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IN THE COURT OF COMMON PLEAS

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ELIZABETH RIBELIN)
)
Plaintiffs,)

vs.)

WACCAMAW CHIROPRACTIC)
JEFF EVANS, & WELLNESS CENTER,)
LLC)
)
Defendants.)

Civil Action No. 2013-CP-22-00817

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS**
[Not Ending Action]

This matter came before the Court through the Defendants Waccamaw Chiropractic & Wellness Center, LLC's Motion to Dismiss. A hearing was held on October 3, 2014. Appearing at the hearing for the Plaintiff was Robert Maring, Esquire, of Maring Law Firm, P.A. Appearing for the Defendants Waccamaw Chiropractic & Wellness Center, LLC was Elizabeth S. Corn, Esquire, of Hall Booth Smith, P.C. After careful consideration and review of the matter, including a review of the memorandums submitted, the Court finds that the Defendants' Motion to Dismiss should be denied.

STANDARD OF REVIEW

As outlined in Spence v. Spence, 368 SC 106, 116-17, 628S.E.2d 869, 874 (2006), the standard of review of a motion pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure is as follows:

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in a light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, than the grant of a

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motion to dismiss for failure to state a claim is improper. Baird v. Charleston County, 333 S.C. 519, 511S.E.2d 69 (1999). In 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 release. Gentry v. Yonce, 337 S.C. 1,522S.E.2d 137 (1999). A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deduced therefrom entitle the plaintiff to relief from any theory. *Id.* Furthermore, the Complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Toussant v. Hamm, 292 S.C. 415, 357 S.E.2d 8 (1987).

ANALYSIS

I. Medical Malpractice

The Defendant alleges the Plaintiffs' Notice of Intent pleads medical negligence against Defendant. See Notice of Intent of file Suit, *generally*. Defendants' Motion to Dismiss is predicated on well-established South Carolina law governing medical malpractice actions, regarding compliance with South Carolina's Medical Malpractice Reform Act of 2005 S.C. Code Ann. §15-79-110 *et. seq.* (hereinafter "The Act") and S.C. Code Ann. §15-36-100. The Act became effective for all suits alleging medical negligence arising after July 1, 2005. The alleged medical negligence arose on or about September 9, 2010. As such, Plaintiff must comply with The Act, including §15-36-100.

Defendant's motion to dismiss based failure to state a claim for medical malpractice is denied.

II. Expert Witness

The Defendant alleges that the Plaintiff failed to comply with The Act as she failed to attach an affidavit from a competent expert witness specifying at least one act or omission of Defendant Jeff Evans, DC. An Affidavit of John D. Davilla, D.C. was attached to the Plaintiff's Notice of Intent to File Suit. Furthermore, the Plaintiff filed an Amended Affidavit of John D.

Davila, D.C. which remedied any defects alleged to have been contained in the Affidavit of John D. Davila, D.C. which the Plaintiff attached to the Notice of Intent to File Suit.

Defendants' motion to dismiss based on the alleged insufficiency of the affidavit of the expert witness is denied.

III. Mediation

The Defendants allege that the Plaintiff failed to comply with The Act as she failed to comply with the pre-suit mediation requirements. See S.C. Code Ann. §15-79-125(C). As such, the Defendants claim that the Plaintiff's claims should be dismissed with prejudice for failure to comply with The Act.

Subsection (C) of The Act is silent as to the consequences for a party's failure to comply with the mediation requirement, but Subsection (D) recognizes the Court's authority to ensure compliance with the requirement. The Circuit Court "retains discretion to permit the mediation process to continue beyond the 120-day time period..." Ross v. Waccamaw Community Hospital, 404 S.C. 56, 744 S.E.2d 547 (2013).

Defendants' motion to dismiss based on Plaintiff's alleged failure to comply with The Act and alleged failure to fulfill the mediation requirement is denied.

CONCLUSION

The Court finds that the Plaintiff has adequately pled, and there are sufficient facts and inferences drawn from the facts alleged in the Complaint to support the Plaintiff's allegations against the Defendants. These facts and allegations, viewed in the light more favorable to the Plaintiff, clearly state a valid claim of action against the Defendant Waccamaw Chiropractic & Wellness Center, LLC. The Circuit Court retains discretion to permit mediation outside the 120-day time period. For the foregoing reasons, the Defendants' motion to dismiss is **DENIED**.

THEREFORE, IT IS ORDERED that the motion to dismiss is **DENIED**.

AND IT IS SO ORDERED.



Larry B. Hyman, Jr.
Presiding Judge
Fifteenth Judicial Circuit

Georgetown, South Carolina

2-9-, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ELIZABETH RIBELIN,)
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Plaintiff,)
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V.)
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WACCAMAW CHIROPRACTIC,)
& WELLNESS CENTER, LLC AND)
JEFF EVANS, DC,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-22-0817

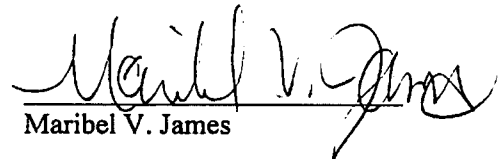
CERTIFICATE OF MAILING

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I the undersigned, secretary of Maring Law Firm, P.A., hereby certifies that I have this 17th day of February, 2015, served a copy of the documents listed below on the person or persons below by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

DOCUMENT(S): Order Denying Defendants' Motion to Dismiss

ADDRESSEE(S): Jack G. Gresh, Esquire
40 Calhoun Street, Suite 550
Charleston, SC 29401


Maribel V. James