

FILED: October 2, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6241
(4:16-cv-03188-TMC)

CLIFTON DONELL LYLES

Plaintiff - Appellant

v.

ANGELA BROACH, Dental Asst.; LULA MILLER, Lieutenant; OFFICER
HAMBY

Defendants - Appellees

and

NURSE HERRING

Defendant

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Appendix D

Entered at the direction of the panel: Chief Judge Gregory, Judge Floyd, and
Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-6241

CLIFTON DONELL LYLES,

Plaintiff - Appellant,

v.

ANGELA BROACH, Dental Asst.; LULA MILLER, Lieutenant; OFFICER
HAMBY,

Defendants - Appellees,

and

NURSE HERRING,

Defendant.

Appeal from the United States District Court for the District of South Carolina, at
Florence. Timothy M. Cain, District Judge. (4:16-cv-03188-TMC)

Submitted: July 26, 2018

Decided: July 30, 2018

Before GREGORY, Chief Judge, FLOYD, Circuit Judge, and HAMILTON, Senior
Circuit Judge.

Affirmed by unpublished per curiam opinion.

Clifton Donell Lyles, Appellant Pro Se. Andrew Lindemann, LINDEMANN, DAVIS & HUGHES, PA, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Clifton Donell Lyles appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on his 42 U.S.C. § 1983 (2012) complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Lyles v. Broach*, No. 4:16-cv-03188-TMC (D.S.C. Feb. 26, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Clifton Donell Lyles,	)	
	)	C/A No. 4:16-3188-TMC-TER
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
Dental Assistant Angela Broach,	)	
Nurse Herring, Lieutenant Lula	)	
Miller; and Officer Hamby;	)	
	)	
Defendants.	)	
	)	

Plaintiff Clifton Donell Lyles, proceeding pro se, filed this action pursuant to 42 U.S.C. § 1983 on September 19, 2016. (ECF No. 1). In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02, D.S.C., this matter was referred to a magistrate judge for pretrial handling. Defendants Angela Broach, Lieutenant Lula Miller, and Officer Hamby (collectively “Defendants”) filed an amended motion for summary judgment on August 16, 2017. (ECF No. 58).¹ Before the court is the Magistrate Judge’s Report and Recommendation (“Report”), recommending that the court grant Defendants’ amended motion for summary judgment. (ECF No. 69). Plaintiff timely filed objections to the Report. (ECF No. 71). Plaintiff has also filed a motion opposing the defense of collateral estoppel (ECF No. 59), and Defendants filed a response opposing this motion (ECF No. 62). Finally, Plaintiff also filed a motion seeking relief from a prior order pursuant to Fed. R. Civ. P. 60. (ECF No. 73). Defendants filed a response opposing this motion. (ECF No. 75).

The Report has no presumptive weight and the responsibility to make a final determination

¹Defendant Nurse Herring was previously granted summary judgment, and she was dismissed from this action. (ECF No. 50).

in this matter remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court need not conduct a de novo review when a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In that case, the court reviews the Report only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

In his complaint, Plaintiff alleges claims for negligence, malpractice, and deliberate indifference to serious medical needs stemming from the alleged denial of dental care from December 2015 to June 2016. (ECF No. 1 at 2, 3-5). Defendants filed an amended motion for summary judgment alleging that Plaintiff’s action is barred by collateral estoppel. (ECF No. 58).² Plaintiff filed a response opposing the motion (ECF No. 65) and a separate motion opposing the defense of collateral estoppel or issue preclusion (ECF No. 59). Defendants filed replies (ECF Nos. 62 and 66, 67), and Plaintiff filed a sur-reply (ECF No. 68).

In his Report, the magistrate judge recommends granting Defendants’ amended summary judgment motion. Defendants raise the defense of collateral estoppel/issue preclusion based on a state court action filed by Plaintiff in which judgment was entered on May 17, 2017, *Lyles v. South Carolina Dep’t of Corrs.*, No. 2016-CP-40-5671. (ECF No. 38-4). In his objections, Plaintiff contends that the magistrate judge erred in finding the instant action is barred by collateral estoppel because he failed to address equitable estoppel; the claims in this action and the state action are not

²The court previously granted Defendants’ unopposed motion to amend their answer to allege collateral estoppel (ECF No. 38). (ECF No. 50). Additionally, the court denied in part Defendants’ then pending summary judgment motion (ECF No. 20) with leave to re-file an amended motion for summary judgment. (ECF No. 50 at 4).

the same; and there were numerous errors in the state action. Plaintiff also contends the magistrate judge erred in failing to address the remaining issues after he had determined that this action was barred by collateral estoppel.

First, Plaintiff contends that the magistrate judge erred in applying collateral estoppel because he contends that the claims in the instant action are not the same as those that he raised in his state lawsuit. The court disagrees.

Res judicata precludes the assertion of a claim after a judgment on the merits in a prior suit by parties or their privies based on the same cause of action. *Meekins v. United Transp. Union*, 946 F.2d 1054, 1057 (4th Cir. 1991). The doctrine bars litigation of all claims or defenses that were available to the parties in the previous litigation, regardless of whether they were asserted or determined in the prior proceeding. *Id.* “[C]ollateral estoppel, or issue preclusion, is a subset of the general doctrine of res judicata and applies where a second action between same parties is based upon a different cause of action.” *In re Prof'l Coatings (N.A.), Inc.*, 210 B.R. 66, 79 (Bankr. E.D. Va. 1997). *See also Noonan v. Stock Bldg. Supply, Inc.*, No. 4:08-2433-RBH, 2009 WL 302314, at *1 (D.S.C. Feb. 6, 2009) (explaining distinctions between res judicata and collateral estoppel).

Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. *Montana v. United States*, 440 U.S. 147, 153 (1979). Collateral estoppel “works to ensure that parties get ‘one full and fair opportunity to litigate a particular issue, while preventing needless relitigation of that issue.’ ” *Barna Conshipping, S.L. v. 2,000 Metric Tons, More or Less, of Abandoned Steel*, 410 Fed. App’x 716, 720 (4th Cir. 2011) (quoting *In re Cygnus Telecomms. Tech., LLC, Patent Litig.*, 536 F.3d 1343, 1350 (Fed. Cir. 2008)).

“Where the prior proceeding that may make issue preclusion applicable is a state court proceeding, as here, the federal courts use the law of the state to determine if preclusion applies.” *Ayers v. Cont’l Cas. Co.*, 2007 WL 1960613, *4 (N.D.W.Va. 2007) (citation omitted). Under South Carolina state law, the party asserting collateral estoppel must show that the issue of fact or law in the present lawsuit was: “(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.” *Carolina Renewal, Inc. v. S.C. Dep’t of Transp.*, 385 S.C. 550, 554 (S.C. Ct. App. 2009). “While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” *Id.* (internal quotations omitted). A defendant can assert collateral estoppel against a plaintiff who had previously had a full and fair opportunity to litigate the relevant issue effectively in a prior action. *Graham v. State Farm Fire & Cas. Ins. Co.*, 287 S.E.2d 495, 496 (S.C. 1982).

In his response opposing the motion, Plaintiff concedes that he presented “the same facts in this federal action as he did in the state action.” (ECF No. 65 at 2). However, citing *vonRosenberg v. Lawrence*, 849 F.3d 163 (4th Cir. 2017), he argues that the issues raised in the two actions are different and different parties are involved. (ECF No. 65 at 2, 5). He alleges that, in the state action, he raised claims of negligent failure to train, monitor, and supervise its employees against the South Carolina Department of Corrections (“SCDC”). *Id.* at 3. Moreover, he argues that the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et. seq., prevented him from suing the employees and required that he sue the agency for whom they worked. *Id.* at 4.

A plaintiff should not be allowed to “bring piece-meal litigation by n

aming different defendants and alleging new causes of action, when all of his claims arise from the same operative facts.” *Ali v. Jeng*, 86 F.3d 1148 (4th Cir. 1996) (affirming award of summary judgment based on collateral estoppel and res judicata). In this case, it is clear that Plaintiff could have raised his § 1983 claims in his state court action because there is concurrent jurisdiction for such claims in both state and federal court. *Felder v. Casey*, 487 U.S. 131, 139 (1988) (finding that state courts possess concurrent jurisdiction over § 1983 litigation); *Maine v. Thiboutot*, 448 U.S. 1, 3 n.1 (1980). He chose not to do so, but as Plaintiff acknowledges, the current action is clearly based on the same transaction or occurrence as the facts in both the state complaint and the federal one are the same. Moreover, while Plaintiff brought the state action pursuant to the South Carolina Tort Claims Act, and he now brings claims pursuant to 1983, the identity of the subject matter “rests not in their forms of action or the relief sought, but rather, in the combination of the facts and law that give rise to a claim for relief.” *James v. Wright*, No. 1:13-1438-TMC, 2014 WL 2612487, at *4 (D.S.C. June 9, 2014) (citing *Plum Creek Dev. Co., Inc. v. City of Conway*, 512 S.E.2d 106, 109-110 (S.C. 1999)). Additionally, Plaintiff’s reliance on *vonRosenburg* is misplaced as that case involved the application of the doctrine of abstention and not res judicata or collateral estoppel.³

As for Plaintiff’s contentions that the state court erred in any way, federal district courts lack the authority to review final determinations of state courts. *See Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476. Any such review can only be conducted by the United States Supreme Court pursuant to 28 U.S.C. § 1257. *Id.* If Plaintiff wanted to contest the disposition of

³As a general rule, “our dual system of federal and state governments allows parallel actions to proceed to judgment until one becomes preclusive of the other.” *Vulcan Chem. Techs., Inc. v. Barker*, 297 F.3d 332, 340 (4th Cir. 2002). Abstention from the exercise of federal jurisdiction may be appropriate when there are on-going parallel proceedings in state and federal courts. Here, however, there is not a pending state action. Therefore, abstention is inapplicable.

his state court lawsuit past the state circuit court level, his remedy was to appeal any final order of the circuit court to the appropriate state appellate court. He cannot, however, seek review of the state circuit court's order through the filing of a lawsuit in federal court. Plaintiff also contends that the magistrate judge erred in failing to apply equitable estoppel to bar the application of collateral estoppel. The court finds no legal or factual foundation in the record for applying equitable estoppel to bar the application of collateral estoppel. Finally, Plaintiff contends the magistrate judge erred in failing to address the remaining issues after he had determined this action was barred by collateral estoppel. The magistrate judge was not required to address the remaining issues once he determined that Plaintiff's claims are barred by collateral estoppel.

Plaintiff also filed a motion pursuant to Fed. R. Civ. P. 60 seeking relief from the court's prior order denying without prejudice Defendants' summary judgment motion and allowing Defendants to amend their answer to assert collateral estoppel (ECF No. 50). (ECF No.73). Plaintiff contends that Defendants perjured themselves in the affidavits that they filed to support their motion to amend their answer. (ECF No. 73 at 2). He contends they made false statements to commit a fraud upon the court. *Id.*

Plaintiff does not specify which subsection of Rule 60 is applicable. Rule 60 addresses two types of fraud claims. Rule 60(b)(3) provides that the court may grant relief from an order or judgment because of fraud committed by the opposing party. A motion for relief on this ground must be made within a reasonable time and no later than one year of final judgment. *See* Fed. R. Civ. P. 60(c)(1). A moving party must establish three factors to prevail on a Rule 60(b)(3) motion: (1) the moving party must have a meritorious defense; (2) the moving party must prove misconduct by clear and convincing evidence; and (3) the misconduct prevented the moving party from fully and

fairly presenting its case. *Square Constr. Co. v. Washington Metro. Area Transit Auth.*, 657 F.2d 68, 71 (4th Cir. 1981).

Additionally, Rule 60(d)(3) provides that a court may “set aside a judgment for fraud on the court.” Fed. R. Civ. P. 60(d)(3). The one-year time limit does not apply to fraud under Rule 60(d)(3). *Outen v. Balt. Cnty.*, 177 F.R.D. 346, 348 (D. Md. 1998). However, “[f]raud on the court is not your ‘garden-variety fraud.’” *Fox ex rel. Fox v. Elk Run Coal Co.*, 739 F.3d 131, 135 (4th Cir. 2014). Rather, “fraud on the court” is construed very narrowly, and “is typically confined to the most egregious cases, such as bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged.” *Great Coastal Express, Inc. v. Int’l Bhd. of Teamsters*, 675 F.2d 1349, 1356 (4th Cir. 1982). “By contrast, perjury and fabricated evidence alone, being evils which can be exposed by the normal adversary process, do not constitute grounds for relief as ‘fraud on the court.’” *Rainwater v. Mallas*, No. 94-1122, 1994 WL 712570, at *2 (4th Cir. Dec. 23, 1994) (per curiam) (citing *Great Coastal Express*, 675 F.2d at 1357); see also *In re Genesys Data Techs., Inc.*, 204 F.3d 124, 130-31 (4th Cir. 2000).

Plaintiff’s allegations do not satisfy the demanding standard for setting aside an order for fraud on the court under Rule 60(d)(3). At best, Plaintiff is raising a Rule 60(b)(3) fraud between the parties. However, Plaintiff has not shown by clear and convincing evidence that Defendants committed any misconduct or that the Defendants’ alleged misconduct prevented him from fully and fairly presenting his case. Importantly, the court notes that Plaintiff did not file any opposition to Defendants’ motion to amend their answer or their supporting affidavits. Therefore, the court denies Plaintiff’s motion for relief from the court’s prior order.

Accordingly, based on the foregoing, the court adopts the report and recommendation (ECF No. 69) and Defendants' Amended Summary Judgment Motion (ECF No. 58) is **GRANTED**. Additionally, Plaintiff's motions opposing the defense of collateral estoppel (ECF No. 59), and for relief from an order (ECF No. 73) are **DENIED**.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

February 26, 2018
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CLIFTON DONELL LYLES,	)	C/A No. 4:16-3188-TMC-TER
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Report and Recommendation
	)	
DENTAL ASSISTANT ANGELA BROACH, NURSE	)	
HERRING, LIEUTENANT LULA MILLER AND	)	
OFFICER HAMBY,	)	
	)	
Defendants.	)	
	)	

I. PROCEDURAL BACKGROUND

The Plaintiff, proceeding *pro se*, filed this action under 42 U.S.C. § 1983¹ on September 19, 2016. Plaintiff is a prisoner in the custody of the South Carolina Department of Corrections currently housed at the Turbeville Correctional Institution. At all times relevant to the allegations in the complaint, the Plaintiff was an inmate housed in the Kershaw Correctional Institution (KCI). All of the named individual Defendants are employees of the SCDC.

A report and recommendation ("Report") was entered on May 18, 2017,

¹All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d), DSC. Because this is a dispositive motion, the report and recommendation is entered for review by the District Judge.

recommending that the motion for summary judgment be granted as to Defendant Herring and denied as to Defendants Hamby, Miller, and Broach. On July 31, 2017, the District Judge entered an order adopting in part the Report granting summary judgment to Defendant Herring but declined to adopt the part of the Report denying summary judgment on the merits as to Defendants Hamby, Miller, and Broach. Instead, the court denied summary judgment to these Defendants without prejudice, granted Defendants' motion to amend their answer based on a recent judgment entered in state court, and recommitted the matter to the undersigned. On August 8, 2016, Defendants filed their amended answer and on August 16, 2017, filed an amended motion for summary judgment. (Doc. #58). Because Plaintiff is proceeding *pro se*, he was advised on or about August 18, 2017, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), that a failure to respond to the Defendants' motion for summary judgment could result in dismissal of his complaint. The Plaintiff filed a response in opposition on August 21, 2017. Defendants filed a reply on September 14, 2017, and additional attachments on September 21, 2017. (Docs. # 66 and #67). Plaintiff filed a sur-reply on October 10, 2017. (Doc. #68).

II. DISCUSSION

A. STANDARD FOR SUMMARY JUDGMENT

The federal court is charged with liberally construing the complaints filed by pro se litigants, to allow them to fully develop potentially meritorious cases. See Cruz v. Beto, 405 U.S. 319 (1972); Haines v. Kerner, 404 U.S. 519 (1972). The court's function, however, is not to decide issues of fact, but to decide whether there is an issue of fact to be tried. The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts which set forth a federal claim, Weller v. Dep't of Social Servs., 901 F.2d 387 (4th Cir. 1990), nor can the court assume the existence of a genuine issue of material fact where none exists. If none can be shown, the motion should be granted. Fed. R. Civ. P. 56(c).

The moving party bears the burden of showing that summary judgment is proper. Summary judgment is proper if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Summary judgment is proper if the non-moving party fails to establish an essential element of any cause of action upon which the non-moving party has the burden of proof. Celotex, 477 U.S. 317. Once the moving party has brought into question whether there is a genuine dispute for trial on a material element of the non-moving party's claims, the non-moving party

bears the burden of coming forward with specific facts which show a genuine dispute for trial. Fed.R.Civ.P. 56(e); Matsushita Electrical Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574 (1986). The non-moving party must come forward with enough evidence, beyond a mere scintilla, upon which the fact finder could reasonably find for it. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The facts and inferences to be drawn therefrom must be viewed in the light most favorable to the non-moving party. Shealy v. Winston, 929 F.2d 1009, 1011 (4th Cir. 1991). However, the non-moving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment. Barber v. Hosp. Corp. of Am., 977 F.2d 874-75 (4th Cir. 1992). The evidence relied on must meet “the substantive evidentiary standard of proof that would apply at a trial on the merits.” Mitchell v. Data General Corp., 12 F.3d 1310, 1316 (4th Cir. 1993).

To show that a genuine dispute of material fact exists, a party may not rest upon the mere allegations or denials of his pleadings. See Celotex, 477 U.S. at 324 (Rule 56(e) permits a proper summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings themselves). Rather, the party must present evidence supporting his or her position through “depositions, answers to interrogatories, and admissions on file, together with . . . affidavits, if any.” Id. at 322; see also Cray Communications, Inc. v. Novatel

Computer Systems, Inc., 33 F.3d 390 (4th Cir. 1994); Orsi v. Kickwood, 999 F.2d 86 (4th Cir. 1993); Local Rules 7.04, 7.05, D.S.C.

B. ARGUMENT OF PARTIES/ANALYSIS

In the amended motion for summary judgment on behalf of Defendants Broach, Miller and Hamby (“Defendants”), Defendants assert an affirmative defense of collateral estoppel/issue preclusion as a complete bar to this action based upon the judgment entered in favor of Defendant SCDC on May 17, 2017, in the state court case of Lyles v. South Carolina Department of Corrections, Civil Action No. 2016-CP-40-5671. Specifically, Defendants argue that on or about September 7, 2016, Plaintiff filed a dental/prison negligence/gross negligent case in State court against the SCDC in Lyles v. South Carolina Department of Corrections, Civil Action No. 2016-CP-40-5671, pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. 15-78-10, et. seq. wherein the individual Defendants could not be named as the Tort Claims Act provides that SCDC, as a governmental agency, is responsible for the acts/conduct of its employees acting with the scope of their official duties, and is the only named defendant. In their reply, Defendants argue that they are not asserting *res judicata* or claim preclusion. Instead Defendants argue that Plaintiff’s federal lawsuit is barred based upon issue preclusion premised on the fact that a “[p]laintiff cannot now argue

that she should be allowed to establish deliberate indifference (a higher standard of proof) when she could not prove negligence (a lesser standard of proof) as to the same conduct.’ Giron v. Correctional Corp. Of America, 191 F.3d 1281, 1286 (10 Cir. 1999). See also, A.D. v. Alabama Department of Human Resources, 995 F.Supp.2d 1253, 1261 (N.D. Ala 2014) (court found that deliberate indifference claim was barred by collateral estoppel where defendants ‘were found not to be negligent by the state court and therefore ‘they cannot have acted with deliberate indifference’).” (Doc. #66 at 3).

On May 16, 2017, Plaintiff’s state court case was tried before a jury in the Richland County Court of Common Pleas with Circuit Court Judge George M. McFadden, Jr. presiding. At the end of Plaintiff’s case-in-chief, Judge McFadden granted SCDC’s motion for a directed verdict finding no genuine issue of material fact. (Doc. #58-3). Plaintiff filed a Notice of Appeal which was dismissed by the South Carolina Court of Appeals on September 18, 2017. (Doc. #67-1).

Defendants argue that the entire action should be dismissed based on the doctrine of collateral estoppel, or issue preclusion, in light of the fact that the state court dismissed Plaintiff’s negligence and gross negligence claim and that Plaintiff must establish more than mere negligence to succeed on a §1983 claim for deliberate indifference. Defendants contend that Plaintiff relies on essentially the same set of

facts regarding the same individual SCDC employees for his state court negligence/gross negligence action, as he does in this deliberate indifference action, and the evidence submitted in state court was the same as submitted in this case. Therefore, Defendants assert that collateral estoppel/issue preclusion applies in the present case .

“[A] federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered.” Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984); Allen v. McCurry, 449 U.S. 90, 96, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). Collateral estoppel prevents the relitigation of an issue of fact or law that was settled in a previous case. Id. at 94; see also Virginia Hosp. Ass'n v. Baliles, 830 F.2d 1308, 1311 (4th Cir.1987). It is related to the doctrine of *res judicata*, but it “can be applied to narrower portions of an action than is the case for *res judicata*.” United States v. Tatum, 943 F.2d 370, 382 (4th Cir.1991). “Issue preclusion is more narrowly drawn and ... operates to bar subsequent litigation of those legal and factual issues common to both actions that were ‘actually and necessarily determined by a court of competent jurisdiction in the first litigation.’” Orca Yachts, L.L.C., 287 F.3d 316, 318 (4th Cir 2002). Collateral estoppel may be used defensively as a bar if the plaintiff had a full and fair opportunity to litigate the

issues in the previous suit; mutuality of the parties is not required. Blonder-Tongue Labs., Inc. v. University of Illinois Found., 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971); Thurston v. United States, 810 F.2d 438 (4th Cir.1987).²

Under South Carolina law, “[t]he party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.” Carolina Renewal, Inc. v. S.C. Dep’t. of Transp., 385 S.C. 550, 684 S.E.2d 779, 782 (S.C.Ct.App.2009). Id.

In Plaintiff’s state court complaint, he alleges that on December 11, 2015, he was in the care and custody of Kershaw Correctional Institution (KCI) when he signed up for dental care due to a tooth ache and tooth decay wherein he was scheduled to be seen on January 20, 2016. Plaintiff alleged that upon reporting for his dental appointment in January 2016, he was told by dental assistance Angela Broach that because this was his first time coming to dental at KCI, that no work would be

² Collateral estoppel prevents a party from re-litigating in a subsequent suit an issue actually and necessarily litigated and determined in a prior action” (quoting Jinks v. Richland County, 355 S.C. 341, 585 S.E.2d 281 (S.C. 2003)); cf. United States v. Mendoza, 464 U.S. 154, 159 n. 4, 104 S.Ct. 568, 78 L.Ed.2d 379 (1984). “Defending use of collateral estoppel occurs when a defendant seeks to prevent a plaintiff from relitigating an issue the plaintiff has previously litigated unsuccessfully in another action against. . . a different party”; Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 326, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979). “[O]ffensive use of collateral estoppel occurs when the plaintiff seeks to foreclose the defendant from litigating an issue the defendant has previously litigated unsuccessfully in an action with another party.” Id. at 326 n.4. The present case involves the defensive use of issue preclusion.

performed other than the examination, but that they would only do an exam and reschedule him for the needed work to be performed. Plaintiff alleged that Dr. Nolan informed him that he needed a filling in both teeth #4 and #15, and, after sending in a request to staff, Plaintiff was rescheduled for March 28, 2016. Plaintiff alleged that on March 28, 2016, he informed Officer Hamby that he had an order to report to dental that morning but was told that his unit was on lock-down. Plaintiff asserted that he informed Officer Hamby that there was a memorandum sitting on her desk which stated that all medical OTRs are allowed to proceed during all lock-downs but he still refused to release him to report. Plaintiff alleged that Officer Hamby stated that his appointment would be rescheduled because the nurse he needed to see was not at work but that he later found out from Nurse Herring that dental was being conducted. Plaintiff alleged that both Nurse Herring and Lieutenant Miller advised him that his appointment would be rescheduled but, upon inquiring on April 1, 2016, he was informed by dental assistant Broach that since he failed to come to his appointment, he would have to wait four weeks to sign-up for dental again even though he was complaining of a tooth ache. Plaintiff asserts that on June 22, 2016, Dr. White reviewed x-rays taken by dental assistance Broach and performed an examination of Plaintiff. He asserts Dr. White informed him that due to the long delay between Dr. Nolan's initial examination and her examination, the tooth decay had worsened to the

point that tooth #4 would have to be extracted. Plaintiff alleged that dental assistant Broach instructed the dentist that she could not perform work on tooth #15 as Plaintiff would have to sign up for dental again for that work to be performed. Plaintiff alleged negligence.

The Fourth Circuit held the following with relation to collateral estoppel in the case of Malm v. Gonzales, 151 Fed. Appx. 252 (4th Cir.2005):

Collateral estoppel, or issue preclusion, bars subsequent litigation of legal and factual issues common to an earlier action that were “actually and necessarily determined” in the first litigation. Montana v. United States, 440 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979); Combs v. Richardson, 838 F.2d 112, 114 (4th Cir.1988). Thus, “[c]ollateral estoppel forecloses the relitigation of issues of fact or law that are identical to issues which have been actually determined and necessarily decided in prior litigation in which the party against whom [collateral estoppel] is asserted had a full and fair opportunity to litigate.” Sedlack v. Braswell Servs. Group, Inc., 134 F.3d 219, 224 (4th Cir.1998) (internal quotation marks omitted). To apply collateral estoppel or issue preclusion to an issue or fact, the proponent must demonstrate that (1) the issue or fact is identical to the one previously litigated; (2) the issue or fact was actually resolved in the prior proceeding; (3) the issue or fact was critical and necessary to the judgment in the prior proceeding; (4) the judgment in the prior proceeding is final and valid; and (5) the party to be foreclosed by the prior resolution of the issue or fact had a full and fair opportunity³ to litigate the issue or fact in the prior proceeding.

See id.

³ “It is well settled that the full-and-fair-opportunity formulation generally requires that a litigant receive ‘reasonable notice of the claim against him and opportunity to be heard in opposition to that claim.’” Holland v. Kohn, 12 F. App’x 160 (4th Cir. 2001) (unpublished) quoting Hardy v. Johns-Manville Sales Corp., 681 F.2d 334, 338 (5th Cir. 1982).

The issue in this lawsuit, inadequate dental care, was litigated in state court based upon the same facts as set out in this federal action, a directed verdict was granted at the conclusion of Plaintiff's case, and the appeal was dismissed by the South Carolina Court of Appeals. Therefore, Plaintiff had full and fair opportunity to litigate relevant issues effectively in the prior action. As the state court found no negligence, Plaintiff cannot now argue the higher standard of medical indifference based on the same facts/issues raised in state court.⁴ Based on a review of the record, the entire action against these Defendants is barred on the doctrine of collateral estoppel or issue preclusion. Therefore, it is recommended that Defendants' motion for summary judgment be granted⁵ and any outstanding motions be deemed moot.

Respectfully submitted,

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

⁴ For a Plaintiff to show that prison officials acted with deliberate indifference, he must show the officials acted with more than mere negligence but less than malice. See Williams v. Benjamin, 77 F.3d 756, 761 (4th Cir. 1996). Plaintiff's state court action alleged negligent acts on the part of the defendants named in this action. In fact, the allegations litigated and contained in the state court action are the same allegations of conduct alleged in this action.

⁵ As the undersigned finds that the Plaintiff's claims are barred by collateral estoppel, the Defendants' remaining arguments in support of summary judgment will not be addressed.

January 17, 2018
Florence, South Carolina

The parties' attention is directed to the important notice on the next page.