

STATE OF SOUTH CAROLINA
COUNTY OF Greenville

IN THE COURT OF COMMON PLEAS

Alicia Ruffin,

Civil Action No. 2022-CP-23-05634

Plaintiff,

V.

CONTINUANCE

Dr. David Mitchell and Carolina Orthopaedic
& Neurosurgical Associates,

Defendants.

RECEIVED
Mar 23 2023
SC Court of Appeals

23 MAR 3 PM 1:42
Paul Wickensimer COC 601 SC

REQUEST FOR CONTINUANCE

The Plaintiff was unaware that this matter was before the Court of February 17, 2023, since the Defendants have failed to properly and effectively process serve the Plaintiff and their position on the cases should be dismissed. The Plaintiff would have been present, but the Plaintiff was awaiting a response to the November 17, 2022, request for Recusal of Judge G.D. Morgan Jr. In order to not violate the Canon 2 of the Code of Judicial Conduct , Rule 501, SCACR. The law requires a judge to “disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned....” The Plaintiff filed this request on November 17, 2022 in a timely manner before any motions should have been heard. Under Rule 6(d)

Procedural & Factual Background

The Plaintiff first served Dr. David Mitchell and Carolina Orthopaedic & Neurosurgical Associates with an Intent to Sue on January 21, 2020, by means of certified mail and email. Dr. David Mitchell and Carolina Orthopaedic & Neurosurgical failed to respond to the letter. On July 20, 2022, via email the Plaintiff received an email regarding, “MagMutual File 76584/76585 (Michael D Mitchell, MD/Sean Irving PA) RE: January 21, 2020, Letter” from Susannah Gleason of MagMutual

not Attorneys Appleby and Williford. Then on July 26, 2022 opposing counsel made themselves known to the Plaintiff, who was representing the interests of Dr. David Mitchell and Carolina Orthopaedic Neurosurgical Associates. The Plaintiff cannot file timely service if not informed as to who is representing the interests of the party.

The Plaintiff has made a clear and concise complaint of defamation caused by Dr. David Mitchell and allowed by Carolina Orthopaedic & Neurological Associates. The Plaintiff is aware that the statutes of limitations for medical malpractice for the injuries that were sustained by PA, William Sean Irving while under the supervision of Dr. David Mitchell has surpassed. But the statement made by Dr. David Mitchell and going by the face of the complaint is factual when it is supported by the audio/video exhibits that that Plaintiff submitted to the State of South Carolina County of Spartanburg. The Plaintiff submitted to Spartanburg County along with the Complaint that was also provided to Opposing the audio/video of the Office Visit dated July 26, 2019. The audio/video will demonstrate what accurately occurred and how this incident is in direct conflict with what Dr. David Mitchell charted. Additionally, what Dr. David Mitchell charted was with the malicious intent to invoke future harm to the Plaintiff's ability to receive proper and reasonable medical care from other healthcare providers.

Discussion

I. Was the Defendants intent to mislead the court that the Plaintiff was properly served or insufficient in the service of process, in order to have the case dismissed?

The Plaintiff filed Letter of Intent to sue on January 21, 2020, as under SC Code 15-79-125. Dr. David Mitchell and Carolina Orthopaedic & Neurosurgical Associates failed to respond. Then on July 20, 2022, via email the Plaintiff received an email response from Susannah Gleason of MagMutual not Opposing Counsel. On August 26, 2022, past the deadline for the Defendants to file a response, the Plaintiff received notification of Representation by Attorney David Williford and

Attorney Mitchell D. Appleby via email. The Defendants failure to notify the Plaintiff of representation is the cause of insufficient service of process.

II. Did the Plaintiff fail to state a claim for defamation?

The elements of Defamation include: (1) *a false and defamatory statement concerning another.*

(A) The Plaintiff has been vehement in stating what Dr. Mitchell has charted is indeed false. In addition to providing supporting eye-witness testimony to the event; the Plaintiff has submitted audio/video of the July 26, 2019, office visit which contradicts the malicious statements noted by Dr. David Mitchell. (2) *an unprivileged publication to a third party.* (B) What Dr. David Mitchell published was not centrally noted within the confines of my medical chart. EPIC is the electronic medical record system that that physicians and healthcare providers use to share patient medical records. Dr. David Mitchell's medical notes which included inflammatory remarks about the actions of the Plaintiff and her spouse were shared with SC Workers Compensation Commission and Social Security Administration. Both entities and others state and federal agencies received his malicious remarks. The Plaintiff has suffered substantial losses from SC Workers Compensation Commission and SC Social Security Administration. (3) *fault on the part of the publisher;* (C) Dr. David Mitchell had medically charted on July 26, 2019, that he was going to relinquish medical care of the Plaintiff because there was nothing further that he could do for the Plaintiff's current medical condition. From Nov. 2019 until July 26, 2020, Dr. David Mitchell failed to provide adequate diagnoses, care and treatment for the Plaintiff. Further, Dr. David Mitchell failed to provide an adequate treatment plan to suit the injuries sustained from P.A. William Sean Irving on April 12, 2019. Due to the prolonged prescribed use of a medical rigid neck brace, Dr. David Mitchell on the same day (April 12, 2019) charted, "we feel that her wearing the neck collar is making her neck weaker." Dr. David Mitchell and the team of Carolina Orthopedic & Neurosurgical Associates failed to provide an

accurate diagnosis and treatment plan for the Plaintiff. Further, the medical records of the Plaintiff were weaponized to discourage other medical providers from providing timely and necessary medical treatment for the Plaintiff forthwith. Leaving the Plaintiff with permanent nerve diseases irrevocable or unable to be properly compensated for.

Dr. David Mitchell noted in the Plaintiff's medical records, "I do not feel like we can maintain a doctor-patient relationship with the animosity and the confrontational attitude they have portrayed today." Dr. Mitchell had already determined that he could no longer care for Plaintiff; he provided two Referrals for the Plaintiff to be seen by a Chiropractor and Neurologist.

The Defendant states "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)), however, "Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation ...is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses. (citing 18 US Code § 1038 False Information and Hoaxes). The Plaintiff had already suffered physical injury and the weaponized medical notes charted by Dr. David Mitchell left the Plaintiff and her spouse, Mr. Michael Ruffin to unfairly succumb to additional harm and injury to their character. Dr. David Mitchell was contracted by Liberty Mutual, to provide beneficial medical treatments, to refrain from causing further harm or hurt to the Plaintiff and to provide exemplary professional care. Instead, Dr. David Mitchell submitted charting information that subverted the Plaintiff from receiving proper treatment. Additionally, this change in the Plaintiffs medical records influenced the decision(s) for the Plaintiff's workers compensation and social security disability benefits. And lastly the "The publication of defamatory matter is its communication intentionally or by a

negligent act, to a third party-some other than the per defamed.” Along with the accusation towards the Plaintiff; Dr. David Mitchell also accused the Plaintiff’s spouse, Michael Ruffin of being *abusive and confrontational* towards him. The Plaintiffs video demonstrates that these actions were never seen on the part of the Plaintiff and her spouse, Michael Ruffin. The additional parties that also witnessed the incident occurring during the office visit were Linda Salido, Case Manager for CareWorks and the Plaintiff’s 3 grandchildren, all of whom can testify to the nature of what transpired.

Dr. David Mitchell wrote a letter terminating care of the Plaintiff from Carolina Orthopedic & Neurosurgical Associates 18 days after July 26, 2019. In the letter, provided the invitation of allowing the Plaintiff to maintain temporary care with Carolina Orthopedic & Neurosurgical Associates in case of a medical emergency and to remain the Plaintiff’s Primary Treating Physician for 30 days from the date of the later. (August 13, 2019) Dr. Mitchell’s actions are a testimony that there could not have been any animosity or threatening disposition by the Plaintiff or her spouse, since he still wanted to provide temporary care after terminating care of the Plaintiff.

III. The Plaintiff was not time-barred by the statutes of limitations.

Opposing counsel stated, *“Even if Plaintiff properly stated a claim for defamation, her action is time-barred by the statutes of limitations.”* According to common law in the United States, defamation and slander are considered to be part of personal injury law, since the injury that is incurred is being caused to an individual’s character. A victim of defamation or slander may bring action in court against the guilty party.

1) Based on the above italicized statement; Opposing counsel recognized that the Plaintiff did properly state a claim for defamation. 2) Under SC. Code§15-3-530(4) Statute of Limitation for

Defamation under Personal injury is 3 years and for Written or oral contracts is also 3 years under S.C. Code §15-3-530 (1)

The Plaintiff first filed her complaint on July 25, 2022; Dr. David Mitchell first published the malicious statement on July 26, 2019. The injury must occur first and when that is first recognized only then the victim can file a claim. The first Personal injury statement occurred to the best of the victim's knowledge was when it was then published in the denial orders under SC Workers Compensation on December 10, 2020, by Commissioner T. Scott Beck and again on January 13, 2022, when the Plaintiff was then denied disability benefits. Dr. David Mitchell's medical notes created an unduly negative influence with any third-party agency or entity as it concerns the Plaintiff.

Conclusion

Under the Doctors Hippocratic Oath, is to first "*do no harm*". The Plaintiff suffer irreparable harm begs for the opportunity to allow oral argument to fairly litigate damages incurred by the Defendants and to all the viewing of the already submitted audio/video to provide an accurate testimony of what occurred on July 26, 2019. The Plaintiff begs for relief in the form of an amended statement or complete removal of the July 26, 2019, medical notes or record(s) and all associated statements that allude to the Plaintiff and her spouse being dismissed due to inflammatory or exaggerated events as a patient to be stricken from all medical records.

The Plaintiff begs for relief in the form of monetary compensation, the Plaintiff seeks \$1 Million from Dr. David Mitchell and \$1 Million from Carolina Orthopedic and Neurosurgical Associates be provided for non-economic losses as it impacted workers compensation and the incurred losses from denied disability benefits dated from December 10, 2020, to October 2022. Additional monetary compensation needs to be considered for the physical and mental pain and suffering from the negative remarks made towards the Plaintiff and her spouse, Michael Ruffin.

IT IS SO ORDERED.

Alicia M. Ruffin
Alicia M. Ruffin, *Pro Se*

March 3, 2023
Greenville, South Carolina

~~The Honorable G.D. Morgan, Jr.
Resident Circuit Judge, 13th Circuit.~~

~~_____, 2023~~

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2022-CP-230-5634

Alicia M Ruffin)
Plaintiff,)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.)

Dr David Mitchell and)
Carolina Ortho + Neuro Assoc. Defendant.)

23 MAR 9 PM 1:23
Paul Wickensimer COC GUL SC

Plaintiff's Attorney: <u>Alicia M Ruffin</u> , Bar No. _____ Address: <u>563 Duncan Station Dr</u> Phone: <u>(864) 814-8591</u> Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>Amy's Applebee & Williford</u> , Bar No. _____ Address: <u>15 9th Main St Suite 602 Grnvl, S.C. 29601</u> Phone: <u>(864) 884-9898</u> Fax _____ E-mail: _____ Other: _____
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information
Nature of Motion: Continuance/Recusal
Estimated Time Needed: 1 HR Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type
 Written motion attached
 Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.
Alicia M. Ruffin Signature of Attorney for Plaintiff / Defendant Date submitted 03/03, 2023

SECTION III: Motion Fee
 PAID - AMOUNT: \$ 25.00
 EXEMPT: (check reason) Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCPP)
 Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
 Other: Continuance / Recusal

JUDGE'S SECTION
 Motion Fee to be paid upon filing of the attached order.
 Other: _____ JUDGE CODE _____
Date: _____, 20____

CLERK'S VERIFICATION
Collected by: KM Date Filed: March 3, 2023
 MOTION FEE COLLECTED: \$ 25.00
 CONTESTED - AMOUNT DUE: \$ _____

Certificate of Electronic Notification

Recipients

David Williford - Notification transmitted on 03-07-2023 08:51:25 AM.

Mitchell Appleby - Notification transmitted on 03-07-2023 08:51:39 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

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A filing has been submitted to the court RE: 2022CP2305634

Official File Stamp: 03-07-2023 08:51:02 AM

Court: CIRCUIT COURT

Common Pleas

Greenville

Case Caption: Alicia Ruffin vs. David Mitchell , defendant, et al

Document(s) Submitted: Order/Electronic Form 4 Order/Electronic Form 4

Filed by or on behalf of: Grenville D. Morgan

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

David Lee Williford, II for David Mitchell et al

Mitchell D. Appleby for David Mitchell et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Alicia Ruffin for Alicia Ruffin

Alicia Ruffin for Alicia Ruffin

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<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$1.74
Total Postage and Fees	\$7.24

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03/14/2023

Sent To Atty Appleby & Atty Williford
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