

COURT OF APPEALS OF GEORGIA

RETURN NOTICE

July 21, 2015

www.GAAPPEALS.US

To: Mr. Kenneth Ray Evans, GDC478957, Muscogee County Prison, 175 Sacerdote Lane, Columbus, Georgia 31908

Case Number: \_\_\_\_\_ Lower Court: \_\_\_\_\_ County Superior Court

Your document(s) is (are) being returned for the following reason(s).

- There is no case pending in the Court of Appeals of Georgia under your name.
- A Notice of Appeal is filed with the clerk of the trial court and not with the Court of Appeals of Georgia. See OCGA §5-6-37. Once the trial court clerk has received and filed the Notice of Appeal, the trial court clerk will prepare a copy of the record and transcripts as designated by the Notice of Appeal and transmit them to this Court. Once the Notice of Appeal is docketed in the Court of Appeals of Georgia, a Docketing Notice with the Briefing Schedule and other important information is mailed to counsel for the parties or directly to the parties, if the parties are representing themselves. You do not need to provide this Court with a copy of the Notice of Appeal you filed with the superior court.
- The Notice of Appeal must include a proper Certificate of Service. The Certificate of Service must show service to the opposing counsel and contain the counsel's full name and complete mailing address. The opposing counsel must actually be served with a copy of your filing.
- An Application for Writ of Habeas Corpus should be filed in the superior court of the county in which you claim you are illegally detained. An appeal from a denial of an Application for Writ of Habeas Corpus is to the Supreme Court and not the Court of Appeals.
- An Application for Writ of Mandamus should be filed in the superior court of the county official whose conduct you intend to mandate. An appeal from a denial of an Application for Writ of Mandamus is to the Supreme Court and not the Court of Appeals.
- Your appeal was disposed by opinion (order) on \_\_\_\_\_. The Court of Appeals divesting this Court of jurisdiction. The remittitur issued on \_\_\_\_\_. The case decision is therefore final.
- Your mailing/documents indicate that you intended to file your papers in another court rather than the Court of Appeals of Georgia. The address of the Clerk of the \_\_\_\_\_ is: \_\_\_\_\_
- If an attorney has been appointed for you and you are concerned with the representation provided by that attorney, you should address that issue to the trial court. As long as you are represented by an attorney, you cannot file pleadings on your own behalf. Your attorney must file a Motion to Withdraw as Counsel and it must be granted, before you can file your own pleadings in this Court.
- A request for an out-of-time appeal should be made to the trial court from which you are appealing. If your motion is denied by the trial court, you can file an appeal of that decision by filing a Notice of Appeal with the clerk of the superior court.

In The Court of Appeals  
State of Georgia

Kenneth Ray Evans

- VS -

Trinity Services Group

Georgia Department of Corrections

Corrections Corporation of America

Superior Court Coffee County

Civil Action No.

2013511-811

RECEIVED IN CHIEF  
2015 JUL 21 11:26 AM

NOTICE OF APPEAL

NOW comes the plaintiff Kenneth Ray Evans, hereby gives notice of his appeal in the above styled case. Appealing orders of the Honorable Judge Jeffery H. Knight granting Summary Judgment for all defendants and order denying plaintiffs request for Oral hearing. Both orders issued on June 19, 2015, recieved by plaintiff on July 8, 2015.

Jurisdiction of this appeal is vested in the Court of Appeals, The State of Georgia.

Sworn to and subscribed before

me this 16 day of July, 2015

*[Signature]*  
My Commission Expires

March 3, 2017  
My Commission Expires

This The 16 day of July, 2015

*[Signature]*

Kenneth Ray Evans

PRO-SE

In The Court of Appeals  
State of Georgia

Kenneth Ray Evans  
-vs-

Superior Court Coffee County

Trinity Services Group  
Georgia Department of Corrections  
Corrections Corporation of America

Civil Action No:  
2013511-811

NOTICE OF APPEAL

Poverty Affidavit

NOW comes Kenneth Ray Evans plaintiff in the above styled case, first being duly sworn, deposes and says:

- 1) That by reason of his poverty he is unable to pay any cost associated with the filing of above referenced appeal.
- 2) That he is an indigent inmate within the Georgia Dept. of Corrections housed at the Muscogee County Prison
- 3) That he was granted leave to proceed in forma Pauperis in the filing of this action by the Superior Court.
- 4) That he hereby request to be able to be able to proceed in this action without having to pay filing fees and associated cost or fees be assessed at the disposition of same.

Submitted this the 16 day of July 2015

Sworn to and subscribed before me  
this the 16 day of July 2015  
[Signature]  
Notary

Kenneth Ray Evans  
Kenneth Ray Evans # 478957  
Muscogee County Prison  
7175 Sacerdote Lane  
P.O. Box 84041  
Columbus, Georgia  
31908-4041

My Commission Expires  
March 3, 2017

PRO-SE

# Certificate of Service

This is to certify that I have on this day served on the below listed persons at the addresses provided the enclosed Notice of Appeal, to the Appellate Courts of the State of Georgia by placing the same in the U.S. Mail with adequate postage.

1) Clerk

Georgia Court of Appeals  
47 Trinity Avenue, Suite 501  
Atlanta, Georgia 30334

2) Angela Spell-Hutto, Clerk

Superior Court Coffee County  
218 B. Courthouse  
101 S. Peterson Avenue  
Douglas, Georgia 31533

3) Honorable Jeffery H. Kight

Superior Court, Waycross Judicial Circuit  
Pierce County Courthouse Annex  
312 Nichols Street  
Blackshear, Georgia 31516

4) For Trinity Services Group

John B. Nichols, James-Bates-Brannen-Groover LLP  
231 Riverside Drive  
Macon, Georgia 31201

5) For Corrections Corporation of America

Stephen E. Curry, Esq.  
3508 Professional Circle, Suite C.  
Martinez, Georgia 30907

a) For Georgia Department of Corrections  
Laura H. Hones  
Department of Law State of Georgia  
40 Capital Square  
Atlanta, Georgia 30334-1300

Submitted this the 16 day of July, 2015

~~Kenneth Ray Evans~~

Kenneth Ray Evans  
Muscookee County Prison  
7175 Sacerdote Lane  
P.O. Box 84041  
Columbus, Georgia

31908-4041

PRO-SE

IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

KENNETH RAY EVANS,

Plaintiff,

v.

TRINITY SERVICES GROUP, GEORGIA  
DEPARTMENT OF CORRECTIONS and  
CORRECTIONS CORPORATION OF  
AMERICA,

Defendants.

Civil Action No. 2013-s11-811

**ORDER GRANTING DEFENDANT TRINITY SERVICES GROUP, INC.'S  
MOTION FOR SUMMARY JUDGMENT**

Defendant Trinity Services Group, Inc.'s ("Trinity") Motion for Summary Judgment against Plaintiff having come before this Court, and the Court having considered the motion and having reviewed the Rule 6.5 Theory of Recovery and Statement of Undisputed Material Facts, Memorandum of Law in Support, all pleadings and discovery materials of record herein, and the legal authority, and for good cause shown,

IT IS HEREBY ORDERED AND ADJUDGED that Trinity's Motion for Summary Judgment against Plaintiff is GRANTED;

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff's Request for Oral Hearing in this matter is DENIED.

It is SO ORDERED this 19<sup>th</sup> day of June, 2015.

  
HONORABLE JEFFREY A. KIGHT  
Judge, Superior Court of Coffee County, Georgia

22 June 15  
Court



## CONCLUSIONS OF LAW

Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. O.C.G.A. § 9-11-56(c); Lau's Corp. v. Haskins, 261 Ga. 491 (405 S.E.2d 474) (1991). When a motion for summary judgment is filed, the court's inquiry is whether there remains any genuine issue of fact after consideration of the pleadings and supporting evidence. Alexander v. Boston Old Colony Ins. Co., 127 Ga. App. 783, 195 S.E.2d 277 (1972). Where there is no evidence presented which would create a genuine issue on any material fact, the trial court does not err in granting a summary judgment. Houser v. Tilden Fin. Corp., 166 Ga. App. 710, 305 S.E.2d 440 (1983). Only where evidence produced in a motion for summary judgment pierces allegations of the pleadings and shows that there are no genuine issues of material fact, should summary judgment be denied. Crawford v. McDonald, 125 Ga. App. 289, 187 S.E.2d 542 (1972). The court finds that the defendant's unopposed motions has met this standard for a number of reasons.

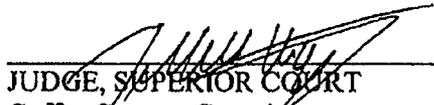
Plaintiff claims defendant CCA was deliberately indifferent to medical needs for failure to adequately treat post salmonella symptoms. Such conduct can of course can violate the Eighth Amendment of the Constitution. Estelle v. Gamble, 429 U.S. 97, 104 (1976). However, the plaintiff does not allege such a violation. Deliberate indifference means more than mere negligence or medical malpractice. Estelle, 429 U.S. at 106. Plaintiff Evans does not identify the person or persons with CCA responsible for him having failed to receive legally inadequate medical care and follow up. The plaintiff's supporting evidence must show acts or omissions that are "so grossly incompetent, inadequate, or excessive as to shock the conscience or be intolerable to fundamental fairness." See Harris v. Thigpen, 941 F.2d 1495, 1505 (11th Cir. 1991). Even if the plaintiff had pled a claim of negligence or medical malpractice, the

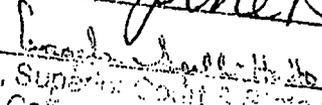
defendant has demonstrated in its exhibits that Evans was seen promptly, tested, diagnosed, sent to the hospital, treated there, and was returned to medical observation at the prison where medications were continued until his symptoms cleared. Such a response hardly qualifies as deliberate indifference to Evans' condition.

It is also important to know which prison staff members the plaintiff claims failed to deliver care because a 28 U.S. C. § 1983 civil rights claim cannot be based upon vicarious liability. There has to be personal participation in the alleged deprivation of a prisoner's rights. Zatler v. Wainwright, 802 F.2d 397 (11th Cir. 1986). There are several ways the prisoner can show this required causation. He can allege and show the prison official knew of a history of abuse of constitutional rights but failed to act. It is also possible to show that a prison official had a policy that excused unlawful actions of staff or even that staff were directed to act improperly. Mathews v. Crosby, 480 F.3d 1265, 1270 (11th Cir. 2007). The plaintiff in this case does not allege even the most basic components of a deliberate indifference civil rights claim or supervisory liability claim. Therefore, if he intended to make a claim for violation of civil rights, he has failed to plead one and the evidence offered by the defendant pierces his allegations.

WHEREFORE, the Court determines that the defendant's motion for summary judgment should be and is hereby GRANTED and that defendant Corrections Corporation of America is DIMISSED.

SO ORDERED, this 19<sup>th</sup> day of June, 2015.

  
\_\_\_\_\_  
JUDGE, SUPERIOR COURT  
Coffee County, Georgia

Filed in Office this  
22 day of JUNE 15  
  
\_\_\_\_\_  
Clerk, Superior Court & State Court  
Coffee County, Georgia

IN THE SUPERIOR COURT OF COFFEE COUNTY  
STATE OF GEORGIA

KENNETH RAY EVANS,

Plaintiff,

vs.

CIVIL ACTION NO: 2013S11-811

TRINITY SERVICES GROUP,  
GEORGIA DEPARTMENT OF  
CORRECTIONS, AND CORRECTIONS  
CORPORATION OF AMERICA,

Defendants.

**ORDER DENYING PLAINTIFF'S REQUEST FOR ORAL HEARING**

After considering the Plaintiff's Request for Oral Hearing, Defendant, Corrections Corporation of America's Response to Plaintiff's Request for Oral Hearing, and all pleadings of record and applicable law,

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff's Request for Oral hearing is DENIED.

SO ORDERED this 19<sup>th</sup> day of June, 2015.

  
HONORABLE JEFFREY H. KIGHT  
Judge, Coffee County Superior Court

Filed in Office this  
22 day of June 15  
  
Clerk of Court & State Court  
Coffee County, Georgia

March 22, 2015

Angela Spell-Hutto, Clerk  
Superior Court Coffee County  
218 B Courthouse  
101 Peterson Avenue  
Douglas, Georgia 31533

Kenneth Ray Evans #478957  
Muscookee County Prison  
7175 Sacerdate Lane  
P.O. Box 84041  
Columbus, Georgia  
31908-4041

RE: For filing Civil Action Number 2013SI1-811

Dear Clerk:

Please find enclosed for filing copies of several matters regarding the above referenced Civil Action matter pending in your County.

Please clock/stamp, file and return a copy of the same to me. I have forwarded an unstamped copy to Judge Kight and one copy to counsel for Trinity Services Group along with explanation why I cannot at this time provide copies by Service to the other two defendants of which I will when I acquire the necessary writing material provide the same to the unserved defendants.

Thanking you in advance as I await receipt of my clock/stamped copy. I am.

CC/KRE - file

Sincerely  
Kenneth Ray Evans

Click  
Exhibit  
"B"

In The Superior Court of Coffee County  
State of Georgia

Kenneth Ray Evans  
Plaintiff  
vs  
Trinity Services Group  
Georgia Department of Corrections  
Corrections Corporation of America

Civil Action Number  
2013511-811

Filed in Office this  
12 day of March



~~Angela J. Hall~~  
Clerk, Superior Court & State Court  
Coffee County, Georgia

Plaintiff Kenneth Ray Evans's opposition  
to all above styled defendants Motion for  
Summary Judgement and defendants request to  
deny plaintiffs request for oral hearing

In support of the above styled opposition  
and request for oral hearing the plaintiff  
would show the court:

D All defendants are in fact either a state  
agency who has custodial care of the defendant  
or contracts with the state agency the Georgia  
Department of Corrections to house state inmates  
under a private prison contract and Trinity Services  
contracts with the state agency through private  
prison contractor to provide food services at  
several facilities within the state of Georgia.  
one (1) being Coffee Correctional Facility, Nichols  
Georgia where the action in question occurred.

plaintiff is an inmate (State prisoner) who is presently incarcerated at Muscogee County Prison, Columbus, Georgia. The plaintiff was previously assigned to the Coffee Correctional Facility, Jenkins Correctional Facility and Wheeler Correctional Facility between August 2011 and October 2013.

2) The plaintiff did in fact initiate litigation on this claim prior to the expiration of the two (2) year statute of limitation, period. The plaintiff on September 26, 2013 while in the Segregation unit of the Wheeler Correctional Facility, this being prior to the two (2) year statute of limitation date of October 23, 2013, as departmental policy provides submit his negligence claim to the mail room staff as provided segregation inmates along with the necessary Indigent postage request form properly addressed to the Clerk of Superior Court, Coffee County with copies to all defendants properly notarized with Certificate of Services. Being an inmate and especially one in a Segregation unit I had/have no control over the processing of inmate mail other than to turn mail over to mail room staff at an assigned facility.

The Clerk of Courts file date of November, 2013 is highly questionable as the initial claim

was turned over to mail room staff on September 26, 2013 this being thirty-five (35) days before date of filing. I have on several different occasions requested the Clerk of Court to provide me with a photo-copy of the post-mark date on envelope claim was received in and as of this date have not received the same. This should be on file with the Clerk's office as verification of postage date. Also all legal mail both incoming and outgoing must be logged and kept as a permanent record by prison mail room staff. I have several times requested the mail room at Wheeler Correctional Facility provide me with copies of my incoming and outgoing legal mail as well as copies of the request for indigent <sup>spouse</sup> form utilized by indigent inmates, again received no reply.

3) It is a common fact all defendants in this case are in the business of housing and providing food services as well as medical care for incarcerated persons. The plaintiff has already advised the court of the primary custodians failure to follow their own written policies and procedures by not providing the plaintiff, whom is an indigent inmate with the necessary writing material and postage to

properly serve all defendants thereby hampering and intentionally interfering with plaintiff's access to the court to seek redress of grievances.

4) The plaintiff did in fact meet the two (2) year statute of limitations in filing claim. The defendants were properly served. During an unincarcerated period between October 24, 2013 and February 13, 2014 the plaintiff attempted to obtain legal counsel, spoke with numerous prison officials, legal counsel for the same, the Clerk of Court's office as well as Judge Gillis office whom was originally assigned this case.

By letters of March 23, 2014, June 16, 2014, July 17, 2014 August 10, 2014, September 4, 2014, The plaintiff informed the Clerk of Court of changes of addresses, filed motions for hearings, status updates, with no responses. The prison's failure to follow their own policy of providing indigent inmates with adequate writing material and postage as outlined in SOP for privileged mail has been the reason the plaintiff has not been able to serve all parties. However, the court should take into consideration the plaintiff has been consistent in his attempts to keep the court informed through the Clerk's office to comply with the rules of the court under difficult circumstances.

5) The fact remains I did in fact obtain Salmonella poisoning from a food borne substance which required hospitalization and afterwards it took over sixteen (16) months to receive a adequate follow-up by prison medical services. The defendants have attempted to deny this incident or assume responsibility. However, the investigation conducted by the Southeast Health District office of infectious disease clearly show an illness occurred among 39 inmates with three (3) inmates testing positive for Salmonella poisoning at a local hospital with one (1) inmate being admitted, myself.

The methods of investigation by the Southeast Health District coordinated with the Georgia Department of Health in an analysis case study of 72 inmates (39 cases, 33 controls) clearly show the only food consumed by these inmates had to come from the cafeteria as the outbreak affected inmates in most all units throughout the institution and was not contained to any one specific unit of the facility.

6) Surely, the Court, the Honorable Judge is well aware the plaintiff is an inmate incarcerated as a result of bad choices made, is not an attorney but has repeatedly requested that a hearing be held on the merits of his claim,

The acts of the defendants and their counsel to prevent the plaintiff from appearing in open court to have the issues addressed by stating "Since the plaintiff is an incarcerated person, complying with his request for oral hearing would require the court to issue a production order to the Georgia Department of Corrections, would require repositioning the prisoner within the GDC system, as well as the allocation of multiple corrections officers to transport him" is discriminatory as well as a blatant attempt to avoid having this case heard in open court as the issues stated above are every day occurrences within the operation of the prison system.

D) Granted, the plaintiff not being an attorney and the prison refusing to provide the plaintiff with adequate writing material and postage ~~was~~ not followed all rules of Service yet the plaintiff has done everything within his control to comply with court rules and notify parties to include a pending internal grievance for the prison's failure to follow their own written policy of providing adequate writing material and postage to correspond with the courts.

Exhibit  
1011

In The Superior Court of Coffee County  
State of Georgia

Kenneth Ray Evans  
US Plaintiff

Trinity Services Group  
Georgia Department of Corrections  
Corrections Corporation of America

Civil Action Number  
2013SI1-011



### ORDER

Plaintiff having submitted the attached opposition to ~~defendants~~ defendants Motion for Summary Judgment and request to deny Plaintiff's request for Oral Hearing would request the above order be issued for good cause.

It is hereby ordered and adjudged that all defendants motions for Summary Judgment is denied.

It is further ordered and adjudged that the plaintiff's request for Oral Hearings in this matter be granted.

It is so ordered this the \_\_\_\_\_ day of \_\_\_\_\_ 2015.

Honorable Jeffrey H. Kist  
Judge Superior Court Coffee County  
Georgia

Exhibit  
12X

# Certificate of Service

This is to Certify that I have served a true and correct copy of the foregoing motion to oppose Summary Judgment and Motion for Oral Hearing upon the below listed individuals by placing the same in the United States postal mail at the Muscogee County Prison, Columbus, Georgia

\* Served 1) Angela Spell-Hutto, Clerk  
Superior Court, Coffee County  
218 B. Courthouse  
101 S. Peterson Avenue  
Douglas, Georgia 31533

\* Served 2) Honorable Jeffery H. Kist  
Superior Court, Waycross Judicial Circuit  
Pierce County Courthouse Annex  
312 Nichols Street  
Blackshear, Georgia 31516

← Un-served 3) For Georgia Department of Corrections  
Inadequate writing Laura L. Lewis  
material to serve Department of Law, State of Georgia  
at this time 40 Capital Square  
Atlanta, Georgia 30334-1300

\*Served

4) For Trinity Services Group  
John B. Nichols, James-Bates-Braunew-Geover LLP  
231 Riverside Drive  
Macon, Georgia 31201

\*Un-served  
↓  
inadequate writing  
material to serve  
- this time

5) For Correction Corporation of America  
Stephen F. Curry, Esq.  
3508 Professional Circle, Suite C  
Macon, Georgia 30907

Summited this the 22 day of March 2015

~~Kenneth Ray Gunn~~  
Kenneth Ray Gunn #478957  
Muscoosee County Prison  
775 Sacerdote Lane  
P.O. Box 84041  
Columbus, Georgia  
31908-4041

Jul, 16, 2015

Kenneth Ray Evans #478957  
Muscookee County Prison  
7175 Sacerdote Lane  
P.O. Box 84041  
Columbus, Georgia  
31908-4041

Clerk, Georgia Court of Appeals  
47 Trinity Avenue, Suite 501  
Atlanta, Georgia  
30334

RE: Enclosed Notice of Appeal

Dear Clerk:

Please find enclosed for filing Notice of Appeal, Certificate of Service and poverty Affidavit. Also included are the Orders of the court which are the subject of this appeal, Cover letter of March 22, 2015 to clerk Superior Court Exhibit "A", my opposition to defendants motion for summary judgement - and request to deny defendants opposition for Oral Hearing Exhibit "B", unsigned Order I provided Court Exhibit "C", Certificate of Service Exhibit "D", letter of June 8, 2015 to Honorable Judge Jeffrey H. Kight Exhibit "E".

I would request the clerk to file and return to me filed copies for my records. Should the clerk require anything further please advise me as soon as possible.

Thanking you, I am.

Sincerely  
Kenneth Ray Evans

cc / KRE - Appeal File

RECEIVED IN OFFICE  
2015 JUL 21 AM 11:26  
LESLIE LEWIS, CLERK  
COURT OF APPEALS OF GA.

July 31, 2015

Kenneth Ray Evans # 478957  
Muscogee County Prison  
7125 Sacerdote Lane  
P.O. Box 84041  
Columbus, Georgia  
31908-4041

Clerk  
Georgia Court of Appeals  
47 Trinity Avenue, S.W. Suite 501  
Atlanta, Georgia  
30334

RE: Notice of Appeal - Civil Case Number: 2013511-811

Dear Clerk:  
Please find enclosed a copy of letter sent to Clerk, Superior Court of Coffee County in reference to the appeal I filed with your office and your return notice regarding the above case.

Thanking you. I am -

Sincerely  
Kenneth Ray Evans

CC / RRR - Case File

RECEIVED IN OFFICE  
2015 AUG -5 PM 3:21  
CLERK/COURT REPORTER SECTION  
COURT OF APPEALS OF GA

Clerk  
Court of  
Appeals

July 31, 2015

Kenneth Ray Evans #478957  
Muscookee County Prison  
7775 Sacerdote Lane  
PO. Box 84041  
Columbus, Georgia  
31908-4041

Angela Spell-Hutto, Clerk  
Superior Court Coffee County  
218 B. Courthouse  
101 S. Peterson Avenue  
Douglas, Georgia  
31533

RE: Notice of Appeal - Clock/Stamped received in the Clerk of  
Court of Appeals dated July 21, 2015 11:26 AM  
Civil Case Number: 2013511-811

Dear Clerk:

I have received a return notice from the Court of Appeals informing me the notice of appeal should be filed with the Clerk of the trial Court. In this case there ~~was~~ never been any hearings before the court.

However, the Clerk the Clerk Coffee County Superior Court as well as all defendants and all parties concerned were properly served by certificate of Service. Therefore I would request the clerk to prepare a copy of the record and transmit them to the court of appeals.

I am enclosing everything I submitted to the court of appeals and would request you clock/stamp the same and return to me copies enclosed.

Thanking you in advance. I am.

Sincerely  
Kenneth Ray Evans

CC / KRE - File

Clerk, Court of Appeals  
47 Trinity Avenue, SW, Suite 501  
Atlanta, Georgia  
30334