

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Medical Malpractice

Honorable Doyet A. Early, III, Circuit Court Judge.

Case No.: 2011-CP-02-02726

The Estate of Anthony Bibbs,Appellant

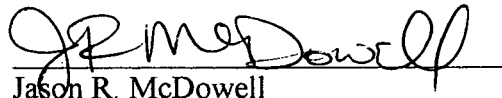
vs.

Aiken Regional Medical Centers, IncorporatedRespondent
Universal Health Services, IncorporatedRespondent
Universal Health Services FoundationRespondent
Stephen Platte, M.D.Respondent
Aiken Emergency Medicine PhysiciansRespondent

NOTICE OF APPEAL

The Estate of Anthony Bibbs, byway of personal representative, Irene Bibbs, through undersigned, appeals the Order issued by the Honorable Doyet A. Early, III, which was filed on April 23, 2012. Appellant, through counsel, received written notice of entry of this Order on April 24, 2012.

THE MCDOWELL FIRM, LLC



Jason R. McDowell
P.O. Box 455
Graniteville, SC 29829
(803)663-5253 Telephone
Attorney for Appellant

Other Counselors of Record:

James Nance, Esq.
Post Office Box 2881
Aiken, SC 29802
(803) 649-6200 Telephone
Attorney for: Stephen Platte, M.D., and

RECEIVED

APR 27 2012

SC Court of Appeals

Aiken Emergency Medicine Physicians

George C. Beighley, Esq.

Post Office Drawer 7788

Columbia, SC 29202

(803) 576-3703 Telephone

Attorney for: Aiken Regional Medical Centers, Incorporated;

Universal Health Services, Incorporated; and

Universal Health Services Foundation

April 26, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Medical Malpractice

Honorable Doyet A. Early, III, Circuit Court Judge

Case No.: 2011-CP-02-02726

The Estate of Anthony Bibbs, Appellant

vs.

Aiken Regional Medical Centers, Incorporated Respondent
Universal Health Services, Incorporated Respondent
Universal Health Services Foundation Respondent
Stephen Platte, M.D. Respondent
Aiken Emergency Medicine Physicians Respondent

CERTIFICATE OF SERVICE

I, Jason R. McDowell, Attorney for Petitioner, hereby certify that I placed in the United States Mail this 24th day of April, 2012, a copy of Notice of Appeal with final Order attached, with postage prepaid and the return address clearly shown on said envelop, to James Nance, Esquire, and George C. Beighley, Esquire, respectively, Respondents' attorney, at:

James Nance, Esq.
Post Office Box 2881
Aiken, SC 29802

George C. Beighley, Esq.
Post Office Drawer 7788
Columbia, SC 29202

RECEIVED
APR 27 2012
SC Court of Appeals

THE MCDOWELL FIRM, LLC
Jason R. McDowell
Jason R. McDowell
P.O. Box 455
Graniteville, SC 29829
(803)663-5253 Telephone
Attorney for Petitioner

April 26, 2012

THE McDOWELL FIRM, LLC

Post Office Box 455
Graniteville, South Carolina 29829
(803) 663-5253 Telephone
(803) 663-1001 Facsimile

April 26, 2012

The Honorable Jenny A. Kitchings
Clerk, Court of Appeals of South Carolina
Post Office Box 11629
Columbia, SC 29211

RE: THE ESTATE OF ANTHONY BIBBS, v. AIKEN REGIONAL MEDICAL CENTERS
INCORPORATED; UNIVERSAL HEALTH SERVICES, INCORPORATED;
UNIVERSAL HEALTH SERVICES FOUNDATION; STEPHEN PLATTE, M.D., and AIKEN
EMERGENCY MEDICINE PHYSICIANS
Action No.: 2011-CP-02-2726

VIA CERTIFIED U.S. MAIL


Re: The Estate of Anthony Bibbs vs. Aiken Regional Medical Centers, etal
Case No.: 2011-CP-02-02726
Aiken County, South Carolina

Dear Honorable Clerk:

For filing, attached please find a Notice of Appeal and appropriate Certificate of Service(s) and a copy of the Order in the above referenced case.

Thank you. Should you have any questions or need any additional information, please do not hesitate to contact me.

Yours truly,


Jason R. McDowell
Attorney for Appellant

cc: James Nance, Esq. - Defendant's attorney
George C. Beighley, Esq. - Defendant's attorney
Clerk of Court of Aiken County

RECEIVED
APR 27 2012
SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 The Estate of Anthony Bibbs,)
)
 Plaintiff,)
)
 v.)
)
 Aiken Regional Medical Centers,)
 Incorporated, Universal Health)
 Services, Incorporated, Universal)
 Health Services Foundation;)
 Stephen Platte, M.D. and Aiken)
 Emergency Medicine Physicians,)
)
 Defendants.)
)

RECEIVED
 APR 27 2012
 Civil Action No.: 2011-CP-02-2726
SC Court of Appeals

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

ORDER APR 23 2012 *JBO ash*

 C.C.C.P. & G. S., Aiken County, S.C. *Liz Godard*

 Deputy Clerk *Anita Knoepfle*

This matter is before me upon motion of Defendants Stephen Platte, M.D. and Aiken Emergency Medicine Physicians, LLC ("Defendants") to dismiss the Plaintiff's Complaint pursuant to the provisions of SCRCP 12(b) due to a lack of jurisdiction and failure to state a cause of action.

A hearing was held in this matter on April 9, 2012, at which time the following counsel of record were present: Plaintiff's attorney, Jason R. McDowell, Esquire, these Defendants' attorney, James D Nance, Esquire, and the attorney for the Co-Defendants, George C. Beighley, Esquire.

I have listened to the arguments of counsel and reviewed all documents relevant to, in support of, and in opposition to the Motion to Dismiss and find and conclude as follows:

S.C. Code §15-79-125 requires that a notice of intent to file suit be filed and served in all medical negligence actions. Section (C) of this statute requires that a mediation be held within 90 to 120 days from the date the Notice is served. If an impasse is reached, Section (E) of the

Done
4/21

statute requires that a Summons and Complaint be filed within 45 days of the date the impasse is declared or before the statute of limitations expires, whichever is later. In this case, an impasse was declared on October 4, 2011, a Summons and Complaint filed on December 5, 2011, and, for some reason, the Summons and Complaint was not served until February 26, 2012. In response to the Complaint, the Defendants first filed this motion and subsequently filed an Answer, which specifically reserves their rights pursuant to the motion.

The Defendants allege that the Complaint should be dismissed due to lack of personal and subject matter jurisdiction and failure to state a cause of action because S.C. Code §15-51-20 requires that a wrongful death and/or survival action be brought only by the Estate's personal representative. In the heading and first paragraph of the Complaint it indicates that "The Estate of Anthony Bibbs" is the initiator of the action. The Complaint does not refer to, or mention, a personal representative of the Estate of Anthony Bibbs.

The Plaintiff argues that SCRCF Rule 15(c) allows a Complaint to be amended as a matter of course within 30 days from the date an Answer is filed, and that because the Defendants filed an Answer, Plaintiff has 30 days from that date to file an Amended Complaint, which would be brought by the personal representative of the Estate.

In response, the Defendants argue that they specifically reserved their rights to the motion to dismiss in their Answer; therefore, any rights they may have pursuant to this motion are not waived. Defendants further argue that the provisions of Rule 15 would not apply because the action pertaining to an Estate may only be brought by the personal representative; therefore, the purported Complaint filed by the Plaintiff is null and void. In sum, since the action was not brought by the personal representative, as required by law, it is as if the Complaint was never filed and the plaintiff cannot amend a Complaint that does not exist.

DAE
H L

Having given careful consideration to this matter, I must rule in favor of the Defendants and dismiss the Plaintiff's Complaint.

It is crystal clear that S.C. Code §15-51-20 requires that the personal representative of an Estate is the exclusive person who can bring a wrongful death and/or survival action on behalf of an Estate. It is also crystal clear that the purported Complaint filed on behalf of the Estate was not done so by the personal representative. In fact, it was brought by "The Estate of Anthony Bibbs," which is a non-entity.

It is true that SCRCP 15 allows amendments to Complaints as a matter of course in certain situations, and that these amendments would relate back to the original pleading, but a Complaint that is brought by a person or entity that is not authorized to do so by law, or a non-entity, is void. It is as if it never existed. For these reasons, the provisions of Rule 15 would not apply in this situation.

What the result of the dismissal of the Complaint may be is outside the scope of the Court's consideration in this matter.

Based upon the foregoing, it is

ORDERED ADJUDGED AND DECREED that the Plaintiffs Complaint be dismissed without prejudice.

IT IS SO ORDERED this 19 day of April, 2012.



Doyet A. Early, III
Judge, First Judicial Circuit