

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,

The Legacy at Southpointe Respondent

FINAL BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Plaintiff's assign as error the trial court's granting of defendant's motion to dismiss. Defendant moved to dismiss plaintiff's amended complaint without listening to the details of the case.

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APPELANTS' OPENING BRIEF AND EXCERPT OF RECORD

STATEMENT OF THE CASE

Nature of the action and relief sought

This is an action against The Legacy at Southpointe for breach of contract and negligence. Appellant seeks reversal of the judgment dismissing the initial complaint Rule 12(b)(5) and 12(b)(6) and S, C, Code Ann S 15-3-530(1).

Nature of the Judgment

The nature of the judgment is the dismissal of the Plaintiffs' pleading for insufficient process, and More Definite Statement.

Basis of appellate jurisdiction

Appellate jurisdiction is based on S.C. Code Ann. S. 14-3-310

Effective date for appellate purposes

The Judgement of Dismissal was signed on September 16, 2025, and entered on September 16, 2025. The Notice of Appeal was served and filed on October 17, 2025.

Notice of Appeal

Shena D. Webb appeals the order of the Honorable William C. McMaster III dated September 17, 2025. Appellant received the written notice of entry of this order on October 17, 2025.

Questions Presented on Appeal

- a. Did the trial court error in ruling before considering the process that the plaintiff was told by the Clerk of Court was incomplete?
- b. Did the trial court error in ruling before giving the plaintiff the opportunity to give a more definite statement?

Summary of Argument

Neither the defendant nor the court considered a particular standard of neglect under the South Carolina Nursing Home Bill of Rights.

The plaintiff's pleadings are sufficient to the stated common law negligence claim. The Legacy at Southpointe breached that duty of failing to monitor my husband the late Charles Webb.

Statement of Facts

On 11/2/2021 between 3:30-4:30am, I received a phone call from the Legacy at Southpointe stating my spouse Charles Webb was found in his room unresponsive after the can had made her rounds around 2:00 am. 911 was called and CPR was performed and no response. She then put the EMT responder on the phone and he stated Charles had passed away from cardiac arrest, CPR was performed and no response. At this point I was very upset and could not continue talking, so the administrator asked if she could call my son Tory to convey the situation. The administrator also informed me if I could come down asap to clean out Charles' apartment.

After speaking with my family and making plans, we decided to get on the road that morning. I waited until Charles' doctor's offices opened so I could inform them of his passing. I called his primary care doctor first Dr. Micheal Capps; he was not in that day, so I left a message with his receptionist. I then called his cardiologist Dr. Joseph Falzone, and he was in the office. I told Dr. Falzone what I was told by the administrator and the EMT responder. Dr. Falzone asked me who informed me of the cause of Charles death I told him the EMT responder. Dr. Falzone stated that an EMT responder cannot diagnose cardiac arrest due to performing CPR on a person.

Furthermore, Charles had a pacemaker, and he was on a heart monitor that would detect heart issues, and the monitor would have gone off in his office had there been heart issues. The heart monitor did not go off.

Upon arrival at the Legacy of Southpointe, Shena Webb, (self) Sharna Williams (my cousin), Tory Breece (my son), Ashlei Jones (my daughter), Shenell Armstrong (my sister) we headed to Charles apartment to clean it out. We ran into the nurse who put Charles to bed. She stated she

was shocked to hear the news of his passing when she arrived at work that morning. She stated Charles asked to go to bed after dinner, and that she was the one to put him in bed, she also stated she worked over her shift because the facility was short staffed. We went down to his room and roommate was on his side of the room, he stated he had eaten lunch with Charles and they talked about sports, the roommate stated Charles seemed fine to him. His roommate stated he woke up to his room being filled with a lot of people and Charles was on the floor. Between cleaning his room and taking things to the car, we ran into the one who found Charles in the room unresponsive, my sister asked her what happened and why he was left so long unattended; her response was she did not know.

We finished cleaning out his side of the apartment and headed over to the hospital to view Charles' body. I was given the contact number of the coroner Michelle Bright. In speaking with the coroner to view Charles, she informed me we could not see him and that he was fully dressed in a jogging suit like he was getting ready to go for a run. I then told her, I was told by the nurse he asked to go to bed, so she put him to bed. Charles served in the United States Navy from March 10, 1972, to January 31, 1992. He served in the Gulf war era, Peace time, and Vietnam era. He was an honorable veteran of this country. I found this facility, the Legacy of Southpointe, through the referral of care.com, and the resource for seniors. I was not physically capable of providing the care of that my husband needed and deserved. Charles had a stroke on June 14, 2018, that limited his mobility. He arrives at the Legacy of Southpointe June 25, 2021 until his death of November 2, 2021.

Charles saw both of his doctors before entering the Legacy of Southpointe. He saw Dr. Michael Capps his primary doctor on 5/5/2021 and 6/23/2021 where he filled out his medical paperwork for the facility. Dr. Joseph Falzone is his cardiologist, and he saw him on April 22, 2021 for a device check (his pacemaker), and he performed an echocardiogram with color flow spectral doppler. I called Dr. Falzone again to discuss Charles' passing. Dr. Falzone stated that if Charles had other issues concerning his health, he would have shown signs.

In the Legacy of Southpointe Appendix D: Residents Bill of Rights: To participate in the initial care/service plan (Charles was a Level III patient care; he should not have been left alone for over 6 hours alone.)

Also, Residents Bill of Rights: To have a safe and home-like environment: (the nurse told me that Charles asked to go to bed after dinner, he ate dinner with his roommate. His roommate stated he was fine at dinner. Sometime between Charles going to bed and the can doing her rounds at 2:00 am he was found unresponsive.

The Legacy of Southpointe is negligent in delivering Level III care in the contract that was signed and agreed upon by myself and my late husband Charles Webb.

ASSIGNMENT OF ERROR

Preservation of Error

Plaintiff's assign as error the trial court's granting of defendant's motion to dismiss. Defendant moved to dismiss plaintiff's amended complaint without listening to the details of the case.

ARGUMENT

In the Janet Hart case against the Santa Maria Senior Citizens Home was sued due to Janet being overmedicated on antipsychotic according to her daughter. The Carolina News & Reporter documented this where Janet Hart's (who was 78 years old at the time) daughter Tamara Hart took video from her cell phone observing her mother in a wheelchair, crying, and holding a baby doll. There is also video footage (in which Tamara installed in her mother's room) of her bedcovers being forcibly removed and undressing her as well as placing her in a sit-to-stand lift to transfer her to a wheelchair as she is screaming and crying. The nursing home's excuse? She was being combative and abusive toward them. This led them to prescribing her eight antipsychotics that Janet nor her family were aware of.

This story also brings to light the shortage of qualified staff in nursing homes giving the sense that over medicating the elderly is cheaper than hiring more caregivers. It also puts into question, what else are they hiding? This is an example of the violation of the Nursing Home Care Bill of Rights as Janet was not aware of the medication she was taking and the care, she received was neglectful.