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SC Court of Appeals

IN THE

SOUTH CAROLINA COURT OF APPEALS

Tyrone Robertson, 191327 — Plaintiff - Appellant

VS.

Ruston W. Neely, Assistant Attorney General of South Carolina., Bryan P. Stirling, Director of South Carolina Department of Corrections., Joseph McFadden, Warden of Lieber Corrections Institution., Fred Thompson, Associate Warden of Program Services., William Brightharp, RHU/SMU Manager Captain., Ms. Birch, Clinical Mental Health Counsel, et al of Lieber Corrections Institution. Private Health Care provider Ms. Elizabeth Holcomb, et al of SCDC Lieber Corrections Institution; SC Insurance Reserve Fund of SCDC Insurance Carrier of the State Budget And Control Board committee., and Commissioner of the Palmetto Unified School District No. #1 Board of Trustee Randy Reagan, Ed. D., Superintendent, et & al., and third-party Ms. Bowman Postal Service designee of Lieber Correction

Defendants - Respondents

NOTICE OF APPEAL

Appeal from the Court of Common Pleas of

Dorchester South Carolina Judgment in a Civil Case Number # 2017CP18-00677 Before Circuit Court Judge Edgar Dickson decided July 3, 2018.

Appellant received a copy of this adverse order through the prison incoming mail procedure July 6, 2018 that was sent from the clerk of court of Dorchester County, of which plaintiff had to sign for during July 6, 2018.

This Appeal follows:

Whether there has been an abuse of discretion amounting to error of law in Judge Edgar Dickson July 3, 2018 order Granting Motion for summary Judgment in favor of Defendants.

FACTS

The evidence of plaintiff summary of the Facts presented in the Records before the Court. Plaintiff Motion with concise Statement, Affidavit by plaintiff in Motion to Amend third-party Defendants, Plaintiff First Set of Request for Admission from Defendants And third-party, Exhibits, Affidavits, along with the May 30, 2018 Court transcript in Civil case No. # 2017-CP-18-00677 clearly establishes a genuine issue of material fact as to whether the defendants and third-party breached the applicable Constitutional and Statutory State and Federal Standard of Care

owed to plaintiff T.R. Tyrone Roberson and thereby proximately caused the plaintiff injuries. such issues are questions for the Jury. Turner V. Duke Univ., 325 N.C. 152, 162, 381 S.E. 2d 706, 712 (1989).

FACTS

Plaintiff elected to proceed on the theory of unconstitutional condition of confinement that subject him to genocide by denying him Conjugal Visitation with his wives (female's); denied Him Halal Islamic diet meals, etc., and denied Inmate pay incentive that deprive him for 25 years from purchasing hygienic and food items off the canteen, etc by Defendants scnc Lieber Correctional Institution political Subdivision employee's State Agency Business invitee Sexual and Racial discrimination /and or premises liability for $12,999,935.98 and for the Recovery of $150 dollar's in Hourly Attorney fee's and Court Cost in this matter.

A person owes an invitee the duty of exercising reasonable or ordinary care for his safety and is liable for any injury resulting from the breach of this duty. This degree of care must be commensurate with the particular circumstances involved, including the age and capacity of the invitee. This duty is an active on

affirmative duty. It includes refraining from any act which may make the invitee's use of the premises dangerous or result in injury to him. It is unessential that the precise manner in which the injuries might have occurred, or where sustained, be foreseeable, or foreseen. It is sufficient that there is a reasonable generalized gamut of greater than ordinary dangers of injury and that the sustaining of the injury was within this range. It is, therefore, a jury question whether the defendant had provided reasonably safe premises. Hughes v. Children's Clinic, 269 S.C. 389, 237 S.E. 2d 753 (1977).

Other questions for the jury are the issues of negligence, contributory negligence, and proximate cause, and, if more than one reasonable inference can be drawn from the evidence, the trial judge is required to submit these issues to the jury. Kennedy v. Custom Ice Equipment Co., 271 S.C. 171, 246 S.E. 2d 176 (1978). Similarly, if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, wilfull, or wanton, the issue of punitive damages must also be submitted to the jury. Gilbert v. Duke Power Co., 255 S.C. 495, 179 S.E. 2d 720 (1971); Gibbs v. Atlantic Coast Line R. Co., 221 S.C. 243, 70 S.E. 2d 238 (1952). See Graham v. Whitaker, cite as 321 S.E. 2d 40 (S.C. 1984), (emphasis quoted).

The defendant maybe held liable for anything which appears to have been a natural and probable consequence of his negligence. Greenville Memorial Auditorium v. Martin, -S.C.-, 391 S.E. 2d 546 (1990); Childers v. Gas Lines, INC., 248 S.C. 316, 149 S.E. 2d 761 (1966). A plaintiff therefore proves legal cause by establishing the injury in question occurred as a natural and probable consequence of the defendants negligence. Id. under South Carolina law, the primary wrongdoers action is a legal cause of an injury if either the intervening act or the injury itself was foreseeable as a natural and probable consequence of that action. Young V. Tide Craft, INC., 270 S.C. 453, 242 S.E. 2d 671 (1978), citing Benford v. Berkeley Heating Co., 258 S.C. 357, 188 S.E. 2d 841 (1972). As discussed above plaintiff Tyrone Roberson not only established causation in fact, he produced evidence establishing a deprived condition of confinement and that defendants SCDC and third-party political subdivision State Agency institution psychiatric employees acts or omission under color of state with a culpable state of mind in being deliberately indifferent to and in violating plaintiff state and federally protected clearly established 1st, 4th, 8th, and 14th constitutional Amendment Civil Right - was foreseeable as a natural and probable consequence of defendants failure to act and abate the pervasive risk of loss and injury to liberty and private property interest entitlement Rights pursuant to South Carolina Constitution Article XIV, § 3. ultimate property in land., and see South Carolina Constitution

Article I, § 13. Taking private property.", and See South Carolina Constitution Article XII, § 1. Matters of public concern; General Assembly to provide appropriate agencies.", and See South Carolina Constitution Article XII, § 2. Institutions for confinement of persons convicted of crimes.", under the provision of South Carolina Constitution Article I, § 10. Searches and Seizures, invasions of privacy.", under the provision of South Carolina Constitution Article I, § 2. Religious freedom of Speech; right of assembly and petition.", under the provision of South Carolina Code of law Title Section Statute § 45-9-100. Action for damages by aggrieved party; minimum damages for violation.", under the provision of South Carolina Code of law Title Section Statute § 24-5-90. Discrimination in Treatment of prisoners unlawful.", under the provision of South Carolina Constitution Article I, § 15. Right of bail, excessive bail, cruel or unusual or corporal punishment, detention of witnesses.", under the provision of South Carolina Code of law Title Section Statute § 45-4-80. Insurance Coverage. A bed and Breakfast shall maintain appropriate commercial insurance, including property and liability coverage, as a lodging facility.",

under the provision of South Carolina Constitution Article XVII, § 2. Claims against State.

The General Assembly may direct, by law, in what manner claims against the State may be established and adjusted.

under the provision of South Carolina Constitution Article I, § 3. privileges and immunities; due process; equal protection of laws.

Plaintiff should have been allowed to present testimony of undisclosed expert witness to rebut Defendants experts Kennard Dubose previously undisclosed Affidavit proffered Hearsay testimony. Generally, expert testimony is required to establish proximate cause in medical malpractice action, however, such testimony is not required to prove proximate cause if common knowledge or experience of lay person is extensive enough to determine presence of required causal link between medical treatment and patients injury. See BRAMLETTE V. CHARTER-MEDICAL-COLUMBIA, cite as 393 S.E.2d 914 (S.C. 1990). Id. at 916-917; GREGORY, Chief Justice: [3] (emphasis quoted).

Plaintiff objects to proffered hearsay Evidence provided by defendants in an Affidavit given by Kennard Dubose, Division Director for Behavioral Mental Health and Substance Abuse at SCDC.

Plaintiff grounds for obbecting to said Affidavit relied on as Evidence by Defendant grant of Summary Judgment is as follows: Plaintiff assents that MR. Kennard Dubose has never personally met, treated, nor ever psychologically assessed plaintiff Tyrone Roberson for any Mental Health issues at any time... And there exist a substantial amount of Evidence through-out plaintiff Tyrone Roberson entire Medical / and Mental Health record files here in South Carolina and New York State by other certified licensed treating psychiatric Mental Health physicians that will contradict and refute MR. Kennard Dubose third hand summary erroneous version and conclusion that plaintiff did not have a mental Health Diagnosis which would fall within the definition of individuals included in the class action settlement. And furthermore, counsels for Defendants never provided plaintiff with a copy of said Affidavit by MR. Kennard Dubose to refute said allegation... that amounts to extrinsic fraud by officer of the court in withholding information from a State and federal civil rights investigation that involves plaintiff. See local Rule 60(b)(3).

Plaintiff now offer Expert opinion Testimony by Dr. Dillon in his deposition also stated as follows: "I think in at least a minimum sense a supervising physician needs to make contact some-times, preferably at the beginning, and maybe a few times in between, as to what is occurring on his

service." Dr. Dillon further stated, "I think that what we are talking about is what is proper supervision and what is not proper supervision... I think that there is a certain standard when one is supervising residents that must be met. If a private physician is going to supervise residents, he must meet those standards." Id. Thus, according to the defendant's own experts, simply remaining at home and available to take telephone calls is not always an acceptable standard of care for supervision of residents. Id.

Id. In opposition to the defendant's motion, the plaintiffs introduced the affidavit and deposition of Dr. Dillon in which he stated that the defendant Dr. Kazior did not meet the accepted medical standard for an on-call supervising physician, given the known medical condition of Sandra Dee Mozingo. See MOZINGO V. PITT COUNTY MEMORIAL HOSP., cite as 415 S.E. 2d 341 (N.C. 1992), Id. at 343, 346: MITCHELL, Justice.

The evidence of record in this case establishes that the residents who performed the inadequate mental Health evaluation assessment of plaintiff for treatment were "agent[S], servant[S] or employee[S] of SCDC Lieber Correctional Institution out-patient Mental health political subdivision housing hospital ward that evidenced that the psychiatric treating physician has negligently performed some responsibility voluntarily assumed by them, suggests that the residents

were employed by or were servants of the implementation Remedial plan Representative coordinator for South Carolina Advocacy Group for people with Disabilities, incorporation Executive Director Gloria M. Prevost, and Tammie M. Pope as consultant for the SCDC implementation panels, and thus liability may be vicariously imputed to the Defendants SCDC and third-party for the Resident's alleged negligence for Breach of implied law Contract based on that physicians non-compliance which is the proximate cause of plaintiff loss, disease and injury. cf. Moeller v. Hauser, 237 Minn. 368, 54 N.W. 2d 639 (1952) (hospital vicariously liable for negligence of resident physicians in its employ). Stuart Circle Hosp. Corp. v. Curry, 173 Va. 136, 3 S.E. 2d 153 (1939) (liability imposed on hospital for negligent acts of interns and nurses).

Moeller v. Hauser, 237 Minn. 368, 54 N.W. 2d 639 (1952), and McCullough v. Hutzel Hosp., 88 Mich. App. 235, 276 N.W. 2d 569 (1979), two other cases relied upon by the Majority. In those cases, the physicians sought to be held liable were the attending physicians to whom the injured patients were assigned for treatment.

As the attending physicians, they had a duty to exercise due care to see that the patients received adequate medical care. The majority correctly notes that the plaintiff in Moeller was a patient injured "by the negligent post-operative care rendered by resident physician."

In Maxwell v. Cole, 126 Misc. 2d 597, 482 N.Y.S. 2d 1000 (Sup. Ct.), the Court considered the liability of a hospital's chief of service for negligent supervision of residents providing post-operative care. The Maxwell Court denied the physician's motion for summary judgment, concluding that the physician had presented no evidence to rebut the plaintiff's allegations that he had negligently performed his responsibilities "to supervise residents and interns and to develop and implement rules, regulations and guidelines for treatment and supervision." Id. at 598, 482 N.Y.S. 2d at 1002.

Until today, it has been fairly well settled that absent a physician-patient relationship or vicarious liability based on the negligence of a servant, a physician is liable for his negligence to the same extent as any other individual – a physician is liable in tort when he undertakes responsibility to do some act and negligently performs the act thereby causing injury to a person whom it was reasonably foreseeable might be injured as a consequence of the physician's negligence. See W. Page Keeton et al., Prosser and Keeton

on The Law of Torts § 56 (5th ed. 1984) (physician has no duty to render professional services but having volunteered or agreed to render such services must use due care); 9 Strong's North Carolina Index 3d Negligence [redacted] § 1.1, at 344 (1977) (Same).

RELIEF

Plaintiff ASK to be Granted a Civil Trial by Jury.

SIGNED THIS 16th DAY OF July 20 18.

RESPECTFULLY SUBMITTED
Tyrone Robertson

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RB 119-B
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The South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
1220 Senate Street
Columbia, South Carolina 29201

Date: July 16, 2018

Dear Clerk

Enclosed with cover letter is an original hand written copy of Notice of Appeal, Affidavits, and Common pleas Court order that I am appealing from - that I need for you to please clock date stamp and to file accordingly in my behalf. Also due to me being lock down with out readily available access to photo copy machines, and not being physically able to re-write all of this stuff with such very little time to file Appeal - I am presently in dear need of your help to send me a certified clock copy of said enclosed documents back to me at the above listed forewarding address please! I would really appreciate your understanding in this regard; because I cannot, at the moment, do all of this on my own! Thank you! Respectfully, Tyrone Roberson

cc.

FROM: MR. Tyrone Robertson #191327
Lieber Correctional Institution
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136 Wilborn Avenue
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