

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.

REPLY BRIEF OF APPELLANT

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REPLY TO RESPONDENTS' STATEMENT OF THE CASE

In reply, Appellant does not adopt Respondents' Statement of the Case. Appellant continues to rely on the Statement of the Case as set forth in Appellant's Brief, which included verbatim from the Second Amended Complaint, the Factual Allegations, the First Cause of Action (Premises Liability), the Second Cause of Action (Negligence), and the Third Cause of Action (Gross Negligence). (R.pp. 47-53)

REPLY TO RESPONDENTS' STATEMENT OF FACTS

Appellant does not adopt Respondents' Statement of Facts, wherein they narrowly interpret the pleadings in the light most favorable to Respondents, and then argue that Appellant's negligence and premises liability claims were actually a medical malpractice claim which required expert testimony.

REPLY

Appellant submits this reply to address Respondents' mischaracterizations of the Second Amended Complaint and to address the applicable legal standards.

In general, Respondents ignore Rule 12(b)(6) SCRPC, which requires the trial 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.*

- 1. RESPONDENTS MISAPPLY AND MISINTERPRET CASE LAW TO IMPROPERLY CONFLATE APPELLANT'S PREMISES LIABILITY AND NEGLIGENCE CAUSES OF ACTION INTO AN ACTION FOR MEDICAL MALPRACTICE.**

Appellant's allegations arise from Respondents' failure to exercise ordinary care owed to a business invitee, not from any negligent medical treatment. Appellant alleges that her fall resulted from Respondents' negligence in failing to ensure a safe egress. (R.pp. 50-53, 2d Amended. Complaint). Specifically, the allegations that state Appellant was likely in a weakened condition and that Respondents failed to provide a safe exit for pickup from the sidewalk in front of the hospital entrance, or alternatively, to provide a safe exit via wheelchair or other routine assistance, goes to the duty owed by Respondents to Appellant as a business invitee and the proximate cause analysis that it is foreseeable that hospital invitees could be in a weakened condition whether they received treatment or not. Plaintiff's causes of action are for premises liability and ordinary negligence, not medical malpractice. (R.p. 51, 2d Amend. Complaint, para. 31)

Despite the clear distinctions in the Second Amended Complaint, Respondents disregard the pleaded Causes of Action and instead argue that, because Respondents are a health care institution and certain acts or omissions *could* be framed as those of a "reasonably prudent institution", the claims necessarily sound in medical malpractice and require compliance with S.C. Code Ann. § 15-79-125. (Respondent Brief, p. 7, para. 1) (emphasis added).

This argument mischaracterizes the nature of Appellant's claims and ignores the well-established distinction between medical judgment, which typically requires an expert to establish a departure, and ordinary negligence and premises liability.

A. RESPONDENTS MISAPPLY *CHALFANT* AND MISINTERPRET *DAWKINS*

Respondents' reliance on *Chalfant v. Carolinas Dermatology Grp., P.A.*, 439 S.C. 372, 887 S.E.2d 1 (Ct. App. 2023), is misplaced. Respondents attempt to reframe Appellant's premises liability and negligence claims as challenges to "discharge protocols" requiring expert testimony.

This argument ignores the allegations in Appellant's Second Amended Complaint and conflates two entirely different areas of conduct – proper medical decision-making versus nonmedical, administrative, ministerial, or routine care as established in *Dawkins v. Union Hospital District*, 408 S.C. 171, 758 S.E.2d 501 (2014).

In *Chalfant v. Carolinas Dermatology Grp*, the court required expert testimony because the appellant directly challenged the adequacy of post-operative discharge instructions relating to surgical risks, which varied among physician practices. 439 S.C. 372 (Ct. App. 2023). The case turned on whether the specific method of communication of post-surgical bleeding risk via telephone met the standard of care. *Id.* at 385-386. The court held it was not within the layman's common knowledge to determine the proper standard of care by deciphering multiple doctors' methods of discharge instructions. *Id.*

In the case sub judice, Appellant raises no such challenge to medical decision making. Appellant does not allege that Respondents failed to warn her of any medical risks, failed to provide proper post-treatment instructions, or made any medical decision that deviated from a professional standard of care. Instead, Appellant alleges that Respondents, acting as business proprietors, failed to provide reasonable, routine assistance to elderly invitees navigating a sloped walkway. Whether a hospital should assist an elderly person down a long, sloping sidewalk is a matter well within a lay jury's common knowledge. It does not require deciphering medical protocols or expert testimony, but rather whether Respondents, as business proprietors, acted reasonably. The allegations of negligence would have been the same had Appellant's elderly companion fallen.

Respondents also misinterpret *Dawkins*, suggesting it only applies to injuries occurring before treatment, and that any post-treatment incident requires examining Appellant's medical care

and “discharge protocol”. (Respondent Brief, p. 9, last para.). *Dawkins* does not rely on when the injury occurred, but rather on the facts surrounding the injury—specifically, whether the claim challenges medical judgment or, conversely, routine, nonmedical care.

Appellant’s fall occurred after discharge, when she was no longer under medical supervision and was a business invitee who was owed a routine, non-medical duty of ordinary care. Respondents’ reliance on paragraph 8 of the Second Amended Complaint to argue otherwise is misplaced (Respondent Brief, p. 9, last para.). Paragraph 8 of the Second Amended Complaint alleges an emergency-room admission; it does not allege that medical treatment or discharge judgment caused the fall. (R.p. 48, 2d Amend. Complaint, para. 8). Instead, Appellant’s complaint challenges Respondents’ failure to act with reasonable care when directing two elderly ladies to a temporary side exit, with a long, sloping sidewalk and without any assistance.

2. RESPONDENTS MISCHARACTERIZE APPELLANT’S CAUSES OF ACTION.

Respondents next rely on *Callender v. Charleston Doughnut Corp.*, 305 S.C. 123, 406 S.E.2d 361 (1991) to misconstrue Appellant’s claims as sounding in medical malpractice. (Respondent Brief, p. 10, first para.). *Callender* does not convert ordinary negligence or premises liability claims into medical malpractice actions simply because no danger or defect is alleged. Rather, *Callender* adopts the Restatement (Second) of Torts § 343A, which makes clear that a business proprietor may still be liable for any activity or condition on the premises, even one that is open and obvious, when the landowner should anticipate that the invitee’s attention may be distracted or that the invitee may be unable to protect herself. *Id.* at 125-126. This principle supports Appellant’s position. Directing Appellant through a temporary exit and by way of a long,

sloping sidewalk constituted a dangerous condition for elderly invitees exiting the hospital, and Respondents should have anticipated the risk and provided reasonable assistance.

Hughes v. Children's Clinic, P. A., 269 S.C. 389, 237 S.E.2d 753 (1977) also supports Appellant's position. Respondents' argument that *Hughes* is inapplicable because Appellant did not allege an "inherently dangerous condition" disregards the facts and issues in the case at bar. (Respondent Brief, p. 11, para. 2). *Hughes* holds that a premises owner owes an affirmative duty to refrain from acts that make an invitee's use of the premises dangerous, taking into account the invitee's age and capacity. (emphasis added). *Hughes* at 397. Appellant alleges precisely that Respondents' decision to divert her from the hospital's normal exit and direct her through a temporary exit with a long, sloping sidewalk without assistance, created the danger that caused her fall. More specifically, Respondents' decision created an unreasonable and foreseeable risk given Appellant's age and condition.

Respondents then disregard Appellant's showing that *Dawkins* expressly incorporates *Hughes* and *Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984) into the modern framework for distinguishing medical malpractice claims from ordinary negligence and premises liability claims. Instead, Respondents repeat the same contention that *Hughes* and *Graham* should be disregarded because they predate the 2005 medical malpractice statute, and that if challenged, would be decided differently today. (Respondent Brief, p. 11, last para.). *Dawkins* directly refutes Respondents' contention by confirming that these cases continue to govern claims sounding in ordinary negligence and premises liability, independent of medical malpractice requirements.

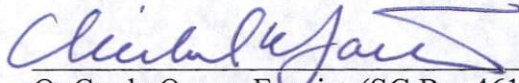
CONCLUSION

Respondents' arguments rest on a mischaracterization of Appellant's claims and an overly broad application of S.C. Code Ann. § 15-79-125. Appellant alleges negligence and premises

liability arising out of routine, nonmedical care—claims that do not require expert testimony and do not fall within the requirements of the medical malpractice statute. Under Rule 12(b)(6) SCRCP, dismissal was improper, and the Circuit Court’s order should be reversed and remanded.

Respectfully submitted,

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