

Attorney General Alan Wilson and granting Defendants Motion to Dismiss plaintiff complaint against SCDC State Agency employees.

FACTS

Plaintiff alleged on the Record that He was subjected to draconian Restriction and a condition of confinement that deprived him of the very basic minimum of life necessities in violation of South Carolina Constitution Article XX, § 2.

ARGUMENT

Plaintiff brought this action against Defendants Attorney General Alan Wilson and Ms. Tarcia L. James, et al of McCormick Corrections Institution inmate program services private health care provider of SCDC (Medical) seeking actual and punitive damages of \$10,000,000 for personal injuries he sustained while a student, patient, inmate, prisoner in the custody and care of the political subdivision.

Plaintiff Tyrone Roberson a patient cause of action against Defendants alleging assault and battery arising from the performance of an injection without informed

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Tyrone Lamar Roberson, #191327
Plaintiff,

v.

South Carolina Attorney General,
Alan Wilson; Defendants of Penny
Corrections Institution, Warden
Larry Cantledge; Associate Warden
James Parker, Jr.; Lieutenant Stanley
Terry; Nurse Tarcia L. James, third-party
Defendants South Carolina Department of
Corrections Director, Bryan P. Stirling;
and SCDC Insurance Carrier the State
Budget and Control Board Committee,
Commissioner of the Palmetto Unified
School District No. #1 Board of
Trustee Randy Reagan, Ed. D.,
Superintendent, et al,
Defendants

IN THE COURT OF COMMON PLEAS
C.A. No. 2017-CP-23-03406

Plaintiff Motion
To Alter or Amend
Judgment Dismissing
Attorney General
Alan Wilson as
Follows:

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Come now Plaintiff Tyrone Roberson with Motion to
Alter or Amend Judgment November 1, 2017 Dismissing
Attorney General Alan Wilson.
Plaintiff objects to Judge Edward W. Miller dismissing

Consent stated a cause of action based on intentional tort, for which the Defendants inmate program services private health care provider of SCDC (Medical) was not immune under the doctrine of charitable immunity. At all times relevant to this action the Defendants had in force a comprehensive employee liability insurance policy coverage that is bonded by a nationally registered commercial insurance carrier.

The complaint sets forth three causes of action. First, the complaint alleges a cause of action for gross negligence and recklessness. Second, the complaint alleges an intentional tort consisting of an assault and battery arising from the performance of the injection Friday - February 20, 2015 without informed consent. Third, the complaint alleges a cause of action based on the breach of an implied warranty.

ARGUMENT

Plaintiff Tyrone Robertson asserts that his present draconian restriction with condition of confinement in violation of South Carolina Constitution Article XXII, § 2, that gross negligently subjects plaintiff to medical malpractice by Defendants Attorney General Alan Wilson and third-party SCDC acts or omission by Doctor or Nurses [REDACTED]

under color of state law with a culpable state of mind where Defendants Alan Wilson and third-party SCDC is so indifferent to the consequences of his conduct as not to give a slight care to what he is doing when that employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude that is deemed reckless, willful or wanton to include the intentional infliction of emotional harm to plaintiff with corporal punishment to cause plaintiff unnecessary wanton infliction of pain and suffering with mental anguish, on account of [REDACTED] loss/with Medical Malpractice action often; and that the plaintiff [REDACTED] was not aware of the identity/Location/Home/Business addresses of the Government State Agency political subdivision fraud feason employer and employees, and plaintiff is not aware of the fact that an injury has been inflicted because the physician's negligence may consist of some improper impure tuberculosis test shot injection by tort feason / product liability: when the identity of the maker of the defective product is not know, and that the product has a causal relation [REDACTED] to the injury when Defendants Alan Wilson and third-

party SCDC tortious acts of commission or omission of the agents, servants, employees or officers of a charitable hospital in this state conduct is shown to be motivated by evil motive or intent, or when it involves reckless disregard or callous indifference by exposing plaintiff to excessive and pervasive risk with ingestion of poison caused by Defendants Alan Wilson and third-party SCDC defective drug medication/food / and water supply condition of confinement, when prison official is subjectively aware that plaintiff face such a risk from such adverse prison conditions from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference to the extent that plaintiff Tyrone Roberson sustaining an injury or dying by reason of the tortious act of commission or omission of agents, servants, employees or officers of a charitable hospital or medical facility or of a hospital or other medical facility operated or funded by the state, its agencies, departments, institutions, commissions, boards or political subdivisions. When prison officials know of a substantial risk of serious

harm but fail to take reasonable measures to lessen the risk, the Eighth Amendment is violated. See FARMER V. BRENNAN, 511 U.S. 825, 114 S. Ct. 1970, 1976, 128 L.Ed. 2d 811 (1994). See ESTELLE V. GAMBLE, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed. 251 (1977). The Defendants Attorney General Alan Wilson and third-party SCDC [officials] acted with reckless disregard for a substantial risk to the prisoner Tyrone Robertson, that he drew the inference, and that he disregarded the risk. The officials must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." FARMER, 511 U.S. at 837.

The Defendants Attorney General Alan Wilson and third-party SCDC deprivation and invasion and breach of state and federally protected 8th and 14th Constitutional Civil Rights of plaintiff that were clearly established at the time of their challenged conduct under color of state law was objectively "sufficiently serious" and that "subjectively 'the officials acted with a sufficiently culpable state of mind,' " knowing "a serious or significant risk of physical and emotional psychological harm and injury would result from the challenged prison condition." Wilson V. Beiter, 111 S. Ct., 2324 (emphasis added).

Assuming the truth of these allegations, as we must,
Springfield V. Williams Plumbing Supply Co., 249
S.C. 130, 153 S.E.2d 184 (1967), the complaint clearly
states a cause of action based on an intentional
tort. *Id.* at 119; GREGORY, Justice. The complaint
states a cause of action based on an intentional
tort for which the Hospital is not immune,
Jeffcoat V. Caine, 261 S.C. 75, 198 S.E.2d 258 (1973).
See Douglas V. Florence General Hospital, cite as 259 S.E.2d 117
(Oct. 10, 1979), *Id.* at 118; GREGORY, Justice; *FN*
Brown V. Anderson County Hospital Association, 268 S.C. 479,
234 S.E.2d 873 (1977) the majority opinion of this court
recently held that charitable hospitals are liable for their
needless and reckless torts. We... hold that anyone injured
through tortious acts of commission or omission of the
agents, servants, employees or officers of a charitable
hospital in this state may recover damages against such
hospital, if the aggrieved party can establish that the injuries
occurred because of the hospital's needlessness and reckless
disregard of the plaintiff's rights. 234 S.E.2d at 876-877.

What constitutes cruel and unusual punishment, and
thus, what violates the Eighth Amendment, is determined by
evolving standards of decency that mark the progress
of a maturing society. Constitutional provisions
prohibiting "the infliction of 'cruel and unusual punishments'"
are primarily intended to proscribe inhuman or barbarous

treatment. South Carolina Constitution Article I, § 15, and South Carolina Constitution Article I, § 3.

in plaintiff position in opposition to the Defendants November 1, 2017 dismissal of Alan Wilson, Plaintiff here now incorporate; Motion with Memorandum of law with **OBJECTION**, and original Complaint, and followed by Motion Requesting leave of court to Amend original Complaint by plaintiff in opposition to Defendants Attorney General Alan Wilson Motion to dismiss, and followed by plaintiff production of Documents Motion Subpoena duces tecum to Defendants Counsel. This request for a New Civil trial hearing in plaintiff behalf to be granted for oral Argument of plaintiff Motion 59(E) to Alter or Amend Judgment Dismissing Attorney General Alan Wilson as follows. see [REDACTED] Rule 18(a)(b)

The South Carolina Department of Connections and the State of South Carolina palmetto Unified School District No. 1 Board of Trustee Randy Reagan, Ed. v. Superintendent, et al, Defendants and the State of South Carolina State Budget and Control Board Committee Insurance Chief Trustees may be Joined as a third-party defendant [Rule 14(c)] whether in an action for contribution among Joint Tortfeasors where two or more persons become Jointly or severally liable in tort claim filed by plaintiff Tyrone Lamar Robertson for the same personal injury or damage to personal property proximately caused by any

employee or member of the SCDC / Palmetto Unified School District No. #1 Board of Trustees while engaged in action within the scope of his / her employment with the Agency or service on the Board for errors and omissions in Medical Malpractice / product liability breach or implied Warranty arising from any negligent act, and for other Claims arising as a result of accidents, negligence, and / or other acts by the Agency, its employees, and inmates under its jurisdiction as well as for theft or willful wrongdoing on the part of SCDC Agency political subdivision employees while they are engaged in official Agency business.

See South Carolina Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. §§ 15-38-10 to 15-38-70 (Supp. 1998).

The court directed the Magistrate to pay costs of \$150 hourly Attorney fees and court costs to the complaining party [plaintiff], leaving him to settle with the Crown the matter of indemnification. 42 U.S.C. § 1988. Pursuant to Rule 14(c), Rule 18(a)(b) of the S.C. Rules of Civil Procedure as it applies to Tyrone Lamar Roberson v. Anthony D. Padula, et al of SCDC and State Budget and Control Board Committee in Civil Case No. # 2:13-CV-01872-CMC-BHH-WWD-RMG. See

VERMEER CAROLYNAS V. WOOD / CHUCK CHAZPER, cite as 518 S.E. 2d 301 (S.C. App. 1999). see BROWN V. JOHNSON, cite as, S.C., 275 S.E. 2d 876 (March 2, 1981), id. at 877: LITTLEJOHN, Justice: The sole issue in this appeal is

whether the trial judge erred in awarding attorney fees to Counsel for Sadie Pierce Johnson, an insured person, under the provisions of § 38-9-320, Code of Laws of South Carolina (1976). That section provides, in relevant part, as follows: "(1) In the event of a claim, loss or damage which is covered by a policy of insurance on a contract of a nonprofit hospital service plan or a medical service corporation and the refusal of the insurer, plan or corporation to pay such claim within ninety days after a demand had been made by the holder of the policy or contract and a finding on suit of such contract made by the trial judge of a county court or court of common pleas that such refusal was without reasonable cause or in bad faith, the insurer, plan or corporation shall be liable to pay such holder, in addition to any sum or any amount otherwise recoverable, all reasonable attorneys fees for the prosecution of the case against the insurer, plan or corporation..." see BCDC policy / procedure: ADM-12.06, § 2.3.1 (a)(b)(c), "Employee Bonding and Liability Insurance" December 1, 2000 POLICY STATEMENT... As it relates to South Carolina Code of law Title Section § 15-78-190. Compensation of plaintiff pursuant to underinsured or uninsured defendant provisions of plaintiff's insurance policy. As it relates to South Carolina Code of law Title Section § 8-11-20. Oath and bonds of certain state employees;

blanket departmental bonds... As it relates to South Carolina
code of law Title Section § 8-3-220. Bonds of public
officers may be sued on... As it relates to South Carolina
code of law Title Section § 11-5-20. Bond... As it relates
to South Carolina code of law Title Section § 24-1-120.
Bonds of director and other personnel. Such bonds shall
be executed by a surety company authorized to do business
under the laws of this state, and the premium on any
such bond shall be paid by the state out of the support
and maintenance fund of the prison system.
see South Carolina Constitution Article XV, § 2. Claims
against state. Appearance Recognition with surety for
\$20,000,000 and \$150 hourly attorney fees and court cost in this matter.

RELIEF

Plaintiff ask to be granted a New Trial hearing to
orally present and argue this foregoing brief.

SIGNED THIS 5th DAY OF NOVEMBER 2017.

RESPECTFULLY SUBMITTED

Yvonne Robertson

Yvonne ROBERTSON #191327
Lieber CONNECTIONS INSTITUTION
RHM/6MU 143B
136 Wilborn Avenue
Ridgeville, SC 29472
COUNSEL OF RECORD PLAINTIFF

cc. Stephanie H. Burton, Esq.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Plaintiff Motion to Alter or Amend Judgment Dismissing His Claims against Attorney General Alan Wilson in the above Case Caption has been served upon the Defendants Attorney Ms. Stephanie H. Burton, Esq. of GIBBS BURTON, LLC 308 East Saint John Street Spartanburg, South Carolina 29302 by mailing via depositing into the United States postal mail carrier a copy of the same with postage prepaid addressed to be delivered to: Paul B. Wickensimer Greenville County Clerk of Court 305 East North Street Greenville, South Carolina 29601.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

SIGNED 5th DAY OF November 2017.

RESPECTFULLY SUBMITTED
Tyvone Robertson
Tyvone Robertson #191327
Lieber Connections Institution
RHU/SMU 143B
136 Wilborn Avenue
Ridgeville, SC 29472

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE, SC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Appellant Notice of Appeal, orders from lower court, and plaintiff Motion to alter or Amend Judgment has been deposited into the United States postal Mail Box carrier with postage prepaid addressed to be delivered to: THE SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

SIGNED THIS 13th DAY OF MARCH 2018.

RESPECTFULLY SUBMITTED
TYRONE ROBERTSON

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TYRONE ROBERTSON # 191327
LIEBER CONNECTIONS INSTITUTION
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cc.

Tyrone Roberson #191327
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Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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DATE: MARCH 13, 2018

Dear Clerk

Enclosed with this letter is an original copy of Notice of Appeal, Court orders, and motion to alter or amend judgment that I need for you to please file accordingly in my behalf. Thank you

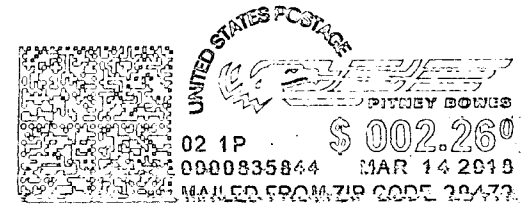
RESPECTFULLY SUBMITTED
Tyrone Roberson

cc,

FROM: MR. TYNONE ROBERSON # 191327
Lieber Connections Institution
RHM / SMU 143B
136 Wilborn Avenue
Ridgeville, SC 29472

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TO: THE SOUTH CAROLINA COURT OF APPEALS
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