

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
Beverly C. Moore,)	
)	
Plaintiff,)	
)	
v.)	Case No. 13-CP-10-0088
)	
Bon Secours - St. Francis Xavier)	
Hospital, <i>et al</i>)	
)	
Defendant)	

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SC Court of Appeals

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on May 31, 2013, before The Honorable R. Markley Dennis, Jr. in Courtroom 3E of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Beverly Moore-Rowe
Mr. Rowe
.... Appearing *Pro Se*

Jeff Bogdan, Esq.
HOOD LAW FIRM

Andrew Halio, Esq.
HALIO LAW FIRM

Jonathon Dunlap, Esq.
BATTEN LEE LAW FIRM

Trey Suggs, Esq.
ROE CASSIDY

...Appearing for Defendants

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
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1 THE COURT: The next one is another
2 Motion to dismiss, Rowe-Moore versus Bon
3 Scours.

4 All right, if everyone will -- are you
5 Beverly Moore-Rowe?

6 MS. ROWE: Rowe.

7 THE COURT: Rowe. I'm sorry. Excuse
8 me for mispronouncing your name. I
9 apologize, Ms. Rowe. You are the plaintiff
10 in this matter?

11 MS. ROWE: I am.

12 THE COURT: Thank you, ma'am.
13 Okay, all of y'all identify yourself --
14 there are multiple defendants?

15 MR. BOGDAN: Yes, Your Honor. I'm
16 Jeff Bogdan from the Hood Law Firm. I
17 represent Christine Thompson, M.D. There
18 have been numerous defendants served in
19 this case.

20 THE COURT: Okay.

21 MR. BOGDAN: We all have similar
22 Motions.

23 THE COURT: So they are Motions to
24 Dismiss?

25 MR. BOGDAN: Right.

1 THE COURT: And they look to be based
2 on -- well, just glancing at the first
3 memorandum -- based on some technical
4 issues, filings that are required.

5 MR. BOGDAN: Correct.

6 THE COURT: So it is based on the
7 pleadings alone?

8 MR. BOGDAN: Correct. And there could
9 be some unique arguments but ---

10 THE COURT: Oh, I understand that.
11 But the statute requires certain things to
12 be done, as well, which would not require
13 me to go outside the pleadings themselves.

14 MR. BOGDAN: Correct. So we have
15 decided amongst ourselves that I am going
16 to take the lead ----

17 THE COURT: That will be fine.

18 MR. BOGDAN: --- and argue for every-
19 body. Then if anybody has anything to add,
20 they'll get up and do that.

21 THE COURT: All right. Ms. Rowe,
22 what I'm going to do is I'm going to hear
23 all the parties at one time. They are
24 similar in nature. Then at the end of
25 that, I will give you an opportunity to

1 respond to that.

2 MS. ROWE: Thank you.

3 THE COURT: You are very welcome.
4 Please proceed. Thank you. Whomever.

5 MR. BOGDAN: Your Honor, this is
6 actually two separate actions that were
7 filed, one by Ms. Beverly Moore-Rowe and
8 one by her husband, I believe that it's
9 Peter Rowe -- or Arthur Rowe.

10 Both are based on medical malpractice,
11 a cervical spine surgery that was performed
12 January 7th, 2010.

13 Beverly Moore-Rowe filed her Notice of
14 Intent exactly three years later, January
15 the 7th, 2013. She did not attach an expert
16 affidavit. Your Honor, clearly Rule 15-79-
17 125 says that an expert affidavit has to be
18 filed contemporaneously with a Notice of
19 Intent.

20 In her Notice of Intent she did argue
21 that Section 15-36-100 allowed her an
22 exception to supplement ---

23 THE COURT: Which is ---

24 MR. BOGDAN: Actually to supplement
25 her affidavit at a later time ---

1 THE COURT: I gotcha.

2 MR. BOGDAN: --- to add an expert's
3 affidavit.

4 THE COURT: That's right.

5 MR. BOGDAN: The plain language of
6 15-79-125 says that the affidavit has to be
7 filed contemporaneously. Since an expert's
8 affidavit was not filed contemporaneously,
9 we have moved to dismiss the Notice of
10 Intent.

11 THE COURT: Okay.

12 MR. BOGDAN: The exception in 15-36-
13 100 does not apply. That section addresses
14 what has to be included in that expert
15 affidavit, and specifically says that that
16 expert affidavit has to be filed
17 contemporaneously with a Complaint, not a
18 Notice of Intent in med mal case.

19 The Court of Appeals has addressed
20 this very issue in *Renuchi* ---

21 THE COURT: Yeah.

22 MR. BOGDAN: --- and found that
23 exception did not apply to the Notice of
24 Intent.

25 THE COURT: That's correct.

1 MR. BOGDAN: Your Honor, for those
2 reasons all of the defendants move to
3 dismiss Beverly Moore-Rowe's Notice of
4 Intent in this case.

5 THE COURT: Okay.

6 MR. BOGDAN: As to her husband,
7 he actually filed a Complaint, not a Notice
8 of Intent. The Complaint is for loss of
9 consortium based on the underlying alleged
10 medical negligence.

11 THE COURT: Okay.

12 MR. BOGADN: Your Honor, that --
13 since it is a medical negligence case, it
14 had to be preceded by a Notice of Intent
15 pursuant to the statute. It was not
16 preceded by a Notice of Intent. Therefore
17 the Complaint was not properly filed.

18 Secondly, even if there was no
19 requirement for the Notice of Intent, he
20 would have had to file an expert affidavit
21 with his Complaint, which -- as with his
22 wife's, there was no expert affidavit
23 attached to his Complaint. Therefore, his
24 Complaint also must be dismissed along with
25 his wife's Notice of Intent.

1 THE COURT: Thank you, sir. Does
2 anyone else wish to supplement the
3 argument?

4 MR. HALIO: Your Honor, ---

5 THE COURT: Mr. Halio?

6 MR. HALIO: I represent MUSC. We're
7 in a slightly different position than the
8 private position, but it is our contention
9 that there is nothing in the frivolous
10 civil proceedings actions statute that
11 exempts the requirement of filing of an
12 affidavit when you bring a medical
13 malpractice action against MUSC. So we
14 would join in the Motion.

15 We also have provided the Court with
16 an affidavit indicating that Steven Heath
17 Cobb, who is the student registered nurse
18 anesthetist who has been sued in this case
19 is subject to the -- is covered by the
20 South Carolina Tort Claims Act, under the
21 definition of the Tort Claims Act is
22 considered to be an employee or agent of
23 MUSC at the time. If the Court were to
24 decide not to dismiss it based on the
25 failure to file the Affidavit and with the

1 naming of the wrong entity, we would
2 suggest that MUSC would have to be
3 substituted for Mr. Cobb. Thank you, Your
4 Honor.

5 THE COURT: Thank you. Anyone else?

6 MR. DUNLAP: Very briefly.

7 THE COURT: Yes?

8 MR. DUNLAP: Your Honor, for the
9 record, I am Jon Dunlap with the law firm
10 of Batten Lee. I am here today in this
11 hearing only on behalf of Nurse Anesthesia
12 South Carolina, LLC.

13 While we do represent Jeffrey S. Wager
14 and Tammy McGraw Speicher, we are not
15 appearing on their behalf in this hearing,
16 because it is our position that they have
17 not been properly served.

18 THE COURT: Okay. All right. Thank
19 you. Anyone else?

20 MR. SUGGS: Judge, I am Trey Suggs.
21 I am here on behalf of Bon Secours Health
22 System, Bon Secours St. Francis Xavier
23 Hospital, and Bon Secours Health System
24 Foundation, Inc. We join in the arguments
25 that have already been made. Thank you,

1 Your Honor.

2 THE COURT: All right. Thank you.

3 All right. Mr. and Mrs. Rowe, I will be
4 happy to hear from you now.

5 MS. ROWE: Judge Dennis, is it okay
6 if I sit?

7 THE COURT: It is certainly okay.

8 MS. ROWE: Thank you very much.

9 THE COURT: You're welcome.

10 MS. ROWE: I brought some documents.
11 The first one that I am going to present is
12 the consent for surgery. There was nothing
13 in the Consent that allowed any information
14 to tell me that they were going to allow a
15 student nurse ---

16 THE COURT: Ma'am, this is critical.
17 That may at certain stages will have,
18 certainly, some relevance but it doesn't
19 have anything to do today with the Motion
20 that is pending.

21 MS. ROWE: Okay.

22 THE COURT: The Motion that is
23 pending is a very technical Motion that --
24 it is really a legal issue. As counsel has
25 cited -- I've read the case on numerous

1 times, Oddly enough in the last six
2 months, I think that I have had two where I
3 have had to dismiss them because the case
4 that he cited says exactly that. There is
5 not -- in fact it was -- I think in that
6 case that they later did obtain an
7 affidavit but the Court said "no." You
8 have to strictly comply with the statute.
9 The Legislature has set forth what had to
10 be done, and it can't be waived.

11 MS. ROWE: Okay. Your Honor, ---

12 THE COURT: That is what we have to
13 address.

14 MS. ROWE: --- the Legislature has
15 established a law that makes it almost
16 impossible for a regular citizen to make a
17 medical malpractice case regardless of
18 their injuries, because of the twenty to
19 thirty thousand dollar payout that has to
20 go to pay an expert witness.

21 THE COURT: Oh, I'm -- Ma'am, I --
22 I practiced law for twenty-one years and I
23 did some medical malpractice. I am well
24 aware of the expense of a plaintiff's case.
25 I am well aware of the difficulty of

1 bringing a case. The Legislature chose to
2 do that, not just for the medical
3 profession but -- this, I think, applies
4 strictly to the medical profession. But
5 from the standpoint of -- the affidavit
6 really applies to any professional lawsuit,
7 as I understand it.

8 The reason for that -- that is not
9 anything new. Do you know that South
10 Carolina is really kind of on the tail-end
11 for that one? North Carolina has had that
12 in place for years, because I had a clerk
13 years ago that took the Bar in North
14 Carolina, as well, and that's -- that's
15 been the requirement to bring a medical
16 malpractice in North Carolina for a long
17 time. It's a logical thing, because it's
18 critical -- except in very limited areas,
19 you have to have an expert. As a lawyer,
20 I never filed a Complaint until I had one.
21 You just -- you just can't. You just can't
22 afford to.

23 So I appreciate your position and your
24 frustration but, unfortunately, that
25 doesn't persuade ---

1 MS. ROWE: In negligence, *per se*, my
2 understanding was that you could bring a
3 case without ---

4 THE COURT: In negligence *per se*
5 there is a limited exception, or common
6 knowledge perception, maybe. But even then
7 you still can't get by the problem that you
8 have with respect to what the Court has
9 said. You have to file it. In this case,
10 I don't think that it's going to be common
11 knowledge, from what I've read. So ---

12 MS. ROWE: I tried to get an
13 affidavit of merit and I tried to get a
14 medical expert and I was unable to do that.

15 THE COURT: Thank you, ma'am. And,
16 Mr. Rowe, you have don't have an affidavit
17 with yours either, sir?

18 MS. ROWE: He's not going to be able
19 to hear. He's almost totally deaf.

20 THE COURT: Well, he doesn't have an
21 affidavit. Based on the statements and
22 arguments and the memoranda submitted and
23 the affidavits, I am granting the Motion to
24 Dismiss. If you will prepare the
25 appropriate Order, each client, I will be

1 happy to sign them.

2 Good luck to you, ma'am. You have a
3 right to appeal this. Once the Order is
4 served upon you, you have thirty days in
5 which to file your Notion of Intent to
6 appeal.

7 MS. ROWE: Thank you very much.

8 THE COURT: Thank you, Ms. Rowe. Have
9 a great day.

10 MS. ROWE: I hope you do, too.

11 THE COURT: Thank you.

12 MR. BOGDAN: You want separate Orders
13 from everybody?

14 THE COURT: I will defer to y'all.
15 If one can incorporate it, I don't have a
16 problem with one covering -- I will let
17 y'all decide what you want to do among
18 yourselves. Thank you very much. Y'all
19 have a great day.

20 MR. SUGGS: Thank you, Judge.

21 THE COURT: Yes, sir. Thank you all.

22 (HEARING CONCLUDED)

23

24

25

