

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-26-3859

Thomas Rickerson,)
)
Plaintiff,)

-vs-

ORDER OF DISMISSAL

John Karl, M.D. and)
Virginia Bell, CS, FSP,)
)
Defendants.)

FILED
HORRY COUNTY
13 MAY - 2 PM 4: 20
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter came before the Court on April 22, 2013 on Defendants' Motion to Dismiss pursuant to South Carolina Code Ann. § 15-79-125(C), seeking dismissal of the Plaintiff's Notice of Intent and preventing a Summons and Complaint from being filed in this matter. Present at the hearing were William Isaac Diggs, attorney for the Plaintiff, and Marian Williams Scalise, attorney for the Defendants. Based on the Court's review of the Defendants' Motion to Dismiss, Plaintiff's Return to Motion to Dismiss, exhibits presented at the hearing, S.C. Code Ann. §15-79-125(C), and the South Carolina ADR Rules as well as considering counsels' arguments during the hearing, this Court finds that dismissal with prejudice is an appropriate sanction for failing to mediate the case within 120 days as required by S.C. Code Ann. §15-79-125(C) and ADR Rules 4(c) and 5(f) and for failing to request an extension to mediate.

In 2005, as part of comprehensive tort reform, the South Carolina General Assembly enacted §15-79-125 which requires that a medical malpractice plaintiff must initially file a Notice of Intent to File Suit together with an affidavit of an expert witness. In the present case, Plaintiff filed his Notice of Intent on May 15, 2012, alleging that an antibiotic prescribed by the Defendants interacted with the Plaintiff's other medications allegedly resulting in hospitalization. Defendant Dr. John Karl was served on June 16, 2012, and Defendant Nurse Practitioner Virginia Bell was served on June 19, 2012. Defendants' counsel filed a Notice of Appearance on July 2, 2012.

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MHC

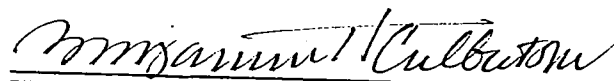
South Carolina Code Ann. §15-79-125(c) states, "Within ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference unless an extension for no more than sixty days is granted by the court based upon a finding of good cause." South Carolina ADR Rules 4(c) and 5(f) require that pre-suit mediations be held no later than 120 days after defendants are served; they do not mention the potential for an extension.

One hundred twenty (120) days from June 19, 2012 was October 17, 2012. Based on the information presented, no attempt was made by any party to schedule mediation prior to December 19, 2012, more than two months after the 120-day pre-suit mediation deadline. Further, no motion was filed seeking an extension of time to mediate. While the ADR Rules discuss both parties' obligation to participate in a mediation, it does not specify who is responsible for initiating the scheduling of a mediation. This Court finds that the Plaintiff, as the party bringing the lawsuit and as the one who has the burden of proof, is responsible for this. If a Defendant will not cooperate in the scheduling of a mediation, the Plaintiff can then file a Motion seeking an extension of time to mediate. Nevertheless, in this case, there was absolutely no discussion about mediation and no contact with a mediator until December 19, 2012. Parties are not permitted to mediate by consent beyond the statutory deadline; instead, it requires permission from the Court. Here, permission from the Court was neither sought nor granted prior to the expiration of the 120-day deadline.

Defendants filed their Motion to Dismiss on Dec. 20, 2012. Rule 10(a) of the South Carolina ADR authorizes sanctions for failure to timely file proof of ADR; the rule does not mandate specifically what sanction must be imposed. Rule 10(b) provides that "any lawful sanctions" may be imposed for a violation of ADR, and it specifically lists that an example of a lawful sanction is "any other sanction authorized by Rule 37(b), SCRCP." Rule 37(b) authorizes dismissal of an action with prejudice as a lawful sanction. Based on the lack of any effort to schedule mediation within 120 days or to request an extension of 60 days, this Court finds that dismissal with prejudice is an appropriate sanction.

NOW, THEREFORE, based upon the above findings and conclusions, it is hereby
ORDERED, ADJUDGED, AND DECREED that this matter is dismissed with prejudice.

AND IT IS SO ORDERED.



Honorable Benjamin H. Culbertson
Presiding Judge, Fifteenth Judicial Circuit

April 24, 2013.

Conway, South Carolina.



State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Judge

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June 27, 2013

The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528

RE: *Rickerson v. Karl, et al.* (Case No. 2012-CP-26-3859)

Dear Ms. Huggins-Ward:

Please find enclosed for filing a Form 4 Order denying the plaintiff's Motion to Reconsider Order of Dismissal in the above referenced case.

By copy of this letter and enclosure emailed to the attorneys in this case, I am providing them with a copy of this order and notice of its filing.

With kindest regards, I remain

Very truly yours,

Benjamin H. Culbertson

BHC/bhc

Enclosure (a/s)

pc: William Isaac Diggs, Esquire (via email: william.diggs@myrtlebeachlaw.com)
Marian W. Scalise, Esquire (via email: mscalise@richardsonplowden.com)

RECEIVED

JUN 28 2013

SC Court of Appeals

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-26-3859

Thomas Rickerson
 PLAINTIFF(S)

John Karl, M.D., et al.
 DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : Plaintiff Defendant
 or
 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:

Plaintiff's Motion to Reconsider Order of Dismissal is DENIED.
(This motion was decided without oral arguments.)

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)
N/A	N/A	\$ N/A
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.

Benjamin H. Culbertson
 Benjamin H. Culbertson, Circuit Court Judge

2148
 Judge Code

June 27, 2013
 Date

