

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF CHARLESTON)

Arthur Peter Rowe,)

C/A No. 2013-CP-10-00090)

Plaintiff,)

Versus)

Bon Secours-St. Francis Xavier Hospital,)
Inc., d/b/a Bon Secours St. Francis)
Xavier Hospital, Bon Secours St. Francis)
Hospital and Roper St. Francis)
Healthcare, Bon Secours St. Francis)
Health System, Inc., d/b/a Bon Secours)
St. Francis Xavier Hospital, Bon Secours)
St. Francis Hospital and Roper St.)
Francis Healthcare, Bon Secours Health)
System, Inc., d/b/a Bon Secours St.)
Francis Hospital and Roper St. Francis)
Healthcare, Roper St. Francis)
Foundation, d/b/a Roper St. Francis)
Healthcare, Bon Secours-St. Francis)
Health System Foundation, Inc., d/b/a)
Roper St. Francis Healthcare, Roper)
Hospital, Inc., d/b/a Roper St. Francis)
Healthcare, Byron N. Bailey, M.D.,)
Christine C. Thompson, M.D., a/k/a)
Christine Thompson, M.D., Charleston)
Neurosurgical Associates, LLC, Mt.)
Pleasant Anesthesia Associates, PA,)
Charleston Surgery Center Limited)
Partnership, d/b/a Charleston Surgery)
Center, Tammy McGraw, CRNA, also)
known as Tammy McGraw Speicher,)
CRNA, Nurse Anesthesia of South)
Carolina, LLC, Jeffery S. Wager, CRNA,)
Tricoastal Healthcare Billing and)
Management, Inc., and Steven Heath)
Cobb,)

Defendants.)

ORDER

RECEIVED

AUG 02 2013

SC Court of Appeals

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2013 JUL -3 PM 3:02

FILED

This matter came before the Court on Motions to Dismiss filed by all Defendants. A hearing was held on May 31, 2013. The Plaintiff appeared *pro se*. Jeffrey Michael Bogdan, Esquire appeared on behalf of the Defendant Christine C.

RM09/11

Thompson, M.D., a/k/a Christine Thompson, M.D.; Fred W. Suggs, III, Esquire appeared on behalf of Defendants Bon Secours Health System, Inc., Bon Secours St. Francis Hospital, and Bon Secours St. Francis Health System Foundation, Inc.; Shawn T. Pinkston, Esquire appeared on behalf of Defendant Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center; Darren K. Sanders, Esquire appeared on behalf of Defendants Byron N. Bailey, M.D. and Charleston Neurosurgical Associates, LLC; Andrew S. Halio, Esquire appeared on behalf of Defendant Steven Heath Cobb; Christine Kent Toporek, Esquire appeared on behalf of Defendants Bon Secours St. Francis Xavier Hospital d/b/a Bon Secours St. Francis Xavier Hospital, Roper St. Francis Healthcare, Roper St. Francis Foundation d/b/a Roper St. Francis Healthcare, and Roper Hospital Inc. d/b/a Roper St. Francis Healthcare. Memoranda of law were submitted by the parties and incorporated into the record and oral arguments were entertained. After having reviewed the pleadings and having considered the arguments and legal memoranda of the parties, I grant the Defendants' Motions to Dismiss on the grounds that (1) the Plaintiff failed to file a Notice of Intent to File Suit and an expert affidavit prior to filing his Complaint as mandated by South Carolina Code Section 15-79-125; and (2) the Plaintiff failed to file an expert affidavit with his Complaint as mandated by South Carolina Code Section 15-36-100.

FACTS

The Plaintiff filed a Complaint on January 7, 2013 alleging one cause of action for loss of consortium based on the alleged medical negligence arising out of a January 7, 2010 cervical spine surgery performed on his wife, Beverly Moore-Rowe.¹ Plaintiff failed to file a Notice of Intent to File Suit prior to filing his Complaint and failed to contemporaneously file an expert affidavit with his Complaint. Numerous Defendants filed Motions to Dismiss based on these procedural failures. Defendants Nurse Anesthesia of South Carolina, LLC, Jeffery S. Wager, CRNA and Tammy McGraw, CRNA, also known as Tammy McGraw Speicher, CRNA have pending Motions to Dismiss based on insufficient service of process in this action. As such, Defendants Jeffery S. Wager and Tammy McGraw Speichers did not enter an appearance at this hearing. Nurse Anesthesia of South Carolina only entered an appearance in the phase of this hearing dedicated to the action of Beverly C. Moore-Rowe. Their pending Motions to Dismiss have been rendered moot by this Order.

STANDARD ON DISMISSAL

"Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004) aff'd 373 S.C. 390, 645 S.E.2d 245 (2007). "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct.

¹ Plaintiff's wife filed a Notice of Intent to File Suit on the same day the Plaintiff filed his Complaint. C/A No. 2013-CP-10-00088. The Defendants in that case, which are the same Defendants in this case, filed Motions to Dismiss Plaintiff's wife's Notice of Intent. Those Motions were heard and granted at the same time as the Motions to Dismiss in this case.

App. 2007). An expert affidavit filed pursuant to South Carolina Code Section 15-36-100 is a pleading for the purpose of the circuit court's evaluation of motions and the merits of the plaintiff's case. Ranucci v. Crain, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct. App. 2012), reh'g denied (Mar. 15, 2012), cert. pending.

PROCEDURAL REQUIREMENTS TO BRING A PROFESSIONAL NEGLIGENCE ACTION

This is a medical malpractice action and therefore is governed by the procedural requirement set forth in South Carolina Code Sections 15-79-125 and 15-36-100. These procedural statutes apply independently of one another as "each statute governs a distinct time period during the litigation process, and those time periods are consecutive." Id. at 176, 723 S.E.2d at 246. "Section 15-79-125 controls the portion of the process that commences with the filing of a Notice of Intent to File Suit and ends with prelitigation mediation. If the parties are unable to resolve their dispute through mediation, section 15-36-100 guides them through the preparation of initial pleadings and provides mechanisms for challenging and curing defects in the required affidavit." Id. In the instant case, the Plaintiff failed to comply with the filing requirements of section 15-79-125 and section 15-36-100.

SOUTH CAROLINA CODE SECTION 15-79-125 BARS THIS ACTION

South Carolina Code Section 15-79-125 establishes the prelitigation requirements for medical malpractice actions. Id. Section 15-79-125(A) states, in pertinent part, "[p]rior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100" S.C. Code Ann. §15-79-125(A). "This provision imposes two requirements on the affidavit, that it be filed at the

same time as the Notice of Intent to File Suit and that it comply with the affidavit requirements of section 15-36-100." Ranucci, 397 S.C. at 176, 723 S.E.2d at 246.

Plaintiff's Complaint alleging loss of consortium is a civil action alleging injury as a result of medical malpractice. See Creighton v. Coligny Plaza Limited Partnership, 334 S.C. 96, 121, 512 S.E.2d 510, 523 (Ct. App. 1998) ("In order to prevail in an action for loss of consortium, a plaintiff must prove the defendant's liability for the spouse's injuries, as well as damages to the plaintiff resulting from the spouse's injury."). Because the Plaintiff's spouse's injuries are alleged to be the result of medical negligence, the Plaintiff's Complaint alleges his injury as a result of medical negligence. Accordingly, the Plaintiff was required to comply with the provisions of § 15-79-125(A). By failing to file a Notice of Intent to File Suit and an expert affidavit before filing his Complaint, Plaintiff failed to comply with § 15-79-125(A) and, therefore, the Court find his Complaint is procedurally inappropriate. Accordingly, the Court finds that the Plaintiff's Complaint is dismissed as he failed to comply with the procedural requirements of § 15-79-125.

SOUTH CAROLINA CODE SECTION 15-36-100 BARS THIS ACTION

The Plaintiff also failed to file an expert affidavit contemporaneously with his Complaint as required by South Carolina Code Section 15-36-100. South Carolina Code Section 15-36-100 establishes the procedures for commencing suits for professional negligence, including medical malpractice. Ranucci, 397 S.C. at 173, 723 S.E.2d at 244. Section 15-36-100 "requires the plaintiff to craft a viable complaint supported by the sworn testimony of a qualified expert witness. Because an affidavit filed pursuant to this section is a 'part of the complaint,' it is a pleading for the purpose of the circuit court's evaluation of motions and the merits of the plaintiff's case." Id. at 178, 723 S.E.2d at 247.

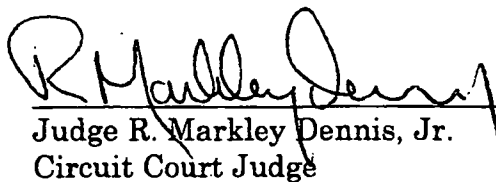
Plaintiff's Complaint is an action for damages based on professional negligence. All of the named Defendants are professional health care providers. Accordingly, Plaintiff was required to comply with §15-36-100 in filing his Complaint. Plaintiff failed to so comply when he filed his Complaint without an expert affidavit. Section 15-36-100(C)(1) does provide an exception allowing a Plaintiff to supplement the complaint with an expert affidavit within 45 days of filing. Plaintiff failed to argue that this exception applied. Further, Plaintiff's Complaint was filed January 7, 2013 and the Plaintiff failed to file an expert affidavit within 45 days. Finally, the Court further finds that any common knowledge exception does not apply here, because the Plaintiff has sued numerous different health care providers, including a neurosurgeon and an anesthesiologist, alleging medical negligence and the determination of the merits exceed the bounds of common knowledge. Accordingly, the Court finds that the Plaintiff's Complaint is dismissed as he failed to comply with the procedural requirements of § 15-36-100(C)(1).

NOW, THEREFORE, based on the foregoing it is

ORDERED, that the Defendants' Motions to Dismiss be, and hereby are, granted and this action be dismissed as to all Defendants;

AND IT IS SO ORDERED.

June 28, 2013
Charleston, South Carolina



Judge R. Markley Dennis, Jr.
Circuit Court Judge

RM9/6

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Beverly C. Moore-Rowe and Arthur Peter Rowe)

CASE NO.

2013-CP-10-00090 & ~~2013-CP-10-00088~~

Plaintiff(s),)

Versus)

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a)
Bon Secours St. Francis Xavier Hospital, Bon)
Secours St. Francis Hospital and Roper St. Francis)
Healthcare, Bon Secours St. Francis Health System,)
Inc., d/b/a Bon Secours St. Francis Xavier Hospital,)
et al.)

Defendant(s))

check box above indicating submitting party

ORDER RECEIVED

AUG 02 2013

SC Court of Appeals

Pro Se Plaintiff: Beverly C. Moore-Rowe Arthur Peter Rowe 52 Chadwick Drive Charleston, SC 29407	Defendant's attorney: Jeffrey M. Bogdan (SC #76354) Hood Law Firm, LLC 172 Meeting Street, P.O. Box 1508 Charleston SC 29402 Phone: (843) 577-1207; Fax: (843) 722-1630 Email: Jeffrey.Bogdan@hoodlaw.com
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MOTION HEARING REQUESTED (attach written motion and complete SECTION 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: _____
Estimated Time Needed: Minutes _____ 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.

Signature of Attorney for Plaintiff(s) / Defendant(s) _____ Date submitted _____

SECTION III: Motion Fee

PAID – AMOUNT: _____
 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, SCRCP)
 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: _____

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE: 2060 DATE: 8-28-2013

CLERK'S VERIFICATION

Collected by: _____ (print name) DATE FILED _____

MOTION FEE COLLECTED: _____
 CONTESTED-AMOUNT DUE: _____

FILED

Arthur Peter Rowe

2013 JUL -3 PM 3:02

JULIE J. ARMSTRONG
CLERK OF COURT

Bon Secours-St. Francis Xavier Hospital, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours St. Francis Health System, Inc.,
d/b/a Bon Secours St. Francis Xavier
Hospital, Bon Secours St. Francis Hospital
and Roper St. Francis Healthcare, Bon
Secours Health System, Inc., d/b/a Bon
Secours St. Francis Hospital and Roper St.
Francis Healthcare, Roper St. Francis
Foundation, d/b/a Roper St. Francis
Healthcare, Bon Secours-St. Francis Health
System Foundation, Inc., d/b/a Roper St.
Francis Healthcare, Roper Hospital, Inc.,
d/b/a Roper St. Francis Healthcare, Byron N.
Bailey, M.D., Christine C. Thompson, M.D.,
a/k/a Christine Thompson, M.D., Charleston
Neurosurgical Associates, LLC, Mt. Pleasant
Anesthesia Associates, PA, Charleston
Surgery Center Limited Partnership, d/b/a
Charleston Surgery Center, Tammy McGraw,
CRNA, also known as Tammy McGraw
Speicher, CRNA, Nurse Anesthesia of South
Carolina, LLC, Jeffery S. Wager, CRNA,
Tricoastal Healthcare Billing and
Management, Inc., and Steven Heath Cobb

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jeffrey M. Bogdan (SC #76354)

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:

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

2060
Judge Code

6.28.2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT