THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Circuit Court Case No. 2024-CP-23-0246 and
Appellate Case No. 2025-001598

Charlotte Beverly Derrick,……Appellant,

v.

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

INITIAL BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

PERSUASIVE AUTHORITY

RULES

STATUTES

STATEMENT OF THE ISSUES ON APPEAL

1. The circuit court properly granted Respondents' Motion to Dismiss and appropriately determined that Appellant was required to comply with S.C. Code Ann. § 15-79-125 because Appellant's claims sound in medical malpractice.

2. The circuit court properly dismissed Appellant's ordinary negligence and premises liability claims because they sound in medical malpractice.

STATEMENT OF THE CASE

This appeal arises out of a dispute over whether Appellant's fall outside of a hospital as a result of medical treatment is a claim for medical malpractice or claims for ordinary negligence and premises liability. Charlotte Beverly Derrick ("Appellant") alleged that she fell after receiving medical treatment and being discharged from St. Francis Downtown's emergency department on November 13, 2021. (Sec. Amend. Complaint, ¶ 8-12). Appellant sued 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") in the Court of Common Pleas of Greenville County for premises liability, negligence, and gross negligence. (See 10/25/2024 Complaint).

By way of procedural history, Respondents filed a Motion to Dismiss on November 6, 2024, arguing that Appellant failed to comply with the procedural requirements for medical malpractice claims as required by S.C. Code Ann. Section 15-79-110. (See Respondents' Motion to Dismiss). Appellant amended her Complaint on November 12, 2024. (See Appellant's Amended Complaint). Respondents filed their Memorandum in Support of their Motion to Dismiss on January 29, 2025. (See Respondents' Memorandum in Support of Motion to Dismiss). Appellant then requested to amend her Complaint for a second time. (See Appellant's Motion to Amend Complaint and Second Amended Complaint). Additionally, Appellant filed Appellant's Memorandum in Response to Respondents' Motion to Dismiss on February 21, 2025.

On May 27, 2025, Respondents' Motion to Dismiss was heard by Judge William C. McMaster III. Judge McMaster subsequently and appropriately granted Respondents' Motion to Dismiss by way of a Form 4 Order on June 16, 2025, and his final Order was entered on June 10, 2025. (See Form 4 Order and Order Granting Respondents' Motion to Dismiss).

In the order, the trial court concluded, amongst other findings, that Appellant pled that she suffered injuries as a result of her examination and treatment, and thus, was required to comply with the procedural requirements outlined in S.C. Code Ann. Section 15-79-110. (See Order Granting Respondents' Motion to Dismiss). Appellant filed a Motion to Reconsider which was appropriately denied. (See Motion to Reconsider and Order Denying Motion to Reconsider.) This appeal followed by filing of a Notice of Appeal on August 11, 2025.

STATEMENT OF FACTS

Appellant alleged that she received medical treatment at St. Francis Downtown's emergency department on November 13, 2021. (Sec. Amend. Complaint, ¶ 8). Appellant was a 69-year-old female and arrived with a high fever potentially due to complications from her breast implantations. (Id. ¶ 8-9). Appellant alleges that medical providers performed a CT scan of the Appellant's breast, found that she had fluid and blood buildup in her breast, and administered an intravenous broad-spectrum antibiotic. (Id. ¶ 10).

Appellant alleged that she was not admitted to the hospital but was discharged and provided discharge instructions, one of which was to follow up with another physician within a week. (Id.) Appellant further alleged that she was not provided with a wheelchair or other assistance at the time of her discharge and upon her exiting the hospital. (Id. ¶ 11). Appellant claims she and her aunt were directed to leave through a side exit without any instruction or physical assistance. (Id. ¶ 11-12). After walking out of the emergency department, Appellant "suddenly fell" to the ground and was injured. (Id. ¶ 12). Appellant was subsequently assisted back into the emergency department and underwent further medical treatment. During her second discharge, she alleged that she "was escorted out via wheelchair by hospital staff, and her aunt was able to pull the car up to the exit[.]" (Id. ¶ 16).

Appellant subsequently brought this action and asserted three causes of action: premises liability, negligence, and gross negligence. With respect to the premises liability claim, she alleged that the Respondents 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 likely in a weakened state *as a result of her examination and treatment*." (Sec. Amend. Complaint ¶ 25 and 31, emphasis added). Regarding the negligence cause of action, Appellant contends that the Respondents 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." (Sec. Amend. Complaint ¶ 36). She continues, asserting that the Respondents "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." (Sec. Amend. Complaint ¶ 39).

Appellant initiated this medical negligence action by filing a Complaint on October 25, 2024. Appellant did not file a Notice of Intent to File Suit accompanied by an expert affidavit as required by S.C. Code Ann. Section 15-79-110. Respondents filed a Motion to Dismiss on November 6, 2024.

The Motion to Dismiss was based on Appellant's failure to file a Notice of Intent and expert affidavit as statutorily required in medical malpractice actions. Respondents argued that the Appellant's claims, although captioned as ordinary negligence and premises liability causes of action, was actually a medical malpractice claim and required expert testimony.

STANDARD OF REVIEW

"On appeal from a dismissal pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court—whether the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Dawkins v. Union Hosp. Dist., 408 S.C. 171, 176, 758 S.E.2d 501, 503 (2014). "[An appellate [c]ourt is required to view the allegations in the complaint in the light most favorable to the plaintiff and determine whether the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief under any theory of the case." *Id.*

ARGUMENT

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:

[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).

> "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).

Here, Respondents 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.

I. THE CIRCUIT COURT PROPERLY GRANTED RESPONDENTS' MOTION TO DISMISS AND APPROPRIATELY DETERMINED THAT APPELLANT WAS REQUIRED TO COMPLY WITH S.C. CODE ANN. § 15-79-125 BECAUSE APPELLANT'S CLAIMS SOUND IN MEDICAL MALPRACTICE.

The trial court correctly determined that Appellant's claim is one of medical malpractice rather than premises liability or ordinary negligence. Accordingly, Appellant was required to comply with the notice of intent and expert affidavit requirement provided for in S.C. Code Ann. § 15-79-125.

"In medical malpractice actions, expert testimony is required to establish both the duty owed to the patient and the breach of that duty, unless the subject matter of the claim falls within a layman's common knowledge or experience." Dawkins v. Union Hosp. Dist., 408 S.C. 171, 176, 758 S.E.2d 501 (2014). It is true that not every injury sustained by a patient in a hospital results from medical malpractice and an ordinary negligence claim can result from a medical provider's failure "to provide reasonable nonmedical, administrative, ministerial, or routine care." Id. at 177-178. However, in general, "if the patient receives allegedly negligent professional medical care,

then expert testimony as to the standard of that type of care is necessary, and the action sounds in medical malpractice." Id. at 177.

In Dawkins, the Supreme Court of South Carolina noted that differentiating between the two types of claims (medical malpractice and ordinary negligence) "depends heavily on the facts of each individual case." *Id.* at 176. Thus, courts often consider whether expert testimony is necessary to aid the jury's determination of fault when distinguishing between medical malpractice and ordinary negligence actions. Id. Here, Appellant specifically pled that she was likely in a weakened state *as a result of her examination and treatment*," and that at least one medical provider "should have provided a wheelchair or other assistance[.]" (Sec. Amended Complaint Para. 31 (emphasis added)).

In other words, Appellant is alleging that a healthcare provider failed to do that which a reasonably prudent healthcare provider would have done, i.e. provide instruction and assistance at discharge after providing medical care and treatment to the patient. Courts have determined that discharge instructions and what kind of fall precautions to administer after treating a patient, if any, is medical care and not a matter of common knowledge. See Chalfant v. Carolinas Dermatology Grp., P.A., 439 S.C. 372, 386, 887 S.E.2d 1 (Ct. App. 2023) (finding standard of care and breach thereof for after-hours contact information and post-operative discharge instructions did not lie within the ambit of common knowledge); See also Minnich v. MedExpress Urgent Care, Inc.-W. Virginia, 238 W. Va. 533, 539 796 S.E.2d 642 (2017) (question of whether plaintiff should have been permitted to climb onto the examination table unassisted was one of medical malpractice and not ordinary negligence); See also Bardo v. Liss, 273 Ga. App. 103, 104-105, 614 S.E.2d 101 (2005) ("the degree of physical assistance needed by a patient to prevent a fall in light of the patient's medical condition required the exercise of expert medical judgment."). Accordingy,

Appellant's allegations of failure to implement proper fall precautions are that of medical malpractice and expert testimony is required.

Appellant contends that the "factual predicate in the present case directly mirrors that of Dawkins v. Union Hosp. Dist., 408 S.C. 171, 758 S.E.2d 501 (2014)." (Appellant's Initial Brief, p. 9). However, this is incorrect. The plaintiff in Dawkins was waiting in the emergency room area, and at "some point after being admitted but prior to receiving treatment," the plaintiff attempted to use the restroom and fell, suffering injuries. (Id. at 174). The Dawkins court found that the claim was one of ordinary negligence, because the "complaint makes clear that she had not begun receiving medical care at the time of her injury[.]" Id. at 178.

Unlike in Dawkins, Appellant received medical treatment in the form of diagnostic scans and IV antibiotics prior to her fall. Moreover, although she attempts to state otherwise, Appellant alleges that she fell as a consequence of the medical treatment she received which put her in a weakened state. (Sec. Amend. Complaint, ¶ 8). Through this allegation, Appellant injects the issue of whether the healthcare provider at discharge, armed with the knowledge of Appellant's medical history, current medical condition, and the impact of treatment, complied with the standard of care when making the professional decision that Appellant was medically stable enough to exit the hospital without further instruction or assistance. Accordingly, the only way to evaluate her theory is to examine the kind of medical treatment she received by a medical provider, and why her discharge protocol was or was not appropriate given the context of her medical condition and treatment. This analysis calls for expert testimony to assess both "duty" and "causation." Under Dawkins, the Plaintiff's action is one of medical malpractice.

Pursuant to clear statutory law, the Appellant was required to file a Notice of Intent accompanied by an expert affidavit. Because she failed to do so, the trial court's grant of Respondents' motion to dismiss was appropriate.

II. THE CIRCUIT COURT PROPERLY DISMISSED APPELLANT'S PREMISES LIABILITY AND ORDINARY NEGLIGENCE CLAIMS BECAUSE THEY SOUND IN MEDICAL MALPRACTICE.

The trial court correctly dismissed Appellant's claims for premises liability and ordinary negligence because the claims were actually claims of medical malpractice. This is certainly not a premises liability case. 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 plaintiff from *a defect or danger on the* premises. Callender v. Charleston Doughnut Corp., 305 S.C. 123, 406 S.E.2d 361 (1991) (emphasis added); Larimore v. Carolina Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000). Appellant does not allege that there was a defect or danger on the premises. She 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." (Sec. Amended Complaint, ¶ 12). Rather than alleging a defect or danger on the premises, she contends that Respondents "breached their duty" by allegedly failing to provide a safe means of egress for discharged patients.

Appellant makes numerous attempts at pleading around what is a medical negligence case by claiming that Respondents "breached their duty by not providing for a curbside pickup," and "failing to provide reasonable access and choosing to direct the Plaintiff to use the side exit and require her to walk approximately 100 yards to her car." (Sec. Amended Complaint, ¶ 29-30). However, the Second Amended Complaint continues and provides the real reason *why* these alleged methods needed to be deployed—not because of a danger or defect on the premises, but

because she was "at risk of harm" due to being "in a weakened state as a result of her examination and treatment." (Sec. Amend. Complaint, ¶ 31). As discussed above, this is simply a different way of phrasing that Respondents breached the standard of care by not providing reasonable assistance at discharge after providing medical care and treatment to Appellant. That is not a premises liability claim, but instead, a claim for medical negligence.

Appellant addresses several cases in her motion in support of her argument, but each falls short. First, the reliance on Hughes is misplaced. Hughes involved a breakable convex mirror in an office clinic, which constituted an "inherently dangerous condition" on the defendant's premises that posed a foreseeable risk of harm to all patients. Hughes v. Children's Clinic, P. A., 269 S.C. 389, 398 (1977). Accordingly, the Hughes court agreed that the defendant clinic should have taken steps to warn its invitees of the inherently dangerous condition. Id. at 400. Here, there is no allegation of an inherently dangerous condition or failure to warn. Instead, Appellant argues that additional assistance at discharge was warranted given her age and impact of the medical treatment she just received. (See generally Sec. Amend. Complaint).

Further, Hughes was decided in 1977, which was long before the South Carolina General Assembly adopted reform legislation for medical malpractice actions arising after July 1, 2005. Thus, the plaintiff in *Hughes* was not required to follow the procedural requirements at issue in the present case. The same is true for Graham, which was decided in 1984. Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984). Although Hughes is cited in the Dawkins opinion and Graham is mentioned in a footnote, Respondents respectfully point out that those plaintiffs were never challenged with a motion to dismiss and contend they would be decided differently if made today.

In sum, the Circuit Court correctly concluded that Appellant's claims sound in medical malpractice. Appellant failed to file a Notice of Intent and expert affidavit in accordance with S.C.

Code Ann. § 15-79-125, and thus, this Court should affirm the Circuit Court's grant of Respondents' motion to dismiss.

CONCLUSION

For the reasons stated above, this Court should affirm the Circuit Court's ruling granting Respondent's Motion to Dismiss.

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