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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable William C. McMaster, III
Circuit Court Judge

Appellate Case No. 2025-002165
Circuit Court Case No. 2024-CP-23-8016

Shena D. Webb, Appellant,

v.

The Legacy at Southpointe, Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES

1. Whether the trial court properly dismissed Appellant's Complaint under Rule 12(b)(5), SCRCP, where the statute of limitations for breach of contract expired on November 2, 2024, and Appellant failed to serve the Complaint within 120 days of filing, effectuating service more than seven months after filing the Complaint on October 31, 2024.

2. Whether the trial court properly dismissed Appellant's Complaint, to the extent it asserts a medical malpractice claim, where Appellant failed to comply with the mandatory presuit requirements of S.C. Code Ann. § 15-79-125(A), including the submission of an expert affidavit addressing the alleged malpractice.

COUNTER-STATEMENT OF THE CASE

Appellant Shena D. Webb, proceeding *pro se*, filed a Complaint on October 31, 2024, in the Greenville County Court of Common Pleas, asserting a single cause of action for breach of contract against Respondent. (R. pp. 3-5.) Mr. Charles Webb, Appellant's husband, was a resident at The Legacy at Southpointe, an assisted living and memory care facility in Greenville, South Carolina. Unfortunately, Mr. Webb passed away on November 2, 2021. Appellant alleged that Respondent breached a contract in connection with Mr. Webb's passing. The Complaint does not identify any specific contractual provision allegedly breached, nor does it articulate what standard of care was allegedly violated or how Respondent's conduct caused Mr. Webb's death.

On July 7, 2025, Respondent filed a Motion to Dismiss or, in the alternative, Motion for More Definite Statement pursuant to Rules 12(b)(5), 12(b)(6), and 12(e) of the South Carolina Rules of Civil Procedure. (R. pp. 6-8.) The matter came before the Honorable William C. McMaster, III on September 16, 2025. (R. pp. 9-14.) Despite proper notice of the hearing,

Appellant did not appear. (R. p. 8.) After carefully considering Respondent's arguments, trial court granted Respondent's Motion to Dismiss. (R. pp. 2.) Appellant filed a Notice of Appeal on October 17, 2025.

COUNTER-STATEMENT OF THE FACTS

Appellant's brief discusses at length facts outside the record, including conversations with physicians and observations made while cleaning out her husband's room. These matters were not before the trial court and are not properly before this Court on appeal. *See* Rule 210(h), SCACR; *Weston v. Kim's Dollar Store*, 385 S.C. 520, 538, 684 S.E.2d 769, 779 (Ct. App. 2009), *aff'd and remanded*, 399 S.C. 303, 731 S.E.2d 864 (2012) ("An appellate court's review is limited to facts appearing in the record.").

Appellant's Complaint is sparse, lacking factual detail, and is difficult to decipher. The entirety of the Complaint is reprinted below.

my late husband was found unresponsive at
Legacy of
The Southpointe facility seven hours after
asking to go to med. I feel as though this
facility made a breach of contract in
delivering the proper care of my husband.

Shena D. Webb
10/31/2024

(R. p. 5.)

STANDARD OF REVIEW

A trial court's decision to dismiss a case for insufficient service of process under Rule 12(b)(5), SCRCP is reviewed for abuse of discretion. *Christian v. Healy*, 435 S.C. 507, 511, 868 S.E.2d 403, 405 (Ct. App. 2021).

“On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court.” *Grimsley v. S.C. L. Enft Div.*, 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012) (quoting *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009)). “That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” *Id.*

ARGUMENTS AND AUTHORITIES

I. The Trial Court properly dismissed the Complaint under Rule 12(b)(5), SCRCP for failure to effectuate timely service

The trial court correctly dismissed Appellant's Complaint because Appellant failed to serve Respondent within the time required by South Carolina law. The statute of limitations for a breach of contract action in South Carolina is three years. S.C. Code Ann. § 15-3-530(1). Mr. Webb passed away on November 2, 2021, meaning the statute of limitations expired on November 2, 2024.

Appellant filed her Complaint on October 31, 2024 – just days before the statute of limitations expired. However, Appellant did not serve the Complaint until June 6, 2025, more than seven months after filing.

Under established South Carolina law, when a complaint is filed near the expiration of the statute of limitations, service must be effectuated within 120 days of filing. *Mims ex rel.*

Mims v. Babcock Ctr., Inc., 399 S.C. 341, 346, 732 S.E.2d 395, 398 (2012) (“When service occurs outside of the statute of limitations it must occur within 120 days of filing the complaint.”). The 120-day period from October 31, 2024, expired on February 28, 2025. Service on June 6, 2025, was therefore untimely by more than three months.

Appellant argues on appeal that “the trial court error[ed] in ruling before considering the process that the plaintiff was told by the Clerk of Court was incomplete.” (Appellant’s Brief, p. 3.) However, Appellant offers no legal authority for the proposition that alleged confusion regarding court procedures excuses compliance with the mandatory service requirements. The Rules of Civil Procedure apply equally to *pro se* litigants and represented parties. *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988) (“Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.”)

Because Appellant failed to serve the Complaint within 120 days of filing – when the statute of limitations had already expired – her action is untimely and was properly dismissed under Rule 12(b)(5), SCRCF.

II. To the extent Appellant asserts a medical malpractice claim, dismissal was proper for failure to comply with mandatory presuit requirements.

The trial court also properly dismissed any medical malpractice claim because Appellant failed to comply with the mandatory presuit requirements of S.C. Code Ann. § 15-79-125(A).

Although Appellant styled her Complaint as a breach of contract action, the allegations that Respondent failed to provide “proper care” to Mr. Webb and that he was found unresponsive sound in medical malpractice or negligence related to the provision of health care services at an assisted living facility. Appellant’s own brief confirms she seeks to assert claims for “breach of contract

and negligence” and alleges that “The Legacy at Southpointe is negligent in delivering Level III care.” (Appellant’s Brief, pp. 3, 5)

South Carolina Code Ann. §15-79-125(A) requires that a plaintiff filing a medical malpractice action “shall contemporaneously file a Notice of Intent to File Suit” and an expert affidavit addressing the alleged deviation from the standard of care. S.C. Code Ann. § 15-79-125(A). Appellant did not file a Notice of Intent to File Suit or submit any such affidavit with her Complaint or at any time prior to the hearing on the motion to dismiss. As the trial court found, “to the extent Plaintiff is alleging a medical malpractice claim, she failed to support her Complaint with an expert affidavit addressing such an allegation.” (R. p. 2.) Appellant’s failure to comply with the mandatory presuit requirements independently warrants dismissal of the Complaint to the extent it is construed as asserting a negligence or medical malpractice claim.

III. Appellant’s Arguments on Appeal Lack Merit

Appellant raises two issues on appeal: (1) whether the trial court erred “in ruling before considering the process that the plaintiff was told by the Clerk of Court was incomplete”; and (2) whether the trial court erred “in ruling, before giving the plaintiff the opportunity to give a more definite statement.” Neither argument warrants reversal.

As a threshold matter, Rule 208(b)(1)(E), SCACR requires an argument section organized around the issues on appeal, supported by analysis, citations to authority, and references to the record. Appellant’s “argument” does none of that. It recounts an unrelated media story and provides no authority or record citations connected to the issues presented. Because Appellant never actually argues the issues raised, those issues are abandoned. *See Fields v. Monroe Ltd.*

P'ship, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) (“An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.”)

Regardless, even if these issues were properly before the Court, they fail on their individual merits. First, Appellant’s argument regarding the “incomplete” process is procedurally and substantively deficient. Appellant provides no citation to the record demonstrating what the Clerk of Court allegedly told her, nor does she cite any legal authority excusing late service based on alleged communications with court personnel. The 120-day service requirement following expiration of the statute of limitations is mandatory, and Appellant’s subjective belief that the process was “incomplete” does not excuse her failure to serve the Complaint for more than seven months. Second, Appellant’s argument that she should have been permitted to file a more definite statement is unavailing. The trial court granted dismissal on the independent ground that service was untimely under Rule 12(b)(5). Once an action is dismissed for insufficient service, there is no complaint pending to be amended or clarified. Moreover, the trial court was not required to allow amendment where Appellant's cause of action was time-barred. *Red Oak Lands, Inc. v. Lane*, 268 S.C. 631, 636, 235 S.E.2d 718, 720 (1977) (affirming the trial court’s decision to deny the plaintiff leave to amend because the statute of limitations had expired, making any amendment futile).

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the trial court’s order dismissing Appellant’s Complaint.

Respectfully submitted,

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