

S.C. Court of Appeals
Jenny ABBOTT Kitchings, CLERK
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Columbia, South Carolina 29211

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MAR 05 2019
SC Court of Appeals

IN RE: Dennis M Temple V. SCOC

Civil Action No: 2016-CP-23-07609

Appellate Case No. 2019-000231

Dear MS. KITCHINGS:

Enclosed please find Plaintiff's order from the lower court and inmate Trust Fund Account Report, which was not submitted with Appellants Notice of Appeal and others forms that are on file in your court.

cc: Greenville County, Clerk of Court
Chapman, Harter & Harter

Dennis M Temple
Dennis M. Temple # 274802
PERRY CORR. Inst. Q3A204
430 Oaklawn Road -
Pelzer, South Carolina 29669

February 28, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

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Dennis M. Temple, #274802

MAR 05 2019

Plaintiff,

SC Court of Appeals

ORDER

-vs-

C/A NO.: 2016-CP-23-07609

South Carolina Department of
Corrections,

Defendant.

73 JUN 15 AM 11:05
Paul Wickersham CJC/BUL/SC

This matter came before me on December 19, 2018 upon the Defendant's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The Defendant moves for an Order to Dismiss the Plaintiff's Complaint with Prejudice on the ground that there is no genuine issue of material fact and that the Defendant is entitled to judgment as a matter of law.

BACKGROUND

Plaintiff filed this action against the South Carolina Department of Corrections alleging that he was improperly dismissed and removed from the Character Based Unit Program as a participant. The Plaintiff alleges that he was removed from the program without cause and he alleges the actions of the Defendant constitute gross negligence. He seeks actual and punitive damages in his suit.

STANDARD OF REVIEW

Summary judgment shall be granted when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Rule 56, SCRPC. The movant must

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first demonstrate that there is no genuine dispute of material fact. *See Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005) (Citing *McCall v. State Farm Mut. Auto Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004)). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *See Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003). Rather, to defeat the motion the party opposing summary judgment must present evidence of specific facts from which the finder of fact could reasonably find for him, thereby showing that there is a genuine issue for trial. *See Miller*, 365 S.C. at 220, 225, 616 S.E.2d at 730, 732.

When only one reasonable inference can be deduced from the evidence, it becomes a question of law for the court, and not a question of fact for a jury. *See National Bank of Honea Path v. Thomas J. Barrett, Jr. & Co.*, 173 S.C. 1, 174 S.E. 581 (1934). Moreover, "a court cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts." *Bloom v. Ravoir*, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (citing *Hopson v. Clary*, 321 S.C. 312, 314, 468 S.E.2d 305, 307 (Ct. App. 1996)).

DISCUSSION

In support of its Motion for Summary Judgment, the South Carolina Department of Corrections submitted an Affidavit of Susan Duffy. Susan Duffy currently is the Associate Warden at Perry Correctional Institution and previously she was Captain over the Character Based Unit. The Affidavit of Susan Duffy confirms that Inmate Temple was removed from the Character Based Unit housing in October of 2016 for having roommate issues and for

threatening another Character Based Unit resident. Her Affidavit explains that participants in the Character Based Unit are required to sign a social contract prior to and contemporaneous with acceptance with that program. The program has a zero tolerance policy including bullying and inmates that are in that program are subjected to peer to peer accountability. Inmates in this Character Based Unit Program do not earn good time credits for participation, and this has no effect on their sentence. The Affidavit of Susan Duffy explains that inmates do not have a right to be accepted into the Character Based Unit Program and that it is considered a privilege and not a right. She explains that Inmate Temple lost that privilege in October of 2016 because of his actions. It further appears from the Affidavit of Susan Duffy that Inmate Temple was given a second chance and was readmitted to the program in or around September 19, 2017. She explains that the decision to remove Inmate Temple from the program was entirely discretionary and it was based on his actions. She further noted that he did not lodge any appeal to request that his status be reconsidered.

Inmate Temple in his oral argument to the Court indicated that as part of the relief he wanted in this case was to make changes with the program in the way it was administered and/or run. He points to no facts to indicate that the Affidavit of Susan Duffy is not accurate as to the programs operation, and it appears that her decision making process to remove Inmate Temple from the program involved an exercise of her discretion. Further, there is no evidence or indication that she acted in a grossly negligent manner.

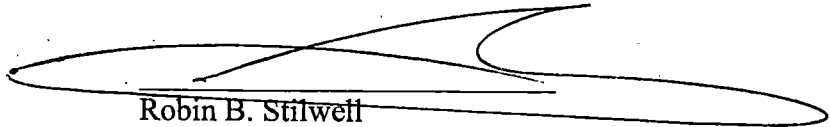
It appears that Inmate Temple is asking this Court to manage and/or supervise voluntary programs within the South Carolina Department of Corrections. This Court does not perceive that it has either the authority or reason to do that.

Accordingly, based upon the arguments before me, the applicable law, and the Affidavit

of Susan Duffy, I find that the Plaintiff has no cognizable claim under the South Carolina Tort Claims Act for damages.

I therefore find that the Defendant's Motion for Summary Judgment should be granted and the Complaint of the Plaintiff is dismissed with prejudice.

IT IS SO ORDERED.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina

Dated: January 18, 2019

Copy made to
Attorney: <u>Harter and Pro Se</u>
on <u>Jan. 15, 2019</u>

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JAN 29 2019

INMATE TRUST FUND ACCOUNT REPORT
for SOUTH CAROLINA COURT FILING FEES

P.C.I. MAILROOM INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

INMATE NAME (print): Dennis Temple

SCDC# 274862 INMATE SIGNATURE: Dennis m Temple

I plan to file this action in the SC County of South Carolina Court of Appeals.

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period* \$ 0
- (2) Twenty percent (20%) of line 1 \$ 0
- (3) Account balance - current date \$ 4.16
- (4) PAYMENT AMOUNT **
(lesser of line 2 or line 3)
Enclosed check # _____ \$ 0

SCDC-FINANCIAL ACCTG.
2019 FEB -4 PM 4:10

*NOTE to COURT: If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21737
Columbia, SC 29221-1737

*Admission date is noted here if inmate incarcerated less than six months 2/4/19

Peggy Carter

2/4/19

Financial Accounting Branch - SCDC

Form 100-1000-100

Dennis M. Temple, SCDC # 274802
Perry Correctional Institution Q3A204
430 Oaklawn Road
Pelzer, South Carolina 29669

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P.C.I. MAILROOM

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LEGAL MAIL