

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2012-212832

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S.C. Supreme Court

Ann P. Adams, as Personal Representative of the Estate
of Jacob E. Adams, Deceased, Petitioner,

v.

Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; Staci L. Versen-Rampey, NP, Individually and as Agent, Servant, Employee of South Carolina Emergency Physicians, LLC, and as Agent, Servant, or Employee of Amisub of South Carolina, Inc. d/b/a Piedmont Healthcare System; Jason Price, Radiologic Technologist, Individually and as Agent, Servant, or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; James E. Reinhardt, Jr., M.D., Individually and as Agent Servant or Employee of Rock Hill Radiology Associates, PA. and as Agent, Servant or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System, and Rock Hill Radiology Associates, P.A. South Carolina Emergency Physicians, LLC, Defendants,

Of whom Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; Staci L. Versen-Rampey, NP, Individually and as Agent, Servant, Employee of South Carolina Emergency Physicians, LLC, and as Agent, Servant, or Employee of Amisub of South Carolina, Inc. d/b/a Piedmont Healthcare System; Jason Price, Radiologic Technologist, Individually and as Agent, Servant, or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System are Respondents.

APPENDIX

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The affidavit requirements invoked by §15-79-125 govern only authorship and content. They do not permit a potential plaintiff to file her expert witness's affidavit after she files her Notice of Intent to File Suit.

Ranucci v. Crain, 397 S.C. 168, 178, 723 S.E.2d 242, 247 (Ct. App. 2012)

Therefore, pursuant to Ranucci the Appellant's Notice of Intent to File suit does not comply with the legislature's requirements set forth in §15-79-125(A) since there were no affidavits contemporaneously filed. The trial judge correctly dismissed Appellant's claims in accordance with the Ranucci opinion.

II. THE APPELLANTS COMPLAINT IS BARRED BY THE STATUTE OF LIMITATIONS.

The statute of limitations in a medical malpractice action is three years. S.C.Code Ann. §15-3-545(A) (2005). The decedent was treated by the Respondent Versen-Rampey on October 20, 2008, and died on October 28, 2008. Appellant never served Respondents SC Emergency Physicians or Versen-Rampey with the original Notice of Intent filed October 20, 2011. Appellant did not file her Summons and Complaint until December 1, 2011. Appellant did not serve Respondent SC Emergency Physicians with the amended Notice of Intent and Summons and Complaint until January 25, 2012 and did not serve Respondent Versen-Rampey with the Amended Notice of Intent and Summons and Complaint until February 10, 2012.

The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure. S.C. Code Ann. §15-79-125. In this instance the Notice of Intent to File suit did not comply with §15-79-125 for the reasons set forth supra, nor was it served on either Respondent SC Emergency Physicians or Versen-Rampey before the expiration of the statute of limitations.

South Carolina Code Ann. §15-36-100, which is inapplicable to the case at bar for the reasons discussed supra, provides a grace period for filing affidavits after suit is filed but does not “toll” the expiration of the statute of limitations since it is a post commencement grace period. As stated by Judge Few in his concurring opinion in Ranucci,

To the majority's analysis, I would add that §15-36-100 does not ever toll the statute of limitations. The forty-five day extension in the section comes into play only after a summons and complaint have been filed and served. § 15-36-100(C)(1) (“In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit.” (emphasis added)). Therefore, it is never necessary under that section to toll the statute. Moreover, §15-36-100(D) specifically provides “[t]his section does not extend an applicable period of limitation.”

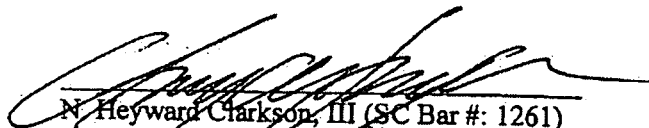
Ranucci v. Crain, 397 S.C. 168, 180, 723 S.E.2d 242, 248 (Ct. App. 2012)

Thus, Appellant has filed a Notice of Intent that is not compliant with S.C.Code Ann. §15-79-125 and is insufficient to toll the statute of limitations. Even if, as Appellant argues, she is entitled to a 45 day grace period to file affidavits pursuant to S.C.Code Ann. §15-36-100, this statute does not provide for any tolling of the statute of limitations. Appellant's suit is untimely filed and was properly dismissed by the trial court.

CONCLUSION

For the reasons set forth herein, Respondent SC Emergency Physicians and Respondent Versen-Rampey requests the Order of the lower court be upheld.

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S.C. EMERGENCY PHYSICIANS AND
VERSEN-RAMPEY**

Greenville, SC
May 2, 2013

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

APPELLANT CASE NO.: 2012-212832

Ann P. Adams, as Personal Representative of the
Estate of Jacob E. Adams, DeceasedAppellant,

v.

Amisub of South Carolina, Inc., d/b/a Piedmont
Medical Center and d/b/a Piedmont Healthcare System;

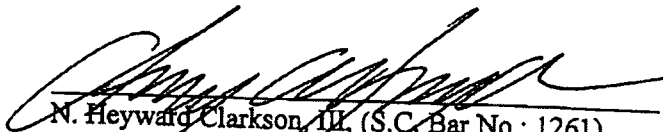
Staci L. Versen-Rampey, NP, Individually and as Agent,
Servant, Employee of South Carolina Emergency Physicians,
LLC, and as Agent, Servant, or Employee of Amisub of South
Carolina, Inc., d/b/a Piedmont Healthcare System;

Jason Price, Radiologic Technologist, Individually and as
Agent, Servant, or Employee of Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare
System; and

James E. Reinhardt, Jr., M.D., Individually and as Agent, Servant
Or Employee of Rock Hill Radiology Associates, P.A. and as Agent,
Servant or Employee of Amisub of South Carolina, Inc., d/b/a
Piedmont Medical Center and d/b/a Piedmont Healthcare System,
Rock Hill Radiology Associates, P.A., South Carolina Emergency
Physicians, LLC,Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondents Versen-Rampey and South Carolina Emergency Physicians is in compliance with Rule 211(b) SCACR.



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Greenville, SC
May 2, 2013

FINAL BRIEF OF RESPONDENTS
Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and
d/b/a Piedmont Healthcare System and Jason Price, Radiologic
Technologist, Individually and as Agent, Servant, or Employee of
Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and
d/b/a Piedmont Healthcare System

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STATEMENT OF THE ISSUES ON APPEAL

- I. **WHETHER THE LOWER COURT PROPERLY RULED THAT SOUTH CAROLINA CODE § 15-79-125 REQUIRES THAT AN EXPERT AFFIDAVIT MUST BE FILED CONTEMPORANEOUSLY WITH A NOTICE OF INTENT TO FILE SUIT IN MEDICAL MALPRACTICE CASES AND THEREFORE PROPERLY DISMISSED THE ACTION PURSUANT TO RULE 12(b)(6), SCRPC.**
- II. **WHETHER THE LOWER COURT'S ORDER OF DISMISSAL MAY BE SUSTAINED ON THE ADDITIONAL GROUNDS THAT DISMISSAL WAS PROPER PURSUANT TO RULE 12(b)(1), SCRPC.**
- III. **WHETHER THE LOWER COURT'S ORDER OF DISMISSAL MAY BE SUSTAINED ON THE ADDITIONAL GROUNDS THAT DISMISSAL WAS PROPER PURSUANT TO S.C. CODE ANN. § 15-79-125(D).**

STATEMENT OF THE CASE

On October 20, 2011, Ann P. Adams, as the Personal Representative of the Estate of Jacob E. Adams (hereinafter, "Mrs. Adams"), filed a Notice of Intent to File Suit, draft Complaint, and Responses to Standard Interrogatories in this medical malpractice action against Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System (hereinafter, "Amisub"); Staci-Versen-Rampey, NP (hereinafter, "Versen-Rampey") individually and as Agent, Servant, [or] Employee of South Carolina Emergency Physicians, LLC and as Agent, Servant, or Employee of Amisub; and Jason Price, Radiologic Technologist (hereinafter, "Price") as Agent, Servant, or Employee of Amisub. (R. pp. 22-39). Mrs. Adams failed to file any expert affidavit contemporaneously with the October 20, 2011 Notice of Intent to File Suit.

On December 1, 2011, Appellant filed an Amended Notice of Intent to File Suit along with the expert affidavits of Apostolos J. Tsiouris, MD; Sangjin Oh, MD; and Sharon

Aboulafia Oken, RN, MSN, CCRN, CNA, BC. (R. pp. 40-87). On that day, Appellant also filed a Summons and Amended Complaint. (R. pp. 45-53). As part of the amendments to December 1, 2011 filings, Appellant added as Defendants, (1) James E. Reinhardt, Jr., M.D. (hereinafter, "Reinhardt"), Individually and as Agent, Servant, or Employee of Rock Hill Radiology Associates, PA and as Agent, Servant, or Employee of Amisub and (2) Rock Hill Radiology Associates, PA South Carolina Emergency Physicians, LLC (hereinafter, "Rock Hill Radiology"). (R. pp. 45-47).

In response, on February 20, 2012, Defendants Reinhardt and Rock Hill Radiology filed a Motion to Dismiss the Amended Notice of Intent and the Amended Summons and Complaint. (R. pp. 101-102). On March 2, 2012, Defendants Amisub and Price (hereinafter, collectively known as "Amisub") filed motions to dismiss the Original Notice of Intent to File Suit, Original Summons and Complaint, Amended Notice of Intent to File Suit, and the Amended Summons and Complaint. (R. pp. 88-97). The grounds of the motions were that the Notice of Intent to File Suit was not accompanied by a contemporaneously filed affidavit of an expert witness, pursuant to S.C. Code Ann. § 15-79-125(A) and should therefore be dismissed under Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. (R. pp. 89, 94).

Following a June 27, 2012 motion hearing, the Lower Court granted both motions to dismiss. In a July 12, 2012 Order, Judge John C. Hayes, III ruled that as to Defendants Amisub, Versen-Rampey, and Price, dismissal was appropriate because "Plaintiff failed to comply with the contemporaneous filing requirement of S.C. Code Ann. §15-79-125." (R. p. 21). On July 31, 2012, the Court issued an Order dismissing Defendants Reinhardt and Rock

Hill Radiology. (R. pp. 3-12). On September 24, 2012, Appellant filed a Notice of Appeal as to those Orders.

FACTS

Jacob Adams ("Decedent") received medical treatment at Amisub's Emergency Department on October 20, 2008. (R. p. 30). After discharge, Decedent passed away on October 28, 2008. (R. pp. 31, 146). Mrs. Adams alleges that Decedent's death was caused by a failure to properly diagnose and treat a subarachnoid hemorrhage. (R. p. 50).

Mrs. Adams filed her first Notice of Intent to File Suit ("Notice of Intent"), draft Complaint, and Responses to Standard Interrogatories on October 20, 2011, three years after Decedent's treatment at Amisub. (R. pp. 22-39). Appellant's Responses to Standard Interrogatories identified three expert witnesses. (R. pp. 37-38). Appellant's Notice of Intent to File Suit did not include a contemporaneously filed expert affidavit as required in S.C. Code Ann. § 15-79-125(A). (R. pp. 25-26). Appellant's Notice of Intent to File Suit stated that under S.C. Code Ann. 15-36-100(C)(1), Appellant was not required to file a contemporaneous expert affidavit because the statute of limitation period would have expired before Appellant was able to obtain an expert affidavit. (R. pp. 25-26). Appellant filed her Amended Notice of Intent to File Suit with expert affidavits on December 1, 2011. (R. pp. 40-87). This filing also added Reinhardt and Rock Hill Radiology as defendants. (R. pp. 43, 45, 47).

Following a June 27, 2012 hearing, the Lower Court granted the motions to dismiss. In a July 12, 2012 Order, Judge Hayes stated that as to Defendants Amisub, Versen-Rampey, and Price, the motion was being granted because "Plaintiff failed to comply with the

contemporaneous filing requirement of S.C. Code Ann. §15-79-125.” (R. pp. 13-14, 17-21). On July 31, 2012, the Court issued an Order dismissing Defendants Reinhardt and Rock Hill Radiology. (R. pp. 1-12).

STANDARD OF REVIEW

An appellate court reviews a motion to dismiss under the same standard applied by the trial court pursuant to Rule 12(b), SCRPC. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001) (citing *O'Laughlin v. Windham*, 330 S.C. 379, 382, 498 S.E.2d 689, 691 (Ct. App. 1998)). As to Rule 12(b)(6), SCRPC, “a trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed ‘to state facts sufficient to constitute a cause of action’ in the pleadings filed with the court.” *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001) (citing Rule 12(b)(6), SCRPC). As such, “[i]n deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006) (citing *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (2009)).

Furthermore, as to Rule 12(b)(1), SCRPC, “the question of subject matter jurisdiction is a question of law for the court.” *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct. App. 1993). However, “where the issue involves jurisdiction, the appellate court can take its own view of the preponderance of the evidence.” *Edens v. Bellini*, 359 S.C. 433, 440, 597 S.E.2d 863, 867 (Ct. App. 2004) (citing *Nelson v. Yellow Cab Co.*, 349 S.C. 589, 564 S.E.2d 110 (2002)).

ARGUMENT

I. THE LOWER COURT PROPERLY DISMISSED APPELLANT'S ACTION BECAUSE APPELLANT FAILED TO COMPLY WITH THE CONTEMPORANEOUS FILING REQUIREMENTS FOR MEDICAL MALPRACTICE CASES FOUND IN S.C. CODE ANN. § 15-79-125.

a. Appellant acknowledges that *Ranucci v. Crain* controls the outcome of this appeal.

In this matter, Mrs. Adams filed a timely Notice of Intent but did not contemporaneously file an affidavit of a medical expert with the Notice of Intent, both of which are required by S.C. Code Ann. § 15-79-125. The Lower Court granted Amsiub's Motion to Dismiss based upon the fact that Appellant failed to comply with the contemporaneous filing requirements of S.C. Code Ann. § 15-79-125 as discussed in *Ranucci v. Crain*, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012). (R. pp. 19-21). In that case, this Court found that the Lower Court did not err when it dismissed Appellant's Notice of Intent to File Suit in a medical malpractice action for Appellant's "failure to comply with the contemporaneous filing requirements" of S.C. Code Ann. § 15-79-125. *Id.* at 178-79, 723 S.E.2d at 247-48.

Appellant admits in her Final Brief that in *Rannuci*, "this Court ruled adversely to the Plaintiff's position on this issue." (Appellant's Final Brief, p. 3). This Court's holding in *Ranucci* is "the law of this state unless either reversed or overruled" and should be followed in this case. *Hamby v. Hamby*, 315 S.C. 518, 520, 445 S.E.2d 656, 657 (1994) (citing 21 C.J.S. *Courts* § 152 at 187 (1990)).

b. This matter is indisputably a medical malpractice action and therefore pre-suit procedures are governed by S.C. Code Ann. § 15-79-125.

Mrs. Adams does not dispute that this matter involves claims of medical malpractice against Amisub. "Medical malpractice" is defined as "doing that which the reasonably prudent health care provider or health care institution would not do or not doing that which the reasonably prudent healthcare provider or health care institution would do in the same or similar circumstances." S.C. Code Ann. § 15-79-110(6). "Healthcare provider" is defined to include doctors and nurses as well as any similar category of licensed health care providers. S.C. Code Ann. § 15-79-110(3). "Health care institution" is defined to include hospitals. S.C. Code Ann. § 15-79-110(2).

South Carolina case law distinguishes ordinary negligence from medical malpractice at the point at which a plaintiff's allegations concern matters of proper diagnosis or treatment involving technical knowledge outside of the knowledge of laymen. *See, e.g., Botehlo v. Bycura*, 282 S.C. 578, 583, 320 S.E.2d 59, 63 (Ct. App. 1984) ("The reason for requiring expert testimony [in medical malpractice actions] is that matters of proper diagnosis and treatment ordinarily involve technical knowledge beyond the ken of laymen.").

It is indisputable that pursuant to the NOI requirements, Amisub is a "health care institution;" Mrs. Adams alleges in her Complaint that Amisub is in fact a hospital. (R. p. 29). There is also no question that Appellant's allegations concern "health care providers" as Appellant alleges that it was Amisub's staff who failed to provide adequate medical care or treatment to Decedent. (R. pp. 29-30). As such, for purposes of the NOI requirements, Appellant's Complaint alleges claims of medical malpractice on the part of Amisub and its staff. Finally, Appellant concedes in her Brief that she filed the instant Notice of Intent "alleging medical malpractice" against Amisub. (Appellant's Final Brief at p.1). *See Rule*

208(c), SCACR ("Any matters stated or alleged in appellant's statement [of the case] shall be binding on the appellant.").

As noted in subsection (a) above, on January 25, 2012, this Court decided a case with strikingly similar facts to those of the case at hand. In *Ranucci*, the Court was confronted with a scenario where three years after suffering a collapsed lung following a biopsy, the plaintiff in that case filed a notice of intent, complaint, and responses to interrogatories. *Ranucci*, 397 S.C. at 168, 723 S.E.2d at 243. Further, although plaintiff identified her expert witness, she stated that she was unable to file a contemporaneous expert affidavit before the expiration of the statute of limitation. *Id.* The plaintiff in that case stated that she intended to file the expert affidavit within the forty five (45) days permitted by S.C. Code Ann. 15-36-100(C)(1). *Id.*

In response, the defendant in that case filed a motion to dismiss based on plaintiff's "failure to file an expert witness' affidavit contemporaneously with her notice." *Id.* Following a hearing, the Lower Court in that case found that plaintiff's failure to file the expert affidavit contemporaneously with the Notice of Intent, as required by S.C. Code Ann. § 15-79-125, rendered the Notice of Intent proper for dismissal. *Ranucci*, 397 S.C. at 171, 723 S.E.2d at 243.

On Appeal, the appellant in *Ranucci* argued that the Lower Court erred by "finding the Affidavit was not timely filed and in reading" S.C. Code Ann. §§ 15-79-125 and 15-36-100 "separate from each other." *Id.* at 169, 723 S.E.2d 243. In considering the issue, this Court began by recognizing that "the cardinal rule of statutory interpretation is to determine the intent of the legislature." *Ranucci*, 397 S.C. at 171, 723 S.E.2d at 244 (quoting *Bass v.*

Isochem, 365 S.C. 454, 469, 617 S.E.2d 369, 377 (Ct. App. 2005)). Further, this Court reasoned that such is to be determined "from the plain language of the statute." *Id.* (citing *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 339, 478 S.E.2d 74, 77 (Ct. App. 1996)).

Utilizing these guideposts of statutory interpretation, this Court recognized that S.C. Code Ann. § 15-79-125(A) "imposes *prelitigation* filing requirements upon individuals intending to file suit for medical malpractice"¹, while S.C. Code Ann. § 15-36-100 "establishes requirements for filing *complaints* in actions for damages based upon professional negligence." *Ranucci*, 397 S.C. at 172-73, 723 S.E.2d at 244 (emphasis added). With that in mind, the Court reasoned that "despite apparent confusion. . . these statutes do not conflict." *Id.* at 175-76, 723 S.E.2d at 246. Expounding on this, this Court stated:

Each statute governs a distinct period during the litigation process, and those time periods are consecutive. Section 15-79-125 controls the portion of the process that commences with the filing of a Notice of Intent to File Suite and ends with prelitigation mediation[,] section 15-36-100 guides them through the preparation of initial pleadings and provides mechanisms for challenging and curing defects in the required affidavit.

Id. at 176, 723 S.E.2d at 246.

As discussed above, S.C. Code Ann. § 15-79-125(A) states that its affidavit requirement is "subject to the affidavit requirements of section 15-36-100." Thus, as this

¹ S.C. Code Ann. § 15-79-125 (A) requires that "prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100." Further, S.C. Code Ann. §§ 15-79-125(C) and (E) require the parties in a malpractice action to "participate in a mediation conference" prior to the filing of a summons and complaint by the plaintiff.

Court found in *Ranucci*, “the narrow question. . . is precisely which requirements of section 15-36-100 constitute the affidavit requirements referenced by section 15-79-125(A).” *Ranucci*, 397 S.C. at 176, 723 S.E.2d at 246. Examining that question, this Court found that S.C. Code Ann. § 15-36-100 contains both “substantive requirements for the authorship and content of affidavits by expert witnesses” and “procedural requirements relating to such affidavits when filed with a complaint.” *Id.* In finding that S.C. Code Ann. § 15-79-125(A) “invokes only the provisions of 15-36-100 governing the preparation and content of the affidavit²,” this Court found that the “plain language of section 15-36-100, which ties the filing of affidavits under that statute to a complaint or other initial pleading, prevents the remaining provisions from applying to affidavits filed pursuant to section 15-79-125.” *Ranucci*, 397 S.C. at 177, 723 S.E.2d at 246.

Additionally, this Court stated that the General Assembly’s intent “is further reflected in the effects of each statute’s provisions.” *Id.* at 177, 723 S.E.2d at 247. While the affidavit requirement under S.C. Code Ann. § 15-79-125 “enables potential litigants to. . . gather information and pursue a resolution of their medical malpractice disputes without. . . fear of losing his or her right to file suit,” an affidavit filed under S.C. Code Ann. 15-36-100 “is part of the complaint,” and is “for the purpose of the circuit court’s evaluation of motions and the merits of the plaintiff’s case.” *Ranucci*, 397 S.C. at 178, 723 S.E.2d at 247. (citing Rule 56(c), SCRCP). Since the latter carries more importance, the General Assembly “provided the parties the rights to challenge. . . and cure any defects in it.” *Id.* This stands in

² S.C. Code Ann. § 15-36-100(A) lists the requirements for one to qualify as an expert and S.C. Code Ann. § 15-36-100(B) is clear that the affidavit “must specify at least one negligent act or omission claimed to exist and the factual basis for each claim.”

juxtaposition to the affidavit required by S.C. Code Ann. § 15-79-125 which does not “carry any additional significance that would necessitate implementing [such] measures.” *Id.*

Thus, this Court held S.C. Code Ann. §§ 15-36-100 and 15-79-125 “operate[d] independently of one another, except that section 15-79-125 relies upon the provisions of section 15-36-100 concerning the preparation and content of an affidavit of a medical expert.” *Ranucci*, 397 S.C. at 177, 723 S.E.2d at 247 at n. 2. Applying the rule to the facts of *Ranucci*, this Court found that the Lower Court in that case did not err in dismissing the Notice of Intent for “failure to comply with the contemporaneous affidavit requirement of section 15-79-125.” *Id.* at 178-79, 723 S.E.2d at 247-48.

Like the plaintiff in *Ranucci*, Appellant in this case filed a timely Notice of Intent alleging medical malpractice but failed to file an expert affidavit contemporaneously with the filing of the Notice of Intent. (R. pp. 25-26; *Ranucci*, 397 S.C. at 170, 723 S.E.2d at 243). Further, like the plaintiff in *Ranucci*, Appellant in this matter filed an expert affidavit at a later date.³ (R. pp. 59-88; *Ranucci*, 397 S.C. at 170, 723 S.E.2d at 243). Thus, the rule application is the same. For the simple reason that Appellant failed to comply with the statutory requirement of S.C. Code Ann. § 15-79-125(A) that a plaintiff must contemporaneously file an expert affidavit with their Notice of Intent to File Suit, Appellant’s Notice of Intent, just as in *Ranucci*, must be dismissed. (R. pp. 25-26; *Ranucci*, 397 S.C. at 179, 723 S.E.2d at 248).

- c. **The Lower Court employed but one of several proper methods at its disposal for dismissing the Notice of Intent.**

³ Not only did Mrs. Adams fail to contemporaneously file an expert affidavit, but she also failed to file any expert affidavit within the applicable limitations period. *See* S.C. Code Ann. § 15-3-545.

In the present case, Judge John Hayes' July 12, 2012 Order makes it clear that Judge Hayes dismissed Appellant's action under Rule 12(b)(6), SCRCP. ((R. pp. 18-19) (discussing the standard for dismissal under Rule 12(b)(6), SCRCP)). "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." *Doe v. Marion*, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct. App. 2004) (citing *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001)). S.C. Code Ann. § 15-79-125(E) provides that a plaintiff may institute a civil action in a medical malpractice case by filing a summons and complaint *only after* it is determined that "the matter cannot be resolved in pre-suit mediation" pursuant to the Notice of Intent Requirements.

In the instant case, dismissal was proper because Appellant's failure to comply with the Notice of Intent requirements rendered Appellant's Complaint and Amended Complaint improperly filed. Due to this noncompliance with mandatory pre-suit requirements, her Complaint and Amended Complaint failed to state a cause of action upon which relief could be granted and the Lower Court properly dismissed the action pursuant to Rule 12(b)(6), SCRCP.

II. DISMISSAL MAY ALSO BE SUSTAINED PURSUANT TO RULE 12(b)(6), SCRCP.

Even if this Court were to find that a dismissal under Rule 12(b)(6), SCRCP was not the proper vehicle with which to dismiss Appellant's claim, there are additional sustaining grounds.⁴ As stated in Amisub's Memorandum filed in the Lower Court, Appellant's action

⁴ It is well-settled that as Respondent, Amisub "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether

should have also been dismissed under Rule 12(b)(1), SCRCP for lack of subject matter jurisdiction. (R. pp. 164-165). “[S]ubject matter jurisdiction refers to a court’s constitutional or statutory power to adjudicate a case.” *Johnson v. South Carolina Dept. of Probation, Parole, and Pardon Services*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007) (citing *State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005)). This Court has stated that “[t]he question of subject matter jurisdiction is a question of law for the court.” *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (citing *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct. App. 1993)).

S.C. Code Ann. § 15-79-125(D) states that the circuit court “has jurisdiction to enforce” the Notice of Intent requirements. Such a dictate necessarily means that a lower court must compel compliance with those prerequisites. The negative implication of said grant of jurisdiction is that where a plaintiff fails to comply with the Notice of Intent Requirements, the circuit court does not have jurisdiction over the plaintiff’s case. Instead, the Lower Court must enforce the Notice of Intent Requirements via dismissal of the action for lack of subject matter jurisdiction. As such, in this case, Appellant’s suit could have been properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1), SCRCP.

III. DISMISSAL MAY ALSO BE SUSTAINED PURSUANT TO S.C. CODE ANN. § 15-79-125(D).

Finally, even if this Court were to find that dismissal was improper under both Rules 12(b)(1), SCRCP and 12(b)(6), SCRCP, this Court could alternately sustain the Lower Court’s dismissal under S.C. Code Ann. 15-79-125(D) itself. *See* fn. 4, *supra*. Just as in *Ranucci*, Appellant failed to comply with the Notice of Intent requirements when she did not

those reasons have been presented to or ruled upon by the lower court.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

contemporaneously file an expert affidavit with her Notice of Intent. As stated above, Section 15-79-125(D) gives the Lower Court authority to enforce the Notice of Intent Requirements. Where a plaintiff fails to comply with these requirements, dismissal is an appropriate exercise of enforcement authority. Accordingly, Appellant cannot maintain an action against Respondent and the Lower Court properly dismissed her claim pursuant to S.C. Code Ann. § 15-79-125(D).

CONCLUSION

There are numerous grounds on which this Court could affirm the trial court's order granting Respondent's Motion to Dismiss for Plaintiff's failure to comply with the pre-suit requirements of S.C. Code Ann. § 15-79-125 including (1) dismissal under Rule 12(b)(6), SCRPC for failure to state facts sufficient to constitute a cause of action, (2) dismissal under Rule 12(b)(1) for lack of jurisdiction over the subject matter, and (3) dismissal under S.C. Code Ann. § 15-79-125(D) as an act of enforcement of the pre-suit requirements. As such, this Court should affirm the Lower Court's dismissal of Appellant's action filed against Amisub.

[signature block on following page]

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Center and d/b/a Piedmont Healthcare System

April 29, 2013
Spartanburg, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
John C. Hayes, III, Circuit Court Judge

Case No. 2011-CP-46-03984

Ann P. Adams, as Personal Representative of the
Estate of Jacob E. Adams, Deceased.....Appellant,

v.

Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a
Piedmont Healthcare System;

Staci L. Versen-Rampey, NP, Individually and as Agent, Servant,
Employee of South Carolina Emergency Physicians, LLC, and as Agent,
Servant, or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Healthcare System;

Jason Price, Radiologic Technologist, Individually and as Agent, Servant,
Or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center
And d/b/a Piedmont Healthcare System;

James E. Reinhardt, Jr., M.D., Individually and as Agent, Servant or
Employee of Rock Hill Radiology Associates, P.A. and as Agent,
Servant or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; and

Rock Hill Radiology Associates, P.A. South Carolina Emergency Physicians,
LLC,Respondents.

CERTIFICATE OF COUNSEL

The undersigned counsel for Respondents Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System and Jason Price, Radiologic Technologist, Individually and as Agent, Servant, or Employee of South Carolina, Inc. d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System hereby certifies that the Final Brief complies with Rule 211(b), SCACR.

HOLCOMBE BOMAR, PA

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Spartanburg, SC

April 29, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
John C. Hayes, III, Circuit Court Judge

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Ann P. Adams, as Personal Representative of the
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v.

Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a
Piedmont Healthcare System;

Staci L. Versen-Rampey, NP, Individually and as Agent, Servant,
Employee of South Carolina Emergency Physicians, LLC, and as Agent,
Servant, or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Healthcare System;

Jason Price, Radiologic Technologist, Individually and as Agent, Servant,
Or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center
And d/b/a Piedmont Healthcare System;

James E. Reinhardt, Jr., M.D., Individually and as Agent, Servant or
Employee of Rock Hill Radiology Associates, P.A. and as Agent,
Servant or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; and

Rock Hill Radiology Associates, P.A. South Carolina Emergency Physicians,
LLC,Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on this 30 day of April 2013, he has served counsel for Appellant Ann P. Adams, as Personal Representative of the Estate of Jacob E. Adams, counsel for Respondents Rock Hill Radiology Associates, P.A. and James E. Reinhardt, M.D. and counsel for Respondent Stacie L. Versen-Rampey, NP with a copy of Respondent's Final Brief of Respondent Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System and Jason Price, Radiologic Technologist in this matter by mailing copies of the same by United States Mail, postage prepaid, to the following addresses:

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For Respondent Staci L. Versen-Rampey, NP.:

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Spartanburg, SC
April 30, 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Ann P. Adams, as Personal Representative of the Estate
of Jacob E. Adams, Deceased, Appellant,

v.

Amisub of South Carolina, Inc., d/b/a Piedmont Medical
Center and d/b/a Piedmont Healthcare System; Staci L.
Versen-Rampey, NP, Individually and as Agent, Servant
or Employee of South Carolina Emergency Physicians,
LLC, and as Agent, Servant or Employee of Amisub of
South Carolina, Inc., d/b/a Piedmont Medical Center and
d/b/a Piedmont Healthcare System; Jason Price,
Radiologic Technologist, Individually and as Agent,
Servant or Employee of Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center and d/b/a Piedmont
Healthcare System; James E. Reinhardt, Jr., M.D.,
Individually and as Agent, Servant or Employee of Rock
Hill Radiology Associates, PA, and as Agent, Servant of
Employee of Amisub of South Carolina, Inc., d/b/a
Piedmont Medical Center and d/b/a Piedmont Healthcare
System; and Rock Hill Radiology Associates, P.A., South
Carolina Emergency Physicians, LLC, Defendants,

of whom Amisub of South Carolina, Inc., d/b/a Piedmont
Medical Center and d/b/a Piedmont Healthcare System;
Staci L. Versen-Rampey, NP, Individually and as Agent,
Servant or Employee of South Carolina Emergency
Physicians, LLC, and as Agent, Servant or Employee of
Amisub of South Carolina, Inc., d/b/a Piedmont Medical
Center and d/b/a Piedmont Healthcare System; Jason
Price, Radiologic Technologist, Individually and as

medical malpractice, the party file a notice, contemporaneously with an expert affidavit, and serve them on the defendant. § 15-79-125(A). Adams failed to contemporaneously file her expert affidavit. Each defendant filed a motion to dismiss, and the circuit court granted all of the motions. Adams appealed, arguing the circuit court erred in its interpretation of section 15-79-125 and section 15-36-100 of the South Carolina Code (Supp. 2012). We disagree.

Both sides concede *Ranucci v. Crain*, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012), *cert. granted*, (Sept. 6, 2013), controls our interpretation of these statutes. In *Ranucci*, this court affirmed the circuit court's dismissal of *Ranucci*'s notice for her failure to comply with the contemporaneous filing requirement of section 15-79-125 because she filed her expert affidavit forty-five days after she filed her notice. 397 S.C. at 178, 723 S.E.2d at 247. The court rejected the same argument Adams makes here—that the affidavit requirements of section 15-36-100 permitted her to file the affidavit late without violating section 15-79-125. *Id.*

As in *Ranucci*, because Adams failed to comply with the mandatory filing requirements of section 15-79-125, the circuit court's order is

AFFIRMED.

PIEPER, J., concurs.

FEW, C.J., concurring: I concur with the majority that *Ranucci* controls our interpretation of the statutes at issue in this appeal. However, as I explained in my concurring opinion in *Ranucci*, I believe our interpretation requires the conclusion that the statute of limitations has expired on any civil action Adams might have brought for malpractice. Therefore, the issues raised in this appeal are moot, and I would dismiss the appeal. *See Ranucci*, 397 S.C. at 179-81, 723 S.E.2d at 248-49 (Few, C.J., concurring). *But cf. Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 66, 744 S.E.2d 547, 552 (2013) (upholding the circuit court's continued jurisdiction over the notice after the time limits of section 15-79-125 have expired, but not addressing the right of a plaintiff to serve a summons and complaint after the expiration of the statute of limitations).

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2012-212832

Ann P. Adams, as Personal Representative of the
Estate of Jacob E. Adams, Deceased.Appellant,

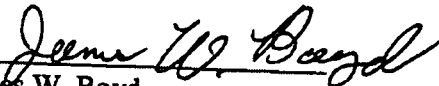
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Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a
Piedmont Healthcare System;

Staci L. Versen-Rampey, NP, Individually and as Agent, Servant or
Employee of South Carolina Emergency Physicians, LLC, and as Agent,
Servant, or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Healthcare System;

Jason Price, Radiologic Technologist, Individually and as Agent, Servant
or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center
And d/b/a Piedmont Healthcare System Respondents.

PETITION FOR RE-HEARING


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Attorney for Appellant

December 19, 2013

Other Counsel of Record:

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The Petitioner petitions the Court for a re-hearing in this case on the following grounds:


If the case of *Ranucci v. Crain* 397 S.C. 168 723, S.E. 2d 242 (S.C. App. 2012), Cert. Granted, (Sept. 6, 2013) is correct then Court's decision upholding the dismissal of this action is correct. However, certiorari has been granted by the South Carolina Supreme Court in the *Ranucci* case and the decision by the South Carolina Supreme Court will be ultimately dispositive on this issue.

2. South Carolina Code 15-36-100 sets forth affidavit requirements as to the filing of malpractice cases against certain professionals including physicians. Section 15-79-125(A) applies only to medical doctors. The language of §15-79-125 which incorporates §15-36-100, makes the language of §15-36-100 applicable to the filing requirements contained in §15-79-125. South Carolina Code §15-79-125 clearly sets forth that the requirements for affidavits are contained in §15-79-100. Section 15-79-125 does not limit the parts of §15-36-100 that apply to §15-79-125. Had the legislature intended to limit the parts of §15-36-100 that apply to §15-79-125 it could have done so by setting the limitations forth in the statute. Any other reading would create a special right to medical doctors that is denied to all other professionals covered by the applicable statutes.

Conclusion

For all of the above reasons the Petitioner requests that the Court grant this
Petition for Re-Hearing.

December 19, 2013


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THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2012-212832

Ann P. Adams, as Personal Representative of the
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Jason Price, Radiologic Technologist, Individually and as Agent, Servant
or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center
And d/b/a Piedmont Healthcare System Respondents.

PROOF OF SERVICE

I, James W. Boyd, certify that I served the within Petition for Re-hearing
on Respondents by depositing a copies of the same in the United States mail,
postage prepaid, on December 18, 2013, addressed to the Respondants' attorney
of record, N. Heyward Clarkson, III, PO Box 6728, Greenville, SC 29606, and
William U. Gunn & Kyle T. Clelland, PO Box 1897, Spartanburg, SC 29304.

December 19, 2013


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The South Carolina Court of Appeals

Ann P. Adams, as Personal Representative of the Estate
of Jacob E. Adams, Deceased, Appellant,

v.

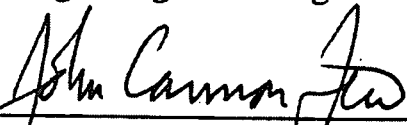
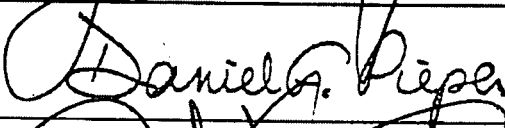
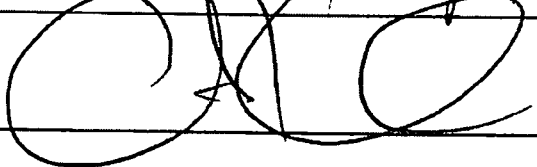
Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; Staci L. Versen-Rampey, NP, Individually and as Agent, Servant or Employee of South Carolina Emergency Physicians, LLC, and as Agent, Servant or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; Jason Price, Radiologic Technologist, Individually and as Agent, Servant or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; James E. Reinhardt, Jr., M.D., Individually and as Agent, Servant or Employee of Rock Hill Radiology Associates, PA, and as Agent, Servant or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; and Rock Hill Radiology Associates, P.A., South Carolina Emergency Physicians, LLC, Defendants,

of whom Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; Staci L. Versen-Rampey, NP, Individually and as Agent, Servant or Employee of South Carolina Emergency Physicians, LLC, and as Agent, Servant or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System; Jason Price, Radiologic Technologist, Individually and as Agent, Servant or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System, are Respondents.

Appellate Case No. 2012-212832

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ C.J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
James W. Boyd, Esquire
George Cox Beighley, Esquire
William U. Gunn, Esquire
N. Heyward Clarkson, III, Esquire
Amy Miller Snyder, Esquire

FILED

February 3, 2014