STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Lisa Renee Sample, Plaintiff, vs. Blood Connection Inc. and Delisha K. English, Defendants.	IN THE COURT OF COMMON PLEAS C.A. No. 2023-CP-10-00914 **ORDER GRANTING DEFENDANT THE BLOOD CONNECTION, INC.'S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court on the Defendant The Blood Connection, Inc.'s Motion for Summary Judgment. This motion was heard on December 3, 2024. Lillian Keeling appeared on behalf of the Defendant The Blood Connection, Inc. (hereinafter "TBC"),[1] while the Plaintiff, Lisa Renee Sample (hereinafter "Ms. Sample"), was represented by Gregory Keith.

Having reviewed the pleadings, the motion, the briefs, and exhibits submitted by the parties, and after considering the arguments of counsel, I hereby **GRANT** TBC's Motion for Summary Judgment.

BACKGROUND

This medical malpractice action arises out of Ms. Sample's attempted blood donation with TBC and her alleged nerve injuries she sustained as a result. (*See generally*, Pl.'s Compl.). Ms. Sample contends that a TBC phlebotomist punctured a nerve during her donation, and asserts medical negligence and various negligent hiring, training, and supervision claims against TBC. (*Id.*). Ms. Sample described the donation experience as follows in her written discovery:

> As the young phlebotomist was readying herself to perform the blood draw, she turned to a supervisor and asked if the supervisor how to perform *[sic]* the blood

[1] The Defendant, Delisha K. English, was dismissed with prejudice on September, 2023 by joint stipulation of dismissal.

> draw, and whether or not she should put the needle in first, or whether she should put the clamp on first. *Immediately upon the insertion, Plaintiff felt instantaneous pain, and the sensation that a nerve had been hit*. Her arm *immediately* began to turn blue. The young phlebotomist *called out urgently for a supervisor to come help her.* At that time a supervisor *immediately came and removed the needle* from Plaintiff's arm.
>
> At that time, the supervisor tried to comfort the Plaintiff *due to her intense pain* and told the Plaintiff that when she removed the needle it was likely that Plaintiff would have a large hematoma. *Plaintiff was in shock and shaking*. Plaintiff recalls that the phlebotomist on duty attempted to treat her with ice and bandages. Plaintiff does recall that she was then asked if she would like to continue her blood donation using her other non-injured arm, and she declined to do so.
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> *At the time Plaintiff left the Defendant Blood Connection's mobile bloodmobile, she was having severe pain and her arm was turning blue, with bruising.* Plaintiff noticed *almost immediate weakness and numbness* in her right arm *in the hours following the attempted blood draw* and insertion of the needle into her arm.

(Pl.'s Answers to Interrogs., No. 17) (emphasis added).

In her deposition testimony, Ms. Sample testified to a similar version of events and reiterated that, on January 2, 2020, the environment "seemed kind of chaotic," that the needle was driven in "really, really hard" with no "finesse," that she immediately "felt a sharp pain that went down into my right hand, like a really, really cold sensation, burning cold sensation, and then numbness." (Pl.'s Dep, 26:5-18). Ms. Sample further testified that she immediately said "something's not right, something's not right, please take it out." (*Id.* at 26:18-19). The Plaintiff also confirmed that the pain she felt immediately upon insertion of the needle was greater than she would expect from a normal donation, and that she immediately suspected that she had experienced some type of injury from the insertion of the needle. (*Id.* at 31:10-16, 33:11-14). Additionally, she informed her fiancé that evening of the "crazy story" about her blood donation that day. (*Id.* at 44:6-13).

The Plaintiff subsequently sought medical treatment at multiple healthcare facilities and received several diagnoses related to an alleged ulnar nerve injury. (Pl's Compl., ¶ 14).

Ms. Sample filed her Notice of Intent and Complaint simultaneously on February 22, 2023. In her Complaint, Ms. Sample alleges that her donation occurred "in the latter part of February of 2020." (Pl.'s Compl., ¶ 9). However, it has been confirmed through discovery that the subject donation took place on January 2, 2020, and the Plaintiff does not dispute this is the date of the attempted donation. TBC filed its Motion for Summary Judgment on the basis that Ms. Sample did not file her action within the requisite three-year statute of limitations, because the statute of limitations began to run on January 2, 2020. (*See* TBC's Memorandum in Support of Motion for Summary Judgment, filed on 11/26/2024). The Plaintiff does not dispute that the applicable statute of limitations is three years under S.C. Code Ann. § 15-3-545(A). Instead, the Plaintiff argues that the three-year statute of limitations did not begin to run until the day Ms. Sample "fully comprehended the nature and potential negligent cause of her injury," the earliest date being December 9, 2020. (*See* Pl.'s Memorandum in Opp. of TBC's Motion for Summary Judgment, filed on 12/2/2024).

For the reasons stated below, this Court finds as a matter of law that the three-year statute of limitations began on the date of Ms. Sample's attempted donation, which was January 2, 2020. Accordingly, Ms. Sample's filing of this action on February 22, 2023 was untimely, as it was filed three years and fifty-one days after January 2, 2020.

STANDARD OF REVIEW

The statute of limitations may be raised in a summary judgment motion. *See McDonnell v. Consolidated School Dist. of Aiken*, 315 S.C. 487, 489 (1994). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter

of law. *Baird v. Charleston County*, 333 S.C. 519, 529 (1999). In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *McMaster v. Dewitt,* 411 S.C. 138, 143 (Ct. App. 2014). Although the burden is on the party seeking summary judgment, it is not sufficient for the non-moving party "to create an inference that is not reasonable or an issue of fact that is not genuine." *Id.* (citing *Town of Hollywood v. Floyd*, 403 S.C. 466, 477 (2013)).

Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial." *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, (1991) (internal citation omitted). A party cannot rest on the mere allegations in her complaint. Nor can a party "escape summary judgment on the mere hope that something may develop later at trial, or by remaining silent and later claiming additional facts supporting the cause of action." *Hammond v. Scott*, 268 S.C. 137, 143 (1977).

"The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 579, (Ct. App. 2001); *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 116 (1991) (internal citation and quotation omitted). Furthermore, "[a] complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Baughman*, 306 S.C. at 116.

ANALYSIS

South Carolina Code Section 15-3-545(A) provides the following regarding the statute of limitations for a medical malpractice claim:

> [I]n any action … to recover damages for injury to the person arising out of the medical, surgical, or dental treatment, omission, or operation by any licensed health care provider as defined in Article 5, Title 38 acting within the scope of his profession must be commenced within three years from the date of treatment, omission, or operation giving rise to the cause of action or three years from the date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section.

S.C. Code Ann. § 15-3-545(A).

Under the discovery rule, the statute begins to run when "the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." *McMaster v. Dewitt*, 411 S.C. 138, 145 (Ct. App. 2014) (citing *Knox v. Greenville Hosp. Sys.*, 362 S.C. 566, 570 (Ct. App. 2005)). *Knox* is particularly instructive as it involved alleged nerve injuries that occurred after a needle was allegedly improperly inserted into the wrist of the plaintiff. (*Id.* at 568-569). The *Knox* Court held that the date of discovery was on the date of the needle insertion itself, because the plaintiff, in response to the needle insertion, "screamed," "squealed and hollered," and his "whole hand jumped up . . . in [his] fingers." (*Id.* at 571). Indeed, the plaintiff in *Knox* knew something was "different" about this insertion because of the pain and reaction he had, and he informed relatives that same day that he was experiencing pain and that the "doctor" hit a nerve. (*Id.*). Accordingly, the *Knox* Court held that the "exercise of reasonable diligence under these facts 'would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against [the Hospital] might exist.'" (*Id.* at 571).

Here, Ms. Sample contends that the discovery rule as explained in *Knox* requires that a plaintiff have a comprehensive understanding of her injury for the statute of limitations to begin, and that Ms. Sample differs from the *Knox* plaintiff because she did not understand her injury or its connection to her attempted blood donation until late 2020 or early 2021. (*See* Pl.'s

Memorandum in Opp. to TBC's Motion for Summary Judgment). The Court disagrees that this is the standard under the discovery rule as outlined in South Carolina's jurisprudence.

In both her written and oral discovery responses, Ms. Sample emphasized that the pain she felt immediately upon insertion of the needle was abnormal, that she felt uneasy with the care she was receiving, and that she believed a nerve had been hit. Indeed, Ms. Sample confirmed in discovery that "[a]t the time [she] left the Defendant Blood Connection's mobile blood mobile, she was having severe pain and her arm was turning blue, with bruising . . . [and that she] noticed almost immediate weakness and numbness in her right arm in the hours following the attempted blood draw and insertion of the needle into her arm." (Pl.'s Answers to Interrogs., No. 17). This Court finds that the facts and circumstances of Ms. Sample's injury "would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." *McMaster v. Dewitt*, 411 S.C. 138, 145 (Ct. App. 2014) (citing *Knox v. Greenville Hosp. Sys.*, 362 S.C. 566, 570 (Ct. App. 2005)).

Thus, regardless of whether Ms. Sample may have learned more about her purported injuries at a subsequent time, she was on notice on January 2, 2020 that she might have a claim against TBC. Accordingly, the statute of limitations began to run on January 2, 2020, and her commencement of this action on February 22, 2023 was untimely. Therefore, summary judgment must be granted in favor of the Defendant TBC.

Similarly, the Court finds that the statute of limitations for Ms. Sample's negligence claims related to TBC's hiring, training, and supervision also began on January 2, 2020, and thus, are untimely. TBC contends that these negligent claims are intertwined with the medical malpractice claim because they are dependent upon her ability to prove medical malpractice. This Court agrees. Regardless, even if her negligence claims related to hiring, training, and supervision were independent

of her ability to prove medical malpractice, these negligence claims are still subject to S.C. Code Ann. § 15-3-530, and her action remains untimely. S.C. Code Ann. § 15-3-530(5) and § 15-3-535 require a cause of action for "injury to the person or rights of another, not arising on contract and not enumerated by law," to be commenced within "three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." *See also Brown v. Pearson*, 326 S.C. 409, 418 (Ct. App. 1997) (negligent hiring and supervision claims must be commenced within three years of injury and "*not* three years after a full-blown theory of recovery has been developed.") (emphasis added).

Here, Ms. Sample made clear in written and oral discovery that she had concerns with the Defendant's staff on the day of January 2, 2020, and thus, the statute of limitations began to run on the day of her donation. (Pl.'s Dep., 26:5-18). As a result, Ms. Sample's negligent hiring and supervision claims are also barred by the statute of limitations because they were not commenced by January 2, 2023.

IT IS, THEREFORE, ORDERED that Defendant The Blood Connection, Inc's Motion for Summary Judgment is **GRANTED.**

IT IS FURTHER ORDERED The Blood Connection, Inc. is dismissed as a Defendant in this action with prejudice.

AND IT IS SO ORDERED.

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The Honorable Judge Marvin H. Dukes, III

Charleston Common Pleas

Case Caption: Lisa Renee Sample VS Blood Connection Inc , defendant, et al

Case Number: 2023CP1000914

Type: Order/Summary Judgment

So Ordered

s/Marvin H. Dukes III #2785