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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Judge

Greenville County

Trial Court Case No.

2020CP2302001

Appellate Case No. 2021-000903

Ortagus Bennett,

Appellant,

v.

Greenville County Detention Center, Respondent.

RESPONDENT'S MOTION TO DISMISS

Pursuant to Rules 240 and 260 of the South Carolina Appellate Court Rules, the undersigned counsel moves to dismiss the above-captioned appeal due to the fact that the Appellant's attempted appeal was untimely and due to his continued failure to comply with the Court's subsequent orders.

Appellant Ortagus Bennett was represented by counsel when the Circuit Court issued its Order Granting Defendants' Motion to Dismiss on June 3, 2021. See Exhibit A. On August 2, 2021, the South Carolina Court of Appeals received then *pro se* Plaintiff Ortagus

Bennett's Appeal which he purports to have dated July 18, 2021. See Exhibit B (titled "Plaintiff Ortagus Bennett's Appeal 59E") and Exhibit C (Consent Motion to Withdraw as Counsel received February 8, 2022 by the Court of Appeals indicating that Mr. Bennett was advised of his deadline and was proceeding *pro se* in his appeal). An Order granting the Consent Motion to Withdraw as Counsel was filed by the Court on March 10, 2022 and Mr. Bennett was provided thirty (30) days to obtain new counsel if he chose to do so. See Exhibit D. Mr. Bennett has not retained new counsel.

Technically, the alleged appeal appears to be a Motion to Reconsider. Id. Even if the document is construed as a Notice of Appeal, it was untimely on both August 2, 2021 and July 18, 2021.

A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order. SCRCP 59. Mr. Bennett never filed the document attached as Exhibit B with the Circuit Court, meaning he never filed a Motion to Reconsider.

Rule 203 of the South Carolina Appellate Court Rules sets forth:

> A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a **timely motion** for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

SCACR 203. (Emphasis added).

As set forth above, Mr. Bennett did not actually file a post-trial motion with the Circuit Court. Therefore, his deadline for filing his appeal with the Court of Appeals was

thirty (30) days from the date of the Order Granting Defendants' Motion to Dismiss, June 3, 2021, which was the date his then attorney received the written order through the Circuit Court's electronic filing system. Mr. Bennett's filing with the Court of Appeals was received on August 2, 2021, making it untimely.

The Court of Appeals issued Mr. Bennett a deficiency letter on May 5, 2022. Exhibit E. A separate letter was sent to Mr. Bennett on June 22, 2022. See Exhibit F. On July 6, 2022, the Court sent Mr. Bennett a letter advising that his initial brief and designation of matter were due thirty (30) days from the date of the letter. See Exhibit G. To date, no initial brief has been filed.

Mr. Bennett sent an untimely request for an extension of time to the Court on July 27, 2022. See Exhibit H. On July 29, 2022, the Court sent Mr. Bennett a letter advising of deficiencies in his Motion for Extension of Time. See Exhibit I. Mr. Bennett was provided ten (10) days to correct the deficiencies. The undersigned counsel has not yet seen evidence of correction of those deficiencies. However, it appears that Mr. Bennett may have submitted a Proof of Service to the Court without sending it to the undersigned counsel.

Based on the foregoing, the undersigned counsel respectfully moves to dismiss Mr. Bennett's appeal. As set forth above, his attempted appeal was untimely and not a proper appeal. In addition, since filing his untimely appeal, Mr. Bennett has repeatedly ignored or disobeyed the Court's instructions. As a result, Mr. Bennett's appeal should be dismissed.

[Signature appears on following page.]

Respectfully submitted,

s/James P. Walsh

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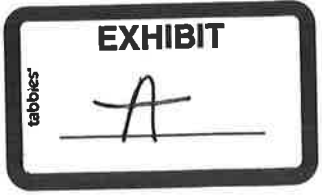
ATTORNEYS FOR RESPONDENT

Greenville, South Carolina
August 18, 2022



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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	CASE NO. 2020-CP-23-02001
Ortagus Bennett,)	
)	
Plaintiff,)	**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**
)	
vs.)	
)	
Greenville County Detention Center,)	
And Greenville County Detention)	
Center Medical Clinic,)	
)	
Defendants.)	
)	

Defendants Greenville County Detention Center and Greenville County Detention Center Medical Clinic[1] moved for an order dismissing the above-referenced case in accordance with Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. A hearing was held in this matter on March 23, 2021.

The Plaintiff, who was *pro se* at the time of filing but now is represented by attorney Adrianne Turner, failed to file his lawsuit within the two-year statute of limitations pursuant to the South Carolina Tort Claims Act. Further, the *pro se* Plaintiff failed to satisfy the mandatory pre-suit requirements set forth in S.C. Code Ann. § 15-79-125. As such, I find that the Plaintiff's case should be dismissed with prejudice.

Background

On the face of the Plaintiff's Complaint, it states the Plaintiff is seeking monetary damages as a result of incidents which allegedly occurred on April 9, 2017. Further, the Plaintiff states in his Complaint that he was released from the Greenville County Detention Center on April 28, 2017. The Plaintiff's Complaint was filed on April 6, 2020 by Ortagus Bennett, *pro se*.

[1] This alleged Defendant is not a separate legal entity and should be dismissed as a party.

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Specifically, the Complaint states in paragraph 7 that:

On or about April 10, 2017 I submitted a medical complaint regarding my condition and requested to have a CT scan along with any other necessary observations that were needed to have adequate service provide (sic). Instead of GCDC allowing me to receive additional medical assistance, they reviewed the records from GHS and ignored my concerns/complaints. On this same date, my fiancé made a manual complaint expressing how I felt my jaw was fractured which was ignored as well.

In paragraph 8 of the Complaint, the Plaintiff states:

On or about April 11, 2017 and (sic) Xray was performed for mandible comparison. It was noted that due to the angled view the comparison was rather limited, but it was noted in my records that a mandibular fracture was not located, which based on factual information was incorrect. Throughout the passing days I continued to make several complaints regarding my condition and all were ignored. I was also accused of making false complaints regarding my condition and as a result was denied access for canteen purchases, telephone usage, and blocked from the ability of noting concerns in the kiosk system. I was also advised that I would be accessed (sic) a $5 charge per approved doctor visit request moving forward.

In paragraph 9 of the Complaint, the Plaintiff states:

On or about April 14, 2017 I made a complaint through the inmate kiosk system to gain clarification on why I was being denied the right to purchase as my claims were not false and **I really needed medical attention**.

In paragraph 10 of the Complaint, the Plaintiff states:

On or about April 24, 2017 I was still making medical complaints regarding my condition and was denied any type of assistance that would improve my health condition. (Emphasis added).

In paragraph 11 of the Complaint, the Plaintiff states:

On or about April 28, 2017 I was released from the Greenville Detention Center and shortly after went to Greenville Health System to seek the medical attention that was previously denied at the Greenville County Detention Center. I immediately received results that I did in fact suffer from a mandibular fracture and was assigned to have immediate surgery because due to the lack of medical attention received from the Greenville County Detention Center, my fracture was healing incorrectly which would

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ultimately cause long-term issues if not surgically corrected. (Emphasis added).

In paragraph 12 of the Complaint, the Plaintiff states:

> The above set forth incidents and I, the Plaintiff's resulting sufferings and damages were proximately caused by the grossly negligent, reckless, willful and wanton acts of the employees of the Defendants (acting individually and together), in the following particulars:

a. In failing to make a proper assessment as to the injuries I sustained which resulted in lack of proper treatment and timely diagnosis;
b. In failing to disregard my medical concerns after proper reports were filed;
c. In causing a delay in treatment;
d. In failing to follow the mandates of the Minimum Standards for Local Detention Centers in South Carlina;
e. In failing to exercise due care; and
f. In failing to render appropriate care in general.

The allegations of the Plaintiff as set forth in his Complaint are allegations of medical malpractice by the medical staff at the Greenville County Detention Center. The untimely filing of the Plaintiff' Complaint and his failure to follow pre-suit procedures are addressed below.

Standard

The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602–03 (1995); citing State Board of Medical Examiners v. Fenwick Hall, Inc., 300 S.C. 274, 387 S.E.2d 458 (1990). A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Id.; citing Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

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Statute of Limitations

The Defendant is a "governmental entity" whose employees were acting within the course and scope of their employment as defined in the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-30(d) at the time of the acts complained of in the Complaint. The Act, which governs all tort claims against governmental entities, see, e.g., Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct.App.1994); Searcy v. Dep't of Educ. Transp. Div., 303 S.C. 544, 402 S.E.2d 486 (Ct.App.1991), provides a strict statute of limitations period:

> Except as provided for in Section 15-3-40 [which is not applicable to this case], any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 185–86, 534 S.E.2d 1, 6 (Ct. App. 2000); citing S.C. Code Ann. § 15-78-110 (Supp.1999). The Tort Claims Act contains a general two-year statute of limitations. Id.

On the face of the Plaintiff's Complaint, it states the Plaintiff is seeking monetary damages as a result of incidents which allegedly occurred on April 9, 2017. Further, the Plaintiff states in his Complaint that he was released from the Greenville County Detention Center on April 28, 2017. The Plaintiff's Complaint was filed on April 6, 2020 by Ortagus Bennett, *pro se*.

The entire thrust of the Plaintiff's Complaint is focused on alleged medical malpractice. However, to the extent the Complaint can be construed to assert any claims other than medical malpractice, as demonstrated by the dates and allegations set forth in the Complaint (some of which are summarized above), I find and conclude the Plaintiff was clearly on notice of those

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claims and events at the time they occurred, which was more than two years before the filing of the subject lawsuit.

Any lawsuit filed by the Plaintiff must have been filed within two years of the date of the subject incident or, at a minimum, from the date he was released from the Greenville County Detention Center. Due to the Plaintiff's failure to file the above-captioned lawsuit until April 6, 2020, which is just a few days short of three years since the subject incident, I find and conclude it should be dismissed due to the fact that it was not timely filed within the applicable statute of limitations.

There is clearly no date of discovery issue, as opined by Plaintiff's newly retained counsel at the hearing, regarding any events that allegedly transpired in the Detention Center outside of the medical claims. The statute of limitations begins to run when a person of common knowledge and experience would be on notice a claim might exist, not when the plaintiff discovers a witness to support or prove the case. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 122, 542 S.E.2d 736, 739 (Ct. App. 2001); citing In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998).

When statutory language is unambiguous, this Court may not impose a contrary meaning. Id. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Id. at 122–23, 542 S.E.2d at 739–40; citing Joiner v. Rivas, 342 S.C. 102, 536 S.E.2d 372 (2000). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Id.; citing Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. What a legislature says in the text of a statute is considered the best

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evidence of the legislative intent or will. Id. Therefore, the courts are bound to give effect to the expressed intent of the legislature. Id.

Provisions of the Tort Claims Act establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting the liability of the State. Id.; citing S.C. Code Ann. §§ 15–78–20(f) & –200 (Supp.1999); Steinke v. South Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999); Baker v. Sanders, 301 S.C. 170, 391 S.E.2d 229 (1990). According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Id. at 123–24, 542 S.E.2d at 740–41; citing Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. Id. citing Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Id.; citing Joubert, supra; Young, supra. "In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." Id.; quoting Young, 333 S.C. at 719, 511 S.E.2d at 416. In Young, the Court of Appeals held **that an inmate was not required to know the sight in his right eye was permanently lost to be put on notice the Department of Corrections had caused him injury by delaying appropriate medical treatment**. Id. (Emphasis added).

Taking Plaintiff's counsel's arguments at the hearing to be true solely for the purposes of this Motion to Dismiss, a date of discovery issue (meaning the Plaintiff knew or should have

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known he had a claim on that date) was only raised by Plaintiff's counsel regarding an alleged subsequent diagnosis that she claims an Amended Complaint can cure. However, any such diagnosis would have nothing to do with any mistreatment or torts alleged by the Plaintiff (if his Complaint is construed to allege such, which it does not) at the Detention Center or the fact that he would know he had a claim (and his statute of limitations would start) when the alleged mistreatment or tort occurred. Likewise, the Plaintiff was also aware of any related claims such as any potential failure to supervise, on the date the conduct occurred. As such, those claims, to the extent they exist and were pled, are dismissed with prejudice. Further, as discussed below, the entire thrust of the Plaintiff's Complaint is centered on medical malpractice and the mandatory pre-suit requirements were not met. As such, the entire case is dismissed with prejudice.

Failure to Comply with Mandatory Pre-Suit Requirements

S.C. Code Ann. § 15-79-125 sets forth, in part, that:

> (A) Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100, in a county in which venue would be proper for filing or initiating the civil action. The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations. The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure.
> Id.

The *pro se* Plaintiff did not file a Notice of Intent to File Suit and an affidavit of an expert witness as required by Section 15-79-125(A) prior to filing his Summons and Complaint. Ms.

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Turner, the Plaintiff's newly retained counsel, conceded that Mr. Bennett failed to make this filing during oral argument on the pending Motion to Dismiss.

As set forth above, the entire thrust of the Plaintiff's Complaint is focused on alleged medical malpractice. The Plaintiff, who was *pro se* at the time of filing his Complaint, failed to adhere to the statutory requirements that mandate certain pre-filing procedures for medical malpractice claims. See generally Duckett v. SCP 2006-C23-202, LLC, 225 F. Supp. 3d 432, 437 (D.S.C. 2015); citing S.C. Code Ann. § 15–79–125 (requiring, among other things, a notice of intent to file suit as a prerequisite to filing action); S.C. Code Ann. § 15–36–100 (requiring an expert witness affidavit to accompany the complaint). If a claim fails to satisfy these requirements and does not fall into an applicable exception, it must be dismissed for failure to state a claim. Id.; citing Millmine v. Harris, No. CA 3:10–1595–CMC, 2011 WL 317643, at *2 (D.S.C. Jan. 31, 2011) (''The South Carolina Code sections relating to professional negligence claims are the substantive law of South Carolina."). See also Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189 (2014) (discussing at length S.C. Code Ann. § 15–79–125 and S.C. Code Ann. § 15–36–100, the applicability of both statutes, legislative intent and the timing of filing the Notice of Intent and the expert affidavit and the gatekeeping function). While timing of filing of the expert affidavit was at issue in Ranucci, with the Supreme Court ultimately interpreting the two statutes together and finding that the filing of the expert affidavit was timely filed within 45 days of the Notice of Intent - overturning the trial court and the Court of Appeals which had granted dismissal on the ground the expert affidavit was not timely, the rulings and discussion make it clear that the failure to file a Notice of Intent and timely Expert Affidavit are fatal to a case. Due to the fact that Mr. Bennett never filed a Notice of Intent and never filed an Expert Affidavit

before filing suit, combined with the fact he untimely filed suit after expiration of the applicable statute of limitations, results in dismissal of this case with prejudice.

Based on the foregoing, IT IS HEREBY ORDERED that the Defendants' Motion to Dismiss is GRANTED and the above-captioned case is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

_____
The Honorable R. Lawton McIntosh
Presiding Judge

Date: _____
Greenville, South Carolina

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Greenville Common Pleas

Case Caption: Ortagus Bennett vs. Detention Center Greenville County , defendant, et al

Case Number: 2020CP2302001

Type: Order/Dismissal

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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SC Court of Appeals

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Ortagus Bennett, Plaintiff, vs. Greenville County Detention Center Defendants.	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT C.A. No. 2020-CP-23-02001 **PLAINTIFF** **ORTAGUS BENNETT'S APPEAL** **59(E)**

You will please take notice that pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure ("S.C.R.C.P."), Plaintiff Ortagus Bennett by and through his undersigned , hereby moves the Court to reconsider its decision to grant the Defendant's Motion to Dismiss.

It is respectfully submitted that the Court erred in the following particulars in reaching its decision to grant the Defendant's motion:

1. The Order does not address with specificity the reasons why the Plaintiff should not be allowed to withdraw the pro se Summons and Complaint for Medical Malpractice he originally filed and substitute the filing with the appropriate Notice of Intent to Sue and Affidavit of a qualified expert where;
    a. The Plaintiff presented the pro se filings to the Clerk of Court and the filings were excepted despite the absence of a previously filed Notice of Intent to Sue and/or supporting Expert Affidavit, as opposed to returning the unfiled pleadings to Plaintiff and advising the Plaintiff that the filings were insufficient, thereby putting Plaintiff on notice that he did not have a pending action prior to the expiration of the applicable statute of limitations.

b. Plaintiff's attempts at filing this action pro se coincided with the onset of the Covid-19 Pandemic, which seriously limited Plaintiff's ability to retain professional counsel to assist him with commencing a Medical Malpractice action, limited Plaintiff's access to the courts and thus limited his ability to correct any erroneous filings within the time period he would have had remaining under the applicable statute of limitations, and limited his ability to obtain the necessary expert opinion as to the viability of his case.

2. The Court erred granting the motion to dismiss with prejudice when a far less drastic remedy would have been to grant the motion, if at all, without prejudice to the Plaintiff's rights to refile the action within the period of unexpired time that remained under the applicable three year statute of limitations at the time the Plaintiff filed the Summons and Complaint.

3. The Court erred in failing to find that the onset of the Covid-19 pandemic effectively tolled the time for correcting the pleadings in this matter until such time as Plaintiff was able to comply with the statutory requirement that he obtain an expert's affidavit in support of his allegations, which Affidavit Plaintiff obtained as soon as it was practical for him to do so given the continuing shut downs and other limitations brought on by the pandemic.

4. The Court erred in failing to grant Plaintiff leave to immediately Amend his pleadings to substitute a notice of intent to file suit and supporting expert affidavit for the previously filed Summons and Complaint, particularly in light of the facts that no prejudice to the Defendant would result inasmuch as the Defendants were made aware of the Plaintiff's intent to sue at the time of the original filings, that the

litigation did not and could not have progressed past the point of the initial pleadings until the recent easing of the pandemic restrictions, and no barriers exist that would prevent the parties from accomplishing all of the statutorily mandated pre-suit processes, such as mediation, if the action was allowed to advance forward. Although my counsel requested to have the lawsuit withdrawn and properly filed, the judge never acknowledged or provided a response to the request and only gave the counsel 30 days to properly submit or make changes to the lawsuit that was filed.

This appeal is based on the grounds stated above and the applicable case, statutory and regulatory law governing Defendant's motion to the filing of Medical Practice actions as well as the adjudication of Motions to Dismiss made pursuant to the South Carolina rules of Civil Procedure, and also upon the supporting Memorandum of law, to be filed at a later date and incorporated herein, any oral arguments the Court may permit the parties to make, and also Plaintiff's previously submitted memorandum of law opposing Defendant's motion to dismiss.

The judge did not attempt to even consider or give proper thought to the motion but merely dismissed it. With given the circumstances of how the pandemic has affected the entire country, I should be allowed a fair chance and opportunity to state my case in court according to Rule 59(e). I have also attached the original filed complaint, titled. **Exhibit A: Memorandum of Lawsuit CA No. 2020-CP-23-02000**.

Respectfully submitted this 18th day of July, 2021

/s/ Ortagus Bennett

Ortagus Bennett, Pro Se

EXHIBIT A: Memorandum of Lawsuit CA No. 2020-CP-23-02000

MEMORANDUM OF LAW
Ortagus Bennett v. Greenville County Detention Center
and
Ortagus Bennett v. Prisma Health-Upstate

ISSUES

Plaintiff, by and through his undersigned attorney, submits the following Memorandum of law per the court's instruction. The issues addressed herein include:

I. Whether Mr. Bennett's Medical Malpractice actions against the Greenville County Detention Center and/or Prisma Health – Upstate should be dismissed pursuant to SCRCP Rule 12(b)(6) due to the action having been filed after the expiration of the 2 year statute of limitations set forth in the South Carolina Tort Claims Act;

II. Whether the Defendants' Rule 12(b)(6) Motions to Dismiss Mr. Bennett's Medical Malpractice actions against Greenville Detention Center and Prisma Health-Upstate should be denied in favor of allowing Mr. Bennett to Amend his original pleadings to include the allegations set forth hereinbelow, or, alternatively, in favor of allowing Mr. Bennett to withdraw his original pleadings and substitute them with Notices of Intent to Sue together with the requisite supporting affidavits, thereby bringing the action into compliance with the prelitigation mandates of S.C. Code Ann. ? 15-79-125. For the reasons set forth herein below, neither action should be subject to dismissal pursuant to Rule 12(b)(6), and Mr. Bennett should be granted leave to amend his pleadings in both actions as set forth herein and/or to substitute the original pleadings with Notices of Intent to Sue together with the requisite supporting affidavits.

ARGUMENTS

I. Neither Greenville County Detention Center nor Prisma Health-Upstate is entitled to dismissal of the medical malpractice claims due to the expiration of the Tort Claims Act 2 year statute of limitations.

A. Prisma Health – Upstate is not a "governmental entity" within the meaning of the South Carolina Tort Claims Act, and is therefore not entitled to the 2-year abbreviated statute of limitations set forth in the Tort Claims Act.

Generally speaking, the statute of limitation in South Carolina for bringing a medical malpractice is 3 years from the date of the procedure that caused the injury, or three years from the date the treatment, omission, or operation that gives rise to the injury, or three years from the date the injury reasonably ought to have been discovered. S.C. Code Ann. §15-3-545. The South Carolina Tort Claims Act sets forth a shorter, 2 year statute of limitations for actions being brought against a "governmental health care facility." SC Code Ann. §15-78-100. A "governmental health care facility" is defined as one that is "operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance . . . ." SC Code Ann. § 15-78-30(j).

In the instant case, Plaintiff misidentified Prisma Health-Upstate as "Greenville Hospital System currently d/b/a Prisma Health." Plaintiff further mistakenly alleged that Prisma Health is a "governmental entity." In its' motion to dismiss, Prisma Health-Upstate attempts to capitalize on this inaccuracy in Plaintiff's pro se original filing to suggest that the 2 year statute of limitations set forth in the Tort Claims Act

should be deemed applicable to Prisma Health–Upstate. This position is, of course, untenable. Prisma Health-Upstate is not a "governmental health care facility" as defined in § 15-78-30(j). Rather, at all times pertinent to this action, Prisma Health-Upstate operated as a privately owned, non-profit entity. Prisma Health-Upstate cites no authority, and the undersigned counsel is aware of none, supporting the position that a litigant's inadvertent designation of a private facility as a governmental health care facility in a pleading somehow bestows legal status upon the misnamed entity as an actual "governmental health care facility" within the meaning of the Tort Claims Act. Because Prisma Health is actually a private entity, the general 3 year statute of limitations is applicable in Plaintiff's action against Prisma Health-Upstate.

Plaintiff filed his pro se original Complaint on April 6, 2020, alleging in part that he was assaulted and injured on April 9, 2017. Even assuming, without conceding, that the applicable statute of limitations was triggered on the day Plaintiff suffered the underlying injuries, Plaintiff clearly filed his Complaint prior to the expiration of the 3 year time frame applicable to Prisma Health-Upstate.

Pursuant to Rule 15, of the South Carolina Rules of Civil Procedure, Plaintiff should be granted leave to amend his Complaint to, inter alia, delete reference to Greenville Hospital System, add "Upstate" to the designation of Prisma Health as a party defendant, and delete mistaken references to Prisma Health as a governmental entity. Alternatively, under the same theory of applicability as Rule 15, SCRCP, Plaintiff should be granted leave to withdraw and replace the Summons and Complaint with the attached Notice of Intent to Sue and Supporting Affidavit.

B. The Statute of Limitations as to both Prisma Health-Upstate and the Greenville

County Detention Center, should be deemed to have been triggered on January 28th 2020, the date on which Plaintiff reasonably could have discovered that Defendants negligently failed to offer him appropriate medical evaluation and treatment for his injuries.

The general law on the statute of limitations is familiar. "The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). It requires a party to "act with some promptness" when the circumstances "would put a person of common knowledge and experience on notice that some right of his had been invaded or that some claim against another party might exist." Johnston v. Bowen, 313 S.C. 61, 64, 437 S.E.2d 45, 47 (1993).

The lead case on tolling explains it is based on ensuring "fundamental practicality and fairness" and should be used "sparingly." Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 115-17, 687 S.E.2d 29, 32-33 (2009) (quoting Rodriguez v. Superior Court, 176 Cal. App. 4th 1461, 98 Cal. Rptr. 3d 728, 736 (Cal. Ct. App. 2009)). "It has been observed that '[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control.'" Id. at 116, 687 S.E.2d at 32 (quoting Ocana v. Am. Furniture Co., 2004- NMSC 018, 135 N.M. 539, 91 P.3d 58, 66 (N.M. 2004)). Estoppel applies when the defendant's conduct induces the plaintiff to delay filing suit. Hedgepath v. Am. Tel. & Tel. Co., 348 S.C. 340, 360, 559 S.E.2d 327, 338 (Ct. App. 2001).

Here, the Defendants' wrongful conduct was not reasonably discoverable until January 28th, 2020, the date Plaintiff was first made aware that Defendants had

wrongfully failed to initially complete adequate imaging studies of the correct region of his head and face, which led to the failure of both Defendants to diagnose his actual injuries.

The Plaintiff's medical records show that he presented to the Detention Center and to Prisma Health Upstate on April 9, 2017 with an indented facial structure and complaining of sever pain in the facial/jaw area. Despite obvious swelling and indentation in Plaintiff's facial area, in addition to persistent complaints of severe pain, Defendants' took x-ray images of only Plaintiff's mandible area. According to Plaintiff's records, neither the treating physicians nor the hospital radiologist could appreciate any fracture of the Plaintiff's mandible from the films taken on April 9, 2017. Despite Plaintiff's massive facial swelling, and continued complaints of severe pain, neither facility initially obtained any additional imaging.

Following his initial presentation at Prisma Health-Upstate, Plaintiff was transported to the Greenville County Detention Center. Once there, Plaintiff continued to exhibit massive facial swelling and an indentation in the area of his cheek, as well as continued severe pain. Medical personnel at the Detention Center took another x-ray, again limiting the diagnostic test to images of Plaintiff's mandible. Failing to appreciate a fracture in Plaintiff's mandible, medical personnel at the Detention Center simply ceased offering help to the Plaintiff. Plaintiff remained incarcerated at the Greenville County Detention center for three additional weeks, during which time he consistently sought medical attention via the Detention Center's Medical Kiosk, and was continually denied the same. In fact, rather than offer Plaintiff the additional medical treatment he desperately needed and continuously requested, the Detention Center opted instead to intentionally cut off the Plaintiff's access to the facility's Medical Kiosk, which was the

only means available to Plaintiff to request medical care within the Detention Center. Requests made by Plaintiff's fiancé and other family members on Plaintiff's behalf seeking additional medical evaluation and treatment were steadfastly ignored while Plaintiff remained incarcerated.

On April 30, 2017, after his release from the Detention Center, Plaintiff returned to Prisma Health-Upstate for additional medical evaluation and treatment, which included a CT Scan. Thereafter, he was referred to Dr. Bart Williams, who several weeks later performed surgery to correct Plaintiff's pronounced zygomatic arch fracture.

It is important to note that Plaintiff's argument, to be set forth in his Amended Complaint and/or NOI, is not that Defendants failed to properly diagnose a fractured mandible - Claimant did not, in fact, sustain a fractured mandible. Instead, both Defendant Prisma Health-Upstate and the Greenville County Detention Center negligently failed to order the correct imaging studies during Plaintiff's initial encounters, which studies would have immediately revealed (and later did reveal) Plaintiff's zygomatic arch fracture.

It is further important to note that while subsequent caregivers confirmed Defendants' reading of the original films, which did not show a mandible fracture, and although Plaintiff's zygomatic arch fracture was diagnosed during the April 30, 2017 return visit to Prisma Health-Upstate, neither Defendant made Plaintiff aware that CT scan images of his entire head and face should have been taken initially, and that those CT scans would have immediately revealed the zygomatic arch fracture. For purposes of determining when a reasonably prudent person would have realized that the failure to obtain CT scans initially was a negligent omission, it is Plaintiff's position that a lay person could not be expected to realize that the failure to order a different type of diagnostic test initially was

an act of negligence in and of itself.

Moreover, Plaintiff, and others acting on his behalf, requested copies of the initial images taken at Prisma Health-Upstate and the Greenville County Detention Center on several occasions prior to the filing of this action, but both Defendants refused to release the x-ray film images to Plaintiff. Specifically, Plaintiff requested his medical records from The Greenville County Detention Center on the day after his release, on April 30, 2017, but was only provided with copies of his own requests for medical care made via the facility's Health Care Kiosk. No x-ray films were provided to him by the Detention Center. Plaintiff also requested his entire medical file from Prisma Health-Upstate on three separate occasions in 2017 – August 29th, October 25th, and November 6th. On all three occasions Defendant Prisma Health-Upstate failed to provide Plaintiff with the x-ray films. Defendants' failure to release the x-ray films effectively thwarted Plaintiff's efforts accomplish due diligence in attempting to discover whether Defendants committed an actionable error in failing to diagnose his zygomatic fracture, despite the Defendants' correct diagnosis that he did not sustain a fracture of his mandible.

Further, although Plaintiff was diagnosed with a closed head injury and given care instructions for a mild concussion during his April 30, 2017 return visit to Prisma Health-Upstate, it was not until Plaintiff was able to obtain extensive additional evaluation and care, including examination by a neurologist, Dr. Marshall A. White, that Plaintiff learned the Defendants also failed to properly diagnosis him with a significant concussion resulting in traumatic brain injury, accompanied by other neuropsychological and neuropsychiatric consequences including retrograde anterograde amnesia, as well as anterograde amnesia. Importantly, Dr. White opined in his January 28, 2020 report that as of the time of his evaluation, Plaintiff was not receiving adequate treatment for the

neuropsychiatric consequences of his traumatic brain injury. In fact, Plaintiff reported that this condition went completely undiagnosed during the weeks he spent in the Detention Center, and that he received no therapy or other treatment at all while housed there.

Particularly in light of the unique circumstances surrounding Defendants' failure to properly diagnose Plaintiff, including the capturing and valid interpretation of x-ray images of Plaintiff's mandible, Plaintiff posits that a "a reasonable person" would not have been put on notice of negligent misdiagnosis where caregivers were skilled at using the apparatus they choose, the x-ray films prints resulting from the initial studies appeared readable, and caregivers correctly determined from those images that Plaintiff did not suffer a fractured mandible, and, most especially, where the skilled medical personnel apparently did not appreciate the need for further studies despite Plaintiff's persistence complaints of pain and discomfort.. This is particularly true where both Defendants played an active roll at thwarting Plaintiff's efforts to accomplish due diligence in discovering that a cause of action existed by failing to provide Plaintiff with his entire medical file until years after his numerous requests that the records be produced. Moreover, there can be no serious question but that Plaintiff's traumatic brain injury, which was not adequately treated during the bulk of the statutory period, burden Plaintiff with some degree of disability that, in the interest of fairness, ought to be considered in evaluating the merits of Plaintiff's tolling argument.

For all of the foregoing reasons, the statute of limitations should be deemed triggered as of January 28, 2020. At a minimum, this Court should construe the proposed changes to Plaintiff's theory of recovery set forth above as adequate to preclude dismissal of either action under the auspices of Rule 12(b)(6) due to the running of the statute of limitations.

II. Defendants' Rule 12(b)(6) Motions to Dismiss Plaintiff's medical malpractice actions against Greenville Detention Center and Prisma Health-Upstate for failure to comply with the prelitigation filing mandates of S.C. Code Ann § 15-79-125 should be denied in favor of allowing Plaintiff to Amend his original pleadings to include the allegations and alternative theories of recovery set forth in this memorandum, or, alternatively, in favor of allowing Mr. Bennett to withdraw his original pleadings and substitute them with Notices of Intent to Sue together with the requisite supporting affidavits, thereby bringing the action into compliance with the prelitigation mandates of S.C. Code Ann. ? 15-79- 125.

Rule 12(b)(6), SCRCP, under which both Defendants have elected to proceed, permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim. See, e.g., Charleston Cty. Sch. Dist. v. Harrell, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011) ("In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint."); Brown v. Leverette, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) (". . . solely upon the allegations set forth on the face of the complaint"); see also Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 127 S. Ct. 1955, 1965, 167 L. Ed. 2d 929, 940-41 (2007) ("[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote [**588] and unlikely.") (internal quotations omitted); Republican Party of N. Carolina v. Martin, 980 F.2d 943, 952 (4th Cir. 1992) ("A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses."). At the Rule 12 stage, therefore, the first decision for the trial court is narrow in scope: whether the pleading states a claim upon which relief can be granted under any

theory of law. Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 179-180, 826 S.E.2d 585, 587-588, 2019 S.C. LEXIS 14, *2-4

There exists a vast body of law in South Carolina establishing our judiciary's strong preference that meritorious cases be allowed to proceed to trial rather than dismissed due to the presence of deficiencies that may be easily remedied by way of an amended pleading. Spence v. Spence, 368 S.C. 106, 130-131, 628 S.E.2d 869, 881-882, 2006 S.C. In fact, it is so well established as to be axiomatic in South Carolina that even when a trial court finds a complaint fails "to state facts sufficient to constitute a cause of action" under Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal. See Foman v. Davis, 371 U.S. 178, 179, 182, 83 S. Ct. 227, 228, 230, 9 L. Ed. 2d 222, 224, 226 (1962) (where a complaint is dismissed "for failure to state a claim upon which relief might be granted," leave to amend the complaint "should, as the rules require, be 'freely given'" (quoting Rule 15(a), Fed. R. Civ. P.)); [***3] Dockside Ass'n, Inc. v. Detyens, Simmons & Carlisle, 297 S.C. 91, 95, 374 S.E.2d 907, 909 (Ct. App. 1988) (holding "Dockside should have been given leave to amend its complaint" before it was finally dismissed pursuant to Rule 12(b), SCRCP (citing Foman, 371 U.S. at 182, 83 S. Ct. at 230, 9 L. Ed. 2d at 226)). It is further well established in South Carolina that Rule 15(a) "strongly favors amendments and the court is encouraged to freely grant leave to amend." Patton v. Miller, 420 S.C. 471, 489-90, 804 S.E.2d 252, 261 (2017) (quoting Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005)).

Even on appeal, when a plaintiff is not given the opportunity to file and serve an amended complaint at the trial court level, but is left with no choice but to appeal after dismissal of her case with prejudice, an appellate court which affirms the dismissal may modify the lower court's order to find the dismissal is without prejudice. When the statute of limitations has expired, the

appellate court may in its discretion impose a reasonable period of time in which to amend the complaint. An appellate court should follow this procedure when the plaintiff presents additional factual allegations or a different theory of recovery which, taken as true in a well-pleaded complaint, may state a claim upon which relief may be granted. Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell, 1998 ME 70, 708 A.2d 283, 286-87 (Me. 1998) (trial court acted within its discretion in dismissing case with prejudice pursuant to Rule 12(b)(6) where plaintiff was unable to show how he would cure defects in his complaint if granted leave to amend it); Barkley v. Good Will Home Asso., 495 A.2d 1238 (Me. 1985) (in absence of bad or dilatory motives on the part of plaintiff or undue prejudice to defendant, the trial court abused its discretion by denying the plaintiff an opportunity to amend her complaint after it was dismissed pursuant to Rule 12(b)(6)); Baker v. Town of Middlebury, 753 N.E.2d 67, 74 (Ind. App. 2001) (dismissal of complaint pursuant to Rule 12(b)(6) with prejudice was harmless error because plaintiff failed to show how he would have amended his complaint to avoid dismissal).

It stands to reason that the judicial goal of carefully guarding the fundamental rights of parties to move forward with a full and fair hearing whenever possible would also carry over into the arena of applying and, where necessary, construing the provisions of South Carolina Code Ann. § 15-79-125, South Carolina's medical malpractice "gatekeeper" statute. It goes without saying that SC Code Ann. § 15-79-125 is fraught with pitfalls for the unwary and uninitiated, such as the Plaintiff herein who, through no fault of his own that he could have predicted, found himself attempting to navigate through the unfamiliar provisions without the benefit of an attorney, in the midst of a pandemic, facing the possibility that the statute of limitations may have been close to expiring, and also dealing with the very real possibility (and eventual reality) that for the first time in recent memory, the entire South Carolina judiciary might be forced to shut down. There can be little question but that in a few weeks or months, a

body of caselaw will develop to help all of us deal with the aftershock of Covid-19, but thus far we have very little pandemic-crisis related caselaw currently at our disposal. Fortunately, our Appellate Courts have had some opportunity to weigh in on how to best utilize the statute to accomplish the goals of the legislature in enacting its provisions while also avoiding the worst of the unintentially harsh results.

SC Code Ann.15-79-125 provides as follows:

(A) Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100, in a county in which venue would be proper for filing or initiating the civil action. The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations. The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure.

(B) After the Notice of Intent to File Suit is filed and served, all named parties may subpoena medical records and other documents potentially related to the medical malpractice claim pursuant to the rules governing the service and enforcement of subpoenas outlined in the South Carolina Rules of Civil Procedure. Upon leave of court, the named parties also may take depositions pursuant to the rules governing discovery outlined in the South Carolina Rules of Civil Procedure.

(C) Within ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference unless an extension for no

more than sixty days is granted by the court based upon a finding of good cause. Unless inconsistent with this section, the Circuit Court Alternative Dispute Resolution Rules in effect at the time of the mediation conference for all or any part of the State shall govern the mediation process, including compensation of the mediator and payment of the fees and expenses of the mediation conference. The parties otherwise are responsible for their own expenses related to mediation pursuant to this section.

(D) The circuit court has jurisdiction to enforce the provisions of this section.

(E) If the matter cannot be resolved through mediation, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed:

(1) within sixty days after the mediator determines that the mediation is not viable, that an impasse exists, or that the mediation should end; or

(2) prior to expiration of the statute of limitations, whichever is later.

(F) Participation in the prelitigation mediation pursuant to this section does not alter or eliminate any obligation of the parties to participate in alternative dispute resolution after the civil action is initiated. However, there is no requirement for participation in more than one alternative dispute resolution forum following the filing of a summons and complaint to initiate a civil action in the matter.

It is undisputed that Plaintiff in the instant case, having been demonstrably forced to proceed without an attorney due to the onslaught of Covid-19 closures and shelter-in-place orders, filed Summonses and Complaints against Prisma Health and The Greenville County Detention Center in the Court of Common Pleas in April of 2020, and had the pleadings served on the Defendants, without knowing that §15-79-125(A) requires that medical malpractice litigants to begin the litigation process by filing a and serving Notice of Intent to Sue rather than a Summons and Complaint. Unfortunately, Plaintiff was not advised at the time of filing with the Clerk of Court that an NOI was required before a Medical Malpractice suit could be commenced, and the filings were instead accepted and filed with the

clerk's office. Both Defendants filed motions to dismiss pursuant to Rule 12(b)(6). Thereafter, the case essentially became inactive due to closures associated with the pandemic, Plaintiff actually contracting Covid -19, and other delays, until last week the Court heard Defendants Motions.

One of the concerns raised by the Court was what, if any, path forward exists for the Plaintiff since the Summons and Complaints were filed without first complying with the mandates of § 15-79-125(A). As more fully set forth below, Plaintiff believes that the most appropriate course of action is to grant Plaintiff leave to withdraw the initial pleadings in both cases while contemporaneously filing a Notice of Intent to Sue, together with a Supporting Affidavit from a qualified physician.

The South Carolina Supreme Court has recently provided guidance on how the provisions of 15-79-125 should be construed in favor of allowing amendments to pleadings. By way of example, the Court recently noted that allowing amendments to prelitigation pleadings is consistent with the intent of the legislature to create a unique pre-litigation period of discovery and mandatory mediation via section 15-79-125 in order to filter out frivolous claims at the earliest stage in medical malpractice cases. Wilkinson v. E. Cooper Cmty. Hosp., Inc., 410 S.C. 163, 173-174, 763 S.E.2d 426, 432, 2014 S.C. LEXIS 435, *16-18, 2014 WL 4935934. Fu"rther, the Court has recently expressed a strong preference to "permit medical malpractice cases to proceed on the merits rather than to affirm unwarranted dismissals based on technical noncompliance with the medical malpractice statutes. See Ross v. Waccamaw Cmty. Hosp., 404 S.C. 56, 744 S.E.2d 547 (2013) (concluding that failure to timely complete the prelitigation mediation process as required by section 15-79-125 does not divest the trial court of subject matter jurisdiction or mandate dismissal); Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 725 S.E.2d 693 (2012) (holding that the pre-litigation expert affidavit, which is filed pursuant to section 15-79-125, must specify at least one negligent act or omission and the factual basis for each claim, but does not need to include an opinion as to proximate cause and, therefore, medical malpractice claimant's case could proceed as the pre-litigation affidavit was sufficient).

Notably, granting the Plaintiff leave to amend and replace the original pleadings with a compliant Notice of Intent to Sue would harmonize with the Supreme Court's recent decision and would not result in any demonstrable prejudice to either Defendant since until very recently, the ability of any parties to any actions has been extremely limited. As well, at this very early stage of litigation, there exist no procedural barriers to aligning the pleadings herein with the requirements of Section 15-79-125 and proceeding forward exactly as set forth in the statutory scheme.

RECEIVED
Feb 08 2022
SC Court of Appeals

Ortagus Bennet, Appellant v. Greenville County Detention Center, Respondents	IN THE COURT OF APPEALS FOR STATE OF SOUTH CAROLINA 2021-000903 **CONSENT MOTION TO WITHDRAW AS COUNSEL**

You will please take notice that the undersigned counsel, Adrianne L. Turner, with the consent of Appellant, Ortagus Bennett, hereby moves the Court for leave to immediately withdraw as Counsel of Record for Ortagus Bennett in the above-entitled matter. In furtherance of this Motion, the undersigned counsels would respectfully show as follows:

1. Appellant, Ortagus Bennett, retained the undersigned counsel for purposes of defending against a then-pending motion to dismiss in the lower court.
2. Defendant/Respondent's motion to dismiss was ultimately granted.
3. Upon receipt of written notification of entry of the relevant order, the undersigned advised Mr. Bennett as to time limitations applicable to filing an appeal in the Court of Appeals and advised Mr. Bennett of the terms under which the undersigned would agree to represent Mr. Bennett on appeal.
4. Mr. Bennett declined to retain the undersigned to represent his interests on appeal and instead elected to proceed pro se.
5. Accordingly, the undersigned has not been retained for purposes of representing Mr. Bennett's interests on appeal in this matter and, further, has had no participation in the preparation or filing of documents relating to this appeal.
6. Appellate, Mr. Bennett, agrees with the facts set forth above and consents to the undersigned's motion to withdraw as counsel of record.

Wherefore, having fully stated the basis for this motion, the undersigned counsel respectfully request an Order from the Court which allows her to withdraw as counsel of record for Ortagus Bennett in the above entitled matter.

I So Move

/s/Adrianne L. Turner
Adrianne L. Turner, Esq
PO Box 210638
Columbia, SC 29221
aturner@turnerlawsc.com
Phone: 803.467.8687

I consent

Ortagus Bennett

RECEIVED
Feb 08 2022
SC Court of Appeals

TURNER LAW, LLC
PO Box 210638, Columbia, SC 29221
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Fax: 803-271-0451
aturner@turnerlawsc.com

February 8, 2022

V. Claire Allen
Chief Deputy Clerk
South Carolina Court of Appeals

In re: Ortagus Bennett v. Greenville County Detention Center Appellate Case No. 2021-000903

Dear Madame Chief Deputy Clerk,

Please find attached a Consent Motion to Withdraw as Counsel of Record in the above entitled appeal. By inclusion on this email, I am informing other counsel of record of this correspondence and motion.

Please feel free to contact me directly should you require any additional information concerning this matter.

Sincerely,

/s/ Adrianne L. Turner, Esq
Adrianne L Turner, Esq.

EXHIBIT
D
PENGAD 800-631-6989

The South Carolina Court of Appeals

Ortagus Bennett, Appellant,

v.

Greenville County Detention Center, Respondent.

Appellate Case No. 2021-000903

The Honorable R. Lawton McIntosh
Greenville County
Trial Court Case No. 2020CP2302001

ORDER

Appellant's counsel has filed a motion to be relieved as counsel. The Appellant consented to the motion. The motion is Granted. Adrianne LaVonne Turner is relieved as counsel for Ortagus Bennett. Please be advised that this appeal will be held in abeyance for thirty days to allow Appellant time to procure counsel. New counsel shall file a notice of appearance with this Court within thirty (30) days or this Court will presume Appellant is proceeding pro se.

FOR THE COURT

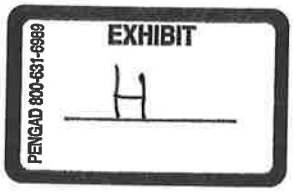
BY V Claire Allen
CLERK

Columbia, South Carolina

FILED
Mar 10 2022

cc:
Ortagus Bennett
P. Christopher Smith, Jr., Esquire

James P. Walsh, Esquire
Adrianne LaVonne Turner, Esquire



From: Ortagus Bennett
To: Court Of Appeals Filings
Subject: Case 2021000903
Date: Wednesday, July 27, 2022 1:39:03 PM
Attachments: Continuance Request 2021000903.docx

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Please note that I have attached a letter to request a continuance and the notice that will be sent to the opposing party.

Thanks,
Ortagus

RECEIVED
Jul 27 2022
SC Court of Appeals

RE: Ortagus Bennett v. Greenville County Detention Center

Appellate Case: 2021-000903

To Whom it May Concern,

I would like to provide notice and request for a time extension to complete Rule 208 and Rule 209.

All parties have been notified via US mail to the following:

James P. Walsh
PO Box 6728
Greenville SC 29606

EXHIBIT
E
PENGAD 800-631-6989

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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May 05, 2022

Ortagus Bennett
504 Piedmont Golf Course Rd
Piedmont SC 29673

Re: Ortagus Bennett v. Greenville County Detention Center
Appellate Case No. 2021-000903

Dear Mr. Bennett:

The Court issued an order on March 13, 2022 requiring a notice of appearance to be filed or this Court would presume the Appellant is proceeding pro se. The Court did not receive a response, therefore the Court will consider you to be proceeding as pro se.

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within fifteen (15) days of the date of this letter or your appeal will be dismissed.:

- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.
- The notice of appeal fails to include a statement of when you received written notice of entry of the order or judgment from which this appeal is taken.
- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

- Your notice of appeal is not correctly formatted. You must submit a notice of appeal which contains the name of the court, judge and county from which the appeal is taken, the docket number of the case in the lower court, the date of the order or judgment, the name of the party taking the appeal, and the names, mailing addresses, and telephone numbers of all attorneys of record as stated by Rule 203(e) of the South Carolina Appellate Court Rules (SCACR). Your amended notice of appeal shall not contain any arguments

Very truly yours,

V Claire Allen

CLERK

cc: P. Christopher Smith, Jr., Esquire
James P. Walsh, Esquire

EXHIBIT
F
PENGAD 800-631-6989

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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June 22, 2022

Ortagus Bennett
504 Piedmont Golf Course Rd
Piedmont SC 29673

Re: Ortagus Bennett v. Greenville County Detention Center
Appellate Case No. 2021-000903

Dear Mr. Bennett:

Our records reflect that the time for ordering the transcript has expired. Within ten days of the date of this letter, you must file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten days of the date of this letter.

Very truly yours,

V Claire Allen

CLERK

cc: P. Christopher Smith, Jr., Esquire
James P. Walsh, Esquire

EXHIBIT
G
PENGAD 800-631-6989

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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July 06, 2022

Ortagus Bennett
504 Piedmont Golf Course Rd
Piedmont SC 29673

Re: Ortagus Bennett v. Greenville County Detention Center
Appellate Case No. 2021-000903

Dear Mr. Bennett:

The Court has received your letter dated July 1, 2022 stating that there is no transcript to be ordered. Therefore, the appellant's initial brief and designation of matter will be due thirty (30) days from the date of this letter.

Very truly yours,

Catherine Flanagan, deputy

CLERK

cc: P. Christopher Smith, Jr., Esquire
James P. Walsh, Esquire

EXHIBIT
I
PENGAD 800-631-6989

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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July 29, 2022

Ortagus Bennett
504 Piedmont Golf Course Rd
Piedmont SC 29673

Re: Ortagus Bennett v. Greenville County Detention Center
Appellate Case No. 2021-000903

Dear Mr. Bennett:

Upon reviewing your Motion for an Extension of Time, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and each deficiency must be corrected within ten (10) days of the date of this letter or your motion will not be considered:

- The accompanying proof of service is not in compliance with the SCACR. Specifically, your Motion for an Extension of Time was not served on all counsel of record for the Respondent. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- The required filing fee has not been submitted. The correct filing fee is $50.00.

Very truly yours,

V Claire Allen

CLERK

cc: P. Christopher Smith, Jr., Esquire
James P. Walsh, Esquire

RECEIVED
Aug 18 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Judge

Greenville County

Trial Court Case No.

2020CP2302001

Appellate Case No. 2021-000903

Ortagus Bennett,

Appellant,

v.

Greenville County Detention Center, Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is employed by the attorneys for Respondent and that she has served the pro se Appellant with a true and accurate copy of **Respondent's Motion to Dismiss** by depositing a copy of the aforementioned document in the United States mail, First Class, in an envelope with due and proper postage affixed thereto and addressed as shown below this 18th day of **August, 2022**:

Ortagus Bennett
504 Piedmont Golf Course Road
Piedmont, SC 29673

Sandra K. Thompson
Paralegal to James P. Walsh (15180) and
P. Christopher Smith, Jr. (74086)
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ATTORNEYS FOR RESPONDENT

Greenville, South Carolina

RECEIVED
Aug 18 2022
SC Court of Appeals

CWC

CLARKSON | WALSH | COULTER
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August 18, 2022

Via E-Mail

Jenny Abbott Kitchings, Clerk
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: Ortagus Bennett vs. Greenville County Detention Center
Appellate Case No.: 2021-000903

Dear Ms. Kitchings:

Please find attached Respondent's Motion to Dismiss with exhibits for filing in the above-referenced matter, along with our Certificate of Service for same. By copy of this letter, Mr. Bennett is being served with same.

Our firm check number 82215 in the amount of $50.00 in payment of the filing fee was mailed today via U.S. Mail.

As always, we appreciate your assistance in this matter. Should you have any questions, please do not hesitate to contact us.

Yours very truly,

Clarkson, Walsh & Coulter, P.A.

Sandra K. Thompson
Paralegal to James P. Walsh and P. Christopher Smith, Jr.

/skt
Enclosures
cc: (via U.S. Mail)
Ortagus Bennett
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Piedmont, SC 29673