

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-015000

RECEIVED

MAR 08 2016

SC Court of Appeals

JIM WASHINGTON,)
)
Plaintiff,)
)
v.)
)
TRIDENT MEDICAL CENTER,)
)
Defendant.)
_____)

ORDER

This matter came before the Court on the Motion to Dismiss filed by the Defendant Trident Medical Center, LLC. A hearing was held on January 7, 2016. The Plaintiff, Jim Washington, appeared *pro se*. William H. Harkins, Jr. appeared on behalf of the Defendant Trident Medical Center, LLC.

Memoranda of law were submitted by all parties and incorporated into the record, and oral arguments were entertained by the Court. After having reviewed the pleadings and having considered arguments and legal memoranda of the parties, the Court hereby **GRANTS** Defendant's Motion to Dismiss on the grounds that (1) Plaintiff failed to file a Notice of Intent to File Suit as a prerequisite to filing a medical malpractice action pursuant to S.C. Code § 15-79-125(A); (2) Plaintiff failed to file an expert witness affidavit specifying at least one negligent act or omission claimed to exist pursuant to S.C. Code §§ 15-79-125(A) and 15-36-100(B); (3) This medical malpractice action did qualify for the "common knowledge" exception to an expert witness affidavit pursuant to S.C. Code § 15-36-100(C)(2) ; and (4) Plaintiff was not subject to protections afforded by the "safe harbor" provisions of § 15-36-100(C)(1).

RMOJ/1

FACTS

The Plaintiff filed a Summons and "Complaint" on September 11, 2015 alleging medical negligence arising out of medical treatment rendered to Mr. Washington at Trident Medical Center between September 23-26, 2012. Plaintiff wholly failed to file a Notice of Intent to File Suit as required by S.C. Code § 15-79-125(A). Further, Plaintiff failed to file an expert witness affidavit specifying at least one negligent act or omission claimed to exist pursuant to S.C. Code §§ 15-79-125(A) and 15-36-100(B). There was no allegation by Plaintiff that time constraints prevented him from filing the required expert witness affidavit. See S.C. Code § 15-36-100(C)(1). Further, the determination of the merits of this medical malpractice action against Trident Medical Center exceed the bounds of common knowledge such that that exception to the need for an expert witness affidavit is inapplicable. S.C. Code § 15-36-100(C)(2).

Defendant Trident Medical Center filed a Motion to Dismiss Plaintiff's Summons and Complaint based on his failure to file a Notice of Intent to File Suit and an expert witness affidavit supporting his claims of medical negligence.

STANDARD OF DISMISSAL

"Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct.App. 2004), *aff'd*, 373 S.C. 390, 645 S.E.2d 245 (2007). "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." Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct.App. 2007).

PROCEDURAL REQUIREMENTS FOR MEDICAL MALPRACTICE ACTIONS

This is a medical malpractice action and therefore is governed by the procedural requirements set forth in S.C. Code §§ 15-79-125 and 15-36-100. Section 15-79-125 controls the portion of the process that commences with the filing of the Notice of Intent to File Suit and ends with the pre-litigation mediation. If the parties are unable to resolve their dispute through pre-litigation mediation, section 15-36-100 guides the parties through the process of filing the Summons and Complaint. In the instant case, Plaintiff failed to comply with the filing requirements of S.C. Code §§ 15-79-125 and 15-36-100.

SOUTH CAROLINA CODE SECTION 15-79-125 BARS THIS ACTION

South Carolina Code § 15-79-125 establishes the pre-litigation requirements for medical malpractice actions. Section 15-79-125(A) provides in pertinent part as follows: “[p]rior 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.” *Id.* Here, Plaintiff failed to file a Notice of Intent to File Suit. Plaintiff also did not file an expert witness affidavit in support of his claims of medical negligence. § 15-79-125(A). The Court finds this deficiency and failure to file both a Notice of Intent to File Suit and an expert affidavit sufficient to dismiss this action.

The Court recognizes that 15-79-125 incorporates the expert witness affidavit requirements of 15-36-100. However, Section § 15-36-100(C)(1) provides an exception to the affidavit requirement when the applicable statute of limitations will expire within ten (10) days of filing of the complaint and the plaintiff alleges, because of time constraints, that an expert

affidavit could not be prepared. Section § 15-36-100(C)(1) allows the plaintiff forty-five (45) days to supplement the complaint with an expert affidavit.

In the instant action, the Court finds the Plaintiff failed to satisfy the pre-litigation requirements of § 15-79-125. The Court further finds that the “safe harbor” provisions of § 15-36-100(C)(1) are inapplicable. The Plaintiff filed a Summons and Complaint on September 11, 2015 alleging medical negligence arising out of medical treatment Mr. Washington received at Trident Medical Center between September 23-26, 2012. Accordingly, the applicable 3-year statute of limitations would not have expired within ten (10) days of filing. Further, Plaintiff did not allege in any of his pleadings that an expert witness affidavit could not be prepared due to time constraints. S.C. Code § 15-36-100(C)(1).

At the hearing regarding the instant Motion to Dismiss on January 7, 2016, Plaintiff did not produce or tender an expert witness affidavit for the Court’s consideration, and he did not move the Court orally or in briefing for an extension of time to file an expert affidavit. Pursuant to the safe harbor provisions of Section § 15-36-100(C)(1), Plaintiff has forty-five (45) days or longer “as the court determines justice requires” to supplement his filing with an expert affidavit.

Id.

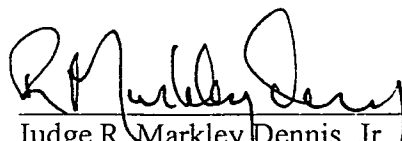
Assuming the safe harbor provisions are applicable here, the 45 days to supplement with an expert affidavit have expired since Plaintiff’s filing date of September 11, 2015. Plaintiff has not moved the Court for an extension of time to file an expert affidavit, and the Court finds no good cause to allow additional time past the 45-day safe harbor to allow Plaintiff to supplement with an expert affidavit. Further, the Court finds no merit in Plaintiff’s argument that his verified “Complaint” will suffice in lieu of an expert witness affidavit.

2/10/16

Section § 15-36-100(C)(2) provides an additional exception to the affidavit requirement when the allegation of negligence in the complaint involves subject matter “that lies within the ambit of common knowledge and experience.” *Id.* Based upon the Summons and Complaint filed by the Plaintiff herein, the Court finds that the Plaintiff’s allegations of medical negligence are outside the realm of common knowledge and experience. The amount, dosage, administration, and choice of anticoagulation medication to help prevent future blood clots are all issues requiring special learning and expert testimony and the determination of the merits herein exceeds the bounds of common knowledge.

Plaintiff alleges medical negligence arising out of medical treatment he received at Trident Medical Center between September 23-26, 2012. Medical malpractice actions are subject to a three-year statute of limitations. The Court finds that there are no allegations by Plaintiff herein that would trigger the “discovery rule” and nothing in the pleadings filed by Plaintiff which would otherwise toll the statute of limitations. Accordingly, the three-year statute of limitations on Plaintiff’s medical malpractice claims has expired.

Now, therefore, based on the foregoing it is **ORDERED** that Defendant’s Motion to Dismiss be **GRANTED** and this action be **DISMISSED** with prejudice



Judge R. Markley Dennis, Jr.

January 27, 2016
Charleston, South Carolina

RMDS/5

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

RECEIVED

MAR 08 2016

SC Court of Appeals

163



JIM WASHINGTON
209 SIGNET DR
EUTAWVILLE SC 29048-9140

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/defnt's motion to dismiss is granted

CASE NO: 2015CP1005000

Jim Washington VS Trident Medical Center

This judgment was entered on the 05th day of February, 2016, and notice mailed first class on Monday, February 08, 2016, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.