THE SOUTH CAROLINA COURT OF APPEALS
APPELLATE CASE NO. # 2019-001122

Tyrone Lamar Roberson, #191327 Plaintiff - Appellant,

VS.

South Carolina Attorney General, Alan Wilson, "private party Defendants of Perry Correctional Institution," Warden Larry Cartledge, Associate Warden Stephen Clayton, "private party Defendants of McCormick Corrections Institution," Warden Leroy Cartledge, Associate Warden James Parker, Jr., Lieutenant Stanley Terry, Nurse Tarcia L. James, "third-party Defendants" South Carolina Department of Corrections," State Budget and control Board committee, commissioner of the Palmetto Unified School District No. #1 Board of Trustee Director, Bryan P. Stirling,
Defendants - Respondents

AMENDED NOTICE OF APPEAL

This Amended Notice of Appeal pursuant to SCRul. Civ. Procedures 60(b)3 is taken from The Greenville County Court of Common pleas adverse dismissal of plaintiff state tort claim Evidentiary hearing Before Judge Alex Kinlaw, Jr. in the matter of Tyrone Lamar Roberson Vs. South Carolina Attorney General, Alan Wilson, et al in Case Action No. # 2017-CP-23-03406 during July 18, 2018

THIS APPEAL FOLLOWS:

QUESTION

Did Judge Alex Kinlaw, Jr during July 18, 2018 committed an Abuse of His trial court Discretion when His Ruling of Dismissal is controlled by an error of law on a factual conclusion that is without evidentiary support that plaintiff was not entitled to maintain a cause of Action for the Recovery of liability Damages against named State Agency institution political Subdivision employees of Perry and McCormick Correctional Institution of SCDC by only executing Service of process on The South Carolina Attorney General Alan Wilson.

PROCEDURAL HISTORY

(1). This matter came before the court on motion to dismiss of Defendants South Carolina Department of Corrections, Larry Cartledge, Stephen Clayton, Leroy Cartledge, James Parker Jr., Stanley Terry, Tancia L. James, and Bryan Sterling that was filed on May 23, 2018. A hearing was held on July 18, 2018. Brianna L. Schill appeared on behalf of Defendants South Carolina

Department of Corrections, Larry Cartledge, Stephen Clayton, Leroy Cartledge, James Parker Jr., Stanley Terry, Tarcia L. James, and Bryan Sterling. Plaintiff appeared pro se. For the reasons discussed below, the Court grants the motion to dismiss.

First, plaintiff has failed to properly serve any of these Defendants. See page 1 of 3, Lines 1-28 of ORDER GRANTING DEFENDANTS MOTION TO DISMISS.

(2). 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 Carolina Department of Corrections, 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. See page 2 of 3, Lines 7-16 of ORDER GRANTING DEFENDANTS MOTION TO DISMISS.

(3). 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. See page 2 of 3, Line's 21 through Page 3 of 3, Lines 1-2 of ORDER GRANTING DEFENDANTS MOTION TO DISMISS.

(4). 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, Defendant's Motion to Dismiss is granted. ■ For the foregoing Reasons, Defendants South Carolina Department of Corrections, Larry Cartledge, Stephen Clayton, Leroy Cartledge, James Parker Jr., Stanley Terry, Tarcia L. James, and Bryan Sterling's Motion to Dismiss is granted. This case is dismissed without prejudice. AND IT IS SO ORDERED. See page 3 of 3, Lines 11-20 of ORDER GRANTING DEFENDANT'S MOTION TO DISMISS.

(5). Third, this court finds that plaintiff's complaint has failed 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. See page 3 of 3, Line's 3-7 of ORDER GRANTING DEFENDANTS MOTION TO DISMISS.

ARGUMENT

It is duly Noted on the Record July 18, 2018 in Civil Case No. #2017-CP-23-03406 that Appellant timely made objections to Defendants plea of statute of limitation bar to plaintiff Medical Malpractice Claim And use of excessive force claim, and that Appellant timely made objections to the Courts dismissal of all remaining Defendants as pointed out.

Plaintiff Request leave of Court to proceed with Amended Notice of Appeal to be relieve from a final Judgment, order, or proceeding July 18, 2018 - July 30, 2018 in Civil Case No. #2017-CP-23-03406 for the following reasons: Rule 60(b) provides, in part: (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. Cant V. Marcum, supra.; Hickman V. Grover, supra.; Hundley V. Martinez, supra.; Jones V. Trustees of Bethany College, supra.; Hansen V. A.H. Robins, Inc., supra.; (emphasis applied) Cant 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, faulty construction, and invasion of privacy. unless a clear statute foreclosed expanding the scope of the discovery rule, we have expanded it each time. See Morningstar V. Black and Decker Manufacturing Company, 253 S.E. 2d 666 (1979). see South Carolina Code of law Title Section §15-73-10 (1977). see Cada V. Baxter HealthCare Corp., 920 F.2d 446, 450-51 (7th Cir. 1990) Equitable tolling, however, "permits a plaintiff to avoid the bar of the statute of limitations if despite all due diligence he is unable to obtain vital information bearing on the existence of his claim." Id. 920 F.2d at 451.

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, 358 S.E. 2d 810, 813 (1987).

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. Hundley V. Martinez, 158 S.E. 2d 159 (1967).

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 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, 351 S.E. 2d 183, 184 (1986).

ARGUMENT

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.'" Mn. G v. Mr. G, 320 S.C. 305, 311, 465 S.E. 2d 101, 106 (Ct. App. 1995) (Dissent, HEARN, J.).

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).

ARGUMENT

During July 18, 2018 Appellant-plaintiff Tyrone Lamar Robertson was prevented from presenting all the material facts of His claim in Verified State Tort Claim Complaint for $10,000,000 in Damages against named party Defendants Due to Judge Alex Kinlaw usurpation of Plaintiff constitutional civil Rights with Judge Bias conduct towards incarcerated pro se litigant by Judge interupting plaintiff repeatedly during the course of plaintiff oral presentation of the material facts of His Claim for cause of Action and Relief Sought - that amounts to extrinsic fraud by officer of the Court.

where there is a strong showing by the plaintiff Tyrone Lamar Roberson that he was prevented from knowing of the claim at time of injury due to handicaps to discovery, inability to comprehend injury or other extreme hardship that some action by the defendants are great and are largely product of defendants and Judges Alex Kinlaw and Judges Edward W. Miller conduct in concealing either tort or wrongdoers identity that prevented the plaintiff from knowing of the wrong at the time of the injury.

Even though plaintiff were not able to execute service of process of summons and verified complaint on named defendants and third-party pen se; But were only able to execute service of process of summons and verified claims on south carolina Attorney General Alan Wilson via registered certified mail delivery June 20, 2017. However, plaintiff pursuant to the south Carolina Tort claims Act were entitled to maintain a cause of action against named state Agency Institution political subdivision employees of perry and Mccormick correctional Institution of scdc for premises liability for defective condition of confinement by third-party for the recovery of $10,000,000 Dollars in actual and punitive compensatory liability Damages from Defendants and third-party scdc who actually employed the employees Joint tortfeasors whos acts or omission with a

culpable State of Mind to arbitrarily deny plaintiff of legally protected liberty and property interest civil Rights numerated under the Fourteenth constitution State and federal Amendments at all times herein under color of State law with malicious intent to cause Serious Bodily and psychological harm and injury with unnecessary wanton infliction of pain with corporal punishment and cruel and unusual punishment in violation of the Eighth and Fourteenth United States Constitution Amendment which is the 'proximate cause' of plaintiff loss, injury and stomach and colon disease, et that presently inflicts plaintiff with loss of equity tangible and intangible earned wages and dividends, gifts allowance benefits from escrow accounts of Educational / Vocational Training Rehabilitation of the United States Department of Labor/prison Bureaue/Department of Health and Agricultural Social Services of the United States Department of Justice which is the 'proximate cause' of plaintiff loss and economic public and private delinquit indebtness with irreparable harm and injury. Requirement that agency or political subdivision be named party Defendant-Tort claim Act Section §15-78-70(b). See, e.g., Mull V. Ridgeland Realty, LLC., supra.

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

However, plaintiff while in the custody of Defendants and third-party SCDC perry and McCormick Correctional Institution, et al of the Palmetto Unified School District No. # 1 Board of Trustee of the State Budget And control Board [redacted] committee employee Director Bryan Stirling: the plaintiff was gross

negligently exposed through clinical trials by Defendants willful and reckless conduct with Bio-chemical terrorizum hazardous insecticide Round up chemical Agents to include but not limited to: chloroacetenophenone, chlorobenzylmalononitrite; pharmaceutica drugs; foreign object in food or food product caused by spoilage, contamination of prison well water pipe supply for prisoners, staff member 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 left inside of plaintiff, the effects of which were only detected twenty years later.

"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, 358 S.E. 2d 810 (1987).

'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, 158 S.E. 2d 159 (1967). [Emphasis added].

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., 335 N.W. 2d 578, 583 (1983).

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, 358 S.E. 2d 810 (1987).

"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 [redacted] the product as the 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." Morningstar V. Black and Decker Manufacturing Company, 253 S.E. 2d at 680 (1979).

FACTS

This is applicable to hold Defendants SCDC and third-party liable for an intentional Tort of a public or private independent contractor Doctor John B. McCree, Doctor Pravin R. Patel, Dentist Doctor Krebs, Nurse Judy Rabon, Nurse Yvette Mcdonald, Nurse Tancia L. James, and Nurse Elizebeth Holcomb, et al of Perry/McCormick/Evans/Lee/Lieber/and Kirkland Correctional Institution political subdivision State Agency employees, liable for the Medical Malpractice of a Contractor's negligence of the SCDC Inmate Program Services Health Care Provider Medical/Dental Health Care Treatment deliberate indifference to plaintiff Tyrone Lamar Roberson Health and Safety in failing to protect plaintiff from Breach of implied warrantee by Tuberculin Vaccine Shot Defect Manufacturer product since May 10, 1999 through February 20, 2015 clinical trials impure tuberculin test shot injection.

The Defendants SCDC Doctors and Nurse's Knew of and disregarded an excessive risk to plaintiff Tyrone Lamar Roberson health or safety," when the Defendants and third-party SCDC Medical Health Care Administrator employee's subjected plaintiff to "grossly inadequate care" in failing to protect plaintiff from injury proximately caused by Breach of implied warrantee by food, water, drug and Medicine Tuberculin Vaccine Test Shot Defect Manufacturer products.

Deliberate indifference has three components: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence.

Grossly incompetent medical care or choice of an easier but less efficacious treatment can constitute deliberate indifference.

However, "an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that a harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm." Farmer v. Brennan, 511 U.S. at 842, 114 S.Ct. 1970 (1994). 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."

We have also held that deliberate indifference may

be established by a showing of grossly inadequate care as well as by a decision to take an easier but less efficacious course of treatment. See Steele V. Shah, 87 F.3d 1266, 1269-70 (11th Cir. 1996); Waldrop V. Evans, 871 F.2d 1030, 1035 (11th Cir. 1989). Moreover, "when the need for treatment is obvious, medical care which is so cursory as to amount to no treatment at all may amount to deliberate indifference." Mandel, 888 F.2d at 789; Ancata V. Prison Health Servs., Inc., 769 F.2d 700, 704 (11th Cir. 1985). Mandel V. Doe, 888 F.2d 783, 788 (11th Cir. 1989) (noting that "Knowledge of the need for medical care and intentional refusal to provide that care constitute deliberate indifference"). Boretti V. Wiscomb, 930 F.2d 1150, 1154-55 (6th Cir. 1991) (recognizing that "a prisoner who suffers pain needlessly when relief is readily available has a cause of action against those whose deliberate indifference is the cause of his suffering."). A similar situation was present in Carswell V. Bay County, 854 F.2d 454 (11th Cir. 1988). In Carswell, the plaintiff made a series of requests for medical care and attention. Although the medical staff diagnosed and provided some medication to the plaintiff, we nonetheless affirmed a jury verdict for the plaintiff, explaining that, because plaintiff's condition worsened and the jail medical staff failed to respond, "with evidence of knowledge the jury could have concluded that the failure to provide Carswell with medical

care constituted deliberate indifference." Id. at 457.

In Estelle, the Supreme Court recognized that the Eighth Amendment requires the government "to provide medical care for those whom it is punishing by incarceration" precisely because the failure to do so "may actually produce physical 'torture or a lingering death'" or, "in less serious cases, ... may result in pain and suffering which no one suggests would serve any penological purpose." Estelle, 429 U.S. at 103, 97 S. Ct. 285 (quoting In re Kemmler, 136 U.S. 436, 447, 10 S. Ct. 930, 34 L. Ed. 519 (1890)). Prison officials who deliberately ignore the serious medical needs of inmates cannot claim that it was not apparent to a reasonable person that such actions violated the law.'") (quoting Hamilton V. Endell, 981 F. 2d 1062, 1066 (9th Cir. 1992) (emphasis in original)).

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 also Hill V. DeKalb Regional Youth Detention Ctr., 40 F. 3d 1176, 1186 (11th Cir. 1994) ("A finding of deliberate indifference necessarily precludes a finding of qualified immunity.

Qualified immunity is a guarantee of fair warning. Under the doctrine of qualified immunity, a government official sued for damages for injuries arising out of the performance of discretionary functions must be "shown to have violated 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" Conn, 119 S. Ct. at 1295 (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982)). As the Supreme Court has explained, "qualified immunity seeks to ensure that defendants 'reasonably can anticipate when their conduct may give rise to liability,' by attaching liability only if 'the contours of the right [violated are] sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" United States v. Lanier, 520 U.S. 259, 270, 117 S. Ct. 1219, 137 L. Ed. 2d 432 (1997) (citations omitted). "This is not to say that an official action is protected by qualified immunity unless the very action in question has been held unlawful, but it is to say that in the light of pre existing law the unlawfulness must be apparent." Anderson v. Creighton, 483 U.S. 635, 640, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987) (citations omitted).

ARGUMENT

Plaintiff now hereby request leave of court to incorporate in this Amended Notice of Appeal the genuine issue of material facts discovered in the June 20th, 2019 Notice of Appeal filed by plaintiff-Appellant at page 18 of 37, Lines 2- through pages 37 of 37, Lines 1-21.

see Raymond J. Brittain et al. V. Troy B. Camp, cite as 188 S.E. 2d 494 (March 10, 1972), id. at 495: "A party may state as many separate claims as he has regardless of consistency and whether based on legal or on equitable grounds or on both. If a complaint shows a claim on which relief, either legal or equitable, may be granted, it is not subject to dismissal.

Thus Rule 18(a) provides that a plaintiff "may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party." (emphasis applied), Dairy Queen, Inc. V. Wood, cite as 82 S. Ct. 894 (1962), id. at 896; Mr. Justice BLACK delivered the opinion of the court: [1]

see Teachy V. Coble Dairies, INC., cite as N.C., 293 S.E. 2d 182 (July 13, 1982), id. at 182-183: MITCHELL, Justice; 4. States ⚖ 112.2 (1) The State may be joined as a third-party defendant, whether in an action for contribution or in an action for indemnification, in state courts. Rules Civ. Proc., Rule 14(c) G.S. § 1A-1.

see Giles V. Lanford & Gibson, Inc., cite as 328 S.E.2d 916 (S.C. App. 1985), Id. at 918: BELL, Judge: [1, 2] "Constructive fraud is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests. (emphasis applied).

see Arnold V. Arnold, cite as 328 S.E.2d 924 (S.C. App. 1985), Id. at 925: GOOLSBY, Judge: [2] We find that summary judgment under the facts of this case was inappropriate since the doctrines of res judicata and collateral estoppel do not bar collateral attack of a judgment based on fraud.

The leading case discussing the application of the doctrine of res judicata as it relates to an action to vitiate a decree obtained by fraud is Sea Land Services, Inc. V. Gaudet, 414 U.S. 573, 94 S. Ct. 806, 39 L.Ed.2d 9 (1974).

FACTS

At the time of the incident in question February 3, 2014, Plaintiff had been confined in SMU / RHU political subdivision cage cell with both his hands shackled behind

his back. under these circumstances, the "ongoing violation" of resisting arrest had been terminated, and a Jury could reasonably conclude that plaintiff Robenson posed no continuing threat to Defendants Lieutenant S. Terry or others during February 3, 2014. The evidence in the record could support a Jury determination that Defendants Lieutenant S. Terry and third-party SCDC maliciously and sadistically intended to use excessive force on plaintiff Tyrone Robenson February 3, 2014 to inflict unnecessary wanton infliction of pain in violation of the Eighth Amendment prohibition against cruel and unusual punishment clause... And Defendants S. Terry and third-party SCDC acted with a culpable state of mind under color of state law with evil motive or intent to punish plaintiff Robenson for his refusal to sit half naked on the cold filthy (unswept and unmoped) floor of SMU/RHU of McCormick Correctional Institution February 3, 2014, and did so through the use of excessive force in violation of of the Eighth and Fourteenth Constitutional Amendment Rights when Defendants and third-party Recklessly

pulled plaintiff Roberson from cell 48 with both of his hands restrained behind his back while in handcuffs and escorted plaintiff to the wall on the Rock and then swept plaintiff feet from under him and 'proximately caused' plaintiff Back of Head and neck to slam backward on the base of wall and concrete floor with such force that completely knocked plaintiff unconscious and left him with a few crack back teeth and a Head swollen with disfiguring Lump to the Back of head. Defendant's Lieutenant S. Terry and third-party SCDC during February 3, 2014 maliciously and sadisticly continue to employ physical use of excessive force or other coercive measures after the necessity for such coercive action has ceased. And the Defendant's Lieutenant S. Terry and third-party SCDC intended to punish plaintiff Tyrone Roberson with corporal for plaintiff being accused of masturbating off of the female officers at McCormick, for being a bothersome writ writer to prison officials of McCormick and SCDC; for refusing to script naked and spread

ass cheeks or squat and cough for Burgandy agency search team members February 3, 2014, and for refusing to sit half Naked on the coldfilthy (unswept and unmoped) floor to teach plaintiff a leason. And Defendant's and third-party fulfilled the motive with intent to Maliciously and Sadistically to punish plaintiff with corporal punishment Reprisal and Retaliation February 3, 2014.

ARGUMENT

The Supreme Court has explained that this issue turns on "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and Sadistically for the very purpose of causing harm." Whitley V. Albers, 475 U.S. 312, 320-21, 106 S.Ct. 1078, 1085, 89 L.Ed. 2d 251 (1986) (quoting Johnson V. Glick, 481 F. 2d 1028, 1033 (2d Cir.), cert. denied, 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed. 2d 324 (1973)). As the District Judge correctly perceived, "such factors as the need for the application of force, the relationship between the need and the amount of force that was used, [and] the extent of injury inflicted," 481 F. 2d, at 1033, are relevant to that ultimate determination. See 546 F. Supp., at 733. From such

considerations inferences may be drawn as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur. See Duckworth v. Franzen, 780 F.2d 645, 652 (CA7 1985) (equating "deliberate indifference," in an Eighth Amendment case involving security risks, with recklessness in criminal law," which "implies an act so dangerous that the defendant's knowledge of the risk can be inferred"). cf. Block v. Rutherford, 468 U.S. 576, 584, 104 S.Ct. 3227, 3231, 82 L.Ed.2d 438 (1984) (requiring pretrial detainees claiming that they were subjected to "punishment" without due process to prove intent to punish or show that the challenged conduct "is not reasonably related to a legitimate goal," from which an intent to punish may be inferred); Bell v. Wolfish, supra, 441 U.S., at 539, 99 S.Ct., at 1874. As we said in Hudson v. Palmer, 468 U.S. 517, 526-527, 104 S.Ct. 3194, 3200, 82 L.Ed.2d 393 (1984), prison administrators are charged with the responsibility of ensuring the safety of the prison staff, administrative personnel, and visitors, as well as the "obligation to take reasonable measures to guarantee the safety of

the inmates themselves." See Whitley V. Albers, cite as 106 S.Ct. 1078 (1986), Id., at 1088: Justice O'CONNOR delivered the opinion of the Court: IV [12] We think the Eighth Amendment, which is specifically concerned with the unnecessary and wanton infliction of pain in penal institutions, serves as the primary source of substantive protection to convicted prisoners in cases such as this one, where the deliberate use of force is challenged as excessive and unjustified. It would indeed be surprising if, in the context of forceful prison security measures, "conduct that shocks the conscience" or afford[5] brutality the cloak of law," and so violates the Fourteenth Amendment, Rochin V. California, 342 U.S. 165, 172, 173, 72 S.Ct. 205, 210, 96 L.Ed. 183 (1952), were not also punishment "inconsistent with Contemporary Standards of decency" and "'repugnant to the conscience of mankind,'" Estelle V. Gamble, 429 U.S., at 103, 106, 97 S.Ct., at 290, 292, in violation of the Eighth. We only recently reserved the general question "whether something less than intentional conduct, such as recklessness or 'gross negligence,' is enough to trigger the protections

of the Due Process clause." Daniels V. Williams, 474 U.S. 327, 334, n. 3, 106 S. Ct. 662, 667, n. 3, 88 L. Ed. 2d 662 (1986).

See Whitley V. Albers, cite as 106 S. Ct. 1078 (1986), Id., at 1089: Justice MARSHALL, with whom Justice BRENNAN, Justice BLACKMUN, and Justice STEVENS Join, dissenting: I The Court properly begins by acknowledging that, for a prisoner attempting to prove a Violation of the Eighth Amendment, "[a]n express intent to inflict unnecessary pain is not required, Estelle V. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L. Ed. 2d 251 (1976)." Ante, at 1084. Rather, our cases have established that the "unnecessary and wanton" infliction of pain on prisoners constitutes cruel and unusual punishment prohibited by the Eighth Amendment, even in the absence of intent to harm. Ibid.; See also Ingraham V. Wright, 430 U.S. 651, 670, 97 S. Ct. 1401, 1412, 51 L. Ed. 2d 711 (1977); Gregg V. Georgia, 428 U.S. 153, 173, 96 S. Ct. 2909, 2925, 49 L. Ed. 2d 859 (1976) (Joint opinion of STEWART, POWELL, and STEVENS, JJ.). Having correctly articulated the teaching of our cases on this issue, however, the Majority inexplicably arrives at the conclusion that a constitutional Violation in the context of a prison uprising can be established only if force was used "maliciously and sadistically for the very purpose of causing harm," ante, at 1085 - thus requiring

the very "express intent to inflict unnecessary pain" that it had properly disavowed.[1]

Whitley V. Albers, cite as 106 S. Ct. 1078 (1986), id., at 1083: Justice O'CONNOR delivered the opinion of the court: I A panel of the Court of Appeals for the Ninth Circuit reversed in part and affirmed in part, with one Judge dissenting. 743 F. 2d 1372 (1984). The court held that an Eighth Amendment violation would be established "if a prison official deliberately shot Albers under circumstances where the official, with due allowance for the exigency, knew or should have known that it was unnecessary," id., at 1375, or "if the emergency plan was adopted or carried out with 'deliberate indifference' to the right of Albers to be free of cruel unusual punishment." Ibid. The Court of Appeals pointed to evidence that the general disturbance in cell block "A" was subsiding and to respondent's experts testimony that the use of deadly force was excessive under the circumstances and should have been preceded by a verbal warning, and concluded that the jury could have found an Eighth Amendment violation. Id., at 1376.

Whitley V. Albers, cite as 106 S. Ct. 1078 (1986), id., at 1084: Justice O'CONNOR delivered the opinion of the court: [3-5] "After incarceration, only the "unnecessary

and wanton infliction of pain"' ... constitutes cruel and unusual punishment forbidden by the Eighth Amendment." Ingraham v. Wright, supra, 430 U.S., at 670, 97 S.Ct., at 1412 (quoting Estelle v. Gamble, supra, 429 U.S., at 103, 97 S.Ct., at 290) (citations omitted).

Whitley v. Albers, cite as 106 S.Ct. 1078 (1986), Id., at 1089-1090: Justice MARSHALL, with whom Justice BRENNAN, Justice BLACKMUN, and Justice STEVENS join, dissenting: ¶¶ The Court properly begins its application of the law by reciting the principle that the facts must be viewed in the light most favorable to respondent, who won a reversal of a directed verdict below. See Galloway v. United States, 319 U.S. 372, 395, 63 S.Ct. 1077, 1089, 87 L.Ed. 1458 (1943). ¶¶ If under any reasonable interpretation of the facts, a jury could have found the "unnecessary and wanton" standard to be met, then the directed verdict was improper.

Determination of whether there was such a disturbance or risk, when disputed, should be made by the jury when it resolves disputed facts, not by the Court in its role as arbiter of law. See Byrd v. Blue Ridge Cooperative, 356 U.S. 525, 537, 78 S.Ct. 893, 900,

2 L. Ed. 2d 953 (1958).

The eighth amendment "prohibits the unnecessary and wanton infliction of pain, or the infliction of pain totally without penological justification." Ort v. White, 813 F. 2d 318, 321 (11th cir. 1987).
Even if a physical assault does not constitute cruel and unusual punishment, "the use of undue force by a prison guard is actionable as a deprivation of fourteenth amendment due process rights." Id. George v. Evans, 633 F. 2d 413, 415 (5th cir. 1980). Id. 633 F. 2d at 416.

Moreover, the fourteenth amendment is violated "where prison officers continue to employ force or other coercive measures after the necessity for such coercive action has ceased." Ort, 813 F. 2d at 327. (foot note emphasized).

Davis v. Locke, cite as 936 F. 2d 1208 (11th cir. 1991), Id. at 1213; Birch, circuit Judge: [8] In 1984, the law of this circuit prohibited the unjustified use of excessive force by a prison guard against an inmate. See, e.g., George, 633 F. 2d at 416, Bailey v. Byrnes, 605 F. 2d 858, 860-61 (5th cir. 1979). The evidence supports a conclusion that Davis

posed no continuing threat to Locke or Gemelli after he was recaptured, and a reasonable juror could view the guards use of force as unjustified and excessive under these circumstances.

FACTS

Plaintiff brought this action against Defendants Attorney General Alan Wilson and Ms. Tarcia 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 Roberson 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 thats 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 employees 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 fraudfeasor employer and employees.

And plaintiff was not aware of the fact that an injury has been inflicted because the physicians negligence may consist of some improper impure tuberculosis test shot injection by Joint tortfeasor / product liability : when the identity of the maker of the defective product is not known and that the product has a causal relation to the injury when Defendants Alan Wilson, et al and third-party scdc tortious acts of commission or omission of the agents, servants, employees or officers of a charitable hospitals 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, et al and third-party scdc defective drug medication / food / and water supply condition of confinement, when prison officials 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 Lamar Roberson sustaining an injury, loss 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, et al and third-party scdc [officials] acted with reckless disregard for a substantial risk to the prisoner Tyrone Lamar Roberson, that Defendants 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.

"An employer is liable for the negligence of a SCDC inmate program services Medical health care provider contractor employees... 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." "[A]n agency or master-servant relationship (does not) ipso facto (constitute) privity for purposes of res judicata or estoppel by judgment." (emphasis added) Allen V. King Plow Co., cite as 490 S.E. 2d 457 (Ga. App. 1997).

See TOWNES ASSOC., LTD. V. CITY OF GREENVILLE, cite as 221 S.E. 2d 773 (Jan. 22, 1976), id. at 776: LITTLEJOHN, Justice: [8, 9] We take no issue with the general principle of law that estoppel will not lie against a governmental body for the unauthorized acts of its officers and agents. Looper V. City of Eagley, 172 S.C. 11, 172 S.E. 705 (1934), Farrow V. City Council of Charleston, 169 S.C. 373, 168 S.E. 852 (1933). However, where the officers or agents of a governmental body act within the proper scope of their authority, a municipality cannot escape liability

on a contract within its power to make, on the ground that the officer executing it in its behalf was not technically authorized to do so, where he was the proper person to enter in to such a contract. See Farrow V. City Council of Charleston, supra, 56 Am. Jur. 2d Municipal Corporations, Etc. § 528 (1971).

CONCLUSION

Wherefore it is prayed this Court of Appeals Reverse and Remand Judgment of Circuit Court with Order And Grant Plaintiff a State Civil Trial by Jury for equity Monetary Damage Recovery of $10,000,000 and $150 hourly Attorney fees and court cost. Signed this 6th DAY OF August 2019.

RESPECTFULLY SUBMITTED

Tyrone L. Roberson

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

cc.
Stephanie H. Bunton, Esquire.
Greenville County office of the
Clerk of Court

THE SOUTH CAROLINA COURT OF APPEALS
APPELLATE CASE NO. # 2019-001122

Tyrone Lamar Roberson, #191327 Plaintiff-Appellant

Vs.

South Carolina Attorney General, Alan Wilson; "private party Defendants of perry correctional institution," Warden Lanny Cartledge; Associate Warden Stephen Clayton; "private party Defendants of McCormick Corrections institution," Warden Leroy Cartledge; Associate Warden James Parker, Jr.; Lieutenant Stanley Terry; Nurse Tarcia L. James; "third-party Defendants South Carolina Department of Corrections;" State Budget and control Board committee, commissioner of the Palmetto Unified School District No. #1 Board of Trustee Director, Bryan P. Stirling,

Defendant-Respondents

CERTIFICATE OF SERVICE BY MAIL

The undersigned plaintiff-Appellant hereby certifies that a true copy of Amended Notice of Appeal in the above captioned case matter has been served upon the following Respondents via first class Mail with pre-paid postage deposit into the United States postal service carrier to be delivered to: Stephanie H. Burton, Esquire 308 East Saint John Street Spartanburg, South Carolina 29302.

Signed this 6th day of August 2019.

RESPECTFULLY SUBMITTED

Tyrone L. Roberson

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

cc.
Greenville County office of the Clerk of court.
Amy Jolley, SCDC.

FROM: Tyrone Lamar Robertson #292527
Lee Correctional Institution F-7North 59A
990 Wisacky Highway
Bishopville, South Carolina 29010

LEGAL MAIL ONLY

RECEIVED
AUG 30 2019
SC Court of Appeals

To: The South Carolina Court of Appeal
1220 Senate Street
Columbia, South Carolina 29201