

**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**

Arthur Peter Rowe, Appellant,

v.

Bon Secours-St. Francis Xavier Hospital, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital, Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Bon Secours Health System, Inc., d/b/a Bon Secours St. Francis Hospital and Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis Healthcare, Bon Secours-St. Francis Health System Foundation, Inc., d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare, Byron N. Bailey, M.D., Christine C. Thompson, M.D., a/k/a Christine Thompson, M.D., Charleston Neurosurgical Associates, LLC, Mt. Pleasant Anesthesia Associates, PA, Charleston Surgery Center Limited Partnership, d/b/a Charleston Surgery Center, Tammy McGraw, CRNA, a/k/a Tammy McGraw Speicher, CRNA, Nurse Anesthesia of South Carolina, LLC, Jeffery S. Wager, CRNA, Tricoastal Healthcare Billing and Management, Inc., and Steven Heath Cobb, Respondents.

Appellate Case No. 2013-001682

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-288
Submitted May 1, 2015 – Filed June 17, 2015

AFFIRMED

Arthur Peter Rowe, of Charleston, pro se.

James B. Hood, Robert H. Hood, and Deborah H. Sheffield, all of the Hood Law Firm, LLC, of Charleston, for Respondent Christine C. Thompson, M.D.; Darren K. Sanders, of Buyck, Sanders & Simmons, LLC, of Mount Pleasant, for Respondents Byron N. Bailey, M.D. and Charleston Neurosurgical Associates, LLC; Jack G. Gresh, of Hall Booth Smith, P.C., of Charleston, for Respondent Charleston Surgery Center Limited Partnership d/b/a Charleston Surgery Center; Andrew S. Halio, of Halio & Halio, of Charleston, for Respondent Steven Heath Cobb; Jonathan H. Dunlap, of Batten Lee, PLLC, of Raleigh, North Carolina, for Respondents Nurse Anesthesia of South Carolina, LLC, Jeffery S. Wager, CRNA, and Tammy McGraw, CRNA, a/k/a Tammy McGraw Speicher, CRNA; Fred W. Suggs, III of Roe Cassidy Coates & Price, P.A., of Greenville, for Respondents Bon Secours Health Systems, Inc., Bon Secours St. Francis Health System Foundation, Inc., and Bon Secours St. Francis Hospital; and Stephen L. Brown, Joseph J. Tierney, Jr., Christine Kent Toporek, and Russell Grainger Hines, all of Young Clement Rivers, LLP, of Charleston, for Respondents Bon Secours-St. Francis Xavier Hospital, Inc. d/b/a Bon Secours St. Francis Xavier Hospital and Roper St. Francis Healthcare, Bon Secours St. Francis Health System, Inc., d/b/a Bon Secours St. Francis Xavier Hospital and Roper St. Francis Healthcare, Roper St. Francis Healthcare, Roper St. Francis Foundation, d/b/a Roper St. Francis

Healthcare, Roper St. Francis Healthcare, and Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare.

PER CURIAM: Arthur Peter Rowe appeals a circuit court order dismissing his loss of consortium case under Rule 12(b)(6), SCRCF. Rowe argues the circuit court judge erred by (1) dismissing Rowe's complaint because he did not contemporaneously file an expert witness affidavit in compliance with sections 15-36-100 and 15-79-125 of the South Carolina Code (Supp. 2014), (2) finding the exception to the contemporaneous filing requirement codified in section 15-36-100(C)(1) was inapplicable, and (3) not recusing himself. We affirm.

1. As to issues one and two, we affirm because the record does not indicate Rowe ever filed or otherwise produced an expert witness affidavit at any time or that he requested an extension to file an affidavit. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); *Wilkinson v. E. Cooper Cmty. Hosp., Inc.*, 410 S.C. 163, 169-70, 763 S.E.2d 426, 430 (2014) ("On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the [circuit] court. That standard requires the [c]ourt to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." (internal citations and quotation marks omitted)); § 15-36-100 (governing the filing requirements for complaints alleging professional negligence); § 15-36-100(B) (requiring a plaintiff alleging professional negligence to submit with his complaint an expert witness affidavit that "must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit"); § 15-36-100(C)(1) (allowing a plaintiff additional time to file an expert affidavit after filing his complaint: forty-five days or as extended by the circuit court upon motion); *id.* ("If an affidavit is not filed within the period specified in this subsection or as extended by the [circuit] court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim.").

2. We find issue three is not preserved for our review. *See Ness v. Eckerd Corp.*, 350 S.C. 399, 403-04, 566 S.E.2d 193, 196 (Ct. App. 2002) (stating a recusal issue

is unpreserved if the circuit court does not rule on it and the appellant does not file a Rule 59(e), SCRCP, motion requesting a ruling).

AFFIRMED.¹

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.