

1 STATE OF SOUTH CAROLINA  
2 COUNTY OF CHARLESTON

COURT OF COMMON PLEAS  
CASE NO. 2015-CP-10-6819

**RECEIVED**

OCT 19 2016

SC Court of Appeals

6 TRACY SMITH, )  
7 PLAINTIFF, )  
8 VS. )  
9 )  
10 SARAH GAINNEY AND )  
11 SAVE, INC., )  
12 DEFENDANTS. )

TRANSCRIPT OF RECORD

APRIL 29, 2016  
CHARLESTON, SC

13 B E F O R E:

14 HONORABLE KRISTI HARRINGTON, JUDGE

15 A P P E A R A N C E S:

16 TRACY SMITH, Pro Se  
17 For the Plaintiff

18 LAUREN SPEARS, ESQUIRE  
19 Attorney for the Defendant

20 \* \* \* \* \*

22 Ruth C. Weese, RDR  
23 Official Court Reporter  
24 Ninth Judicial Circuit  
25

1 (The following proceedings were held  
2 April 29, 2016, Charleston County, South Carolina,  
3 @ 11:12 a.m.)

4 THE CLERK: Smith versus Gainey.

5 THE COURT: Counsel, state your name  
6 for the record and the party you represent.

7 MR. SMITH: Tracy Smith, pro se  
8 Plaintiff.

9 THE COURT: Are you an attorney?

10 MR. SMITH: No, ma'am.

11 MS. SPEARS: Lauren Spears for the  
12 Defendant Sarah Gainey and Save, Inc.

13 THE COURT: We are here on your motion  
14 to dismiss?

15 MS. SPEARS: Yes, Your Honor.

16 THE COURT: Are you prepared to go  
17 forward on that matter?

18 MR. SMITH: Yes, Your Honor.

19 THE COURT: Happy to hear from you, Ms.  
20 Gainey, I am sorry, Ms. Spears.

21 MS. SPEARS: May it please the Court,  
22 Your Honor, we are here today on a fairly  
23 straightforward motion to dismiss. Plaintiff has  
24 filed a complaint alleging professional negligence  
25 against Defendants Sarah Gainey and Save, Inc. for

1 care and treatment around October 2012, some  
2 counseling sessions that Plaintiff received through  
3 his employer contract with Defendants. South  
4 Carolina statute 15-36-100 states, "In an action  
5 for damages alleging professional negligence  
6 against a professional licensed by or registered  
7 with the State of South Carolina listed in  
8 subsection (G) or against any licensed health care  
9 facility alleged to be liable based upon the action  
10 or inaction of the health care professional, the  
11 Plaintiff must file as part of the complaint an  
12 affidavit of an expert witness."

13 Plaintiff has failed to file an  
14 affidavit of an expert witness pursuant to  
15 15-36-100 (G)16, Sarah Gainey, the licensed  
16 professional counselor; therefore, Plaintiff has  
17 failed to comply with the statute and we would move  
18 for dismissal of the Plaintiff's claim.

19 MR. SMITH: Your Honor, may I provide  
20 this brief to the Court at this time?

21 THE COURT: That's fine. Thank you.

22 MR. SMITH: Your Honor, I'm not an  
23 attorney. I'm a software engineer. I have had a  
24 couple business law courses earning my college  
25 degree. First of all, I contend that Ms. Gainey

1 has acted outside the scope of her --

2 THE COURT: I understand. What we are  
3 only here for today is the law requires that you  
4 file an affidavit when you allege medical or  
5 professional malpractice. So it is a simple issue.  
6 If you do not have that affidavit the law requires  
7 that I must dismiss this case. Do you have an  
8 affidavit?

9 MR. SMITH: No. I am willing to get  
10 one though.

11 THE COURT: And so when -- you filed  
12 this case 2015?

13 MR. SMITH: Yes.

14 THE COURT: The law requires that when  
15 you file this case you must file it with the  
16 affidavit. Did you do that?

17 MR. SMITH: No, I did not.

18 THE COURT: And when did you have  
19 notice that there was -- that you had failed to  
20 file this affidavit?

21 MR. SMITH: I received their motion --  
22 actually I just received it about a week ago. I  
23 have changed residences. I have been out of town.  
24 I have to look at the date if you are relying on  
25 the date when they sent that. So only recently did

1 I realize I needed that affidavit.

2 THE COURT: So it was filed January  
3 29th of 2016. I am assuming that you received  
4 service fairly close to that time. Would that be  
5 an accurate statement?

6 MR. SMITH: I was probably out of town.  
7 Probably not in town. My mother may have received  
8 it. I apologize for the oversight, but I have not  
9 seen it until recently.

10 THE COURT: And so you have been on  
11 notice not only did you need to file it when you  
12 filed this case in 2015, but you were on notice as  
13 of the filing of this the service on or about  
14 January 29th of 2016. So the statute would allow  
15 me to give you once you had notice, but you again  
16 have failed to do so; is that correct?

17 MR. SMITH: Failed to seek an  
18 affidavit? Yes, I have not sought an affidavit.

19 THE COURT: Is there any reason that  
20 you know that I should not dismiss this case based  
21 upon your failure to follow the law?

22 MR. SMITH: First of all, I believe  
23 that she is outside the scope of her professional  
24 responsibility in her counseling sessions with me.

25 THE COURT: I am sorry. You are

1 pointing at?

2 MR. SMITH: The Defendant is outside  
3 the scope of her professional responsibilities.

4 THE COURT: We don't even get to there.  
5 I don't know how long you have been here, the last  
6 gentleman I explained about the rules of  
7 basketball. I'm not sure, I'm not very computer  
8 savvy so I can't even make an attempt, I will not  
9 even make an attempt to do an IT analogy.

10 But you haven't followed the rules.  
11 And the rules are set up for a very particular  
12 reason the way that they are set up. Every  
13 attorney that's appeared in front of me today has  
14 told me why I need to make sure that the rules are  
15 followed and I need to know why I shouldn't follow  
16 the rules for you here today.

17 MR. SMITH: Again, I did not realize I  
18 needed to file an affidavit. I suggest that she  
19 acted outside the scope of her -- and I would also  
20 like to point out to the Court that she has falsely  
21 stated the dates of her service.

22 THE COURT: And all those things could  
23 be true, Mr. Smith. The problem is that you may  
24 not be able to present those because you haven't  
25 followed the rules. You again have not done what

1 you're supposed to do, but are alleging what she --  
2 what you believe she has not done.

3 MR. SMITH: Your Honor, I have acted to  
4 the best of my ability.

5 THE COURT: And unfortunately that is  
6 not going to save the day here today. Is there any  
7 other reason why this case should not be dismissed  
8 based upon the failure to follow the rules?

9 MR. SMITH: She has made false  
10 statements and I contend she acted outside the  
11 scope of her professional responsibility.

12 THE COURT: And again, Mr. Smith, we  
13 just -- if you don't give me the legal basis to  
14 move this case forward, those things may be true,  
15 but you will not be able to present those because  
16 you have not followed the rules. All right?  
17 Anything further?

18 MS. SPEARS: No, Your Honor.

19 THE COURT: At this point would you  
20 object if I gave him 30 days to file an affidavit?

21 MS. SPEARS: Dismissal without  
22 prejudice?

23 THE COURT: I am sorry?

24 MS. SPEARS: Are you dismissing without  
25 prejudice or for a chance to refile or just giving

1 an additional 30 days?

2 THE COURT: Either one.

3 MS. SPEARS: No objection.

4 THE COURT: Mr. Smith, I'm going to  
5 give you 30 days to get an affidavit. If you do  
6 not comply with the affidavit requirement this case  
7 will be dismissed with prejudice which means that  
8 you cannot file.

9 As of this point, sir, you have -- you  
10 are on notice that this affidavit is required. And  
11 as I indicated to you, and to several of the other  
12 people who have appeared in front of me, you are  
13 entitled to represent yourself. Most of us can  
14 read the law and get a basic understanding of it.  
15 You may have had really good instructors who taught  
16 you business law. But just as I can turn my  
17 computer on or off, but when I really have trouble  
18 I call the professional IT guy up in Columbia to  
19 help me.

20 MR. SMITH: I'm a professional IT guy.

21 THE COURT: So I can -- I would take  
22 that however you take it and it may be that you  
23 need to hire somebody with a little more savvy in  
24 the legal world who has had a few more classes than  
25 a couple of business law.

1 MR. SMITH: Yes.

2 THE COURT: Thirty days or it is  
3 dismissed with prejudice. I will do a Form 4. So  
4 then what I would ask from you is if he doesn't  
5 comply with it that you send an order dismissing it  
6 so that the file is clean. Good luck to you, sir.

7 MR. SMITH: May I ask a quick question?  
8 Is there a way to review this information on line?  
9 I was --

10 THE COURT: I'm not sure what  
11 information you mean.

12 MR. SMITH: Just the motions in case I  
13 have trouble being served at my new address.

14 THE COURT: What is your address?

15 MR. SMITH: 1510 Fairbanks Road.

16 THE COURT: Is that what you have,  
17 James?

18 THE CLERK: I am looking at it right  
19 now.

20 THE COURT: The clerk of court is going  
21 to update your address, but that's about all I can  
22 do for you right here today.

23 MR. SMITH: Thank you, Your Honor.

24 (These proceedings were concluded at  
25 11:40 a.m., April 29, 2016, Charleston County,

South Carolina.)

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## CERTIFICATE OF REPORTER

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2  
3 I, Ruth C. Weese, Registered Diplomate  
4 Reporter for the State of South Carolina at Large,  
5 do hereby certify that the foregoing transcript is  
6 a true, accurate, and complete record.

7 I further certify that I am neither related  
8 to nor counsel for any party to the cause pending  
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my  
11 official seal this 19th day of September, 2016 at  
12 Charleston, Charleston County, South Carolina.

13  
14 *Ruth C. Weese*

15  
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19 Reporter  
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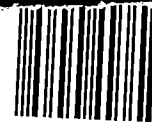
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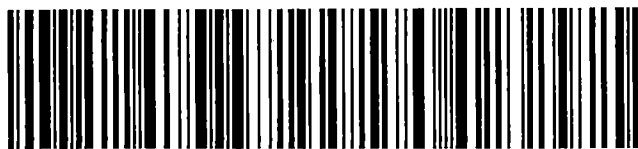
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