

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

CHRISTOPHER LANE #307401,

Plaintiff,

v.

SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2012-CP-18-1745

ORDER

2013 APR 30 PM 1:57
CLERK OF COURT
DORCHESTER COUNTY

This matter came before the Court on Defendant's Motion for Summary Judgment. Present at the hearing were, Christopher Lane, pro se, and Christopher T. Dorsel, counsel for Defendant. After careful consideration of the pleadings, memoranda, the arguments, and the applicable common and statutory law, the Court concludes that Defendant's Motion for Summary Judgment should be granted for the reasons set forth below and that Plaintiff's claims should be dismissed with prejudice.

In this matter, Plaintiff claims that Defendant "mixed up, misplaced, and gave away" some of his personal property after he was placed in the Special Management Unit of Liber Correctional Institute following a disciplinary violation.

Defendant first asserts that Plaintiff has not exhausted his administrative remedies under the Administrative Procedures Act ("APA"). S.C. Code Ann. §§ 1-23-310 to -680. The South Carolina Department of Correction's ("SCDC") final decisions, like those of other administrative agencies, are subject to judicial review pursuant to the APA. Al-Shabazz v. State, 338 S.C. 354, 373, 527 S.E.2d 742, 752 (2000). To appeal an SCDC agency decision, an inmate must file a notice of appeal in the Administrative Law Court ("ALC"). Id. At 376, 527 S.E.2d at 753-54. An inmate may seek further judicial review of the ALC's final decision by filing a notice of appeal in the Court of

Appeals. S.C. Code Ann. § 1-23-610(A)(1); see, e.g., S.C. Dep't of Corrections v. Mitchell, 377 S.C. 256, 659 S.E.2d 233 (Ct. App. 2008).

By Plaintiff's own admissions, he started the grievance process in regard to his lost property by filing a Step 1 and Step 2 grievance. However, Plaintiff failed to exhaust his administrative remedies by not appealing the final agency decision to the ALC. The South Carolina Supreme Court has held that "the ALC has jurisdiction over **all** inmate grievance appeals that have been properly filed." Furtick v. SCDC, 374 S.C. 334, 340, 649 S.E.2d 35, 38 (2007) (emphasis in original).

Because Plaintiff started the grievance process, he was required to complete the grievance process pursuant to the APA. Plaintiff has failed to do so and has therefore, failed to exhaust his administrative remedies. On this basis alone, Plaintiff's claims should be dismissed.

However, Plaintiff's claims are also subject to dismissal with prejudice pursuant to the South Carolina Tort Claims Act. SC Code Ann. §15-78-10, et seq. Since his claims are against a state prison, the proper standard to judge the actions in this case is gross negligence, pursuant to SC Code Ann. §15-78-60(25). "Gross negligence is the intentional, conscious failure to do something which one ought to do or the doing of something which one ought not to do. It is the failure to exercise slight care." Hendricks v. Clemson University, 529 S.E.2d 293, 297 (S.C. Ct. App. 2000) *citing* Hollins v. Richland County School Dist. One, 310 S.C. 486, 427 S.E.2d 654 (1993) and Clyburn v. Sumter County School Dist. # 17, 317 S.C. 50, 451 S.E.2d 885 (1994).

Plaintiff asserted in both his filed memorandum and during oral arguments that Defendant had a duty of care and that Defendant breached its duty of care to him by misplacing his personal property. However, Plaintiff has not set forth facts sufficient to show that Defendant did not use slight care, and therefore, Plaintiff has not met his burden of proving that a factual issue exists in regard to his claim of gross negligence.

THEREFORE, THIS COURT FINDS THAT Defendant's Motion for Summary Judgment should be granted, and Plaintiff's Complaint should be dismissed with prejudice.

AND IT IS SO ORDERED.

Signed this 25 day of April, 2013.



Honorable Judge Diane Goodstein

St George South Carolina