

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Alicia Ruffin,

Plaintiff,

v.

Dr. David Mitchell and Carolina Orthopaedic  
& Neurosurgical Associates,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2022-CP-23-05634

**RECEIVED**

**MAR 17 2023**

**SC Court of Appeals**

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS  
WITH PREJUDICE**

This matter came before the Court on February 17, 2023, upon Defendants' Motion to Dismiss the Complaint pursuant to Rules 12(b)(4), 12(b)(5), and 12(b)(6) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. §§ 15-36-100, 15-79-125, 15-3-530, 15-3-545, and 15-3-550. Having considered the Motion, the Memorandum in Support of the Motion, the pleadings, the law, and the arguments of counsel, the Court hereby grants Defendants' Motion to Dismiss the Complaint.

***Procedural & Factual Background***

Plaintiff filed a Summons and Complaint in Spartanburg County on July 25, 2022. The Complaint alleges Defendants made defamatory remarks, failed to document properly, and, during an examination, assaulted the Plaintiff. More specifically, Plaintiff alleges that on July 26, 2019, Dr. Mitchell documented in Plaintiff's medical records, "I asked her to stand up and her husband helped her and just touching her clothes caused her to have excruciating pain symptomatology and yelling and screaming saying she is very disappointed in me. Her husband became very abusive and also complained, raising his voice...I certainly apologized that I was sorry that she is having

so much pain, but I do not feel like we can maintain a doctor-patient relationship with the animosity and confrontational attitude they have portrayed today. At this point in time, I would like to have her released from our practice and if she has any emergencies for the next 3 days, she can come back but otherwise, she is discharged from this practice secondary to failure of the doctor-patient relationship.” Plaintiff claims the above-quoted language that was allegedly entered into her medical chart by Defendants was defamatory and intended to harm Plaintiff by giving the appearance that Plaintiff and her husband can be abusive, thus having a negative impact on her future medical care.

Counsel for Defendants timely filed a Motion to Dismiss the Complaint on August 25, 2022, pursuant to Rules 12(b)(4), 12(b)(5), and 12(b)(6) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. §§ 15-36-100, 15-79-125, 15-3-530, 15-3-545, and 15-3-550. Defendants argument in their Motion to Dismiss for why this action should be dismissed has multiple levels, including that this is a medical malpractice case and Plaintiff failed to comply with the statutory requirements for bringing a malpractice action in South Carolina, that Plaintiff failed to properly serve Defendants, that Plaintiff failed to plead the proper elements of a defamation claim and a civil assault claim, and that Plaintiff failed to comply with the statute of limitations. Plaintiff filed a Response to Defendants’ Motion to Dismiss on August 31, 2022, along with additional filings on September 21, 2022, and September 27, 2022. Plaintiff then filed a Motion to Transfer Venue from Spartanburg County to Greenville County on October 5, 2022, which was granted by The Honorable R. Keith Kelly on October 10, 2022.

A hearing on Defendants’ Motion to Dismiss was scheduled for February 17, 2023, at 10:30 a.m. at the Greenville County Courthouse. Plaintiff was notified of the hearing by the Court on November 10, 2022, and by letter from defense counsel on November 16, 2022, which was sent

via mail and e-mail. On the day of the hearing, the bailiff went into the hall of the courthouse and called Plaintiff's name, but she was not present.

For the reasons set forth below, the Court hereby grants Defendants' Motion to Dismiss the Complaint.

### ***Standard for Motion to Dismiss***

When considering a motion to dismiss pursuant to Rule 12(b)(6), "the trial court must base its ruling solely upon allegations set forth on the face of the complaint." *Doe v. Greenville Co. School Dist.*, 375 S.C. 63, 66, 651 S.E.2d 305, 307 (2007); *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 378, 635 S.E.2d 538 (2006). The Court must construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief. *Wilkinson v. East Cooper Community Hospital, Inc.*, 410 S.C. 163, 169-170, 763 S.E.2d 426, 430 (2014). Thus, this Court must look to the pleadings to determine whether a complaint sufficiently states a claim for which relief could be granted.

### ***Discussion***

When reviewing the Complaint in the light most favorable to the Plaintiff as the nonmoving party, Defendants' Motion to Dismiss the Complaint must be granted, and the Plaintiff's Complaint must be dismissed.

***I. Because the Plaintiff served insufficient process and was insufficient in the service of process, this action must be dismissed.***

The Plaintiff filed her Summons & Complaint on July 25, 2022. Accompanied with her filings from July 25, 2022, is a Certificate of Service indicating that certain "Orders" were served via first class mail and email on July 22, 2022. It is not entirely clear if those aforementioned Orders are referring to Plaintiff's Summons & Complaint, but assuming that to be the case based

on the information available, the Plaintiff failed to comply with Rule 4, SCRCPP, by serving an unfiled Summons & Complaint and by serving process herself as a party to the action. To this date, Defendants have not been properly served. Because Plaintiff failed to comply with Rule 4, SCRCPP, this action must be dismissed pursuant to Rules 12(b)(4) and 12(b)(5), SCRCPP.

**II. Because the Plaintiff failed to state a claim for defamation, this action must be dismissed.**

The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Holtzscheiter v. Thomson Newspaper, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998) (citing Restatement § 558) (emphasis added). The second major element of defamation is an unprivileged publication to a third party. *Id.* (citing *Riley v. Askin & Martin Co.*, 134 S.C. 198, 132 S.E. 584 (1926)). “No matter what a person may write, if it is not published, there is of course no liability, since no one is injured.” *Id.* (citing *Carver v. Morrow*, 213 S.C. 199, 202, 48 S.E.2d 814, 816 (1948)). The publication of defamatory matter is its communication, intentionally or by a negligent act, to a third party – someone other than the person defamed. *Id.* (citing *50 Am.Jur.2d Libel & Slander § 235* (1995)).

Plaintiff alleges that on July 26, 2019, Dr. Mitchell documented in her medical record, “I asked her to stand up and her husband helped her and just touching her clothes caused her to have excruciating pain symptomatology and yelling and screaming saying she is very disappointed in me. Her husband became very abusive and also complained, raising his voice...I certainly apologized that I was sorry that she is having so much pain, but I do not feel like we can maintain a doctor-patient relationship with the animosity and the confrontational attitude they have portrayed today. At this point in time, I would like to have her released from our practice and if

she has any emergencies for the next 3 days, she can come back but otherwise, she is discharged from this practice secondary to failure of the doctor-patient relationship.” Plaintiff alleges the quoted language from her medical records are defamatory remarks that will have a negative influential impact on her future medical care. Plaintiff did not state anywhere in her Complaint where the above-quoted language was published. She did, however, state in her Response to Defendants’ Motion to Dismiss that “[t]he statement was first published on December 10, 2019, when Commissioner T. Scott Beck used the exact terms that Dr. David Mitchell when charting the events of that date of the Plaintiff.”

Plaintiff attached Commissioner Beck’s “publication” as an exhibit to her Response to Defendants’ Motion to Dismiss. The “publication” she is referring to is a Decision and Order of the South Carolina Workers’ Compensation Commission, which was drafted by Commissioner Beck. In his report, Commissioner Beck summarized portions of Dr. Mitchell’s medical records from the July 26, 2019, visit with Plaintiff. Plaintiff claimed one other publication of the defamatory remarks in her September 27, 2022, filing with the Court. In that filing, she included a letter from Liberty Mutual Insurance Company from August 21, 2020, in which the above-referenced portion of Dr. Mitchell’s medical records are summarized pursuant to a Workers’ Compensation evaluation. Plaintiff does not claim any other publications of the allegedly defamatory remarks by Dr. Mitchell. Being that Commissioner Beck’s Decision and Order and the Liberty Mutual Insurance letter are the only publications, Plaintiff failed to meet the elements for bringing a defamation action because Dr. Mitchell did not publish those documents himself and because those documents are not “unprivileged publications.” Therefore, because Plaintiff failed to state a claim for defamation, this action must be dismissed.

***III. Because the Plaintiff’s action is time-barred by the statute of limitations, her action must be dismissed.***

Even if Plaintiff properly stated a claim for defamation, her action is time-barred by the statute of limitations. The statute of limitations for action for libel and slander is two years. S.C. Code Ann. § 15-3-550. The limitations period begins when the alleged defamatory statement is made, not when the plaintiff learns of the statement. *Harris v. Tietex International Ltd.*, 417 S.C. 533, 790 S.E.2d 411 (Ct. App. 2016) (citing *Jones v. City of Folly Beach*, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997), which affirmed the trial court's grant of summary judgment as to the plaintiff's defamation claim because South Carolina has not adopted the discovery rule in libel or slander cases). Plaintiff alleges Dr. Mitchell's allegedly defamatory remarks were documented in her medical record on July 26, 2019. Because the allegedly defamatory statement was made on July 26, 2019, and because Plaintiff did not file her Complaint until July 25, 2022, this action is time-barred by the statute of limitations and must be dismissed.

#### *Conclusion*

Defendant also made arguments for dismissal pursuant to the medical malpractice laws in South Carolina, but those arguments for dismissal are denied. However, for the reasons stated above, and even in the light most favorable to the Plaintiff as the nonmoving party, the Plaintiff's Complaint and action are hereby dismissed.

IT IS SO ORDERED.

\_\_\_\_\_, 2023  
Greenville, South Carolina

\_\_\_\_\_  
The Honorable G.D. Morgan, Jr.  
Resident Circuit Judge, 13<sup>th</sup> Circuit



Greenville Common Pleas

**Case Caption:** Alicia Ruffin vs. David Mitchell , defendant, et al  
**Case Number:** 2022CP2305634  
**Type:** Order/Dismissal

So Ordered

G.D. Morgan Jr.

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