

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2013-000717
Case No: 2011-CP-40-08373

Joseph D. McMaster, Appellant,

v.

John H. Dewitt, M.D., and Carolina Psychiatric Services, P.A., Respondents.

INITIAL BRIEF OF RESPONDENT
CAROLINA PSYCHIATRIC SERVICES, P.A.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 5

ARGUMENT..... 6

 I. CAROLINA PSYCHIATRIC SERVICES, P.A. IS ENTITLED
 TO SUMMARY JUDGMENT FOR ALL OF THE REASONS
 STATED BY RESPONDENT DEWITT IN HIS INITIAL
 BRIEF, WHICH ARE INCORPORATED HEREIN BY
 REFERENCE..... 6

 II. CAROLINA PSYCHIATRIC SERVICES, P.A. PROPERLY
 RECEIVED SUMMARY JUDGMENT BECAUSE IT HAS
 NOT WAIVED ITS STATUTE OF LIMITATIONS DEFENSE..... 6

 III. CAROLINA PSYCHIATRIC SERVICES, P.A. PROPERLY
 RECEIVED SUMMARY JUDGMENT BECAUSE ITS
 AGENT, DR. DEWITT, RECEIVED SUMMARY JUDGMENT 7

CONCLUSION..... 9

TABLE OF AUTHORITIES

State Cases

<i>Austin v. Conway Hospital, Inc.</i> , 292 S.C. 334, 356 S.E.2d 153 (1987)	6
<i>Davie v. Atkinson</i> , 281 S.C. 102, 313 S.E.2d 648 (Ct. App. 1984)	6
<i>Sauls-Baker Co. v. Atlantic C.L. R. Co.</i> , 109 S.C. 285, 969 S.E. 118 (1918).....	6

Statutes

South Carolina Code Section 15-3-545	4
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Other Authorities

Rule 8, SCRCF.....	6
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STATEMENT OF ISSUES ON APPEAL

1. IS CAROLINA PSYCHIATRIC SERVICES, P.A. ENTITLED TO SUMMARY JUDGMENT FOR ALL OF THE REASONS STATED BY RESPONDENT DEWITT IN HIS INITIAL BRIEF, WHICH ARE INCORPORATED HEREIN BY REFERENCE?
2. DID CAROLINA PSYCHIATRIC SERVICES, P.A. PROPERLY RECEIVE SUMMARY JUDGMENT BECAUSE IT HAS NOT WAIVED ITS STATUTE OF LIMITATIONS DEFENSE?
3. DID CAROLINA PSYCHIATRIC SERVICES, P.A. PROPERLY RECEIVE SUMMARY JUDGMENT BECAUSE ITS AGENT, DR. DEWITT, RECEIVED SUMMARY JUDGMENT?

STATEMENT OF THE CASE

On May 13, 2008, attorney Joe McMaster had an Adderall induced psychosis for which he was admitted to Palmetto Health Baptist Hospital. (Hearing Transcript, p.14, ll. 3-6, R. ____). He remained hospitalized until May 28, 2008. (Hearing Transcript, p.14, ll. 7-9, R. ____). Mr. McMaster had been a patient of Dr. John DeWitt, psychiatrist, since 1993. According to Mr. McMaster, during the May hospitalization, Dr. DeWitt told Mr. McMaster that his psychosis was Adderall induced. After the hospitalization, Dr. DeWitt stopped prescribing Adderall to Mr. McMaster. (Deposition of Joseph McMaster, pp. 34-35, 46-47, R. ____).

On June 16, 2011, more than three years later, Mr. McMaster filed a notice of intent to sue Dr. DeWitt, alleging that his psychosis was caused by Dr. DeWitt over-prescribing Adderall. (Notice of Intent to File Suit, R. ____). Mr. McMaster knew that he had a medication induced psychosis when he was hospitalized in May of 2008. (McMaster Deposition, pp. 34-35, 46-47, R. ____). Since Mr. McMaster sued more than three years after his hospitalization and after the statute of limitations expired, Dr. DeWitt moved for summary judgment on November 20, 2012. (DeWitt's Motion for Summary Judgment, R. ____). Dr. DeWitt's employer, Carolina Psychiatric Services, moved for summary judgment on the same grounds on November 28, 2012. (Carolina Psychiatric Services' Motion for Summary Judgment, R. ____). Two days before the motion hearing was scheduled, Mr. McMaster submitted an affidavit contradicting his sworn deposition testimony.

Judge Alison Renee Lee heard arguments on the motions on December 13, 2012, and entered an order granting summary judgment for both Defendants on February 21,

2013. (Order of Judge Lee, R. ____). Judge Lee found “no genuine issue of material fact about the date [Mr. McMaster] was on notice of his claim.” (Order, p. 4, R. ____). She relied upon:

- The pleadings (Complaint and Answers, R. ____);
- Deposition excerpts from Mr. McMaster, pp. 34-35, 46-47, 53-54 (Memorandum in Support of Dr. DeWitt’s Motion for Summary Judgment, R. ____);
- Deposition excerpts from Dr. Dave Davis, pp. 35-36 (Memorandum in Support of Dr. DeWitt’s Motion for Summary Judgment, R. ____);
- An affidavit by Mr. McMaster which includes a discharge summary from Palmetto Health Baptist dated 7/2/2008 – 7/27/2008 and a discharge summary from Palmetto Health Baptist dated 9/25/2008 – 12/2/2008 (R. ____);
- A discharge summary from Palmetto Health Baptist dated 5/13/2008 – 5/28/2008 (R. ____);
- Hospital records dated 6/25/2008 – 7/10/2008 (R. ____);
- A detention order request from Columbia Mental Health dated 5/11/2008 (R. ____);
- Progress notes from Palmetto Health Richland dated 5/13/2008 and 5/17/2008 (R. ____); and
- An exam for emergency admission at Palmetto Health Richland dated 5/13/2008 (R. ____).

Judge Lee disregarded Mr. McMaster's affidavit which contradicted his deposition testimony as a sham affidavit. In addition, Judge Lee determined that tolling due to insanity under South Carolina Code Section 15-3-545(D) was not available to Mr. McMaster. (Order, p. 3, R. ____). She entered summary judgment for the Defendants finding that the Complaint was barred by the statute of limitations. (Order, p. 5, R. ____).

Mr. McMaster filed a motion for reconsideration on March 5, 2013, which was denied by Judge Lee on March 11, 2013. (Order, R. ____). Mr. McMaster served his notice of appeal on March 28, 2013.

STATEMENT OF THE FACTS

Dr. John DeWitt is a psychiatrist who treated Attorney Joe McMaster. Dr. DeWitt prescribed Mr. McMaster Adderall for the treatment of Adult Attention Deficit Disorder. On May 13, 2008, Mr. McMaster was involuntarily committed to Palmetto Health Baptist Hospital. He remained in the hospital until May 28, 2008, when he was discharged in good health. (Discharge Summary, R. ____). According to Mr. McMaster, Dr. DeWitt informed him that the hospitalization was a result of Adderall induced psychosis and ceased prescribing the medication. Mr. McMaster was admitted to the hospital about one month later on June 25, 2008, for paranoia. (Order, p. 1, R. ____).

Mr. McMaster's Notice of Intent and Complaint does not mention the May 2008 hospitalization. (Order, p. 3, R. ____; Complaint, ¶ 10, R. ____). However, he testified in his deposition that he knew his May 2008 psychosis was Adderall induced. (Order, p. 2, R. ____; McMaster Deposition, pp. 34-35, 46-47, R. ____).

ARGUMENT

I. CAROLINA PSYCHIATRIC SERVICES, P.A. IS ENTITLED TO SUMMARY JUDGMENT FOR ALL OF THE REASONS STATED BY RESPONDENT DEWITT IN HIS INITIAL BRIEF, WHICH ARE INCORPORATED HEREIN BY REFERENCE.

Carolina Psychiatric Services, P.A. includes and incorporates, by reference, all of the arguments asserted by Respondent DeWitt in his Initial Brief. (DeWitt's Initial Brief, pp. 4-15, R. ____).

II. CAROLINA PSYCHIATRIC SERVICES, P.A. PROPERLY RECEIVED SUMMARY JUDGMENT BECAUSE IT HAS NOT WAIVED ITS STATUTE OF LIMITATIONS DEFENSE.

Mr. McMaster argues, per Rule 8 of the South Carolina Rules of Civil Procedure and *Davie v. Atkinson*, 281 S.C. 102, 313 S.E.2d 648 (Ct. App. 1984), that Carolina Psychiatric Services, P.A. did not plead the statute of limitations defense in its answer and thus has waived this affirmative defense. This argument is valid, but is not a complete statement of the law. In *Austin v. Conway Hospital, Inc.*, the South Carolina Court of Appeals took a step further and held that *Davie* meant only that "the statute of limitations must be pleaded *at some point*." 292 S.C. 334, 337, 356 S.E.2d 153, 155 (1987) (emphasis added). The court in *Austin* further cited *Sauls-Baker Co. v. Atlantic C.L. R. Co.*, 109 S.C. 285, 969 S.E. 118 (1918), as support for this holding. In *Sauls-Baker Co.* the defendant was allowed to amend its pleadings to include a statute of limitations defense *after* the first trial and appeal, but before the second trial. 109 S.C. 285, 969 S.E. 118. Under this precedent, it is clear that Carolina Psychiatric Services, P.A. has not waived the statute of limitations as an affirmative defense. Furthermore, Carolina Psychiatric Services, P.A. timely made its Motion for Summary Judgment after

Mr. McMaster's deposition in which he stated he was aware upon admission to the hospital in May 2008 that his hospitalization was medicine-induced. The lower court properly granted summary judgment in its favor.

III. CAROLINA PSYCHIATRIC SERVICES, P.A. PROPERLY RECEIVED SUMMARY JUDGMENT BECAUSE ITS AGENT, DR. DEWITT, RECEIVED SUMMARY JUDGMENT.

Even if this Court finds that Carolina Psychiatric Services, P.A. waived its statute of limitations defense, the lower court nonetheless still properly granted Carolina Psychiatric Services, P.A. summary judgment because it properly granted Dr. DeWitt summary judgment.

If Dr. DeWitt is entitled to summary judgment on the statute of limitations issues, then so is Carolina Psychiatric Services, P.A. Mr. McMaster admits in both his Notice of Intent to File Suit and his Complaint that Dr. DeWitt was an employee of Carolina Psychiatric Services, P.A. (Notice of Intent, p. 1, R. ___; Complaint, ¶ 5, R. __). Mr. McMaster also asserts in both his Complaint that Carolina Psychiatric Services, P.A. is liable for malpractice through the actions of Dr. DeWitt. (Complaint, ¶ 6, R. __). Also, Mr. McMaster has not set forth in his pleadings or through discovery that Carolina Psychiatric Services, P.A. is liable to Mr. McMaster independent of any alleged negligence by Dr. DeWitt. In its Answer, Carolina Psychiatric Services, P.A. admits Dr. DeWitt was its employee. As such, there is no genuine issue of material fact as to the employee/employer relationship between Carolina Psychiatric Services, P.A. and Dr. DeWitt; Carolina Psychiatric Services, P.A. is only liable to Mr. McMaster if Dr. DeWitt is found liable. Because the lower court found complete summary judgment in favor of

Dr. DeWitt, Carolina Psychiatric Services, P.A. is therefore relieved of any liability to
Mr. McMaster.

CONCLUSION

For the reasons stated herein, Respondents urge this Court to affirm Judge Lee's order for summary judgment.

TURNER, PADGET, GRAHAM & LANEY, P.A.

August 16, 2013

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DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL OF
RESPONDENT CAROLINA PSYCHIATRIC SERVICES, P.A.

Respondent Carolina Psychiatric Services, P.A. proposes the following be included in the Record on Appeal:

1. Notice of Intent to File Suit;
2. Complaint;
3. Answer of John H. Dewitt, M.D.;
4. Answer of Carolina Psychiatric Services, P.A.;
5. Order dated February 21, 2013;
6. Order dated March 11, 2013;
7. Dewitt's Motion for Summary Judgment;

8. Carolina Psychiatric Services' Motion for Summary Judgment;
9. Memorandum in Support of Dr. Dewitt's Motion for Summary Judgment;
10. Affidavit of Joseph McMaster including discharge summaries;
11. Hearing transcript;
12. Deposition of Joseph McMaster, pages 6-7, 10-11, 16-20, 29-32, 34-35, 46-49, 53-54, and 117-129;
13. Detention Order Request from Columbia Mental Health dated May 11, 2008;
14. Exam for Emergency Admission at Palmetto Health Richland dated May 13, 2008;
15. Progress Notes from Palmetto Health Richland dated May 13 and 17, 2008;
16. Discharge Summary from Palmetto Health Baptist dated May 13, 2008 through May 28, 2008;
17. Hospital Records dated June 25, 2008 through July 10, 2008; and
18. Dewitt's Initial Brief.

I certify that this designation contains no matter which is irrelevant to this appeal.

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PROOF OF SERVICE

I certify this 16th day of August 2013 that I have served copies of the INITIAL BRIEF OF RESPONDENT CAROLINA PSYCHIATRIC SERVICES, P.A. and the DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL OF RESPONDENT CAROLINA PSYCHIATRIC SERVICES, P.A. upon other counsel of record, by mailing same, postage prepaid in the United States mail, addressed to the following:

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(Signature page to follow.)

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