

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3202282

Tanya Bennett	Mykelvion Thurmond	Lexington County Health Services District Inc	Lexington Medical Center
PLAINTIFF(S)		DEFENDANT(S)	

RECEIVED
JUN 20 2013
SC Court of Appeals

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	2118	6/7/2013
	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on n/a, and a copy mailed first class or placed in the appropriate attorney's box on 7th day of June 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Edward L. Graham PO Box 550 Florence, SC 29503

Weldon R. Johnson PO Box 8448 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ORIGINAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Tanya Bennett, as next friend of)
Mykelvion Thurmond, a minor,) Civil Action No: 2011-CP-32-2282

Plaintiff,)
REBEKAH G. HIGG)
CLERK OF COURT)
LEXINGTON,)

v.)

Lexington County Health Services)
District, Inc. d/b/a Lexington Medical)
Center,)
Defendant.)

ORDER

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SC Court of Appeals

This matter came before the Court on March 11, 2013 upon the Motion for Summary Judgment filed by Defendant Lexington County Health Services District, Inc. d/b/a Lexington Medical Center ("Lexington Medical Center"). Present at the hearing were Edward Graham, Esquire, counsel for Plaintiff Tanya Bennett, as next friend of Mykelvion Thurmond, a minor ("Plaintiff"), and Weldon Johnson, Esquire, and Emily Brown, Esquire, counsel for Lexington Medical Center. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Lexington Medical Center's Motion for Summary Judgment is **GRANTED**.

FACTS

On July 23, 2001, Mykelvion Thurmond was born to Plaintiff Tanya Bennett at Lexington Medical Center, a governmental healthcare entity, and delivered by Dr. Scott Augustine, a physician employed by Lexington Medical Center. At delivery, Dr. Augustine stated to Plaintiff "[o]ops, I hurt his arm." Bennett Deposition, p. 41, lines 7-23. On August 21, 2001, Plaintiff called Lexington Medical Center in Swansea to obtain an orthopaedic referral for the injury to Mykelvion's arm. In October 2001, Dr. David Redmond, a physician at Midlands Orthopaedics, evaluated and tested Mykelvion's brachial plexus nerves. On December 5, 2001, a doctor at Midlands Orthopaedics advised Plaintiff that Mykelvion's "particular deficit was indicative of marginal recovery." On January 11, 2002, Plaintiff met with and authorized David Betts, an attorney in Columbia, South Carolina to receive Mykelvion's medical records. On January 25, 2006, McWhirter, Bellinger and Associates requested medical records from Dr. Augustine with Plaintiff's permission. On February 6, 2008, a doctor at Emory Orthopaedics

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Center noted “according to his mother at three months of age it sounds like [Mykelvion] had an EMG and the mother thought there would be no nerve regeneration at this time.” Plaintiff commenced this medical malpractice action on June 17, 2011. On September 13, 2011, the Summons and Complaint were served upon the Defendants.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Rule 56(c), SCRPC; *Pittman v. Grand Strand Entertainment, Inc.*, 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005). In determining whether any triable issue of fact exists, the evidence and inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *McNair v. Rainsford*, 330 S.C. 332, 341, 499 S.E.2d 488, 493 (Ct. App. 1998). “[I]n cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Carolina Management Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

DISCUSSION

The South Carolina Tort Claims Act (SCTCA), S.C. Code Ann. § 15-78-10 et seq., (Rev. 2005) is the exclusive remedy for any tort committed by an employee of a governmental entity. The SCTCA is applicable in this case because Lexington Medical Center is a governmental healthcare entity. Except as provided in S.C. Code Ann. § 15-3-40, a claim is barred under the SCTCA unless it is “commenced within two years after the date the loss was or should have been discovered.” S.C. Code Ann. § 15-78-110. S.C. Code Ann. § 15-3-40 provides a general exception to the two year statute of limitations for minors. If a person is under the age of eighteen at the time the cause of action accrued, then “the time of the disability is not a part of the time limited for the commencement of the action” S.C. Code Ann. § 15-3-40.

The tolling provision for minors in Section 15-3-40 is more specifically limited by S.C. Code Ann. § 15-3-545(D), which limits the period of tolling to seven years for medical malpractice actions involving minors. Section 15-3-545(D) “demonstrates that, while the legislature was concerned with increased exposure to claims created by the tolling statute, the legislature was not willing to completely abandon the protection given minors by the tolling statute.” *O’Tuel v. Villani*, 318 S.C. 24, 455 S.E.2d 698 (Ct. App. 1995), *overruled on other*

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grounds by I'On, L.L.C. v. Town of Mount Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000). The statute provides in part:

[I]f a person entitled to bring an action against a licensed health care provider . . . is under the age of majority at the date of the treatment, omission, or operation giving rise to the cause of action, the time period or periods limiting filing of the action are not tolled for a period of more than seven years on account of minority.

S.C. Code Ann. § 15-3-545(D).

Here, the date of Mykelvion's birth injury was July 23, 2001. Under Section 15-3-545, any claim by Mykelvion would be tolled for seven years after July 23, 2001. The two year statute of limitations began to run on July 23, 2008. Therefore, Plaintiff was required to bring the action by July 23, 2010. Plaintiff's action, filed June 17, 2011, was not timely.

Plaintiff argues her Complaint was timely filed because she did not discover the full extent or permanency of Mykelvion's injuries until several years after his birth. Plaintiff relies on the affidavit of Dr. Redmond, in which he states he would not be able to tell if the injury was permanent until Mykelvion was eighteen to twenty-four months old.

Under the discovery rule, the statute of limitations begins to run when a cause of action was discovered or reasonably ought to have been discovered by exercise of reasonable diligence. *See Id.* "The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." *Id.* (quoting *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 303, 378 S.E.2d 333, 334 (1981)). "The date on which discovery should have been made is an objective, not subjective, question." *Id.* (quoting *Joubert v. South Carolina Dept. of Social Services*, 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Ct. App. 2000)). Furthermore, "the fact that the injured party does not comprehend the full extent of his injuries is immaterial." *Knox v. Greenville Hospital System*, 362 S.C. 566, 608 S.E.2d 459 (Ct. App. 2005).

Plaintiff's Complaint is barred by the application of S.C. Code Ann. § 15-3-40 and S.C. Code Ann. § 15-3-545(D); therefore, Plaintiff's claim need not be addressed under the discovery rule. However, even if the discovery rule were to apply, this Court finds that there is sufficient evidence to establish that Plaintiff was on notice Mykelvion suffered an injury at birth during the first six months of his life.

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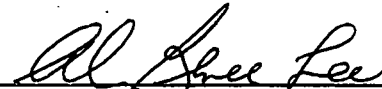
FILED

ORDER

For the reasons stated above, it is therefore **ORDERED** that Lexington Medical Center's 40
Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.

2013 MAY 15 AM 11:40
BETH A. CANNIGG
CLERK OF COURT
LEXINGTON, SC


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
May 13, 2013

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