STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Claudine Garver, Both Individually and as Personal Representative of the Estate of Jeremy Garver,	)	C/A No. 2019-CP-26-05302
Plaintiff,	)	**ORDER GRANTING DEFENDANT MCLEOD LORIS SEACOAST HOSPITAL'S MOTION FOR SUMMARY JUDGMENT**
Versus	)	
McLeod Loris Seacoast Hospital; McLeod Physician Associates, II; and Michael McCaffrey, M.D.	)	
Defendants.	)	

Defendant McLeod Loris Seacoast Hospital filed a Motion for Summary Judgement pursuant to Rule 56 of the South Carolina Rules of Civil procedure. A hearing was held via WebEx conferencing on January 3, 2023. After having closely reviewed memos, depositions, arguments of the parties, and applicable law, this Court hereby **grants** McLeod Loris Seacoast Hospital's Motion for Summary Judgment.

Standard of Review

Summary judgment is proper when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. City of Columbia v. ACLU, 323 S.C. 384, 475 S.E.2d 747 (1996); Rule 56 (c) SCRCP. The plain language of Rule 56 (c) SCRCP mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). A party cannot escape summary judgment on the mere hope that something may develop at trial or by remaining

silent and later claiming additional facts supporting the cause of action. Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977). Conclusory allegations or denials, without more, are insufficient to defeat a motion for summary judgment. Ross v. Communication Satellite Corp., 759 F. 2d. 355, 365 (4th Cir. 1985); see also Baber v. Hosp. Corp. of Am., 977 F. 2d 872, 874-75 (4th Cir. 1992) (holding that the nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment).

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. Etheredge v. Richland School Dist. One, 534 S.E.2d 275, 277 (S.C. 2000). In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party. Id. When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008).

The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Richardson v. The State Record Co., Inc., 499 S.E.2d 824-25 (S.C. Ct. App. 1998). With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility may be discharged by showing, that is, pointing out to the [trial] court that there is an absence of evidence to support the nonmoving party's case. Id. at 825. The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim. Id.; see Milligan v. Liberty Life Ins. Co., 443 S.E.2d 381, 382 (S.C. 1994) (noting that where record is devoid of evidence, moving party is entitled to summary judgment as a matter of law). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot

simply rest on mere allegations or denials contained in the pleadings. See Singleton, 659 S.E.2d at 203. It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine. Thompkins v. Festival Centre Group, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991).

Therefore, where the Plaintiff relies solely upon the pleadings, files no counter affidavits, and makes no factual showing in opposition to motion for summary judgment, the court is required to grant summary judgment, if under the facts presented by the Defendant, he is entitled to judgment as a matter of law. Garrett v. Reese, 262 S.C. 327, 204 S.E.2d 432 (1974).

Issues

The allegations of the Complaint include assertions the Codefendant neurologist, Michael McCaffrey, MD, mis-diagnosed a basilar aneurysm for approximately 22 months beginning treatment of the Decedent on December 29, 2015. [Defendant's Exhibit 1- McCaffrey Medical Records]. The Decedent presented through the McLeod Loris Seacoast Hospital Emergency Department on October 23, 2017. [Defendant's Exhibit 2- McLeod Seacoast Records]. It was through this ER visit when radiographic studies first diagnosed the brain tumor. [Id.]. Mr. Garver then succumbed to this unexpected finding on November 4, 2017. [Defendant's Exhibit 3- Grandstand Medical Records.]. At no time was Defendant Dr. McCaffrey an employee of this Defendant, McLeod Loris Seacoast Hospital. Rather he was employed by and through the properly named entity, McLeod Physician Associates, II, a separate 501(c)(3) corporation serving as a physician practice plan. [Affidavit, William S. Barnes, Jr., Esq.]

Plaintiff has only identified one medical expert witness, Neurologist Thomas Ward, M.D. [Defendant's Exhibit 4 - Plaintiff's Third Response to Defendants' Interrogatories]. Dr. Ward does not hold himself out as an expert in the standard of care for emergency medicine.

[Defendant's Exhibit 5 - Deposition of Thomas Ward p. 72: 6-9]. Dr. Ward testified that he will not opine at the trial of this case that the Defendant Hospital deviated from the standard of care.

> 2 Q. Well, then, in that regard let me make
> 3 sure that I'm clear for the record.
> 4 You will not come to trial in this case
> 5 and say that any of the staff at McLeod Seacoast
> 6 Hospital, including Dr. Larson, the ER doctor –
> 7 you wouldn't contend there were deviations from the
> 8 standard of care on October the 23rd; is that
> 9 correct?
> 10 A. I think that's what I would agree.
>
> [Id. at p.73: 4-10].

Dr. Ward additionally admitted he would not offer that the hospital proximately caused the death of the Decedent.

> 16 Q. Are you going to argue at the trial of
> 17 this case that McLeod Seacoast Hospital is
> 18 responsible for Mr. Garver's death?
> 19 A. I don't think I would come to that
> 20 conclusion.
>
> [Id. at p. 75: 16-20].

To rebut the position of failure to prove medical negligence, Plaintiff asserts the allegations against Defendant Seacoast pertain to a defective referral communication process that under our common tort law, are not guided by the requirements of S.C. Code Ann. Section 15-79-125 et seq., but rather nonmedical and/or administrative care. See Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).

Plaintiff argues the hospital failed to timely refer the decedent for follow-up care for the performance of an MRI. This argument, however, is misplaced as the Plaintiff was referred to MUSC for the MRI, received an MRI and the Plaintiff previously asserted claims against MUSC for medical negligence proximately causing the Plaintiff's death. See Claudine Garver, Both

Individually and as Personal Representative of the Estate of Jeremy Garver v. Medical University of South Carolina d/b/a MUSC, Court of Common Pleas, Charleston County, South Carolina C/A # 2019-CP-10-6565.

Plaintiff failed to meet her burden to assert allegations of medical negligence or negligent administrative care.

A medical malpractice plaintiff must prove, by a preponderance of the evidence:

(1) The presence of a doctor-patient relationship between the parties;
(2) Recognized and generally accepted standards, practices and procedures which are exercised by competent physicians in the same branch of medicine under similar circumstances;
(3) The medical or health professional's negligence, deviating from generally accepted standards, practices, and procedures;
(4) Such negligence being the proximate cause of the plaintiff's injury; and
(5) An injury to the plaintiff.

Jamison v. Hilton , 413 S.C. 133, 140-41, 775 S.E.2d 58, 62 (Ct. App. 2015) (quoting Brouwer v. Sisters of Charity Providence Hosps. , 409 S.C. 514, 521, 763 S.E.2d 200, 203 (2014).

Despite ample time for extensive discovery, the Court finds that the Plaintiff has presented no evidence, affidavits or expert witness testimony of any deviation from the applicable standard of care as to the Hospital or its employees. As reflected above, Plaintiff's only expert, Dr. Ward, testified specifically that he would offer no such testimony. Further, Dr. McCaffrey was not employed by McLeod Loris Seacoast Hospital so Plaintiff cannot impute liability to the hospital for the actions of Dr. McCaffrey. Plaintiff admits Dr. McCaffrey was not involved in the October 23, 2017 emergency room visit at issue.

Plaintiff has failed to set forth any expert testimony from an emergency medicine expert. Further, his only expert witness, who is a neurology expert, failed to proffer any testimony that McLeod Loris Seacoast Hospital deviated from the standard of care or was the cause of Plaintiff's death.

To the extent the Plaintiff relies on Dawkins for the proposition there was a failure on the part of the hospital to appropriately refer or administratively speak with MUSC concerning an MRI referral, this too fails. Plaintiff presents no testimony as to the professional standards required of the Hospital under these circumstances or how the alleged failure to timely refer the decedent to MUSC proximately caused the decedent's death. The MRI was performed at MUSC and Plaintiff has shown no causal relationship through any alleged. As noted, Plaintiff's sole expert, Dr. Ward, testified specifically he would not opine that the Hospital caused the decedent's demise.

THEREFORE, IT IS ORDERED there are no genuine issues of material fact concerning McLeod Loris Seacoast Hospital and judgment as a matter of law is appropriate pursuant to SCRCP 56(c). McLeod Loris Seacoast Hospital's Motion for Summary Judgment is hereby granted, ending this matter as to McLeod Loris Seacoast Hospital with prejudice.

IT IS SO ORDERED!

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The Honorable William H. Seals

January ___, 2023

Horry Common Pleas

Case Caption: Claudine Garver , plaintiff, et al VS McLeod Loris Seacoast Hospital , defendant, et al

Case Number: 2019CP2605302

Type: Order/Summary Judgment

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157