

CASE NO. 2024-CP-21-00406
BRIEF OF THE APPELLANT

DONNA S. ARD
APPELLANT

V.

WILLIE S. EDWARDS AND MCLEOD
SPINE CENTER
RESPONDENTS

RECEIVED

Sep 18 2024

SC Court of Appeals

BRIEF OF APPELLANT*
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Robert Bonds, Circuit Court Judge

Case No. 2024-CP-21-00406

Donna Ard

Appellant

v.

Willie S. Edwards and
McLeod Spine Center

Respondent

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STATEMENT OF ISSUES ON APPEAL

- Did the Judge err in allowing the Respondents Attorney Mr. Banner to speak first at the podium, which perchance giving the judge the opportunity to make a preconceived judgement?
- § 15-36-100, *et. seq.* (2005) of the *Code of Laws of South Carolina*, Complaint in actions for damages alleging professional negligence; contemporaneous affidavit of expert specifying negligent act or omission?
- § 15-36-100(B) of the *Code of Laws of the State of South Carolina (2005(B))* Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit?
- § 15-36-100(F) of the *Code of Laws of the State of South Carolina (2005)* (F) If a plaintiff fails to file an affidavit as required by this section, and the RESPONDENTS raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to

file the affidavit is the result of a mistake. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure?

- 12(B)(4) of the *South Carolina Civil Rules of Procedure*; Insufficiency of Process?
- 12(B)(6) of the *South Carolina Civil Rules of Procedure*; failure to state facts sufficient to constitute a cause of action?

12(C) of the *South Carolina Civil Rules of Procedure*; Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

STATEMENT OF THE CASE

On August 28, 2023, I, Donna Ard filed a NOI letter with In the Court of Common Pleas in Florence S.C. This action of medical negligence was filed assertively and with direct and descriptive words stating in the opening statement is “Failure to properly diagnose, treat and/or perform corrective spinal surgical measures in a timely manner, and being inadequately prepared for third surgery.

In this NOI, I also referenced to the two surgical procedures that had been performed on my lower lumbar spine of which Dr. Willie S. Edwards at McLeod Spine Center had performed on me prior, a second back surgery on October 28, 2019 and a third back surgery on October 14, 2020, all of the lower lumbar. The letter of intent was very explicit in direct and descriptive information of my person letters delivered to your office by my husband addressing the weakness and issue of my knee failing, as well as the surgical instrument that was visually seen and dictated on the radiologist results. This letter detailed explicit information dated back to before my second surgery on October 28, 2019.

On October 3, 2023 I received a cover letter from Aiken Bridges Attorney at Law, Mr. David Banner which reference Donna S. Ard vs. Willie S. Edwards and McLeod Spine Center with an incorrect CA No. 2020-NI-21-00024 AB File No. 37131. This case number belongs to a deceased individual of whom the RESPONDENTS attorney Mr. Banner, was also involved with just prior to my submission of NOI; however the Aiken Bridges AB File No. 37131 which was documented on the cover letter with the deceased case number on October 3, 2023 is in question of who does it belong to, does he have cases entangled due to facts that this case number has been documented on numerous pieces of legal document’s to me and more importantly Mr. Banner referred to me as the decedent?

On December 19, 2023, The Respondents attorney Mr. Banner and I Donna Ard as well as my husband Alvin Ard participated in mediation hosted in Columbia, S.C. which resulted in an impasse.

On February 16, 2024, I the Plaintiff filed a Summons and Complaint with the Circuit court in Florence S.C. I did not file a Expert Affidavit because my intentions was never medical malpractice.

On March 20, 2024 I, the Plaintiff received the Respondents answer and a Request for Motion to Dismiss (Jury Trial Requested).

On April 5, 2024 I, filed a 55 Pages of doctors’ bills from further damage, pain and suffering I have from two falls with a broken hip, medical records and imaging offered both at

the mediation and was refused and at the hearing and was refused, as evidence in Response to the Motion to Dismiss.

On April 12, 2024 I, the Plaintiff filed a Plaintiff's Amended Response Memorandum in Opposition to RESPONDENTS' Motion to Dismiss

On May 28, 2024 I, the Plaintiff received a notice of a hearing scheduled for June 18, 2024, courtroom 3A 9:30 a.m.

Less than twenty four hours of court our court hearing, the Respondents attorney Mr. Banner submitted electronically to the court system a Respondents Memorandum in support of its Motion to Dismiss Plaintiffs complaint" reserving any and all defenses, objections, jurisdictional arguments or available statutory or common law defenses without any citing references.

On June 18, 2024, the Respondent's attorney Mr. Banner opened the hearing by stating I had filed a classic medical malpractice case and did not have the Expert Affidavit. The Judge heard from me, ask me if I understood and I did.

STANDARD OF REVIEW

Did the Judge err in allowing the RESPONDENTS' Attorney Mr. Banner to speak first at the podium, which possibly giving the judge the opportunity to make a preconceived judgement?

Re: *S.C. Code of Laws 15-36-100*

S.C.R.P. 701 In the letter of intent are clear direct described negligence which if the case in a medical negligence case as filed then, the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which do not require special knowledge, skill, experience, or training. *State v. Ostrowski*, 435 S.C. 364, 867 S.E.2d 269 (S.C. Ct. App. 2021). S.C.R.E.401 which defines relevant evidence as evidence that has a tendency to make a fact more or less likely to be true than it would be without the evidence. *State v. Alezander*, 303 S.C.401 S.E.2d 146 (1991) The statutory definition of medical malpractice found in section 15–79–110(6) does not impact medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care. Thus, medical providers are still subject to claims sounding in ordinary negligence.

Re: *S.C. Code of Laws 15-36-100(B)*

The application of the common knowledge exception in proving negligence in a case involving medical malpractice depends on the particular facts of the case. When expert testimony is not required, the plaintiff must offer evidence that rises above mere speculation or conjecture.” *Hickman v. Sexton Clinic*, 295 S.C. 164, 168 (Ct. App. 1988).

Re: *S.C. Code of Laws 15-36-100(F)*

The application of the common knowledge exception in proving negligence in a case involving medical malpractice depends on the particular facts of the case. *Sharpe v. South Carolina Department of Mental Health*, 292 S.C. 11, 354 S.E.2d 778 (Ct.App. 1987)

Re: *12(b)(4) S.C. the South Carolina Rules of Civil Procedure 12(b)(4)*

A motion that merely deals specifically with the content of the summons.” *Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, Federal Practice and Procedure § 1353 (3d ed. 1998) [hereinafter “Wright & Miller”]*. In other words, the objection is to the content of the summons and not the service. See, e.g., *Hammond v. Honda Motor Co., Ltd.*, 128 F.R.D. 638, 639 (D.S.C. 1989)

(denying motion to quash under Rule 12(b)(4) that was based on grounds that the summons did not comply with the requirements of the Hague Convention); *State Bd. Of Medical. Examiners of South Carolina v. Fenwick Hall, Inc.*, 300 S.C. 274, 276, 387 S.E.2d 458, 459 (1990)

Re: *12(b)(6) of the S.C. the South Carolina Rules of Civil Procedure*

As in this Plaintiff's case, 55 pages of legal documented medical records AND IMAGES have been provided to the court on April 5, 2024 and based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true." [*Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 \(2013\)](#); *see also* [*Turner v. Daniels*, 404 S.C. 430, 431 n. 1, 746 S.E.2d 40, 41 n. 1 \(2013\)](#) (noting under the standard of review applicable to Rule 12(b)(6) motions, we construe all of the facts in the appellant's well-pled complaint in the light most favorable to the appellant and presume those facts to be true). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal under Rule 12(b)(6) is improper." [*Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 74-75, 753 S.E.2d 846, 850 \(2014\)](#)

Re: *S.C.12(c)* for fact pleading. It may also be treated as a motion for summary judgment in proper circumstances?

FACTS

In my letter of intent, it was very explicit, direct and detailed in the failures and further injures I have received. The Letter of Intent also is very clear with a detailed history from the beginning of the NOI, until after the summons and complaint was filed and defendants responded. I filed with the court system 55 pages of medical records with imaging of a surgical instrument in my back as well as a dictated Xray report and also hospital records and bills from a fall with a broken hip incurring an additional estimated \$150,000.00 debt.

The Appellant has supplied ample records and is willing to amend if needed or do discovery if needed.

There has only been one encounter with the defendant's attorney and this was during the mediation of which the only words spoken out of his mouth was "I'm sorry, I don't know anything about medical" and this was during medication of which the mediator was very unprofessional, by constantly laughing in my face as if this was a joke.

ARGUMENTS

- I. Because Respondents have failed to file any supporting evidence, or material to dispute allegations and cannot provide any supporting evidence to the seventeen defenses I pray that the Appellate Court will take into account the issues in the defense, the err in by the Respondents Attorney and reverse and Remand the entire decision of the hearing with Judge Robert Bonds on June 18, 2024.
- II. There is a medical negligence case of which S.C Rule 702, the Appellant is not testifying as an expert, the Appellant testimony in the form of opinions or inferences is limited to those opinions or inferences which, do not require special knowledge, skill, experience, or training. [State v. Ostrowski, 435 S.C. 364, 867 S.E.2d 269 \(S.C. Ct. App. 2021\)](#).

S.C. Code of Laws 15-36-100(B)

The application of the common knowledge exception in proving negligence in a case involving medical malpractice depends on the particular facts of the case. When expert testimony is not required, the plaintiff must offer evidence that rises above mere speculation or conjecture” [Hickman v. Sexton Clinic, 295 S.C. 164, 168 \(Ct. App. 1988\)](#).

Re: *S.C. Code of Laws 15-36-100(F)*

The application of the common knowledge exception in proving negligence in a case involving medical malpractice depends on the particular facts of the case. [Sharpe v. South Carolina Department of Mental Health, 292 S.C. 11, 354 S.E.2d 778 \(Ct.App. 1987\)](#)

12(b)(4) S.C. the South Carolina Rules of Civil Procedure 12(b)(4)

A motion that merely deals specifically with the content of the summons.” [5B Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, Federal Practice and Procedure § 1353 \(3d ed. 1998\)](#) [hereinafter “Wright & Miller”]. In other words, the objection is to the content of the summons and not the service. See, e.g., [Hammond v. Honda Motor Co., Ltd., 128 F.R.D. 638, 639 \(D.S.C. 1989\)](#) (denying motion to quash under Rule 12(b)(4) that was based on grounds that the summons did not comply with the requirements of the Hague Convention); [State Bd. Of Medical. Examiners of South Carolina v. Fenwick Hall, Inc., 300 S.C. 274, 276, 387 S.E.2d 458, 459 \(1990\)](#)

12(b)(6)of the S.C. the South Carolina Rules of Civil Procedure

As in this Plaintiff’s case, 55 pages of legal documented medical records have been provided to the court on April 5, 2024 and based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.” [Disabato v. S.C. Ass'n of Sch. Adm'rs, 404 S.C. 433, 441,](#)

[746 S.E.2d 329, 333 \(2013\)](#); *see also* [Turner v. Daniels, 404 S.C. 430, 431 n. 1, 746 S.E.2d 40, 41 n. 1 \(2013\)](#) (noting under the standard of review applicable to Rule 12(b)(6) motions, we construe all of the facts in the appellant's well-pled complaint in the light most favorable to the appellant and presume those facts to be true). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal under Rule 12(b)(6) is improper." [Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 74-75, 753 S.E.2d 846, 850 \(2014\)](#)

Re: *S.C.12(C) of the S.C. the South Carolina Rules of Civil*

The Defendants does not have any proof to dispute the negligence. All information available from the defendants would support every negligent statement in the suit.

CONCLUSION

For the reasons stated, this Court should reverse and remand the judgment of the lower court decision for a new jury trial as requested.

09/18/2024

Respectfully submitted,

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