pope & Laney, LLC
App. CASE NO. 2015-000740

Respectfully For Filing, Petition For
Rethearing And Re-hearing En-Banc,
provisions of Rule 219 & Rule 221,
S.C.A.C.R.

Dear Honorable Ms. Kitchings / Clerk:

Enclosed, please find an Original
plus (6), Copies, under Rule 224(d),
SCA.C.R., to the extent, There are a
\$25.00 (Twenty Five dollars) credit
owes to me, as in regard to:

Dawkin Richard Dowdle sent -

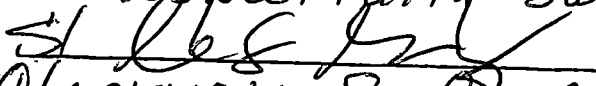
LEGAL MAIL

previously, Filing Fees should be credited, if not so, There will be a \$ 25.00 (Twenty Five dollars) Filing For the Petition For Rehearing etc., sent by the same party, Richard D. Dowdle, 137 Concord Road, Gaffney, S.C. 29341, or From: Mrs. Terrie A. Covington, 908 Blanton Street, Shelby, NC, 28150

It will be sent before the Remittitur sent out to the Lower Court.

Thank you so kindly for your assistance and Cooperation, regard to this matter.

Sincerely, Respectfully submitted


CLARENCE S. GREGORY
#227394, C/O BRCA

Cover Letter of Request
For Filing

May 15, 2017

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Print postage online

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WRITE FIRMLY WITH BALL POINT PEN ON HARD SURFACE TO MAKE ALL COPIES LEGIBLE.

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FROM: (PLEASE PRINT) **Clarence S. Gregory**
c/o BRCI, Murray Unit, B-Wing
4460 Broad River Road Rm. 208
Columbia, SC 29210-4012

PHONE: **803-134-1890**

TO: (PLEASE PRINT) **The S.C. Court, Appeals**
c/o Honorable, Jenny A. Kitchings
Clerk of Court
P.O. Box 11629
Columbia, SC
ZIP + 4 (U.S. ADDRESSES ONLY) **29211-1629**

■ For pickup or USPS Tracking™, visit USPS.com or call 800-222-1811.
■ \$100.00 Insurance Included.

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MAY 25 2017

UNITED STATES POSTAL SERVICE[®] **SC Court, Appeals** **PRIORITY MAIL[™]** **EXPRESS[™]**

ORIGIN (POSTAL SERVICE USE ONLY)

☒ 1-Day ☐ 2-Day ☐ Military ☐ DPO

PO ZIP Code **28150** Scheduled Delivery Date (MM/DD/YYYY) **5/25**

Date Accepted (MM/DD/YYYY) **5/24** Scheduled Delivery Time ☒ 10:30 AM ☐ 3:00 PM ☐ 2 NOON

Time Accepted **401** ☐ AM ☒ PM 10:30 AM Delivery Fee \$

Special Handling/Fragile Sunday/Holiday Premium Fee \$

Weight lbs. ozs. **5.24** Acceptance Employee Initials **SA** Total Postage & Fees **\$23.95**

DELIVERY (POSTAL SERVICE USE ONLY)

Delivery Attempt (MM/DD/YYYY) Time **5/25/2017** ☒ AM ☐ PM Employee Signature **CS**

Delivery Attempt (MM/DD/YYYY) Time **5/25/2017** ☒ AM ☐ PM Employee Signature **CS**

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Clarence S. Gregory #227394
C/o BRCI, Murray Unit, B-Wing Rm. 208
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VIA U.S. Mail, TO: The S.C. Court, Appeals
C/o Honorable Jenny A. Kitchings
Clerk of Court,
P.O. Box 11629
Columbia, SC, 29211-1629

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MAY 25 2017

SC Court of Appeals

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