

EXHIBIT

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Charlotte Beverly Derrick,

Plaintiff,

IN THE COURT OF COMMON PLEAS

C.A. No. 2024-CP-23-06246

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

vs.

Bon Secours St. Francis Health System, Inc.
d/b/a St. Francis Downtown, and St. Francis
Hospital, Inc. d/b/a St. Francis Downtown,

Defendants.

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SC Court of Appeals

This matter was before the Court on May 27, 2025. Defendants Bon Secours Mercy Health, Inc. (incorrectly identified as “Bon Secours St. Francis Health System, Inc. d/b/a St. Francis Downtown”) and St. Francis Hospital, Inc. (incorrectly identified as St. Francis Hospital, Inc., d/b/a St. Francis Downtown”) filed a Motion to Dismiss Plaintiff Charlotte Beverly Derrick’s Complaint. Attorney Lillian K.H. Keeling appeared on behalf of the Defendants, and attorney Nicholas B. Uricchio appeared on behalf of the Plaintiff. Additionally, before the Court was the Plaintiff’s Motion to Amend the Summons and Complaint, which the parties consented to. Accordingly, the Defendants’ argument on their Motion to Dismiss addressed both the Plaintiff’s Complaint and Amended Complaint.

Having reviewed the pleadings, the motions, and the briefs, and after considering the arguments of counsel, I hereby **GRANT** Defendants’ Motion to Dismiss.

BACKGROUND

The Plaintiff filed her Complaint on October 25, 2024. The Defendants filed a Motion to Dismiss on November 6, 2024. The Plaintiff filed an Amended Complaint on February 20, 2025. According to the Amended Complaint, the Plaintiff was a patient at St. Francis Downtown

Hospital at the time of her accident, having been treated for a fever in the emergency department on November 13, 2021. Amended Complaint Para. 8. According to the Plaintiff, she underwent a CT scan and received IV antibiotics during her hospital stay. Amended Complaint Para. 10. The Amended Complaint continues, “When the Plaintiff exited from the hospital, she was not provided a wheelchair, nor assisted in any way by hospital staff . . . Plaintiff and her aunt were merely directed to a side exit which led to the parking area . . . and the Plaintiff and her aunt had to walk more than 100 yards to their vehicle.” Amended Complaint Para. 11. The Plaintiff contends that while “walking out of the ER exit to which Plaintiff had been directed, the Plaintiff suddenly fell to the ground face down.” Amended Complaint Para. 12. Ms. Derrick claims that she suffered injuries as a result of this sudden fall.

The Plaintiff asserts three causes of action: premises liability, negligence, and gross negligence. With respect to the premises liability claim, she alleges that the Defendants are “liable for violating a duty to provide for the safe exit for the Plaintiff . . . by insuring or assisting in her safe egress from the hospital,” and breaching their duty “by not eliminating the risk of harm by ensuring a safe exit via wheelchair or with other assistance while the Plaintiff was in a weakened state as a result of her examination and treatment.” Amended Complaint Paras. 25 and 31.

Regarding the negligence cause of action, the Plaintiff contends that the Defendants were “negligent by not providing the Plaintiff a wheelchair or other assistance when leaving the hospital and allowing her to exit the hospital curbside more than 100 yards from her automobile accompanied only by her elderly aunt.” Amended Complaint Para. 36. She continues, asserting that the Defendants “breach[ed] said duty by not exercising a heightened standard of due care to discharge a weakened patient under the standard course of care or dealing, here by failing to use a wheelchair or other assistance to escort her out of the hospital.” Amended Complaint Para. 39.

In their Motion to Dismiss, the Defendants contend that the Plaintiff's theories of premises liability and negligence are actually causes of action sound in medical malpractice. As a result, the Defendants argue that the Plaintiff was required to follow the procedural requirements for medical malpractice actions outlined in S.C. Code Ann. § 15-79-110, et seq. The Court agrees with the Defendants that the Plaintiff's claims sound in medical malpractice. Accordingly, the Plaintiff was required to follow the procedural requirements outlined in the Act before initiating her Complaint.

STANDARD OF REVIEW

A motion to dismiss is generally held to a strict standard in South Carolina. Nonetheless, a motion to dismiss may be granted by the circuit court when a defendant demonstrates that the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *See Sloan Const. Co. v. Southco Grassing, Inc.*, 368 S.C. 523, 525, 629 S.E.2d 372, 373 (Ct.App. 2006). In considering a motion to dismiss, the court may take judicial notice of well-known facts and principles of law, and in “[v]iewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case.” *Chewning v. Ford Motor Co.*, 346 S.C. 28, 32-33, 550 S.E. 2d 584, 586 (Ct. App. 2001).

For medical malpractice actions arising after July 1, 2005, the South Carolina General Assembly adopted reform legislation designed to provide certain protections and safeguards to hospitals and healthcare providers as defined in the statute (hereinafter the “Act”). *See* S.C. Code Ann. § 15-79-110, et seq. Section 15-79-125 of the Act specifically provides that “prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the Plaintiff must file a Notice of Intent to File Suit and, aside from limited exceptions, an affidavit of an expert witness” S.C. Code Ann. § 15-79-125(A). The Act further provides specific requirements for

the content of the Notice of Intent to File Suit, requires that the notice be served on the named defendants, and requires that the plaintiff answer standard interrogatories. *Id.* Once the aforementioned has been accomplished, the Act further provides that within 120 days from the service of the Notice of Intent to File Suit, the parties must engage in a mediation conference. *Id.* at 15-79-125(C). It is only after conclusion of the mediation conference that a plaintiff may initiate a lawsuit against a health care provider or institution. *Id.* at -125(E).

The statutes provide that these protections are only extended to a “health care institution” or “healthcare provider” as defined by section 15-79-110(2)¹ and section 15-79-110(3)². Moreover, these requirements apply to cases involving medical malpractice. Section 15-79-110(6) of the Act defines “medical malpractice” as follows:

“Medical malpractice” means doing that which the reasonably prudent healthcare provider or healthcare institution would not do or not doing that which the reasonably prudent healthcare provider or healthcare institution would do in the same or similar circumstances.”

S.C. Code Ann. § 15-79-110(6).

ANALYSIS

Although the Plaintiff has filed her Complaint as a premises liability/ordinary negligence lawsuit, it is neither. A premises liability action is one in which the owner or occupier of land or property is held liable for violating a duty to protect the defendant from *a defect or danger on the premises*. *Callender v. Charleston Doughnut Corp.*, 305 S.C. 123, 406 S.E.2d 361 (1991)

¹ A “health care institution” includes a hospital, which is defined by the Act as “a licensed facility with an organized medical staff to maintain and operate organized facilities and services to accommodate two or more nonrelated persons for the diagnosis, treatment, and care of such persons over a period exceeding twenty-four hours and provides medical and surgical care of acute illness, injury, or infirmity and may provide obstetrical care, and I which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina.” S.C. Code Ann. § 15-79-100(2), (4).

² The definition of a “health care provider” includes a “nurse. . . or any similar category of licensed health care provider . . .” S.C. Code Ann. § 15-79-100(3).

(emphasis added); *Larimore v. Carolina Power & Light*, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000). The Plaintiff does not allege that there was a defect or danger on the premises in the Complaint, and the Plaintiff's Amended Complaint does not assert allegations of a defect. The Plaintiff did not trip on a stretcher that was left in the middle of the hallway. She did not slip on a puddle of IV fluid that had been left on the floor for an unreasonable period of time. Instead, she "suddenly fell to the ground." Amended Complaint Para. 12. Rather than alleging a defect or danger on the premises, she contends that the Defendants should have realized that she "was in a weakened state *as a result of her examination and treatment*" and should have provided a wheelchair or other assistance rather than allowing her to leave with her aunt. Amended Complaint Para. 31 (emphasis added). The Plaintiff has pled that she suffered injuries as a "result of her examination and treatment." That is not a premises liability claim, but instead, a claim for medical negligence.

Likewise, the Plaintiff's claim for common or ordinary negligence is instead a claim for medical negligence. The Amended Complaint's language tells the story. The Plaintiff contends that the Defendants breached the standard of care by failing to provide a wheelchair or other assistance upon discharging "a weakened patient" after she underwent medical care and treatment at the hospital. Essentially, the Plaintiff alleges that the Defendants breached the standard of care in failing to appreciate that her medical condition warranted further assistance.

The Defendants, as hospital systems, meet the definition of healthcare provider/institution, and the allegations are that they either committed acts that a reasonably prudent healthcare provider/institution would not have committed, or failed to do certain acts that a reasonably prudent healthcare provider/institution would have done under the same or similar circumstances. Those allegations likewise meet the definition of medical malpractice inasmuch as the Plaintiff is

alleging that a healthcare provider failed to do that which a reasonably prudent healthcare provider would have done, i.e., provide assistance at discharge after providing medical care and treatment to the patient.

The Plaintiff contends that her case differs from a medical malpractice case because it is analogous to *Dawkins v. Union Hospital District*, 408 S.C. 171 (2014). The Court disagrees. In *Dawkins*, the plaintiff fell in the restroom of a hospital and fractured her right foot before receiving medical care. *Id.* at 178-179. Here, the Plaintiff has pled that she was in a weakened state “*as a result of her examination and treatment,*” which caused her to fall. In other words, the Plaintiff alleges that someone in the hospital—a healthcare provider—breached the standard of care by not appreciating the Plaintiff’s weakened medical state prior to discharge, and by discharging her in a weakened state without providing appropriate attendant care.

Pursuant to statutory law, the Plaintiff was required to file a notice of intent accompanied by an expert affidavit. Because she failed to do so, the Defendants are entitled to a dismissal of the action.

IT IS, THEREFORE, ORDERED that Defendants’ Motion to Dismiss is **GRANTED**.

IT IS, THEREFORE, ORDERED that the Plaintiff’s Complaint and Amended Complaint are dismissed for failure to comply with S.C. Code Ann. Section 15-79-110 and Section 15-79-125.

AND IT IS SO ORDERED.

_____, 2025

The Honorable Judge William C. McMaster, III



Greenville Common Pleas

Case Caption: Charlotte Beverly Derrick vs. Bon Secours Mercy Health Inc ,
defendant, et al
Case Number: 2024CP2306246
Type: Order/Other

So Ordered

William C. McMaster, III

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