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THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

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MAY 03 2013
SC Court of Appeals

APPELLANT CASE NO.: 2012-212832

Ann P. Adams, as Personal Representative of the
Estate of Jacob E. Adams, DeceasedAppellant,

v.

Amisub of South Carolina, Inc., d/b/a Piedmont
Medical Center and d/b/a Piedmont Healthcare System;

Staci L. Versen-Rampey, NP, Individually and as Agent,
Servant, Employee of South Carolina Emergency Physicians,
LLC, and as Agent, Servant, or Employee of Amisub of South
Carolina, Inc., d/b/a Piedmont Healthcare System;

Jason Price, Radiologic Technologist, Individually and as
Agent, Servant, or Employee of Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare
System; and

James E. Reinhardt, Jr., M.D., Individually and as Agent, Servant
Or Employee of Rock Hill Radiology Associates, P.A. and as Agent,
Servant or Employee of Amisub of South Carolina, Inc., d/b/a
Piedmont Medical Center and d/b/a Piedmont Healthcare System,
Rock Hill Radiology Associates, P.A., South Carolina Emergency
Physicians, LLC,Respondents.

**FINAL BRIEF OF RESPONDENTS VERSEN-RAMPEY AND SOUTH CAROLINA
EMERGENCY PHYSICIANS**

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N. Heyward Clarkson, III, (S.C. Bar No.: 1261)

Amy M. Snyder (S.C. Bar No.: 07968)

Clarkson, Walsh, Terrell & Coulter, P.A.

P.O. Box 6728

Greenville, SC 29606

(864) 232-4400 Phone

(864) 235-4399 Facsimile

asnyder@clarksonwalsh.com email

**ATTORNEYS FOR RESPONDENTS VERSEN-
RAMPEY AND SC EMERGENCY
PHYSICIANS, LLC**

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL JUDGE CORRECTLY CONCLUDE THAT THE NOTICE OF INTENT WAS NOT PROPERLY FILED BEFORE THE EXPIRATION OF THE STATUTE OF LIMITATIONS?
2. IS THE APPELLANT'S CLAIM TIME BARRED AS TO THE RESPONDENTS SC EMERGENCY PHYSICIANS AND VERSEN-RAMPEY?

STATEMENT OF THE CASE

On October 20, 2011, Appellant Ann P. Adams, as personal representative of the estate of her husband, Jacob E. Adams, filed a Notice of Intent to Sue several of her deceased husband's health care providers for medical malpractice. (R. pp. 25-27) Appellant's claim arises from the treatment the decedent received on October 20, 2008. (R. p. 31) Appellant did not serve the Respondent SC Emergency Physicians and Respondent Staci L. Versen-Rampey, NP, individually and as Agent, Servant, or Employee of South Carolina Emergency Physicians LLC and as Agent Servant or Employee of Amisub of South Carolina, Inc. d/b/a Piedmont Healthcare System ("Versen-Rampey") with the original Notice of Intent to Sue.

The original Notice of Intent to Sue did not comply with S.C.Code Ann. §15-79-125 in that it did not include the required affidavits of a medical expert. (R. pp. 25-26) On December 1, 2011, subsequent to the expiration of the three year statute of limitations, the Appellant filed an Amended Notice of Intent including the affidavits of experts and also adding new parties. (R. pp. 40-87). On that date, the Appellant also filed a Summons and Complaint naming Respondents SC Emergency Physicians and Versen-

Rampey as Defendants.¹(R. pp. 45-53) Appellant served Respondent SC Emergency Physicians with the Amended Notice of Intent to Sue on January 25, 2012. (R. pp. 216-217) Appellant served Respondent Versen-Rampey with the Amended Notice of Intent to Sue on February 10, 2012 (R. p. 218).

On February 16, 2012 Respondents SC Emergency Physicians and Versen-Rampey, filed a motion to dismiss the Appellant's Notice of Intent on the basis that the expert affidavits were not contemporaneously filed with the original Notice of Intent as required by S.C.Code Ann. §15-79-125 and the subsequent Amended Notice of Intent was filed after the statute of limitations had expired. (R. pp. 98-100) All Respondents filed similar motions on similar grounds. These motions were heard by the Hon. John Hayes on June 27, 2012, and an order was entered dismissing the Appellant's Notice of Intent as to Respondent SC Emergency Physicians and Respondent Staci L. Versen-Rampey, NP on August 13, 2012.² (R. pp. 13-21) The Appellant has appealed this order.

STANDARD OF REVIEW

In reviewing a motion to dismiss, this Court applies the same standard of review as the trial court. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint. *Id.* "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the

¹ Although the Appellant filed a Complaint as an exhibit to her original Notice of Intent filed October 20, 2011, she did not file the Summons and Complaint until December 1, 2011. (R. pp. 25-27)

² Appellant has also appealed the order of the court entered July 31, 2012 dismissing the Respondents Reinhardt and Rock Hill Radiology Associates. This order did not address claims as to the Respondent Versen-Rampey and Respondent SC Emergency Physicians and thus will not be addressed by these Respondents.

plaintiff, would entitle the plaintiff to relief on any theory,” dismissal is improper. Id. “Questions of law may be decided with no particular deference to the trial court.” Wiegand v. U.S. Auto. Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011). Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012).

An issue regarding statutory interpretation is a question of law. S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010). “When reviewing an action at law, on appeal of a case tried without a jury, the appellate court's jurisdiction is limited to correction of errors of law.” Epworth Children's Home v. Beasley, 365 S.C. 157, 164, 616 S.E.2d 710, 714 (2005).

ARGUMENT

I. THE COURT CORRECTLY HELD THAT THE APPELLANT'S NOTICE OF INTENT TO SUE WAS NOT PROPERLY FILED IN ACCORDANCE WITH SOUTH CAROLINA CODE ANN. SECTION 15-79-125 PRIOR TO THE EXPIRATION OF THE STATUTE OF LIMITATIONS.

Appellant correctly states that this appeal is governed by this court's opinion issued in the case of Ranucci v. Crain, 397 S.C. 168, 723 S.E. 2d 242 (Ct. App. 2012). The Ranucci case is also a medical malpractice case. In Ranucci, as in the instant case, the plaintiff filed a notice of intent to sue without the statutorily required affidavits. Ranucci later filed the affidavits after the expiration of the statute of limitations. Ranucci argued, as does this Appellant, that he was allowed 45 extra days to file the affidavits pursuant to S.C.Code Ann. §15-36-100.

S.C.Code Ann. §15-36-100 mandates affidavits be filed with a Summons and Complaint in professional negligence cases involving a wide range of professions. The

Court of Appeals held that S.C.Code Ann. §15-79-125 is the controlling statute requiring Ranucci to file his affidavits with his Notice of Intent to File Suit.

As noted in the Ranucci opinion, the affidavit requirement is a matter of statutory interpretation. “The cardinal rule of statutory interpretation is to determine the intent of the legislature.” Bass v. Isochem, 365 S.C. 454, 469, 617 S.E.2d 369, 377 (Ct.App.2005); see also Gordon v. Phillips Utils., Inc., 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005) (“The primary purpose in construing a statute is to ascertain legislative intent.”). Courts should ascertain the legislature’s intent “primarily from the plain language of the statute.” Stephen v. Avins Constr. Co., 324 S.C. 334, 339, 478 S.E.2d 74, 77 (Ct.App.1996). We must read the language “in a sense that harmonizes with its subject matter and accords with its general purpose.” Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

However, when two statutes conflict, a specific statute prevails over a more general statute. Spectre, LLC v. S.C. Dep’t of Health & Env’tl. Control, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010). Ranucci v. Crain, 397 S.C. 168, 171-172, 723 S.E.2d 242, 244 (Ct. App. 2012)

While there are two statutes at issue in this appeal, they are not conflicting. Chapter 79 of Title 15 of the South Carolina Code of Laws sets forth the procedures required to bring an action for medical malpractice. S.C.Code Ann. §15-79-125, within that chapter, mandates that a Notice of Intent to File Suit with Affidavits (“Notice of Intent”) as a prerequisite for filing a medical malpractice action. This section states 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.

S.C.Code Ann. §15-79-125(A) (1976, as amended)

S.C.Code Ann. §15-36-100 is part of chapter 36 Title 15 which governs Frivolous Proceedings. This legislation requires a plaintiff bringing a professional negligence claim to file an affidavit from an expert establishing a breach of the applicable standard of care with his Summons and Complaint. It applies to several classes of professionals enumerated therein, including medical professionals. S.C. Code Ann. §15-36-100 does not require a Notice of Intent to be filed, but requires affidavits to be filed with the Summons and Complaint and governs the content of affidavits required to be filed with the Summons and Complaint. South Carolina Code Ann. §15-36-100 states as follows:

Complaint in actions for damages alleging professional negligence; contemporaneous affidavit of expert specifying negligent act or omission.

(B) Except as provided in §15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or 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 and listed in subsection (G), 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.

(C)(1) The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. The filing of a motion to dismiss pursuant to this section, shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(2) The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.

S.C.Code Ann. §15-36-100 (1976, as amended)

Appellant argues that pursuant to S.C.Code Ann. §15-36-100 she is entitled to a 45-day grace period to file her affidavits in conjunction with her Notice of Intent. While S.C.Code Ann. §15-36-100 allows a 45 day grace period for Summons and Complaint affidavits, there is no similar grace period specified for Notice of Intent affidavits required by §15-79-125(A). Appellant argues that since §15-79-125(A) references the affidavit content requirements set forth in §15-36-100, the legislature has adopted by implication the 45 day grace period for Notice of Intent affidavits. This exact argument was rejected by the Ranucci court:

The affidavit requirements invoked by §15-79-125 govern only authorship and content. They do not permit a potential plaintiff to file her expert witness's affidavit after she files her Notice of Intent to File Suit.

Ranucci v. Crain, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct. App. 2012)

Therefore, pursuant to Ranucci the Appellant's Notice of Intent to File suit does not comply with the legislature's requirements set forth in §15-79-125(A) since there were no affidavits contemporaneously filed. The trial judge correctly dismissed Appellant's claims in accordance with the Ranucci opinion.

II. THE APPELLANTS COMPLAINT IS BARRED BY THE STATUTE OF LIMITATIONS.

The statute of limitations in a medical malpractice action is three years. S.C.Code Ann. §15-3-545(A) (2005). The decedent was treated by the Respondent Versen-Rampey on October 20, 2008, and died on October 28, 2008. Appellant never served Respondents SC Emergency Physicians or Versen-Rampey with the original Notice of Intent filed October 20, 2011. Appellant did not file her Summons and Complaint until December 1, 2011. Appellant did not serve Respondent SC Emergency Physicians with the amended Notice of Intent and Summons and Complaint until January 25, 2012 and did not serve Respondent Versen-Rampey with the Amended Notice of Intent and Summons and Complaint until February 10, 2012.

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. S.C. Code Ann. §15-79-125. In this instance the Notice of Intent to File suit did not comply with §15-79-125 for the reasons set forth supra, nor was it served on either Respondent SC Emergency Physicians or Versen-Rampey before the expiration of the statute of limitations.

South Carolina Code Ann. §15-36-100, which is inapplicable to the case at bar for the reasons discussed supra, provides a grace period for filing affidavits after suit is filed but does not “toll” the expiration of the statute of limitations since it is a post commencement grace period. As stated by Judge Few in his concurring opinion in Ranucci,

To the majority's analysis, I would add that §15-36-100 does not ever toll the statute of limitations. The forty-five day extension in the section comes into play only after a summons and complaint have been filed and served. § 15-36-100(C)(1) (“In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit.” (emphasis added)). Therefore, it is never necessary under that section to toll the statute. Moreover, §15-36-100(D) specifically provides “[t]his section does not extend an applicable period of limitation.”

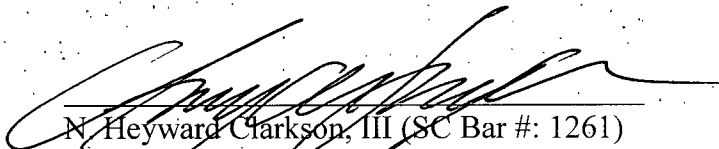
Ranucci v. Crain, 397 S.C. 168, 180, 723 S.E.2d 242, 248 (Ct. App. 2012)

Thus, Appellant has filed a Notice of Intent that is not compliant with S.C.Code Ann. §15-79-125 and is insufficient to toll the statute of limitations. Even if, as Appellant argues, she is entitled to a 45 day grace period to file affidavits pursuant to S.C.Code Ann. §15-36-100, this statute does not provide for any tolling of the statute of limitations. Appellant's suit is untimely filed and was properly dismissed by the trial court.

CONCLUSION

For the reasons set forth herein, Respondent SC Emergency Physicians and Respondent Versen-Rampey requests the Order of the lower court be upheld.

Clarkson, Walsh, Terrell & Coulter, P.A.



N. Heyward Clarkson, III (SC Bar #: 1261)

Amy M. Snyder (SC Bar #: 7968)

P.O. Box 6728

1164 Woodruff Road (29607)

(864) 232-4400 Phone

(864) 235-4399 Facsimile

hclarkson@clarksonwalsh.com email

asnyder@clarksonwalsh.com email

ATTORNEYS FOR RESPONDENTS

S.C. EMERGENCY PHYSICIANS AND

VERSEN-RAMPEY

Greenville, SC

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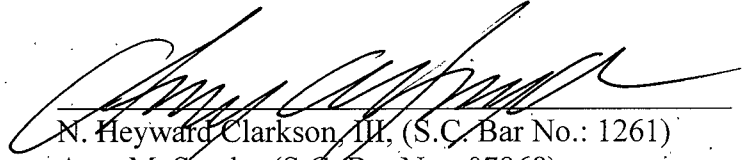
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Physicians, LLC,Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondents Versen-Rampey and South Carolina Emergency Physicians is in compliance with Rule 211(b) SCACR.



N. Heyward Clarkson III, (S.C. Bar No.: 1261)

Amy M. Snyder (S.C. Bar No.: 07968)

Clarkson, Walsh, Terrell & Coulter, P.A.

P.O. Box 6728

Greenville, SC 29606

(864) 232-4400 Phone

(864) 235-4399 Facsimile

asnyder@clarksonwalsh.com email

**ATTORNEYS FOR RESPONDENTS VERSEN-
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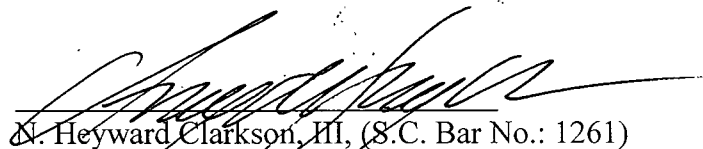
SC Court of Appeals

I certify that I have served a copy of the **Final Brief of Respondents SC Emergency Physicians and Versen-Rampey** for upon all counsel of record by depositing a copy of the same in the United States mail, First Class, in an envelope with due and proper postage affixed thereto, addressed as shown below this 2 day of **May, 2013**:

James W. Boyd, Esquire
P.O. Box 36425
Rock Hill, NC 29732

George C. Beighley, Esquire
1900 Barnwell Street
Columbia, SC 29201

William U. Gunn, Esquire
P. O. Box 1897
Spartanburg, South Carolina 29304



N. Heyward Clarkson, III, (S.C. Bar No.: 1261)

Amy M. Snyder (S.C. Bar No.: 07968)

Clarkson, Walsh, Terrell & Coulter, P.A.

P.O. Box 6728

Greenville, SC 29606

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