STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Benjamin L. Anderson,	)	C.A. No. 2015-CP-23-07324
Plaintiff,	)	
v.	)	**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**
Barksdale Medical Center,	)	
Defendant.	)	

This matter is before the Court on the Motion of the Defendant, Barksdale Medical Center, to dismiss pursuant to SCRCP 12(b)(6). After hearing from both parties to his matter, the Court hereby grants the Defendant's Motion to Dismiss.

PROCEDURAL HISTORY

This is a medical malpractice case. The Plaintiff, Benjamin L. Anderson, filed a Complaint against Barksdale Medical Center on December 14, 2015. Mr. Anderson asserts three causes of action related to Dr. Rebecca F. Barksdale's provision of medical care and her inclusion of certain statements in the medical records. Those causes of action include intentional infliction of emotions distress, defamation of character/libel, and fraud. The Plaintiff did not file a Notice of Intent to File Suit or an expert affidavit pursuant to S.C. Code Ann. Section 15-79-110. Instead, he simply filed a Complaint. The Defendant's Motion to Dismiss followed.

STATEMENT OF FACTS

The Plaintiff alleges that on January 25, 2013, Mr. Anderson was treated and evaluated by Dr. Rebecca Barksdale at Barksdale Medical Center in Greenville, South Carolina. Dr. Barksdale completed an entry regarding that office visit in the medical records. In the subjective section of the office note, she documented as follows: "He is also complaining of having trouble

getting to sleep and staying asleep. He is hearing voices. He thinks he is being watched and spied on by the government." Included in her assessment was a diagnosis of paranoia.

Dr. Barksdale treated Mr. Anderson again on December 2, 2013. She completed an entry regarding that office visit in Mr. Anderson's medical chart. In the subjective section of the office note, Dr. Barksdale noted: "He has been under a lot of stress. Has not been sleeping well. He feels that he is being spied on by the military in California through satellites. The [sic] says they are transmitting noises during the night that keeps him from sleeping." Included in the record was a diagnosis of paranoia and anxiety. These records were made exhibits to the Complaint and are thus part of the pleadings to be considered on the Defendant's motion.

ARGUMENTS AND AUTHORITIES

A. The Plaintiff failed to adhere to the requirements for a medical malpractice lawsuit.

For medical malpractice actions arising after July 1, 2005, the South Carolina General Assembly adopted reform legislation designed to provide certain protections and safeguards to hospitals and healthcare providers as defined in the statute (hereinafter the "Act"). *See* S.C. Code Ann. § 15-79-110, et seq. Section 15-79-125 of the Act specifically provides that "prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the Plaintiff must file a Notice of Intent to File Suit and, aside from limited exceptions, an affidavit of an expert witness . . . ." S.C. Code Ann. § 15-79-125(A). The Act further provides specific requirements for the content of the Notice of Intent to File Suit, requires that the notice be served on the named defendants, and requires that it answer standard interrogatories. *Id.* Once the aforementioned has been accomplished, the Act further provides that within 120 days from the service of the Notice of Intent to File Suit, the parties must engage in a mediation conference.

Id. at 15-79-125(C). It is only after conclusion of the mediation conference that a plaintiff may initiate a lawsuit against a health care provider or institution. *Id.* at -125(E)

The statutes provide that these protections are only extended to a "health care institution" or "healthcare provider" as defined by section 15-79-110(2)[1] and section 15-79-110(3). These requirements apply to cases involving medical malpractice. Section 15-79-110(6) of the Act defines "medical malpractice" as follows:

> "Medical malpractice" means doing that which the reasonably prudent healthcare provider or healthcare institution would not do or not doing that which the reasonably prudent healthcare provider or healthcare institution would do in the same or similar circumstances."

S.C. Code Ann. § 15-79-110(6).

Here, the Plaintiff instituted this action against Barksdale Medical Center without adhering to the statutory requirements for a medical malpractice action. Mr. Anderson filed a Complaint, rather than a NOI accompanied by an expert affidavit. The Defendant constitutes either a "health care institution" and/or a "healthcare provider" and, therefore, must be afforded the protections and safeguards established by the medical malpractice reform legislation. As stated above, this is a medical malpractice case. The allegations are centered around the provision of medical care and relate to the inclusion of certain information in the medical records. While the Complaint sounds in intentional infliction of emotional distress, defamation, and fraud (rather than negligence), the crux of the matter is whether a reasonably prudent healthcare provider or institution would do the same as the Defendant in the same or similar circumstances. Because this is a case alleging medical malpractice, the Plaintiff's Complaint

[1] A "health care institution" includes a hospital, which is defined by the Act as "a licensed facility with an organized medical staff to maintain and operate organized facilities and services to accommodate two or more nonrelated persons for the diagnosis, treatment, and care of such persons over a period exceeding twenty-four hours and provides medical and surgical care of acute illness, injury, or infirmity and may provide obstetrical care, and I which all diagnoses, treatment, or care are administered by or performed under the direction of persons currently licensed to practice medicine and surgery in the State of South Carolina." S.C. Code Ann. § 15-79-100(2), (4).

must be dismissed as he failed to follow the statutory requirements of filing a Notice of Intent and expert affidavit prior to filing a Complaint.

B. The Complaint must be dismissed as the Plaintiff has not asserted any allegations against the named Defendant.

It is recognized that a motion to dismiss is generally held to a strict standard in South Carolina. Nonetheless, a motion to dismiss may be granted by the circuit court when a defendant demonstrates that the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *See* Sloan Const. Co. v. Southco Grassing, Inc., 368 S.C. 523, 525, 629 S.E.2d 372, 373 (Ct. App. 2006). In considering a motion to dismiss, the court may take judicial notice of well-known facts and principles of law,[2] and in "[v]iewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." Chewning v. Ford Motor Co., 346 S.C. 28, 32-33, 550 S.E. 2d 584, 586 (Ct. App. 2001). In applying the appropriate standard for this motion, the Plaintiff has failed to state the facts sufficient to constitute a cause of action in this matter.

The Plaintiff filed this Complaint against Barksdale Medical Center. However, all of the factual allegations are against Dr. Rebecca Barksdale, who is not a named Defendant in this lawsuit. Nowhere in the Complaint does the Plaintiff assert a relationship between Barksdale Medical Center and Dr. Barksdale. The Plaintiff does not allege that Barksdale Medical Center

[2] *See* S.C.R.Evid. 201(b)-(d)(recognizing that a judicially noticed fact is one that is not subject to reasonable dispute in that it is either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.); *see also Moss v. Aetna Life Ins. Co.*, 267 S.C. 370, 228 S.E.2d 108 (1976)(court may admit into evidence and consider, without proof of the facts, matters of common and general knowledge); *Bowers v. Bowers*, 349 S.C. 85, 561 S.E.2d 610 (Ct. App. 2002)(court may take judicial notice of a fact only if sufficient notoriety attaches to the fact involved as to make it proper to assume its existence without proof—also the fact is either of such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.)

provided medical care and treatment to him, or that Barksdale Medical Center made the alleged fraudulent and defamatory entries into the medical record. Instead, the Plaintiff repeatedly refers to Dr. Barksdale and "she" as the perpetrator of the alleged intentional infliction of emotional distress, defamation, and fraud. Nowhere in the Complaint does the Plaintiff allege facts sufficient to constitute a cause of action against Barksdale Medical Center, as he fails to allege any relationship between the Defendant and Dr. Barksdale, and all factual allegations are made against Dr. Barksdale (who is not a Defendant). As such, the Complaint fails to state facts sufficient to constitute a cause of action against Barksdale Medical Center, and thus must be dismissed.

C. The Complaint must be dismissed as it fails to alleged the necessary elements for each cause of action pled.

As indicated above, the Plaintiff has pled three causes of action: intentional infliction of emotional distress, defamation, and fraud. The Plaintiff has failed to plead all necessary elements of each cause of action, and as such, the Complaint must be dismissed.

1. Intentional infliction of emotional distress

In order to establish a cause of action for intentional infliction of emotional distress, the Plaintiff must allege and prove that: 1) the defendant intentionally or recklessly inflicted serious emotional distress or was certain or substantially certain that such distress would result from her conduct; 2) the conduct was so "extreme and outrageous" as to exceed all possible bounds of decency and must be regarded as 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 severe so that no reasonable man could be expected to endure it. Ford v. Huston, 276 S.C. 157, 162, 276 S.E.2d 776, 778-9 (1981). The Plaintiff has

failed to allege all necessary elements of intentional infliction of emotional harm, specifically failing to allege that the actions of the Defendant resulted in emotional distress, or that such emotional distress was severe so that no reasonable man could be expected to endure it. Because severe emotional distress such that no reasonable man could be expected to endure it is a necessary element of this cause of action, and it was not pled, this cause of action for intentional infliction of emotional harm must fail.

2. Defamation

The Plaintiff alleges that the Defendant is guilty of defamation of character/libel. In order to recover for defamation, the Plaintiff must allege and prove that the Defendant made a false statement that: 1) has a defamatory meaning; 2) was published with actual or implied malice; 3) was false; 4) was published by the Defendant, 5) had a message which concerns the Plaintiff; and 6) resulted in legally presumed damages or special damages to the Plaintiff. Parker v. Evening Post Publishing Co., 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct.App. 1994). The Complaint fails in the required elements.

The Complaint simply indicates that Dr. Barksdale (again, not the Defendant in this lawsuit) made false allegations about the Plaintiff which were "out in the local communities." (Complaint, Second Cause of Action). The Plaintiff failed to allege that the allegedly false statements had a defamatory meaning, were published with actual or implied malice, were published by the Defendant, or resulted in damages to the Plaintiff. Because four of the six necessary elements for a cause of action sounding in defamation are absent, the Court must dismiss this cause of action and this Complaint.

3. Fraud

Finally, the Plaintiff included in his Complaint a cause of action for fraud. South Carolina courts require that the following elements be pled and proven to establish fraud: 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 of its truth; 8) the hearer's right to rely thereon; and 9) the hearer's consequent and proximate injury. Kahn Construction Co. v. South Carolina Nat'l Bank of Charleston, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980). The Plaintiff has not pled several of these elements.

In his Complaint, the Plaintiff alleges that Dr. Barksdale, rather than the Defendant, made false entries in the medical records; that the Plaintiff relied on Dr. Barksdale's "prior physician-patient trust to deal with Plaintiff in good faith;" that the Plaintiff relied on this relationship to his detriment; and that the Plaintiff has been hurt in his attempt to return to work due to false representations made by Dr. Barksdale to him. However, the Plaintiff failed to allege multiple required elements, including that any representation was material; that the Defendant had knowledge of its falsity; that the Defendant intended that a representation be relied upon; that someone received (the hearer) the representation; that the hearer was ignorant of its falsity; that the hearer relied upon its truth; that the hearer had a right to rely thereupon; or that the hearer was injured. The Plaintiff appears to suggest that he was the "hearer" in this matter, but that defies logic, as the patient about whom the alleged fraudulent medical entries were made could not be expected to be ignorant of the falsity of the representation, rely on the truth of the representation, or be damaged due to that reliance. While the Plaintiff alleges that he relied upon the physician/patient relationship, he does not allege that he relied upon the allegedly false

statements made in the medical records. Moreover, if the alleged statements were about him, certainly he would know whether or not they were true. In fact, his lawsuit is predicated upon the allegation that such statements were not true. Thus, the Plaintiff could not possibly rely upon the alleged statements to his detriment (and in fact, failed to allege that he did so). As over half of the necessary elements of fraud have not been alleged, and several of the elements which were pled are not legally sufficient, this cause of action must also fail.

CONCLUSION

Based upon the foregoing, the Plaintiff's Complaint fails as a matter of law and must be dismissed pursuant to SCRCP 12(b)(6). IT IS SO ORDERED.

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Hon. Letitia H. Verdin
Presiding Judge Thirteenth Judicial Circuit

_____, 2016

Greenville, South Carolina

Greenville Common Pleas

Case Caption: Benjamin L Anderson vs. Barksdale Medical Center

Case Number: 2015CP2307324

Type: Order/Dismissal

So Ordered

s/Letitia H. Verdin, SC Judge 2162