

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Yusuf Abdur-Rahman, Frances C. Presley,
Jacquelyn M. Blanding, and Gaines M.
Presley,

Plaintiffs,

v.

Richland Memorial Hospital,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2017CP4000445

ORDER

RECEIVED

Sep 26 2022

SC Court of Appeals

This matter comes before the Court upon "Ex Parte Motion" filed by Plaintiff Abdur-Rahman on April 25, 2022. In his motion, Plaintiff Abdur-Rahman requests that this Court reconsider its decision to dismiss this case and reopen the matter for litigation. For the reasons set forth below, the motion is DENIED.

1. **The motion is not timely.** The Summons and Complaint in this action were filed on January 25, 2017, concerning an incident which allegedly occurred on or before December 19, 2014. Because Plaintiff Abdur-Rahman failed to respond to correspondence from the Clerk of Court, the case was dismissed on April 9, 2018. This motion was not filed until April 25, 2022, more than four years after the dismissal, which is unreasonable. Therefore, dismissal was proper pursuant to Rule 41, SCRPC.

2. **It appears that the Summons and Complaint were never served.** Despite this action pending for more than fourteen months before its dismissal, it appears that the Summons and Complaint were never served on Defendant. Pleadings must be served within the statute of limitations or, in certain circumstances, within one hundred twenty days of their filing. See Rule

3(a), SCRPC. If the pleadings are never served, this Court never acquires personal jurisdiction over Defendant. Therefore, dismissal was proper pursuant to Rule 12(b)(2), SCRPC.

3. **No proof of service was ever filed with the Court.** Once the pleadings are served, “Proof of service shall be filed within ten (10) days after the service of the summons and complaint.” Rule 5(d), SCRPC. Irrespective of whether the pleadings were actually served on Defendant, Plaintiff failed to meet this requirement. Therefore, dismissal was proper pursuant to Rule 5(d), SCRPC.

4. **The Complaint does not contain sufficient allegations.** Any claim for relief must set forth “a short and plain statement of the grounds including facts and statutes upon which the court’s jurisdiction depends ... [and] a short and plain statement of the facts showing that the pleader is entitled to relief...” Rule 8(a), SCRPC. Plaintiffs’ Complaint does not comply with this rule; therefore, dismissal was proper pursuant to Rule 12(b)(6), SCRPC.

5. **No expert affidavit was filed.** Plaintiff Abdur-Rahman has presented this action as a medical malpractice claim. “... [I]n an action for damages alleging professional negligence against ... any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina ... the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” S.C. Code Ann. §15-36-100 (2005). The Complaint in this action does not include any such affidavit; therefore, dismissal was proper pursuant to Rule 12(b)(6), SCRPC.

6. **Plaintiff Abdur-Rahman cannot sue on behalf of the other plaintiffs.** Each document filed in this case contains the signature of only one party – Plaintiff Abdur-Rahman. No

other alleged plaintiff has participated in this case in any way. Allowing Plaintiff Abdur-Rahman to litigate this claim on behalf of any other party would amount to the Court encouraging the unauthorized practice of law, which violates S.C. Code §40-5-310 (2009). Therefore, dismissal of this claim was proper.

IT IS, THEREFORE, ORDERED that Plaintiff's "Ex Parte Motion" be DENIED.

AND IT IS SO ORDERED.

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Richland Common Pleas

Case Caption: Yusuf Rahman , plaintiff, et al vs Richland Memorial Hospital

Case Number: 2017CP4000445

Type: Order/Other

IT IS SO ORDERED.

Jocelyn Newman, Chief Judge for Administrative
Purposes, Court of Common Pleas, 5th Judicial
Circuit

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