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

Case No. 2024-CP-23-0246
APPELLANT CASE NUMBER: 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.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES:

COURT RULES

STATEMENT OF ISSUES ON APPEAL

1. **THE TRIAL COURT ERRED IN GRANTING DEFENDANT-RESPONDENTS' MOTION TO DISMISS BY INCORRECTLY INTERPRETING PLAINTIFF-APPELLANT'S CLAIMS AS SOUNDING IN MEDICAL MALPRACTICE AND REQUIRING COMPLIANCE WITH S.C. CODE ANN. § 15-79-125.**

2. **THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S PREMISES LIABILITY AND NEGLIGENCE CLAIMS WHERE RESPONDENTS FAILED TO PROVIDE A SAFE MEANS OF EGRESS FOR INVITEES.**

STATEMENT OF THE CASE

On October 25, 2024, Appellant filed a summons and complaint against Respondents for personal injury claims under the theory of general negligence and premise liability against Bon Secours St. Francis Health System Inc. d/b/a St. Francis Downtown, and St. Francis Hospital Inc. d/b/a St. Francis Downtown, after she suffered severe injuries from a fall that took place on the grounds of St. Francis Hospital. (R.pp. 16-24)

On November 6, 2024, Respondents filed a Motion to Dismiss stating the grounds for dismissal were based upon S.C. Code Ann. §§ 15-79-125 and 15-36-100. Additionally, the Respondents stated that they were incorrectly identified. The correct names for Respondents are 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"). (R.pp. 25-26)

On November 12, 2024, Appellant filed an Amended Summons and Amended Complaint against Respondents, correctly identifying the Respondents and adding additional language to the complaint. (R.pp. 27-36)

On February 20, 2025, Appellant filed a Motion to Amend the Amended Summons and Amended Complaint against Respondent. (R.pp. 42-43, Second Amended Complaint R.pp. 44-53)

On May 27, 2025, oral arguments were heard on Appellant's Motion to Amend the Amended Summons and Amended Complaint and Respondent's Motion to Dismiss. Appellant's Motion to Amend was granted via consent of Respondents at Oral Arguments. (See, R.pp. 14-15, and Transcript, R.pp. 91-107)

Respondent sought to Dismiss the 2d Amended Complaint pursuant to Rule 12(b)6 SCRCP. (Motion to Dismiss, R.pp. 25-26)

Both parties filed memoranda in support of their positions. The Court noted that all filings were considered in the Form 4 Order. (R.pp. 11-13)

Appellant's Second Amended Complaint contains the following pertinent factual allegations (See, R.pp. 48 – 49):

FACTUAL ALLEGATIONS

10. St. Francis Downtown Hospital employees did a CT scan of the Plaintiff's breast and found that she had fluid and blood buildup in her breast. They then administered an intravenous broad-spectrum antibiotic and asked the Plaintiff to follow up with them or a Charleston doctor within a week. The Plaintiff was then discharged from being a patient of the hospital and at this point in time the Plaintiff became a normal business invitee. Plaintiff was no longer under a doctor's care or control

11. **When the Plaintiff exited from the hospital, she was not provided a wheelchair, nor assisted in any way by hospital staff. Plaintiff was accompanied by her elderly aunt, Alice Gillespie. Plaintiff and her aunt were merely directed to a side exit which led to the parking area. They were not given a chance or opportunity for a car to**

be pulled up to this side exit, and the Plaintiff and her aunt had to walk more than 100 yards to their vehicle.

12. After walking out of the ER exit to which Plaintiff had been directed, the Plaintiff suddenly fell to the ground face down. Alice Gillespie ran back into the hospital to get assistance as the Plaintiff was unable to get up on her own.

13. Three medical staff came to help the Plaintiff and took her blood pressure while she was still on the ground. The staff then put her in a wheelchair and rolled her back into the emergency room. Plaintiff was readmitted to the emergency room.

16. Amidst the second discharge, Plaintiff was escorted out via wheelchair by hospital staff, and her aunt was able to pull the car up to the exit so Plaintiff could promptly enter it and leave the premises.

Appellant's first cause of action in the Second Amended Complaint was for Premises Liability as alleged below (See, R.pp. 50- 51):

FOR A FIRST CAUSE OF ACTION
(Premises Liability)

25. The Defendants are liable for violating a duty to provide for the safe exit for the Plaintiff, who was a business invitee, by insuring or assisting in her safe egress from their hospital.

26. The Defendants owed the Plaintiff a duty of due care as Plaintiff was an invitee as a recently released patient of the hospital.

27. The Defendants owed the Plaintiff a duty of due care to discover risks and to take safety precautions to warn of or eliminate unreasonable risks within the area of invitation, at the exit of their hospital.

28. **The Defendants failed to provide reasonable access for elderly business invitees by barring the use of the main entrance, normally the drop off/pick up area, for invitees.**

29. **The Defendants breached their duty by not providing for a curbside pickup adjacent to the exit of the hospital even though it is foreseeable that an elderly person such as the Plaintiff and her aunt would routinely need close and easy access to their vehicles upon exiting the hospital.**

30. **The Defendants breached their duty by 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. Insomuch, Defendants violated their duty of reasonable care for an elderly business invitee.**

31. **The** Defendants breached 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 to be in a weakened state as a result of her examination and treatment.

32. The Defendants' breach of the duty of due care was the proximate cause of the Plaintiff's injury. But for the Defendant's breach, the Plaintiff would not have had to walk to her car from inside the hospital

without a wheelchair or other assistance, resulting in her falling face first and sustaining subsequent injuries to her knees and right hand and wrist. It was foreseeable that, upon exiting the hospital, walking a lengthy distance to her car from inside the hospital after emergency treatment was likely to result in injury to the Plaintiff.

33. As a result of her fall, Plaintiff has experienced excruciating pain, has had to undergo physical therapy and has lost a significant amount of use of her dominant hand.

34. Plaintiff requests an award of damages for pain and suffering, lost wages and other actual and punitive damages against Defendant in an amount to be determined by a jury.

Appellant's second cause of action in the Second Amended Complaint was for ordinary negligence, in not providing Appellant a safe, as alleged below (See, R.pp. 51-52):

FOR A SECOND CAUSE OF ACTION
(Negligence)

36. 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.

37. The Defendants were negligent by not providing for a curbside pickup adjacent to the exit of the hospital even though it is foreseeable that an elderly person such as the Plaintiff and her aunt would routinely need close and easy access to their vehicles upon exiting the hospital.

38. The Defendants owed Plaintiff a duty of care to protect Plaintiff based upon the relationship as a business invitee of the hospital. The design or operation of the emergency room exit and entrance did not allow Plaintiff's aunt to bring the car to the exit.

39. The Defendants acted with reckless disregard for the safety of Plaintiff by breaching 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.

40. As a direct and proximate result of the negligent, reckless, willful, wanton, careless, and grossly negligent acts and omissions of the Defendants, the Plaintiff sustained long-term injuries to her wrist and hand.

41. Plaintiff is entitled to an award of actual damages for pain and suffering, lost wages and other actual damages and punitive damages against the Defendant in an amount to be determined by a jury.

Appellant's third cause of action in the Second Amended Complaint was for Gross negligence as alleged below (See, R.pp.52-53):

FOR A THIRD CAUSE OF ACTION
(Gross Negligence)

42. Plaintiff realleges all of the preceding paragraphs as if set forth herein verbatim.

43. The Defendants were grossly negligent by significantly departing from the reasonable degree of care to protect the Plaintiff from foreseeable injuries.

44. The Defendants, by and through the acts of their staff or employees, instructed the Plaintiff to walk out of the hospital without assistance, rather than being escorted out via wheelchair to the parking lot rather than allowing her to meet her car at the curb of the entrance of the hospital.

45. The Defendants, by and through the acts of their staff or agents, voluntarily and willingly denied the Plaintiff a reasonably safe exit from the hospital by not ensuring her safe departure by wheelchair or with other reasonable assistance for vehicle access.

46. The Defendants created and allowed an unsafe area for exiting their facility by allowing ambulances not actively offloading or picking up patients to congregate without any plan or order in such a way as to block and prevent the Plaintiff's car from being brought to the entrance or near the entrance of the hospital where it would be possible for her to safely embark or alternatively failing to provide a wheelchair or other assistance for her to traverse the substantial distance to her automobile.

On May 27, 2025, the parties through their counsel appeared before the trial court, who GRANTED Appellant's Motion to Amend Amended Complaint. The trial court heard arguments on Defendant's Motion to Dismiss the 2d Amended Complaint pursuant to Rule 12(b)6 SCRCP. (Order, R.pp. 14-15 and Transcript, R.pp. 91-107)

On June 16, 2025, the Court issued a Form 4 Order dismissing the case after hearing arguments of the parties and considering the filings in this case. (See, Form 4 Order of June 16, 2025). The Form 4 Order also left the case open to allow Respondent's 15 days to file a formal order with the Court. (R.pp. 11-13)

On July 10, 2025 and July 18, 2025, the Court filed a Formal Order Dismissing the case and Granting Respondent's Motion to Dismiss. (R.pp. 4 -10)

On July 18, 2025, Appellant filed a Motion to Reconsider the Order Dismissing the case, stating that the causes of action were in general negligence and premises liability and not medical malpractice and that the Court incorrectly ruled that S.C. Code Ann. §§ 15-79-125 and 15-36-100 applied. (R.pp. 60-84).

On August 1, 2025, the Court filed a Form 4 Order denying Appellant's Motion to Reconsider. (R.pp 1-3)

Appellant now appeals to this Honorable Court the June 16, 2025 Form 4 Order and the July 10, 2025 Order Granting the Motion to Dismiss, as well as, the August 1, 2025 Order Denying the Appellant's Motion to Reconsider the July 10, 2025 Order. (Notice of Appeal, R.pp. 108-123)

STANDARD OF REVIEW

When appellate courts review the dismissal of claims for failure to state sufficient facts to establish a cause of action pursuant to 12(b)(6), SCRCP, the court must apply the same standard of review as the trial court. *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 112, 659 S.E.2d 158, 161 (2008). This standard requires the appellate court to determine whether the facts alleged in the complaint, along with the inferences reasonably deducible therefrom, when viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief under any theory of the case. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995). (emphasis added). If so, dismissal is improper. *Id.*

ARGUMENTS

I. THE TRIAL COURT ERRED IN CONCLUDING THAT APPELLANT IMPROPERLY FILED A MEDICAL MALPRACTICE ACTION WHEN APPELLANT BROUGHT AN ACTION UNDER PREMISES LIABILITY, NEGLIGENCE, AND GROSS NEGLIGENCE.

Appellant respectfully submits that she has sufficiently alleged in the 2d Amended Complaint, premises liability claims and negligence causes of action based on the Respondents' failure to act with reasonable care in providing for a safe ingress and egress for business invitees. (R.pp 48-53) Appellant contends compliance with S.C. CODE ANN. § 15-79-125 is not required because Appellant's claims do not involve medical malpractice. The factual predicate in the present case directly mirrors that of *Dawkins v. Union Hospital District*, 408 S.C. 171, 758 S.E.2d 501 (2014), a South Carolina Supreme Court case that establishes that not every injury sustained on the premises of a hospital sounds in Medical Malpractice.

In *Dawkins*, the Plaintiff's Amended Complaint alleged that the grossly negligent, reckless, willful, and wanton conduct of the Defendant Union Hospital District was the proximate cause of the injuries sustained when a patient, Dawkins, fell when she attempted to use a bathroom while unattended in the hospital. *Dawkins v. Wallace Thomson Hospital (aka Union Hospital District)*, 2011 WL 11817872 (S.C.Com.Pl.). In *Dawkins*, the trial court likewise erred in granting the Defendant's Motion to Dismiss.

Upon examination of *Dawkins,* it is evident that the instant matter presents substantially similar factual and legal circumstances. Plaintiff's Motion for Reconsideration in *Dawkins* more succinctly states,

> "Plaintiff is not disputing the diagnosis techniques or professional diagnosis ability of the hospital staff…this case was dismissed before Plaintiffs have had an opportunity to fully engage in discovery… *Plaintiff's theory of the case is simply*

> *that Defendant, as a facility which invites sick and infirmed members of the public into its doors for its own benefit, has a duty to ensure that those members of the public are not exposed to a dangerous environment* and that proper fall procedures should have been in place and enforced in order to prevent incidents such as the one alleged in Plaintiff's Amended Complaint from occurring." (emphasis added). *Dawkins v. Wallace Thomson Hospital (aka Union Hospital District)*, 2012 WL 11113189 (S.C.Com.Pl.).

In its opinion, the Supreme Court specifically emphasizes that at all times medical professionals and facilities have a separate duty to exercise "ordinary and reasonable care" to ensure no unnecessary harm befalls their invitees; a standard not implicated by the medical malpractice statute, S.C. CODE ANN. § 15-79-110, but instead, rooted in ordinary negligence claims. *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 758 S.E.2d 501, 504 (2014). *Dawkins* more succinctly states,

> "However, at all times, the medical professional must "exercise ordinary and reasonable care to insure that no unnecessary harm [befalls] the patient." *Papa v. Brunswick Gen. Hosp.,* 132 A.D.2d 601, 517 N.Y.S.2d 762, 763-64 (App. Div. 1987). 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." *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).

The Court has distinguished that actions involving "nonmedical, administrative, ministerial, or routine care" sound in ordinary negligence, *not* medical malpractice. *Id.* (emphasis added). The

distinction lies in the nature of the facts alleged. *Id* at 176, 504. More specifically, the Supreme Court held that expert testimony is not required in ordinary negligence claims where the jury can determine the relevant facts and legal standards using their common knowledge. *Id.* at 177, 504.

The Court found for the plaintiff in *Dawkins* under claims of ordinary negligence, ruling she did not allege negligently administered medical care, but rather, that her injuries occurred from the Hospital's negligent supervision on the premises. *Id.* at 178-79, 505. (Relying on *Landes v. Women's Christian Ass'n*, 504 N.W.2d 139 (Iowa Ct. App. 1993), finding "claims brought by patient who had just undergone knee surgery and who fell while unattended in the restroom sounded in ordinary negligence because they involved routine, nonmedical care"; and *Kelly v. Bridgeport Health Care Ctr., Inc.*, Cf. No. FBTCV106007389S, 2010 Conn. Super. LEXIS 2178, 2010 WL 3788059, at *1, 5 (Conn. Super. Ct. Sept. 2, 2010), finding "once the Hospital admitted Appellant, it was on notice that she was in a vulnerable physical state and undertook a duty to reasonably care for her"). *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 758 S.E.2d 501 (2014).

Appellant presented at the emergency room complaining of pain and swelling in her breast. She received a CT scan and IV antibiotics and was released from the emergency room, doctor's care, and formally discharged from the hospital. (R.p, 48, See 2d Amended Complaint p. 4 at para. 10) At that point, she became an ordinary business invitee (R.p.48, para 10) to whom the for-profit facility still owed a duty of reasonable ordinary care. (R.p. 52, para. 38)

Respondents assert that just because a patient is no longer under the supervision of a physician does not have any effect on whether the case is sounded on medical malpractice or not. (R.p. 105 lines 7-14, Transcript p. 15) While medical malpractice claims may not end at discharge, the injuries incurred after discharge must be the direct and proximate result of negligently

administered medical care, and therefore, claims in ordinary negligence may still arise. *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 177-178, 758 S.E.2d 501, 504 (2014).

The trial court in this case determined that because Appellant pled that she was in a weakened state, her injuries stem "as a result of her examination and treatment" and therefore her claim lies in medical malpractice. (R.p. 8, para. 1, Final Order Granting Mot. to Dismiss p. 5). This is contrary to the ruling in *Dawkins* and contrary to the evidence presented.

Nearly identical to the claimant in *Dawkins*, Appellant did not allege that the negligent administration of any medical procedure caused her injuries or even that her weakened state was caused by her examination and treatment. Instead, Appellant alleged that her injuries resulted from Respondents' failure to take proper measures as a business proprietor to ensure Appellant's safe egress from the premises. (R.pp. 50-51, paras. 28, 29, and 30; and 52, at para. 37)

Specifically, Appellant alleged that Respondents breached their duty of routine care by directing her and her elderly aunt to leave by way of a side exit with a long, sloping sidewalk without even providing a wheelchair, thereby failing to eliminate a foreseeable risk of harm. (See R.pps. 48, para 11, and 51, para. 31, 2d Amended Complaint paras. 11 and 31; and R.p. 104, Transcript p. 14, lines. 1–13). Appellant further alleged that Respondents disregarded their duty to exercise reasonable routine care by barring the use of the main entrance by Appellant, which would have offered a safe and accessible pickup area, and by failing to provide a comparable alternative at the temporary side exit. (R. p. 50 at para.28, 2d Amended Complaint)

Respondents themselves acknowledged and do not dispute that Appellant alleged in her complaint "that the defendants were negligent in allowing her to leave without assistance", "the defendants are liable for violating a duty to provide for a safe exit.... or assisting in her safe egress",

and that Appellant alleged Respondents breached their duty of care by failing to provide a wheelchair when discharging a weakened patient. (See Transcript, R.p. 97, line 18-p. 98, line 7)

Appellant's claims clearly center on whether Respondents exercised reasonable care in managing their premises. The claims do not involve complex medical procedures requiring expert testimony. Rather, it challenges the reasonableness of directing two elderly women through a side exit with a long, sloping sidewalk, which did not provide safe accessibility to their vehicle. Further, as a hospital serving the public, Respondents had a duty to reasonably anticipate that its invitees might require heightened care during their egress, especially when their temporary exit procedures deviated from their standard business practices. Jurors are fully capable of assessing whether Respondents failed to exercise reasonable ordinary care under these circumstances, especially regarding two elderly women.

Regarding the facts of this case, Appellant's injuries do not arise out of any negligent medical procedure that Respondents performed. Appellant suffered a fractured hand and bilateral knee abrasions. (See, R.p. 49, at paras 14-15, 2d Amended Complaint) The administration of the IV and CT scan was not the direct and proximate cause of these injuries, or Appellant would not have been discharged from the premises. Instead, Appellant's injuries result from falling on the long, sloping sidewalk after her discharge, when Respondents failed to act with ordinary care as business owners.

Contrary to the trial court's determination, the facts and legal issues that were determined in *Dawkins* are nearly identical to those of the case at hand. Accordingly, this Court should apply the precedential authority established in *Dawkins* in its consideration of the premises liability claim and compliance with the medical malpractice provisions of S.C. CODE ANN. § 15-79-110 should not be required.

II. THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S PREMISES LIABILITY AND NEGLIGENCE CLAIMS WHERE RESPONDENTS FAILED TO PROVIDE A SAFE MEANS OF EGRESS FOR INVITEES.

In addition to finding that S.C. CODE ANN. § 15-79-110 is not applicable, Appellant respectfully requests that this Court find that the trial court erred in dismissing Appellant's negligence and premises liability claims. "[T]he 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." *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).

Appellant is clearly a business invitee. Appellant's presence on the property directly served the Respondents' commercial purpose and was foreseeable as part of the ordinary operation of their business. Case law has further established that a business proprietor must use due care to keep the premises in a reasonably safe condition and warn invitees of any condition that might be dangerous to him. *Hughes v. Children's Clinic, P.A.*, 269 S.C. 389, 237 S.E.2d 753 (1977). In *Hughes*, the Court established that a hospital cannot only be found liable for an unreasonably dangerous premises, but also that, as an invitee on the premises, the clinic owed the Plaintiff an active or affirmative duty, which includes refraining from any act that may make the *invitee's* use of the premises dangerous or result in injury to him. *Id.* at 397, 756, (emphasis added). It is not necessary that the precise manner in which the injuries occurred, or where they were sustained, were foreseen or foreseeable. *Id.* at 397, 756-577. It is sufficient that the risk of injury falls within a reasonably anticipated range that exceed ordinary dangers. *Hughes v. Children's Clinic, P.A.*, 269 S.C. 389, 397, 237 S.E.2d 753, 757 (1977).

It was, therefore, a question for the jury whether Respondents had provided a reasonably safe premises for the use of Appellant, as a business invitee. *Hughes v. Children's Clinic, P. A.*,

269 S.C. 389, 397-98, 237 S.E.2d 753, 757 (1977). The trial court erred in dismissing the action prematurely at the 12(b)(6) stage of the proceedings.

Here, Respondents breached their duty of care by directing Appellant and her elderly aunt by way of a side exit with a long, sloping sidewalk without providing a wheelchair or failing to warn about the slope, thereby failing to eliminate a foreseeable risk of harm that resulted in an injury to Appellant. (R.p. 104, Transcript p. 14, lines 1–14). During, the first discharge, Respondents did not provide a chance or opportunity for Appellant's elderly aunt to pull her car closer to the side exit, further limiting the ability to exit safely. (See, R. p 48, 2d Amended Complaint p. 4 at para 11). In contrast, during the second discharge, Respondents permitted Appellant to use the emergency exit, which enabled her to safely access her car at a close distance; an option they reasonably should have provided from the outset. (See R. p. 49, 2d Amended Complaint p. 5 at para. 16). Thus, Respondents breached their active or affirmative duty of refraining from any act that may make the invitee's use of the premises dangerous or result in injury to him.

In *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984), an ophthalmologist's patient who was given eye drops was left unsupervised in the waiting room. When the patient attempted to stand, she fell, blacked out, and injured herself. *Id.* at 396, 42. The Court acknowledged the plaintiff's choice to pursue her claim under theories of a *business invitee* and *premises liability,* citing "A person owes an invitee the duty of exercising reasonable or ordinary care for his safety and is liable for any injury resulting from the breach of this duty. This degree of care must be

commensurate with the particular circumstances involved, including the age and capacity of the invitee." *Id.* at 397, 43.[1]

Respondents' argument that *Hughes* and *Graham* should be disregarded because they predate the 2005 medical malpractice filing requirements under S.C. Code Ann. § 15-79-110 is without merit. (R.p. 88, Respondent Memorandum in Opposition to Motion for Reconsideration, p. 4). This position is directly contradicted by the Supreme Court's 2014 decision in *Dawkins*, which affirmed that claims may still arise under ordinary negligence, independent of the medical malpractice statute. In doing so, *Dawkins* expressly cited *Hughes* and *Graham*, reaffirming that the 2005 medical malpractice amendments do not diminish established premises liability precedents.

Accordingly, *Hughes* and *Graham* remain good case law and are directly relevant to this case at hand. Thus, at all times, Respondents were subject to the standard of reasonable care as business owners, which the trial court erred in failing to acknowledge or apply.

Additionally, the trial court erred in concluding that because Appellant pled she was in a weakened state, her injuries stem "as a result of her examination and treatment" and she is not entitled to the same relief as set forth in *Dawkins.* As stated in *Graham v. Whitaker*, the business has a duty to consider the age and capacity of the business invitees. Appellant's weakened state did not result from medical malpractice but rather from competent medical care, however, the hospital was charged with knowledge of the weakened condition of its business invitee when Appellant was directed to a side exit that was not safe for her to use.

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[1] While *Graham v. Whitaker*, 282 S.C. 393 (1984), continues to serve as persuasive authority on premises liability (see *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 178 (2014)), *Graham's* holding regarding additur has since been superseded by statute.

Appellant suffered a fractured hand and bilateral knee abrasions from her fall. (See 2d Amended Complaint p. 5 at para. 14-15). She did not contend that the administration of the IV and CT scan were the direct and proximate cause of these injuries. Rather, Appellant contended that her injuries resulted from falling on a sloping sidewalk after her discharge, when Respondents failed to act with ordinary care as business owners. (See R.p. 48, 2d Amended Complaint p. 4 at para. 11 and R.p. 51, at para. 31; R.p. 104, Transcript p. 14, lines 1–14).

Specifically, Respondents failed to provide a pickup area adjacent to the hospital's side exit, denying reasonably safe access to Appellant's vehicle. (See R.p. 51, 2d Amended Complaint p. 7 at para. 28-31). It was reasonable for Respondents to be on notice that an elderly invitee (who had just received care) would be unable to exit safely by way of the long, sloping sidewalk, as directed by Respondents. Given that patients who had just received care foreseeably require close and routine access to their transportation, a reasonable person would have anticipated this need.

In any instance, the existence of the main entrance's accessibility evidenced Respondents' knowledge that invitees routinely required close access to their vehicle. By barring use of the main entrance (which offered a safe and accessible pickup area) and failing to implement a comparable alternative at the temporary side exit, Respondents disregarded their duty to exercise reasonable routine care when redirecting Appellant and her elderly aunt by way of the side exit where close access to their vehicle was not available.

Ultimately, when viewed in the light most favorable to the Appellant, she has sufficiently pled facts of this case that, if proven, would entitle her to relief under premises liability or ordinary negligence actions. Accordingly, Appellant respectfully requests that this Honorable Court reverse the trial court's decision to dismiss these claims.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court find that the trial court erred in two respects: first, by misclassifying Appellant's claim as one sounding in medical malpractice and improperly requiring compliance with the filing requirements of S.C. Code Ann. § 15-79-110; and second, by dismissing the action despite Appellant having sufficiently pled facts that, if proven, would entitle her to relief under the theories of premises liability and ordinary negligence.

Accordingly, this Honorable Court should reverse the decision of the trial court and remand the matter for further proceedings consistent with the proper application of South Carolina law.

Respectfully submitted,

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