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4 The State of South Carolina

5 COURT OF APPEALS **RECEIVED**

6
7 SEP 29 2016

8 SC Court of Appeals

9 APPEAL FROM Greenville County

10 CASE NO: 2015CP-2307324

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15 Benjamin L. Anderson, Appellant

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17 V

18
19 Barksdale Medical Center

20 Dr Rebecca F. Barksdale

21 Respondent

22 INITIAL BRIEF OF THE APPELLANT

23
24 / OUT OF TOWN /
25 Address

26 Benjamin L. Anderson

27 3452 Whieldon Drive

28 Perris, CA 92571

Appellant Pro Se

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TABLE OF CONTENTS

Page(s)

Table of Cases and Authorities	11
Statement of Issues on Appeal	3-4
Statement of The Case	5
Argument	6-7
Conclusion	8

EXHIBITS

A - I
[not included]

1	Table of Cases and Authorities	Page
2	SCRC P 12(b) (6)	
3	McCormick V. England, 328 S.C. 627, 494 S.E.2d	
4	431 (CT. App. 1997)	6
5	Toussaint V. Ham, 229 S.C. 415, 357	6
6	S.E. 2d 8 (1987)	
7	Dye V. Gainey, 320 S.C. 65, 463 S.E.2d	
8	97 (CT. App. 1995)	
9	Williams V. Condon, 347 S.C. 227, 233, 553,	6
10	S.E. 2d, 496, 500 (CT. App. 2001)	
11	FOC Lawshe Ltd. P'ship 352 S.C. at 413,	6
12	74, S.E. 2d at 230.	
13	Doe V. Marion, 373 S.C. 390, 395, 645, S.E.2d 245, 247 (2007)	
14	Libel	7
15	Lesene V. Willingham, 93 F. Supp. 918, 921	
16	(E.D. S.C. 1949)	7
17		
18	EXHIBITS	
19	Civil Complaint with attachments	A
20	Plaintiff's Opposition to defendants Motion To Dismiss	B
21	Affidavit of Plaintiff	C.
22	Affidavit of Sammie Hemphill - Trustee - Church	D
23	Recusation of (2) TRIAL COURT Judges - Request	E
24	Appellants - Respiratory Care Practitioners License	F
25	Renewal for State of South Carolina	
26	Professional Character references/Reputation	G
27		
28		

STATEMENT OF Genuine Issues

Genuine issue of material fact exists as to whether or not a reasonable professional person would be upset, in mental anguish after discovering and reviewing his medical records the damaging false statements by Dr Barksdale.

Genuine issue of material fact exists as to whether or not Dr Barksdale deliberately did not want to inform the Appellant of the damaging statements imbedded in his medical records because of the fabrications.

Genuine issue of material fact exists as to whether or not these statements, written damages his reputation or business profession, and is libel.

Genuine issue of material fact exists as to whether or not the Appellant can move forward with obtaining his Respiratory Care Practitioners license with a diagnosis of delusional and paranoia pursuant his S.C. application.

STATEMENT OF Genuine Issues Cont.

Genuine issue of material fact exists as to whether or not Dr Barksdale's actions and concealment is reason for Appellant's emotional distress and personal injury.

Genuine issue of material fact exists where Appellant relied on Dr Barksdale's integrity and trust not to falsify his medical records is fraud and detrimental reliance.

STATEMENT OF THE CASE

The Plaintiff/Appellant, Benjamin L. Anderson, an inactive Registered Respiratory Therapist visited his Primary Care Physician from time to time for health care issues. Dr. Rebecca F. Barksdale was his primary care physician in Greenville. The Appellant trusted her medical ethics in receiving his care from her. Around June 3, 2014, the Appellant discovered imbedded into his medical records outrageous written statements which caused him perplexing grief, disappointment as well as emotional distress. A letter was written to Dr. Barksdale regarding these false statements. Dr. Barksdale never replied to my letter. On December 14, 2015, The Appellant filed his complaint to seek justice and vindicate his rights, pro se, under South Carolina's Personal Injury Tort law. The Defendants filed a motion to dismiss Appellant's claims under SCRPC 12(b)(6). Motion to dismiss was granted. The Appellant appeals that motion. Appellant filed his Affidavit along with a second affidavit. The defendants did not file any countervailing affidavit.

ARGUMENT

Plaintiff's opposition to motion to dismiss complaint pursuant 5CRCP 12(b)(6) adequately pleads his three causes of action, Plaintiff's claims are justifiable. Appellant's facts as alleged in the complaint must be taken as true. The court must accept all material allegations in favor of the complaining party.

MEMORANDUM OF LAW

"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." Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001) FOC Lawshe Ltd. P'ship 352 S.C. @ 413, 74 S.E. 2d @ 230, McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997)

"The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." "concluding that motion to dismiss cannot be sustained if facts alleged in complaint and inferences reasonably deductible therefrom would entitle plaintiff to relief on any theory of the case."

Toussaint v. Ham, 229 S.C. 415, 357 S.E.2d 9 (1987)

ARGUMENT CONTINUED

Dye v. Gainey, 320 S.C. 65, 463 S.E.2d 97 (Ct.App 1995)

"The cause of action should not be struck merely because the Court doubts the Plaintiff will prevail in the action."

DoE v. Marion, 373 S.C. 390, 395, 645 S.E.2d

245, 247 (2007) "In considering a motion to

dismiss a complaint based a failure to state facts sufficient to constitute a cause of

action, the trial court must base its ruling

solely on allegations set forth in the complaint."

MEMORANDUM OF LAW Libel

Libel is actionable per se if it involves written

or printed words which tend to degrade a person,

that is to reduce his character or reputation

in the estimation of his friends or

acquaintances, or the public, or to disgrace him,

or to render him odious, contemptible, or

ridiculous". Lesene v. Willingham, 83 F.Supp.

918, 921 (E.D.S.C 1949) In the instant

case Dr Barksdale's staff input her

notes and statements into their computer

system, which allows them to see the

written disparaging statements.

CONCLUSION

The Appellant, Benjamin L. Anderson
request an impartial review of his record.
The Appellant. Relief Sought is trial by jury
and or settlement of his claims.
Defendants have no response to this appeal.

September 29, 2016

Benjamin L. Anderson
Benjamin L. Anderson
Appellant Pro Se



The South Carolina Court of Appeals

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September 21, 2016

Benjamin L. Anderson
3452 Whieldon Drive
Perris CA 92571

Re: Benjamin Anderson v. Barksdale Medical Center
Appellate Case No. 2016-001376

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Dear Mr. Anderson:

Upon reviewing your appellant's initial brief, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The document has not been signed as required by Rule 267(b), SCACR.

Furthermore, we are returning your exhibits, as it is not the appropriate time to file this material. Please see Rule 209 and 210, SCACR, for further assistance.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Joshua Jennings Hudson, Esquire
Fred W. Suggs, III, Esquire

Benjamin L. Anderson
3452 Whieldon Drive
Perris, CA 92571

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