IN THE

SOUTH CAROLINA COURT OF APPEALS

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SC Court of Appeals

Tyrone Laman Robenson, #191327 Plaintiff-Appellant

VS.

South Carolina Attorney General, Alan Wilson; Defendants of perry Corrections Institution, Warden Lanny Cartledge; Associate Warden of program Services Stephen Clayton, et & al; Defendants of McCormick Corrections Institution, Warden Leroy Cartledge; Associate Warden James Parker, Jr.; Lieutenant Stanley Terry; Nurse Tarcia L. Dames; third-party Defendants South Carolina Department of Corrections Director, Bryan P. Stirling; and BCDC 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-Respondents

NOTICE OF APPEAL

Appeal from Edward W. Miller and Alex Kinlaw Jr., Judge of the Court of Common pleas of Greenville South Carolina State Tort Claims Against State Agency Institution political Subdivision premises liability tort that proximately caused Plaintiff injury in Civil Case No. 2017-CP-23-03406

This present forgoing writ of Certiorari to the South Carolina Court of Appeals is to petition the Court for Direct Review of the lower Court July 30, 2018 Adverse Summary Judgment order granted Defendants by Judge Alex Kinlaw, Jr., #2763 in Civil case No. 2017-CP-23-03406.

Petitioner receive a copy of said order by mail August 3, 2018 from the Greenville County Clerk of Court of which petitioner had to sign for here at Lieber Correctional Institution Mail Room.

This Appeal follows:

QUESTION

Whether there has been an abuse of discretion amounting to error of law in Judge [redacted] March 5, 2018; and Judge Alex Kinlaw, Jr., July 30, 2018 order Granting Motion for Summary Judgment in favor of Defendants.

PROCEDURAL HISTORY

This matter came before the Court on Defendant's Motion to Dismiss, which was filed on July 28, 2017. The primary ground for Defendants motion is that plaintiff's complaint fails to allege any facts relating to any act of Attorney General Alan Wilson and fails to allege facts sufficient to constitute a cause of action against him. A hearing was held on November 1, 2017. Taylor P. Heath appeared on behalf of Defendants. Plaintiff moves this Court to include "Randy Reagan" as the party defendant who holds this title. Defendant has consented to this amendment to add the name in the caption of the complaint.

For the foregoing reasons, Defendants Attorney General Wilson's

Motion to Dismiss is granted and the Court grants Plaintiff's leave to file an amended complaint adding "Randy Reagan," to his title as Commissioner of the Palmetto Unified School District No. #1 Board of Trustee Director." This case is dismissed without prejudice. By order March 5, 2018 by Judge Edward W. Miller the Court Record Reflects that Defendant Alan Wilson has been dismissed as a case party to this case, and that Randy Reagan has been added as a case party Defendant. The case itself was not dismissed, but Remains active as to all the Remaining defendants.

July 18, 2018 a pre-trial conference civil Jury trial hearing was held in Greenville County Courthouse. Brianna L. Schill appeared on behalf of Defendants South Carolina Department of Connections, Larry Cantledge, Stephen Clayton, Leroy Cantledge, James Parker Jr., Stanley Terry, Tarcia L. James, an Bryan Stepling. Plaintiff appeared pro se.

By order issued July 30, 2018 Judge Alex Kinlaw, Jr. Concluded by written order purposed by Defendants lawyer the following: First, plaintiff has failed to properly Serve any of these Defendants. Plaintiff did not comply with the Requirements of the Rules. on June 20, 2017, plaintiff mailed his Summons and Complaint to Attorney General Alan Wilson by Certified mail. Plaintiff did not deliver his Summons and Complaint to the South Caroling Department of Connections, nor did plaintiff attempt to otherwise Serve his Summons and Complaint on any of the other Defendants. At the hearing, plaintiff admitted that he only attempted to Serve his Summons and Complaint on Attorney General Alan Wilson because he believed that Attorney General Alan Wilson could

inform all of the other Defendants of his lawsuit. This Court finds that plaintiff has failed to properly serve his summons and complaint on Defendants as required by Rule 4 of the South Carolina Rules of Civil Procedure, and accordingly, this Court dismisses this case as to all remaining Defendants.

Plaintiff has alleged that the individual defendants were acting in the scope of their duties as employees of the South Carolina Department of Corrections and has not alleged that any acted with actual malice, committed a crime of moral turpitude or with an intent to harm. Accordingly, plaintiff's claims against them must be dismissed.

Plaintiff's second cause of action relates to an incident that Plaintiff alleges occurred on February 3, 2014. Plaintiff's third cause of action identifies an incident that allegedly occurred on February 20, 2015. Since plaintiff did not file his complaint until May 25, 2017, these claims are barred by the two year statute of limitations imposed by the South Carolina Tort Claims Act, and accordingly, Defendants Motion to Dismiss is granted. Third, this Court finds that plaintiff's Complaint has failed [redacted] to state a claim against the South Carolina Department of Corrections. Plaintiff's Complaint fails to allege that the South Carolina Department of Corrections is liable for any conduct alleged in this case and plaintiff did not allege that the South Carolina Department of Corrections acted in a grossly negligent manner as required under the South Carolina Tort Claims Act.

Fourth, this Court finds that many of plaintiffs claims are barred by the statute of limitations contained in the South Carolina Tort Claims Act. S.C. Code Ann. §15-78-110. Under the Act, a plaintiff must commence an action brought under the Act within two years after the date the loss was or should have been discovered.

For the foregoing reason, Defendants South Carolina Department of Corrections, Larry Cartledge, Stephen Clayton, Leroy Cartledge, James Parker, Jr., Stanley Terry, Tancia L. James, and Bryan Sterlings Motion to Dismiss is granted. This case is dismissed without prejudice. And it is so ORDERED.

This APPEALS FOLLOWS:

FACTS

Even though plaintiff were not able to execute service of process on named Defendants and third-party per se, plaintiff pursuant to the South Carolina Tort Claims Act were entitled to maintain a cause of action against named State Agency institution political subdivision of perry and McCormick correctional institution for premises liability for defective condition for $10,000,000 in liability Damages who actually employed the employers and employee's tortfeasors whos acts or omission at all times herein under color of state law is the 'proximate cause'

of plaintiff lost and equity lost of tangible and intangible income earning dividends which is the proximate cause of plaintiff outstanding indebtness of public and private Debt economic Irreparable harm and injury.

And whether During July 18, 2018 did Judge Kinlaw comitted an abuse of discretion with error of law in concluding that plaintiff was not entitle to maintaining a cause of action against named perry and Mcconnick connectional Institution State Agency political Subdivision Government entity by plaintiff executing Summons and complaint or State Verified tort demand for Jury Trial Via Service of process by certified Mail — to be delivered to the South Carolina Attorney General Alan Wilson.

LAW/ANALYSIS:

S.C. Code Ann. §15-78-40 (Supp. 1997) ("The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.").

Under the Tort Claims Act, if a government entity's or employee's discretion is exercised in a grossly negligent manner, then the governmental entity involved is liable for its torts as if it were a private individual Duncan v. Hampton County School Dist. No. 2 (S.C. App. 1999) 335 S.C. 535, 517 S.E.2d 449, rehearing denied, certiorari denied. Municipal Corporation ⚖ 728.

The South Carolina Tort Claims Act, §§ 15-78-10 et seq., allows recovery against a governmental agency in the same manner as a person or private entity. Burns v. South Carolina Com'n for Blind (S.C. App. 1994) 323 S.C. 77, 448 S.E.2d 589. Municipal Corporations ⚖ 723.

Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.

Tort Claims Act § 15-78-70. Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement. Section 15-78-70(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the 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. The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in § 15-78-70(b).

STAUBES V. CITY OF FOLLY BEACH, cite as 500 S.E.2d 160 (S.C. App. 1998), Id. at 168: ANDERSON, Judge: [10] Gross negligence is a mixed question of law and fact and should be presented to the jury unless the evidence supports only one reasonable inference, Clyburn V. Sumter County Sch. Dist. #17, 317 S.C. 50, 451 S.E.2d 885 (1994); Etheredge, supra; Doe, supra.

"An employer is liable for the negligence of a sexe inmate program services Medical health care provider contractor... If the employer retains the right to direct or control the time and manner of executing the work or interferes and assumes control so as to create the relation of master and servant or so that an injury results which is traceable to his interferences." And assumes to be an independent Contractor which contended that all evidence showed as a matter of law that it was negligent or did create a nuisance, and/or Negligent with their deliberate indifference to plaintiff Tyrone Lamar Roberson Serious Medical/Dental Health care Needs and/or assumed the risk of liability for injury sustained Plaintiff Tyrone Lamar Roberson, Raises an issue of fact on the issues of assumption of risk and contributory negligence. Questions of contributory negligence and assuption of the risk are ordinarily facts for the jury to resolve. See Coleman V. Thompson, cite as 111 S.Ct. 2546 (1997), Id. at 2567; Justice O'CONNOR delivered the opinion of the Court: [22] See, e.g., Restatement (Second) of Agency § 242 (1958)

(Master is subject to liability for harm caused by negligent conduct of servant within the scope of employment).

There was evidence that Plaintiff Tyrone Lamar Roberson medical condition was acute or escalating or that SCDC deputy Bryan P. Stirling Medical Regional Director refusal to allow physician to undertake certain treatment caused Roberson harm; inasmuch as evidence that deputy refused emergency admittance to hospital as requested by physician amount to intentional interference with prescribed treatment.

A prisoner has adequately stated a cause of action "when he alleges that prison authorities have denied reasonable requests for medical treatment in the face of an obvious need for such attention where the inmate is thereby exposed to undue suffering or the threat of tangible residual injury."

Where there is a strong showing by the plaintiff Tyrone Lamar Roberson that he was prevented from knowing of the claim at time of the injury due to handicaps to discovery, inability to comprehend injury [redacted] or other extreme hardship that some action by the defendant's are great and are largely product of defendant's conduct in concealing either tort or wrongdoers identity that prevented the plaintiff from knowing of the wrong at the time of the injury.

See Cart V. Marcum, cite as 423 S.E. 2d 644 (W. Va. 1992), Id. at 648: NEELY, Justice: [3,4] Foot Note 14. Examples of lack or comprehension of injury would include a piece of surgical equipment left in a patient that is not discovered until several years later, exposure to hazardous chemicals (such as asbestos or Agent orange) the effects of which were only detected twenty years later.

In the products liability area, lack of comprehension of injury includes (1) that the plaintiff has been injured, (2) the identity of the maker of the product, and (3) that the product has a causal relation to the injury. Syl. pt. 1, Hickman V. Grover, 178 W. Va. 249, 358 S.E. 2d 810 (1987).

See Cart V. Marcum, cite as 423 S.E. 2d 644 (W. Va. 1992), Id., at 648: Foot Note 7. "In products liability cases, the statute of limitations begins to run when the plaintiff knows, or by the exercise of reasonable diligence should know, (1) that he has been injured, (2) the identity of the maker of the product, and (3) that the product has a causal relation to the injury." Syl. pt. 1, Hickman V. Grover, 178 W. Va. 249, 358 S.E. 2d 810 (1987).

See Cart V. Marcum, cite as 423 S.E. 2d 644 (W. Va. 1992), Id., at 647: NEELY, Justice: [2] "In a medical malpractice case the statute of limitations begins to run at the time the injury is inflicted, or... when... the injury is discovered

or when by the exercise of reasonable diligence it should have been discovered.' Syllabus point 2, in part, Hundley V. Martinez, 151 W. Va. 977, 158 S.E.2d 159 (1967). [Emphasis added]
Id. In [Malpractice action] we have recognized that often the plaintiff is not aware of the fact that an injury has been inflicted. In the area of medical malpractice, this is particularly true because the physicians negligence may consist of some improper diagnosis [redacted] or improper surgery when the plaintiff is unconscious so that he is not aware that there has been an injury. Jones V. Trustees of Bethany College, 177 W. Va. 168, 169, 351 S.E.2d 183, 184 (1986).

See Cart V. Marcum, cite as 423 S.E.2d 644 (W. Va. 1992), Id. at 647: NEELY, Justice: [2] However, "[J]ustice is not done when an injured person loses his right to sue before he discovers if he was injured or who to sue." Hickman V. Grover, 178 W. Va. 249, 252, 358 S.E.2d 810, 813 (1987).

See Cart V. Marcum, cite as 423 S.E.2d 644 (W. Va. 1992), Id., at 647: NEELY, Justice: Foot Note 6. The "discovery rule" itself evolved from the concept of fraudulent concealment. Under the fraudulent concealment concept, the statute of limitations would ordinarily run from the time of the injury, unless a plaintiff could show that the defendant actively committed fraud in an attemp to prevent the plaintiff from prosecuting his claim.

See Handley V. Martinez, 151 W. Va. 977, 158 S.E. 2d 159 (1967).

See Cart V. Marcum, cite as 423 S.E. 2d 644 (W. Va. 1992), Id., at 648: NEELY, Justice: [2] Indeed, that reasoning has allowed plaintiffs, a tort at a time, to attempt to extend the torts included under the "discovery rule," such as products liability,[7] faulty construction[8], and invasion of privacy.[9] Unless a clear statute foreclosed expanding the scope of the discovery rule,[10] we have expanded it each time.

See Cart V. Marcum, cite as 423 S.E. 2d 644 (W. Va. 1992), Id., at 648: NEELY, Justice: Foot Note 11. We note that we are not the first State Supreme Court to find a generally applicable "discovery rule": In the interest of justice and fundamental fairness, we adopt the discovery rule for all tort actions other than those already governed by a legislatively created discovery rule. Such tort claims shall accrue on the date the injury is discovered or with reasonable diligence should be discovered whichever occurs first. Hansen V. A.H. Robins, Inc., 113 Wis. 2d 550, 560, 335 N.W. 2d 578, 583 (1983).

See ADKINS V. K-MART CORP., cite as 511 S.E. 2d 840 (W. Va. 1998), Id., at 846: PER CURIAM: [11-13] We have previously held in syllabus point three of Mannington V. Black and Decker Manufacturing Company, 162 W. Va. 857, 253 S.E. 2d 666 (1979) that: "The cause of action covered by the term 'strict liability in tort' is designed to relieve the plaintiff from proving that the manufacturer was negligent in some particular fashion during the manufacturing

process and to permit proof of the defective condition of the product as the [redacted] principal basis of liability." "once it can be shown that the product was defective when it left the manufacturer and that the defect proximately caused the plaintiffs injury, a recovery is warranted absent some conduct on the part of the plaintiff that may bar his recovery." Id. at 883, 253 S.E.2d at 680.

See South Carolina Code of law Title Section § 15-78-70(c) provides that a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting.

See SOUTH CAROLINA BATTLEGROUND OF FREEDOM CODE OF LAWS of SOUTH CAROLINA 1976 CIVIL REMEDIES AND PROCEDURES TITLE 15 ARTICLE 3 PERSONAL OR SUBSTITUTE SERVICE IN STATE

§ 15-9-270. Service on Corporations generally.

See PS-10.08, § 11.4 Indigent inmates and inmates correspondence policy.

FACTS

Plaintiff was prevented from knowing of the claim at [redacted] time of the injury... due to plaintiff inability to comprehend the injury in Medical Malpractice actions, because often the results of such malpractice would be apparent only years later, the Defendants GCDC and third-party actively committed fraud in an attempt to prevent the plaintiff from prosecuting his claim, fraudulent concealment

would include concealment of the injury itself or the identity of the tortfeasor. However, plaintiff while in the custody of Defendants and blind-party was gross negligently through Clinical trials willfully and recklessly exposed to Bio-Chemical tennovizum hazardous insecticide Chemical Agent Chloroacetenophenone, Chlorobenzylmalononitrite, pharmaceutical drugs; foreign object in food or food product caused by spoilage, contamination or prison well water pipe supply for prisoners and staff or visitors Drinking water, or other deleterious condition of food or food product intended for ingestion, medical practitioner use of drug, medical instrument, or similar device used in treating plaintiff, asbestos or Agent orange; foreign objects negligently left in plaintiff body, a piece of a Dentist surgical sponge inside of plaintiff, the effects of which were only detected twenty years later. Where there is a strong showing by the plaintiff Tyrone Lamar Roberson that he was prevented from knowing of the claim at time of the injury due to handicaps to discovery, inability to comprehend injury or other extreme handship that some action by the defendants are great and are largely product of defendants conduct in concealing either tort or wrongdoers identity that prevented

the plaintiff from knowing of the wrong at the time of the injury.

FACTS

This is applicable to hold defendants SCDC and third-party liable for a tort of the private independant contractor Doctor John B. McKee, Judy Rabon, Yvette Mcdonald, Tarcia L. James, Elizebeth Holcomb, Pravin R. Patel, et & al and Dentist Doctor Krebs, et & al of Lieber/Perry/McCormick/Lee/Kirkland/Evans correctional institution political subdivision liable for the Medical Malpractice of a contractor of the SCDC Inmate Program Services Medical / Dental Health Care provider deliberate indifference to plaintiff Tyrone Lamar Roberson serious medical needs when there were excessive delays in the Medical / Dental treatment referral scheduled procedures for Head trauma; Stomach / Colon cancer, testicular lump cancer, impure tuberculosis test shot injection; refusal to surgically remove planters warts from bottom of Right and left feet of plaintiff, refusal to treat Kidney / liver disorder, and plaintiff was not given right to adequate dental care treatment for progressive degenerative tooth cavity carious lesion when Doctor knew Dental caries is a progressive disease process induced by Dentist failure to clean teeth or provide

plaintiff Tyrone Roberson with restorative Gold/Silver mouth filling treatment, or a mistaken decision not to treat based on an erroneously delay in treatment that the condition is benign or trival; contrary, that "a reasonable doctor or patient would find important and worthy of comment or treatment." Deliberate indifference to plaintiff Tyrone Robersons needs if private contractor Dentist Krebs, et & al outright refusal of any treatment for a degenerative condition that tends to cause acute infection and pain if left untreated. District Courts in this Circuit have ruled finding a material issue of fact as to deliberate indifference after an inmate was made to wait five and a half months for refilling of a cavity, resulting in infection and lost of the tooth. ?d. William V. Scully, 552 F. Supp. 431, 432 (S.D.N.Y. 1982). The Defendants SCDC Nurses and Doctors Knew of and disregarded an excessive risk to plaintiff Tyrone Lamar Roberson health or safety," when Medical Health Care Administrator subjected plaintiff to "grossly inadequate care" in the face of "a decision to take an easier but less efficacious course of treatment." Objectively plaintiff Medical need is "sufficiently serious"... and that "subjectively the SCDC Medical Health Care Administrator Nurses and Doctors under color of state law acted with a sufficiently

culpable state of mind," with gross negligent malpractice conduct violated "clearly established statutory or constitutional protected rights of plaintiff of which a reasonable prudent person would have known in the exercise of his/or her discretionary duty.

The inquiry into whether a prison official acted with deliberate indifference has both an objective and subjective component. Comstock v. McCrary, 273 F.3d 693, 702 (6th Cir. 2001). In order to satisfy the objective component, the prisoner must show that the medical need is "sufficiently serious." Id. at 702-03 quoting Farmer v. Brennan, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed. 2d 811 (1994). To satisfy the subjective component, the prisoner must allege facts which show that the prison official had a "sufficiently culpable state of mind." Farmer, 511 U.S. at 834; Comstock, 273 F.3d at 703. It must be shown that the official acted with reckless disregard for a substantial risk to the prisoner, that he knew the inference, and that he disregarded the risk. Farmer, 511 U.S. at 836-37. Id. "Deliberate indifference" will exist when official knows that inmates faces substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it, the Eighth Amendment is violated. See Farmer v. Brennan,

511 U.S. 825, 114 S.Ct. 1970, 1976, 128 L.Ed. 2d 811 (1994).

FACTS

Plaintiff brought this action against Defendants Attorney General Alan Wilson and Ms. Tanci~~a~~ L. James, et al of McCormick Correctional 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 Robenson a patient cause of action against Defendants alleging assault and battery arising from the February 20, 2015 performance of an injection without informed 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's 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 breach of an implied warranty.

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 under color of state law with a culpable state of mind where Defendants is so indifferent to the consequences of his/her conduct as not to give 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 thats 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 lost / with medical malpractice action often, and that plaintiff was not aware of the identity / Location / Home / Business addresses of the government state Agency political

subdivision fraud teason employen and employees, and plaintiff was not awane of the fact that an injury has been inflicted because the physicians negligence may consist of some improper impune tuberculosis test shot injection by tontfeason / product liability. When the identity of the makeN of the defective product is not Known, and that the product has a causal nelation to the injury when Defendants Alan Wilson and thind-panty scne tontious acts of commission on omission of the agents, senvants, employees on officens of a chanitable hopitals in this state conduct is shown to be motivated by evil motive on intent, on when it involves neckless disregand on callous indifnence by exposing plaintiff to excessive and penvasive nisk with ingestion of poison caused by Defendants Alan Wilson and thind-panty scne defective dnug medication / food / and waten supply condition of confinement, when pnison official is subjectively awane that plaintiff face such a nisk from such adverse pnison conditions from which the infenence 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 or commission or omission of agents, servants, employees or officers of a charitable hospital or medical facility or of a hospital or other medical facility [redacted] 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 Defendant's Attorney General Alan Wilson and third-party SCDC [Officials] acted with reckless disregard for a substantial risk to the prisoner Tyrone Roberson, 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 [redacted] 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 Amendment civil Rights of plaintiff Tyrone Robenson 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. Seiter, 111 S. Ct., 2324 (emphasis added). See Farmer v. Brennan, 511 U.S., at 842, 114 S.Ct. 1970 (1994), Id. Further, whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." Id. since a finding of deliberate indifference requires a finding of the defendants subjective awareness of the relevant risk, a genuine issue of material fact exists only if the record contains evidence, albeit

circumstantial, of such subjective awareness;" Campbell V. Sikes, 169 F.3d 1353, 1364 (11th Cir. 1999). (quoting Steele V. Shah, 87 F.3d 1266, 1269 (11th Cir. 1996)). see Clark V. Ross, cite as 328 S.E.2d 91 (S.C. App. 1985), Id., at 101: GOOLSBY, Judge: [14-17] A physicians negligence may be deemed a proximate cause of a plaintiffs injury only when without that negligence the injury either would not have occurred or could have been avoided. Hughes V. The Childrens Clinic, P.A., 269 S.C. 389, 237 S.E.2d 753 (1977). ordinarily, the question of proximate cause is one of fact for the jury and the trial Judges sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence. Carter V. Anderson Memorial Hospital, supra. see Clark V. Ross, cite as 328 S.E.2d 91 (S.C. App. 1985), Id., at 105: GOOLSBY, Judge: [30] So viewed, the instructions are not at odds with South Carolina law regarding proximate cause. It has long since been the law in this State that one "may be held liable for anything which appears to have been a natural and probable consequence of his negligence." Childers V. Gas Lines, 248 S.C. 316, 325,

149 S.E. 2d 761, 765 (1966); Tobias V. Carolina Power & Light Co., 190 S.C. 181, 2 S.E. 2d 686 (1939).

The defendant may be 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).

See Vermeer Carolinas V. Wood/Chuck Chipper, cite as 518 S.E. 2d 301 (S.C. App. 1999), Id. at 307-308:
[17] A sellers strict liability for a defective product is set out in S.C. Code Ann. § 15-73-10 (1977):

(1) one who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm caused to the ultimate user or consumer, or to his property, if (a) The seller is engaged in the business of selling such a product, and (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

FACTS

Plaintiff asserts from Him being recklessly sprayed directly in the eyes and face with chemical gas mace munition hazardous insecticide chemical Agent chloroacetenophenone and chlorobenzylmalononitrile by Defendants of SCDC is the 'proximate cause' of plaintiff eyes injury of the Brown irises to have bled on to the whites of plaintiff eyes which is the proximate cause of ruptured eye vein in plaintiff becoming legally blind.

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. See Douglass V. Florence General Hospital, cite as 259 S.E. 2d 117 (Oct. 10, 1979), 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 Procunier V. Navarette, cite as 98 S. Ct. 855 (1978), Id. at 860: Mr. Justice WHITE delivered the opinion of the Court: [4] under the first part of the Wood V. Strickland rule, the immunity defense would be unavailing to petitioners (Defendants) if the Constitutional right allegedly infringed by them was clearly established at the time of their challenged conduct, if they knew or should have known of that right, and if they knew or should have known that their conduct violated the Constitutional norm.

See Tant V. Dan River, INC., cite as 332 S.E. 2d 534 (S.C. App. 1985), Id. The test for determining whether a tort may be deemed reckless, willful or wanton is

whether it has been committed in such a manner and under such circumstances that a person of ordinary reason on prudence would have been conscious of it as an invasion of the rights of the injured party. (emphasis applied).

In the Tenth Circuit "an official on Municipality acts with deliberate indifference if its conduct on adopted policy disregards a known on obvious risk that is very likely to result in the violation of a prisoners constitutional rights." Berry v. City of Muskogee, 900 F.2d 1489, 1496 (10th Cir. 1990).

see DOUGLASS V. FLORENCE GENERAL HOSPITAL, cite as 259 S.E.2d 117 (Oct. 10, 1979), id. at 118; GREGORY, Justice: In 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 heedless 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 occured because of the hospital's heedlessness and reckless disregard of the plaintiffs rights. 234 S.E. 2d at 876-877.

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 or 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 attorney's fees for the prosecution of the case against the insurer, plan or corporation..." See BROWN V. JOHNSON, cite as, S.C., 275 S.E.2d 876 (March 2, 1981), (emphasis added).

FACTS

It appears that this case requires a decision dispositive of one or more defendants or claims at this time, and consent of all parties has not been obtained. All named parties, including unserved defendants, must consent before a Magistrate Judge has jurisdiction under 28 U.S.C. §636(c)(1) to hear and decide a case. See Williams v. King, 875 F.3d 500, 501-02, 504 (9th Cir. 2017)(Magistrate Judge lacked jurisdiction to dismiss case on initial screening because unserved defendants had not consented to proceed before magistrate Judge). under the provision of section §15-53-80, Code of Laws of South Carolina (1976). That section provides, in relevant part, as follows: that all persons who have or claim any interest which would be affected by a declaratory judgment [redacted] shall be made parties to the declaratory judgment action and that no declaration shall prejudice the rights of persons who were not parties to the action. Rowe v. City of Columbia, cite as 388 S.E.2d 789 (S.C. 1989).

It is duly noted on the Record November 1, 2017 and July 18, 2018 in Civil Case No. 2017-CP-23-03406 that Plaintiff Tyrone Lamar Roberson timely made objections to Judge Edward Miller and Judge Alex Kinlaw dismissal of Defendants and third-party.

Plaintiff's grounds for objection is as follows: For He who acts in the name and for the State and is clothed with State power His act is of the State. States do not exist independent of its officers, agents, or citizens but rather through the structure or its Government and the Character of those who exercise Government Authority a State defines it Self. States act by it legislative, executive and its Judicial Authority. It can act in no other way. For master is subject to liability for Negligent conduct of public servant while acting in scope of employment under color of State law with a Culpable State of Mind. See, e.g., Mull V. Ridgeland Realty, LLC., 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (Stating that the purpose of proper service pursuant to Rule 4 is, in addition to giving notice, to "confer personal Jurisdiction on the Court"). Rule 4(d) requires an agency of South Carolina be served by "delivering a copy of the Summons and Complaint

to such officer or agency..." service can only be accomplished on a state agency by personal service. See, SCRCP 4(a) (5-9). The rule also requires the plaintiff to "send a copy of the summons and complaint by Registered or Certified Mail to the Attorney General at Columbia." See SCDC inmate correspondence policy / Procedures, PS-10.08, §11.4 indigent inmates and inmates without funds in their Account will only be Authorized to send certified mail for summon or complaints going directly to the South Carolina Attorney Generals office.

LAW/ANALYSIS: STAUBES V. CITY OF FOLLY BEACH, cite as 500 S.E.2d 160 (S.C. App. 1998), Id. at 163: ANDERSON, Judge. STANDARD OF REVIEW: In determining whether any triable issue of fact exists, as will preclude summary Judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Koester V. Carolina Rental Ctr., Inc., 313 S.C. 490, 443 S.E.2d 392 (1994). See also Bates V. City of Columbia, 301 S.C. 320, 391 S.E.2d 733 (Ct. App. 1990) (in determining whether to grant summary Judgment, pleadings and documents on

file must be liberally construed in favor of nonmoving party who must be given benefit of all favorable inferences that might reasonably be drawn from record). If triable issues exist, those issues must go to the Jury. Rothrock v. Copeland, 305 S.C. 402, 409 S.E.2d 366 (1991).

Summary Judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997); Baughs v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, Summary Judgment should be denied. Tuper, supra; Koester, supra. Id. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant. Tupper, supra., Baughs, supra.

See STAUBES V. CITY OF FOLLY BEACH, cite as 500 S.E.2d 160 (S.C. App. 1998), Id. at 168: ANDERSON, Judge: [10] Gross negligence is a mixed question of law and fact and should be presented to the Jury unless the evidence supports only one reasonable inference. Clyburn v. Sumter County Sch. Dist. #17, 317 S.C. 50, 451 S.E.2d 885 (1994); Etheredge, supra; Doe, supra.

By contrast, extrinsic fraud "refers to frauds collateral or external to the matter tried such as bribery or other misleading acts which prevent the movant from presenting all of his case or deprives one of the opportunity to be heard." Chewning v. Ford Motor Co., 346 S.C. 28, 34, 550 S.E.2d 584, 587 (Ct. App. 2001).

Rule 60(b) provides, in part: on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal leave to make the motion must be obtained from the appellate court. Again, there is no specific time limit.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the Judgment, order or proceeding was entered or taken. Historically, after the period to claim relief under Rule 60 (b) (1) through (3), SCRCP, has expired, courts have required a showing of extrinsic fraud to vacate a Judgment. Fraud upon the Court has been defined as "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the Court so that the Judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 408 (2nd Ed. 1985). Id. at 405. Extrinsic fraud refers to frauds which are collateral or external to the matter tried in civil case No. # 2017-CP-23-03406 such as misleading acts which prevent the movant from presenting all of his case. Id. at 405. It is some intentional act or conduct by which the

prevailing party has prevented the unsuccessful party from having a fair submission of the controversy. The movant in a Rule 60(b) motion has the burden of presenting evidence, usually provided by affidavits, proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991).

Accordingly, we hold that South Carolina maintains the distinction between extrinsic and intrinsic fraud, even when the allegations are raised through a Rule 60(b)(3) motion filed within one year of the entry of judgment." Raby Const., L.L.P. v. Orr, 358 S.C. 10, 19-20, 594 S.E.2d 478, 482-83 (2004).

"Relief is granted for extrinsic but not intrinsic fraud on the theory that the latter deceptions should be discovered during the litigation itself, and to permit such relief undermines the stability of all judgments." Id. at 405.

Rule 60(b)(3), by its express terms, permits judgments to be set aside for fraud 'whether heretofore denominated intrinsic or extrinsic.' It thus put an end, at least when relief is sought

by motion, a very troublesome and unsound distinction.'... '[I]n commenting on Rule 60(b)(3), Wright and Miller note that the Rule reaches all fraud, and rejects the confusing distinction between extrinsic and intrinsic fraud.'" Mr. G v. Mr. G, 320 S.C. 305, 311, 465 S.E.2d 101, 106 (Ct. App. 1995) (Dissent, HEARN, J.).

See EVANS V. GUNTER, 366 S.E.2d 44 (S.C. App. 1988), Id. [1, 2] The doctrines of Res Judicata and Collateral estoppel do not bar Collateral attack of a Judgment based on fraud. Arnold v. Arnold, 285 S.C. 296, 328 S.E.2d 924 (Ct. App. 1985) this Court addressed a similar situation.

The complaint of a plaintiff "must be liberally construed in favor of the pleader and sustained if the facts alleged, and the inferences reasonably deducible therefrom, entitle plaintiffs to relief on any theory of the case, even though different from that on which they may have supposed themselves entitled to recover." (emphasis added)

Springfield v. Williams Plumbing Supply Co., 249 S.C. 130, 153 S.E.2d 184 (1967).

RELIEF

Reverse and Remand for a Civil Jury Trial for the Recovery of $10,000,000 in actual and punitive Damages. And for the Recovery of $150 Hourly Attorney Fee's and Court cost in the filing of this matter.

SIGNED THIS 20th DAY OF JUNE 2019.

RESPECTFULLY SUBMITTED

Tyrone L. Roberson

Tyrone Roberson # 191327
Lee Correctional Institution F-7 North 59A
990 Wisacky Highway
Bishopville, South Carolina 29010
Counsel of Record plaintiff.

cc.
Stephanie Burton, Esquire
GIBBES BURTON LLC
Attorney & Counselors
308 East Saint John Street
Spartanburg, South Carolina 29302 Ph:(864)327-5000

RECEIVED
JUL 09 2019
SC Court of Appeals

IN THE

SOUTH CAROLINA COURT OF APPEALS

Tyrone Laman Roberson, #191327 Plaintiff-Appellant

Vs.

South Carolina Attorney General, Alan Wilson; Perry Correctional Institution Warden, Larry Cartledge; Associate warden of program services, Stephen Clayton, et al.; McCormick Correctional Institution Warden, Leroy Cartledge; Associate warden, James Parker, JR.; Lieutenant Stanley Terry; Nurse Tarcia L. James; Third-party SCDC Director, Bryan P. Stirling; SCDC Insurance Carrier the State Budget And Control Board Committee, and third-party Commissioner of The Palmetto Unified School District No. # 1 Board of Trustee Randy Reagan, Ed. D., Superintendent, et al,

Defendants-Respondents

CERTIFICATE OF SERVICE BY MAIL

Plaintiff hereby declare and certify that a True copy of petition pursuant to SCRULCIV. Procedures Rule 60(b)(3) has been served upon Defendants-Respondents by placing a copy of original inside The United States Postal Mail Carrier with pre-paid postage addressed to be

LEGAL MAIL ONLY

delivered upon the following: Stephanie H. Burton, Esquire of GIBBES BURTON, LLC ATTORNEY AND COUNSELORS 308 East Saint John Street Spartanburg, South Carolina 29302.

Signed This____DAY OF_____20____.

RESPECTFULLY SUBMITTED

_____

Tyrone Lamar Robertson #191327
Lee Correctional Institution F-7 North 59A
990 Wisacky Highway
Bishopville, South Carolina 29010
Counsel of Record Plaintiff.

cc.

Tyrone Lamar Robertson #191327
Lee Correctional Institution F-7 North 59A
990 Wisacky Highway
Bishopville, South Carolina 29010

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

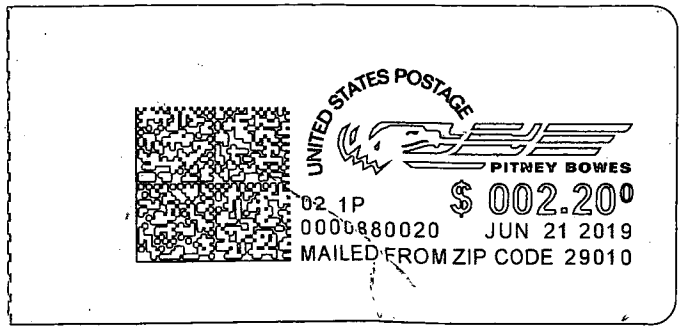
DATE: June 20, 2019

Dear Clerk

Enclosed with this letter is a petition pursuant to SCRul.Civ.Procedure Rule 60(b)(3), with certificate of service by Mail and Court order that I need for you to file accordingly in My behalf. Thank You!

RESPECTFULLY SUBMITTED
Tyrone L. Robertson

FROM: MR. TYRone Lamar Robertson #191327
Lee Correctional Institution F-7North 59A
990 Wisacky Highway
Bishopville, South Carolina 29010



RECEIVED
JUL 09 2019
SC Court of Appeals

LEGAL MAIL ONLY

To: Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201