STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	CASE NO.: 2014-CP-23-06070
	)	
Benjamin L. Anderson,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER GRANTING DEFENDANT'S**
	)	**MOTION FOR SUMMARY JUDGMENT**
DaVita Upstate Dialysis Center,	)	
	)	
Defendant.	)	
	)	

This matter came before the Court on August 4, 2015, on the motion of the Defendant's Motion for Summary Judgment. After hearing the argument of Defendant's counsel and Plaintiff, who appeared pro se, and considering the memoranda of law and other materials of record, the Court has concluded that Defendant's Motion for Summary Judgment should be granted.

FACTS

In February 2013, Plaintiff Benjamin L. Anderson ("Anderson") started receiving dialysis treatment at Defendant DaVita Upstate Dialysis Center ("DaVita"). Anderson's allegations begin on October 31, 2013 in which he alleges that he was harassed by a female DaVita employee. He further alleges that on November 2, 5, 12, 16, and 19, he was subjected to various forms of harassment, including comments regarding his penis, race, about his protesting DaVita, about his complaining about DaVita, and about the use of microwave satellites on him by Loma Linda University Medical Center, a former employer where Anderson worked as a respiratory therapist in the early 1990s.

On November 5, 2014, Anderson instituted the present action, alleging Intentional Infliction of Emotional Distress; Defamation; and Deceit. Anderson has not presented any evidence to support these claims. On August 4, 2015, Anderson filed his Amended Complaint, which contained similar allegations to the original Complaint.

STANDARD OF REVIEW AND APPLICABLE LAW

According to Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment shall be granted for a movant "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to judgment as a matter of law." SCRCP 56(c). Our Supreme Court, citing the U.S. Supreme Court, has held that summary judgment against a Plaintiff is mandated for any cause of action for which the Plaintiff, after adequate time for discovery, fails to establish, with evidence, every essential element. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E. 2d 537 (1991). That case held as follows:

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she had the burden of proof.

Baughman, 306 S.C. at 116, 410 S.E. 2d at 545-46 quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 2552 (1986). The moving defendant may meet its obligation of demonstrating the absence of a genuine issue of material fact by "showing – that is pointing out to the trial court – that there is an absence of evidence to support" the plaintiff's claims.

Baughman, 306 S.C. at 115, 410 S.E. 2d at 545 quoting Celotex, 477 U.S. at 325, 106 S. Ct. at 2554. Further, if a movant properly supports the motion for summary judgment with the evidence required by Rule 56, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial." SCRCP 56(e).

Importantly, to defeat a defendant's motion for summary judgment, a plaintiff must offer more than conclusory allegations or subjective beliefs. O'Connor v. Consolidated Coin Caterers Corp., 56 F.3d 542, 545 (4th Cir. 1995) (employer granted summary judgment where employee "cannot create a genuine issue of fact through mere speculation or the building on one inference upon another."); Mitchell v. Data General Corp., 12 F.3d 1310, 1318 (4th Cir.1993) (plaintiff's conclusory allegations cannot defeat employer's motion for summary judgment); Ross v. Communications Satellite Corp., 759 F.2d 355, 364 (4th Cir. 1985) ("speculative assertions" will not defeat defendant's motion for summary judgment). Hence, a plaintiff's reliance on conclusory allegations and subjective beliefs, without more, entitles the defendant to summary judgment. Id.

Indeed, **if "the evidence is so one-sided that one party must prevail as a matter of law," then summary judgment must be granted.** See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252, 106 S.Ct. 2505, 2512, (1986) [emphasis added]. In the case at bar, the evidence is so one-sided in favor of DaVita that summary judgment in favor of DaVita is required.

ANALYSIS

Anderson has made three allegations in his Complaint: I) Intentional Infliction of Emotional Distress; II) Defamation; and III) Fraud. The evidence in this case is so one-sided, that

summary judgment must be granted on the record sufficient to constitute evidence sufficient to support any of Anderson's allegations.

I. THERE ARE NO FACTS OTHER THAN PLAINTIFF'S OWN STATEMENTS SUPPORTING THE PLAINTIFF'S CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, WHICH IS INSUFFICIENT TO MEET THE "HEIGHTENED BURDEN OF PROOF" STANDARD.

"To establish the tort of intentional infliction of emotional distress, or outrage, the plaintiff must establish the following: (1) the defendant intentionally or recklessly inflicted severe emotional distress, or knew that distress would probably result from his conduct; (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was furthermore atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it." Gattison v. South Carolina State College, 318 S.C. 148, 151, 456 S.E.2d 414, 416 (S.C. App. 1995).

"[A] cause of action for intentional infliction of emotional distress carries a 'heightened burden of proof.'" ALJ Holdings, LLC v. Dunn, 392 S.C. 160, 170, 708 S.E.2d 218, 224 (S.C.App. 2011) (*quoting* Hansson v. Scalise Builders of S.C., 374 S.C. 352, 356, 650 S.E.2d 68, 71 (2007)) [emphasis added]. "Accordingly, the 'mere scintilla' rule of *Hancock* does not apply to this cause of action. (Id.) "[W]here a heightened burden of proof is required, **there must be more than a scintilla of evidence in order to defeat a motion for summary judgment.**" Hancock v. Mid-South Management Co., Inc., 318 S.C. 326, 330, 673 S.E.2d 801, 802 (S.C. 2009) [emphasis added]. The Supreme Court, moreover, has admonished that "[i]n order to prevent claims for intentional infliction of emotional distress from becoming a panacea for wounded feelings

rather than reprehensible conduct, the court plays a significant gatekeeping role in analyzing a defendant's motion for summary judgment." Hansson, 374 S.C. 352, 35S, 650 S.E.2d 68, 72 (2007) (internal quotation marks and citations omitted).

Anderson's Intentional Infliction of Emotional Distress claim arises out of alleged harassment that he received on October 31, 2013 and November 2, 5, 12 16 and 19, 2013. The only evidence presented supporting these allegations are Anderson's own inconsistent testimony, which would not qualify even as a scintilla of evidence, let alone meet the heightened burden of proof standard.

A. Anderson Repeatedly Stated His Distress Was Caused By Microwave Satellites Fired at Him by Former Employers in California.

In a letter to DaVita's corporate headquarters dated November 19, 2013, and attached as an exhibit to DaVita's Memorandum in Support of its Motion for Summary Judgment, Anderson accused DaVita of defamation, bigotry, harassment, and various other allegations, including "Overt hate-filled racism in conjunction with covert high-powered SDA [Cedars-Sinai Medical Center] satellite transmissions 24-7 on dialysis patient." Anderson further stated that "Loma Linda University Medical Center, Loma Linda Calif. Has FEC licensed satellites which is why DaVita Upstate Dialysis Center 308 Mills Ave, Greenville, S.C. came on board to help them conspire to cause me injury and stress, while on dialysis."

Later in his Complaint and Amended Complaint and he stated his emotional distress from November 16 and 19 was caused by the harassment he allegedly sustained at the hands of DaVita employees, but omitted the alleged conspiracy between DaVita and Loma Linda Hospital to cause him distress through the use of satellite transmissions. While omitting the reference to the conspiracy, Anderson did appear to believe that DaVita was aware of the employee as he

alleged a DaVita employee told him "That's why that SDA group used those high –powered satellite transmissions on you (referring to Loma Linda University Medical Center, CA." (Amended Comp.)

On March 9, 2015, Anderson filed a lawsuit against DaVita in federal court for causes of action similar to those raised in this action.[1] In an attachment to that lawsuit, Anderson stated that "dialysis staff technicians and RN's (registered nurses) harassed and intimidated overtly during dialysis, while Loma Linda University Medical Center simultaneously used satellite transmission on me to cause harm at this public facility."[2] (Exhibit "F.") He further stated "I declare that high powered geological satellite was used by "LLUMC" to produce powerful, forceful vibratory microwaves on me while I slept prior to going to dialysis November 16, 2013 @ [sic] 0600 hrs." Various other bizarre and outlandish allegations are further contained in this lawsuit, including allegations that Loma Linda used microwave satellites to harass him while he drove and that it conspired with DaVita to deprive Anderson of his right to use Medicare.

On March 25, 2015, Anderson filed another federal lawsuit against DaVita similar causes of action raised in this lawsuit. While the Complaint in this lawsuit does not include specific allegations relating to the use of microwave satellites, Anderson included a copy of a complaint he filed with the South Carolina Human Affairs Commission, in which he again alleges that the "significant racial discrimination is because of a majority group invasion of privacy by FCC Licensed satellite/satellite transmitter(s) by former employer, Loma Linda, CA. This gives

[1] Anderson filed three different federal lawsuits against DaVita since the filing of this action. Each of these federal lawsuits were summarily dismissed by the Federal Court before being served on DaVita.

[2] Anderson has a history of filing lawsuits against medical facilities for perceived use of "microwave satellites" against him. Anderson filed federal and state lawsuits in California in the early 1990s against his former employer, Loma Linda University Center for religious discrimination and for harassment through the use of microwave satellites. A copy of an order from the 9th Circuit Court of Appeals dismissing Anderson's federal lawsuit against Loma Linda is attached to DaVita's Memorandum in Support of its Motion for Summary Judgment as are memorandums relating to Anderson's state lawsuits against Loma Linda.

rise to majority group racial harassment and different treatment at DaVita Upstate Dialysis Center."

On April 20, 2015 Anderson filed a third federal lawsuit against DaVita, again for causes of action similar to those alleged in this action. In that lawsuit, Anderson again appears to state that DaVita and Loma Linda were using microwave satellites on him, when he stated a DaVita employee told him "That's why that SDA group used those high-powered satellite transmission on you." Anderson further alleges that DaVita personnel were aware that he had worked at Cedars-Sinai hospital in California and knew that he had been terminated from there, stating that a DaVita employee said " 'Our Jews didn't give a shit, that's why they put you out' (referring to Cedars-Sinai Medical Center, California)."

Then, in his June 12, 2015 deposition Anderson again claims that Loma Linda used microwave satellites on him. He stated that Loma Linda "modulated audible transmissions within the decibel range of human hearing" prior to his Dialysis on November 16, 2013. (Dep. of Anderson, p. 76:17-77:14.)

No reasonable person could conclude from Anderson's statements alone that DaVita caused Anderson emotional distress. His statements are contradictory, fantastical, and unbelievable. He alleges that DaVita employees, acting in concert with his former employers in California, conspired to use "microwave satellites" and racial slurs and sexual innuendo to cause him emotional distress. Setting aside the fact that Anderson has presented no evidence whatsoever that any person at DaVita had any contact with any person at Loma Linda or Cedars-Sinai, to allege that a satellite exists that can be aimed at an individual person that uses audio transmissions to disrupt sleep patterns, driving, and dialysis treatment, that a hospital

has both access to and gained control of such satellite, that the hospital then decided to use its access to and control of such satellite to harass a respiratory therapist that has not worked there in over 20 years is beyond belief.

Even accepting that such microwave satellites exist, throughout this litigation, Anderson has been inconsistent, at best, as to whether his emotional distress was caused by the alleged verbal harassment of DaVita employees or by the alleged microwave satellites used to disrupt his sleep and thought process the night before and during his dialysis treatment. Anderson fluctuates between stating that the emotional distress was caused by microwave satellites or the alleged verbal harassment he received by DaVita employees. Anderson's statements regarding the cause of his emotional distress are both contradictory and unbelievable. Such contradictory statements fall far short of the "heightened burden of proof" standard required for Intentional Infliction of Emotional Distress claims.

B. Anderson Has Presented No Evidence Supporting His Claim of Intentional Infliction of Emotional Distress Other than His Own Testimony.

Further failing to meet the "heightened burden of proof" standard required for Intentional Infliction of Emotional distress, the only evidence supporting Anderson's allegations are his own testimony. He has presented no witness, statement, or document other than his own Complaints and testimony supporting his positions. The multitude of affidavits filed by Anderson in this matter only focus on whether the affiants were aware that Anderson had previously been diagnosed with Schizophrenia. As such, these affidavits provide no support to Anderson's allegations.

A Plaintiff cannot manufacture testimony to survive a motion for summary judgment. The sole testimony of one person who believes microwave satellites are being aimed at him by

an employer he has not worked for in over 20 years falls far short of meeting the heightened burden of proof standard.

Anderson claimed to have a witness that supported his allegations. In his deposition, Anderson stated "There was this one particular one, Willie Williams, who was a bit more vocal than the other ones about it." (Dep. of Anderson p. 43:24-44:1.) Contrary to Anderson's claims, however, Mr. Williams submitted an affidavit to the Court in which Williams states that he told Anderson that he did not hear any disparaging remarks, that he told Anderson not to list him as a witness, and "I have never seen or heard any person of any race employed by DaVita say any disparaging remark about Mr. Anderson."

Because Anderson's statements regarding what caused his mental distress are inconsistent, they do not even reach the threshold of a scintilla of evidence, let alone the "heightened burden of proof" standard for claims for Intentional Infliction of Emotional Distress. Because Anderson has not provided even a scintilla of evidence supporting his allegations of Intentional Infliction of Emotional Distress, this cause of action should be dismissed.

C. The Overwhelming Evidence on Record Indicates No Disparaging Remarks Were Ever Made About Anderson.

The only evidence on record other than Anderson's Complaints and the affidavit from Mr. Williams saying he did not hear any disparaging remarks about are affidavits from ten (10) DaVita employees that were working on either November 5, 16, and/or 19, 2013. In each affidavit, the affiant states that they did not make or hear anyone make disparaging remarks about Anderson.

The overwhelming evidence in this case supports the position that none of the statements Anderson alleges were made ever occurred. The only person named by Anderson to have supposedly overheard the abuse states he never heard any such verbal abuse.

Because the only evidence on record supporting Anderson's allegations are his own inconsistent statements in which he states that his emotional distress was caused by microwave satellites, and there is no evidence whatsoever supporting Anderson's allegations that derogatory remarks were made by any person to him, Anderson's Intentional Infliction of Emotional Distress cause of action should be dismissed.

II. THERE IS NO EVIDENCE SUPPORTING ANDERSON'S DEFAMATION ALLEGATION OTHER THAN HIS OWN TESTIMONY, THE ONLY EVIDENCE ON RECORD IS THAT BRIAN HAMRICK HAD NOT WORKED AT DAVITA FOR AT LEAST THREE MONTHS PRIOR TO THE DATE ANDERSON ALLEGES HE MADE THE ALLEGEDLY DEFAMATORY STATEMENTS, AND ANDERSON HAS INTRODUCED NO EVIDENCE THAT THE STATEMENTS WERE EVEN DEFAMATORY OR ANY DAMAGES RESULTING THEREFROM.

Anderson has alleged on November 5, 2013, Brian Hamrick ("Hamrick"), a DaVita employee, made defamatory statements about him. He has presented no information whatsoever supporting any elements of his allegation.

A. The Only Evidence On Record Other than Plaintiff's Statements Regarding the Defamation Claim is that Hamrick Had Not Worked at DaVita Since August of 2013, and, Therefore, Could Not Have Made Any Statements About Anderson on November 5, 2013.

The only evidence on the record indicating that a defamatory statement was made by any person are Anderson's own statements. Anderson has presented no witness, affidavit, document, or other proof that any other person made defamatory statements about him. As noted above, Anderson's own named witness, Mr. Williams, submitted an affidavit indicating he never heard any person make any derogatory statements about Mr. Anderson.

In fact, the only evidence on record is contained in an affidavit by the DaVita administrator, Kevin Donovan. In the affidavit, Donovan stated that Hamrick could not have made any statements about Anderson on November 5, 2013 because Hamrick had not worked at this particular DaVita facility since August of 2013.

B. The Alleged Defamatory Statements are Defamatory *Per Quod* and Anderson Has Not Introduced Extrinsic Evidence to Show Whether They Are Defamatory

The tort of defamation allows a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 508, 506 S.E.2d 497, 502 (1998). Defamatory communications take two forms: libel and slander. Holtzscheiter, 332 S.C. at 508, 506 S.E.2d at 502. Libel is the publication of defamatory material by written or printed words, by its embodiment in physical form or by any other form of communication that has the potentially harmful qualities characteristic of written or printed word. Id. at 517, 506 S.E.2d at 505. Slander is a spoken defamation. Id. at 508, 506 S.E.2d at 501.

"To recover for defamation, the plaintiff must establish by a preponderance of the evidence, that there was (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged communication; (3) fault on the defendant's part in publishing the statement; and (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication." Parrish v. Allen, 376 S.C. 308, 320, 656 S.E.2d 382, 388 (S.C. App. 2007) (*citing* Holtzscheiter, 332 S.C. at 518, 506 S.E.2d at 506 (Toal, J., concurring); Fleming v. Rose, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002)).

"A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating with

him." Holtzscheiter, 332 S.C. at 530, 506 S.E.2d at 513 (Toal, J., concurring). "With this first element of defamation, the trial court must initially determine if the communication is reasonably capable of conveying a defamatory meaning." Parrish, at 321, 656 S.E.2d at 389 (*citing* Holtzscheiter, at 530, 506 S.E.2d at 513; White v. Wilkerson, 328 S.C. 179, 183, 493 S.E.2d 345, 347 (1997)). If the defamatory meaning of a statement is obvious on its face, the statement is defamatory *per se*. Holtzscheiter, 332 S.C. at 508-09, 506 S.E.2d at 501. There is no evidence that the statements allegedly made were even defamatory, and Anderson has introduced no evidence he suffered any damages as a result of those statements.

1. The Defamatory Meaning of Hamrick's Alleged Statements Are Not Obvious on Their Face.

"Slander is actionable per se only if it charges the plaintiff with one of five types of acts or characteristics: (1) commission of a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." Id. at 511, 506 S.E.2d at 502. "If the defamatory meaning is not clear unless the hearer knows the facts or circumstances not contained in the statement itself, then the statement is defamatory *per quod*. In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself in order to prove a defamatory meaning." Id.

In the case at bar, Anderson alleges on November 2, 2013, Hamrick stated "You're not a drug dealer, you have drugs in your body now" and "When a girl sits in front of you with her legs wide apart she is trying to get money out of you [sic]." In his June 12, 2015 deposition, Anderson's version of events changed entirely. Instead of Hamrick making the statements directly to Anderson, Anderson said the man in the seat next to him stated "Brian heard that you were smoking." (Dep. of Anderson, p. 67:16-17.)

Regardless of which version of events Anderson wants to take, none of these statements are not defamatory *per se*. There is no indication that Hamrick accused Anderson of using illegal drugs or being a drug dealer. In one version of story, Hamrick said that Anderson was not a drug dealer. Additionally, saying that a dialysis patient has drugs in his system cannot be considered defamatory *per se* as it is plain that Hamrick could have been talking about blood pressure medication or dialysis treatment medication.

Secondly, the statement that "When a girl sits in front of you with her legs wide apart she is trying to get money out of you" is not defamatory *per se*. There is no indication this statement was directly about Anderson, but rather seemed to be advice telling Anderson to be careful about certain types of women. It does fit into any of the categories of *per se* defamatory statements.

Finally, the statement that "Brian heard that you were smoking" is not defamatory *per se*. There is no indication Hamrick stated that Anderson was smoking illegal substances. It is certainly legal for Anderson to smoke legally obtained cigarettes. Anderson himself said that he "can only assume after he had said I had drugs in my body, I . . .must have been smoking drugs." (Dep. of Anderson, p. 67:20-22.) The fact that Anderson himself admits that he could only *assume* Hamrick was talking about illegal drugs means that the defamatory meaning of the statement was not clear on its face, and, therefore, not defamatory *per se*.

Because the statements allegedly made by Hamrick are not defamatory *per se*, Anderson must introduce facts extrinsic to the statement to prove its defamatory meaning. Anderson has not introduced any extrinsic facts to prove the statements' defamatory

meanings. Because Anderson has not introduced any extrinsic facts to prove the statements' defamatory meanings, this cause of action must be dismissed.

2. There Is No Evidence On the Record Demonstrating Anderson Suffered Special Damages

If a defamatory statement is not actionable *per se,* a Plaintiff "must show he was actually damaged by pleading and proving special damage." Capps v. Watts, 271 S. C. 276, 289, 246 S. E. 2d 606, 611 (1978); see also Wilhoit v. WCSC, Inc., 293 S. C. 34, 358 S. E. 2d 397 (Ct. App. 1987).

As indicated *supra*, Anderson's defamation claim is for defamation *per quod*. In his Complaint, Anderson did not plead any special damages that show he was harmed in any way by the statement. There is nothing in the record indicating that Anderson suffered any harm whatsoever by the alleged defamatory statements. Because Anderson has failed to provide any evidence proving he suffered special damages, his Defamation cause of action should be dismissed.

III. THERE IS NO EVIDENCE ON THE RECORD SUPPORTING ANDERSON'S FRAUD ALLEGATION.

Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct.App. 1993) (*citing* King v. Oxford, 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984)).

In his final cause of action, entitled "Deceit," Anderson appears to be pleading that DaVita committed fraud because its staff nephrologist, Dr. Alioua, told him the dialysis center did not have the medication Anderson was requesting when the medication was allegedly listed on DaVita's website. He also appears to be claiming he was defrauded because Dr. Alioua told him that he would get the other DaVita staff to back off of him and he did not. (See Compl.; Dep. of Anderson, p. 69:22-70:22.)

There are no facts on the record that Dr. Alioua intended for Anderson to act upon the representations he made to him. Other than his own testimony, Anderson there is no evidence of any kind that any of the statements made by Dr. Alioua were false. There is no evidence of any kind that Dr. Alioua knew these statements were false or that he intended Anderson act on those statements. Anderson has not claimed he actually relied on the statements by Dr. Alioua to do anything. (See Dep. of Anderson, p. 69:22-72:3.) Anderson has not stated that Dr. Alioua's telling him that DaVita did not have a particular medication at the facility caused him to buy a different type of medication or make a different decision. Nor did he state that Dr. Alioua telling him that he got DaVita staff to "back off" of him caused him to do anything at all.

In fact, the only insight into why Anderson believes he was defrauded can be found in his June 12, 2015 deposition in which Anderson stated "To me it was deception because he really didn't have any business saying that in front of the staff." (Dep. of Anderson, p. 70:20-22.) Mere anger about a doctor saying something to you in front of the staff is wholly insufficient to support a cause of action for deceit. Even taking everything Anderson has stated in his Complaint, Amended Complaint, and Deposition as true, there is no evidence of any sort whatsoever to support Anderson's claim for fraud.

Because Anderson has failed to present any facts supporting the elements of a fraud claim, the third cause of action entitled "Deceit" should be dismissed.

CONCLUSION

Viewing the evidence in a light most favorable to Anderson, the Court finds that Anderson has not presented evidence sufficient to support any of his causes of action for Intentional Infliction of Emotional Distress, Defamation, and Fraud. Consequently, Anderson has failed to "set forth specific facts, admissible in evidence, showing that there is a genuine issue for trial." Moody v. McLellan, 295 S.C. 157, 163, 367 S.E.2d 449, 452-53 (Ct. App. 1988).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant DaVita Upstate Dialysis Center's Motion for Summary Judgment is granted.

_____
Edward W. Miller, Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina
August _____, 2015

The South Carolina Court of Appeals

Benjamin L. Anderson
445 W. Rebound Road
Lancaster, S.C 29720

09/04/2015

RECEIPT #77158

Fee Type:	Case Initiation Fee
Amount:	$100.00
Payment Type:	Cash
Reference No:	
Check/Money Order Date:	09/04/2015
Comments:	Notice of Appeal

Note: Please file this order and clock in for Summary Judgment. I was there Friday & forget this order. I only need you to send back the first page of the order (clock in page)

Thank You,
Benjamin L Anderson,
Plaintiff/Appellant
9-8-15

Benjamin L. Anderson
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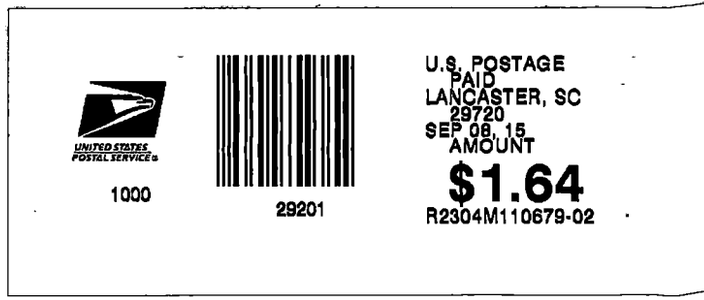

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