


NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM UNION COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2011-CP-44-00074

 Union Hospital District
(aka Wallace Thomson Hospital), Respondent,

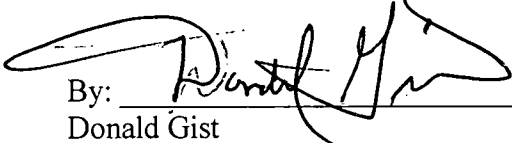
v.

Sarah Dawkins, Plaintiff.

NOTICE OF APPEAL

Sarah Dawkins appeals the order of the Honorable John C. Hayes, III dated April 4, 2012. Appellant received written notice of entry of this order on April 6, 2012.

May 2, 2012

By: 
Donald Gist
4400 North Main Street
Columbia, South Carolina 29230
(803) 771-8007
Attorney for Appellant

Other Counsel of Record:
Joshua T. Thompson
Holcombe Bomar, P.A.
Post Office Box 1897
Spartanburg, South Carolina 29304
(864) 594-5300
Attorney for Respondent

RECEIVED
MAY 03 2012
SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing NOTICE OF APPEAL was served on counsel for Respondent by depositing the same in the United States Mail, postage prepaid, and addressed as follows:

HOLCOMBE BOMAR, P.A.
P.O. Drawer 1897
100 Dunbar Street, Suite 200
Spartanburg, SC 29304 (29306)



Attorney at Law

This 2nd day of May 2012.

RECORDED
MAY 03 2012
SC Court of Appeals

GIST LAW FIRM, P.A.

4400 North Main Street
Columbia, South Carolina 29203
Telephone (803) 771-8007
Facsimile (803) 771-0063

ATTORNEYS-AT-LAW
Donald Gist
Kiera C. Dillon

MAILING ADDRESS
Post Office Box 30007
Columbia, South Carolina 29230

May 2, 2012

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Sarah Dawkins v. Union Hospital District (aka) Wallace Thomson Hospital
Case No. 2011-CP-44-00074

Dear Ms. Kitchings:

Please find enclosed Appellant's Notice of Appeal in the above-cited case. By copy of this letter I am hereby serving counsel for Respondent with a copy of this Notice.

Sincerely,



Kiera C. Dillon

Enclosure

cc: Donald Gist, Esq.
Joshua T. Thompson, Esq.

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MAY 03 2012
SC COURT OF APPEALS

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

IN THE COURT OF COMMON PLEAS
FOR THE 16th JUDICIAL CIRCUIT

Sarah Dawkins,)

Case No. 2011-CP-44-00074

Plaintiffs,)

v.)

RECONSIDERED
ORDER

Union Hospital District)
(aka) Wallace Thomson Hospital,)
Defendant.)

MAY 03 2012

SC Court of Appeals

F	I	L	E	D
APR - 4 2012				
TIME	9:52 AM			
WILLIAM F. GAULT, C.C.P. & G.S.				

This matter concerns a motion by Plaintiff requesting this Court to reconsider and alter or amend its Order dated February 13, 2012 granting Defendant's Motion to Dismiss in the above-captioned case.

As a preliminary matter, the court does not see this as a pleading issue, as Plaintiff seems to place some focus in her Motion to Reconsider. This is a fundamental issue; that is, compliance with a statute with specific requirements and specific remedies.

In her Motion to Reconsider, Plaintiff alleges that this Court erred in granting Defendant's Motion to Dismiss. Plaintiff contends that she has sufficiently alleged a premises liability action in her amended complaint, asserting that "Plaintiff went to the Defendant for medical treatment and medical treatment is what the Defendant is in the business of providing." As such, Plaintiff contends the NOI requirements are not applicable to her claim. Plaintiff further alleges that even if Plaintiff's claims did amount to a claim of professional negligence, Plaintiff was not required to provide a medical affidavit because Plaintiff's claims fall under §15-36-100(C)(2), which provides for an exception to the NOI requirements where the subject matter of a negligence claim lies within the ambit of common knowledge and experience, such that no special learning is needed to evaluate the conduct of the defendant.

Essentially, Plaintiff iterates the same allegations made in her Amended Complaint. As the Court stated in its previous Order, Plaintiff's assertions that her claims are not "medical malpractice" cannot be reconciled with the specific allegations made in Plaintiff's Amended Complaint. "Medical malpractice" is broadly defined under S.C. Code § 15-79-110(6) as "that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent health care provider or health care institution would do in the same or similar circumstances." The premise of Plaintiff's allegations is based on an event that happened in a medical facility due to a medical condition. Any duty in this case arose from the fact that the Plaintiff was seeking medical treatment at a medical facility. Had the events alleged to have occurred at the hospital taken place at a restaurant, grocery store, or any other place of business, none would be liable based on the allegations in the amended complaint. Therefore, this is not a premises liability case, as there is no allegation that any dangerous conditions at the hospital caused Plaintiff to fall.

Accordingly, Plaintiff's claims fall within the statutory definition of medical malpractice, thereby triggering the NOI and Expert Affidavit requirements of § 15-79-125 and § 15-36-100(C)(1). South Carolina Code § 15-36-100(C)(1) provides that where the required Expert Affidavit is not filed and the Defendant moves the Court to dismiss, the complaint is subject to dismissal for failure to state a claim.

Therefore, Plaintiff's Motion to Reconsider is DENIED.

As an aside, it has been brought to the Court's attention that there are two clerical errors in the Court's previous amended order. In the first full paragraph on page two (2) of the Amended Order, the Court cites to "S.C. Code § 15-79-100(6)" in error to define "medical malpractice." The correct citation is S.C. Code § 15-79-110(6). In addition, in the last full

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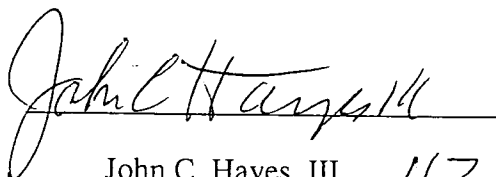
MAY 03 2012

SC Court of Appeals



paragraph on page three (3) of the order, the Court cites to S.C. Code § 15-79-125(C)(1), where it intended to cite to §15-36-100(C)(1). These changes are hereby incorporated into the Amended Order.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge

H.7

March 26th, 2012
Union, South Carolina.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/ John C. Hayes III
Circuit Court Judge

2049
Judge Code

3/20/12
Date

For Clerk of Court Office Use Only

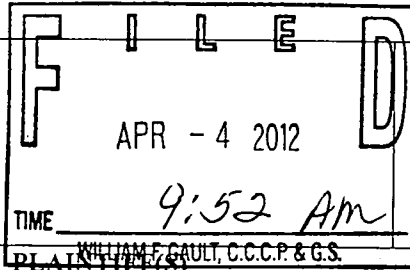
STATE OF SOUTH CAROLINA
COUNTY OF UNION
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4400074

Sarah Dawkins

Wallace Thomson
Hospital

Union Hospital District



PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCPP; Rule 41(a), SCRCPP (Vol. Nonsuit);
 Rule 43(k), SCRCPP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCPP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

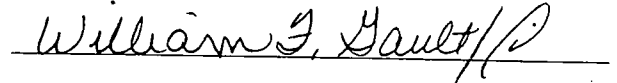
This judgment was entered on 4th day of April, 2012, and a copy mailed first class or placed in the appropriate attorney's box on 4th day of April, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Donald Gist Gist Law Firm, PA P.O. Box 30007 Columbia,
SC 29230

ATTORNEY(S) FOR THE PLAINTIFF(S)

William U. Gunn Holcombe Bomar, PA P.O. Box 1897
Spartanburg, SC 29304
Union Hospital District

ATTORNEY(S) FOR THE DEFENDANT(S)



William F. Gault - Clerk of Court

Court Reporter