

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Ronnie Joe Vanzant,

Plaintiff,

Versus

Carolina Center for Occupational Health,  
(CCOH); CEO Doctor Barry Weissglass;  
Doctor Theodolph Jacobs; Director of Nursing  
Dawn Frazier; and Physician Assistant Karen  
Huffman

Defendants.

RECEIVED

JUN 30 2016

SC Court of Appeals

COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-4510

ORDER

FILED  
2016 APR -7 PM 4:34  
JULIE J. ARMSTRONG  
CLERK OF COURT

This matter was before the Court on March 30, 2016, on Defendants' motion to dismiss the Notice of Intent and Plaintiff's motion to proceed without a medical expert affidavit. Present at the hearing were the Plaintiff, appearing *pro se*, and G. Wade Cooper, Esq. appearing for the Defendants. Having reviewed the Notice of Intent, the motions of the respective parties and memoranda in support thereof, the Court finds the following:

The *pro se* Plaintiff is an inmate incarcerated at the Sheriff Al Cannon Detention Center. The Defendant Carolina Center for Occupational Health (CCOH) is a private entity and which contracts with Charleston County for the provision of medical services to inmates at the Detention Center. The individually named Defendants are medical provider employees of CCOH. Plaintiff filed this action against the Defendants alleging that their termination of certain medications following an incident in which he admits to have been discovered hoarding medications caused him injury and amounts to medical malpractice. Plaintiff filed a Notice of Intent to File Suit pursuant to S.C. Code Ann. § 15-79-125 concerning actions for medical malpractice, but failed to also file an affidavit of an expert witness.

South Carolina Code Section 15-79-125 sets forth the prerequisites required prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice. As detailed, "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...The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure...The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure.(S.C. Code §15-79-125(A)). Subsection C details the procedures for handling a pre-suit mediation which is mandated to occur within 90 to 120 days after service of the Notice of Intent to File Suit. It is only after the pre-litigation requirements have been completed that a Summons and Complaint can be filed. (S.C. Code §15-79-125(E)).

Plaintiff concedes that he did not file a medical expert affidavit with his Notice of Intent, however, he argues that under the facts of his case, the matters alleged fall within the "common knowledge exception" found within S.C. Code § 15-36-100 (C)(2), which provides: "The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant. In support of his argument, Plaintiff's motion cites the case of Brouwer v. Sisters of Charity, 763 S.E.2d 200 (2014), in which the South Carolina Court of Appeals held that, based upon the facts of that case, the exposure of a patient to latex with a known history of allergic

reaction to latex fell within the "common knowledge exception," and, thus, did not require a medical expert affidavit. In so ruling, however, the Court of Appeals cautioned, "The application of the common knowledge exception in proving negligence in a case involving medical malpractice depends on the particular facts of the case." *Id.* quoting Hickman v. Sexton Dental Clinic, P.A., 295 S.C. 164, 168, 367 S.E.2d 453, 455 (Ct. App. 1988).

Having reviewed the allegations contained within the Plaintiff's Notice of Intent, as well as the various medical conditions and medications cited within the Notice and motions to proceed without an expert, the Court find that the issues presented do not fall within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the Defendants. As such, the Court finds that the Plaintiff is required to produce an affidavit of a medical expert as required by S.C. Code Ann. § 15-79-125.

IT IS THEREFORE ORDERED that the Plaintiff's motion to waive the expert witness requirement is DENIED. The Plaintiff shall have forty-five (45) days from the date of this Order to file with the Court and counsel for the Defendants a medical expert affidavit citing any deviations from the medical standard of care as required under the Medical Malpractice Act.

ITS IS THEREFORE FURTHER ORDERED that Defendants' motion to dismiss is CONTINUED pending the Plaintiff's compliance with the Order to produce a medical expert affidavit within forty-five (45) days from the date of this Order.

IT IS SO ORDERED!

4/6, 2016  
Charleston, South Carolina

  
The Hon. J.C. Nicholson, Jr.