



## DISCUSSION

### I. Motion to Dismiss

In “deciding a motion to dismiss pursuant to 12(b)(6), SCRPC, the trial court should consider only the allegations set forth on the face of the plaintiff’s complaint.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). The question to be considered is whether, in a light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Slack v. James*, 356 S.C. 479, 589 S.E.2d 772 (Ct. App. 2003). “A motion to dismiss should not be granted if facts alleged and inferences reasonably deductible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Id.*

Defendants state that Plaintiffs’ cause of action should be dismissed under South Carolina Tort Claims Act (“Tort Claims Act” or “Act”). Defendants argue that Plaintiffs cannot sue the individuals employed with the South Carolina Department of Corrections since they were acting within the scope of their employment, and the Act prevents them from individual liability. The Tort Claims Act allows suits against governmental agencies and is the exclusive remedy available in an action against a governmental entity or its employees. *Flateau v. Harrelson*, 335 S.C. 197, 584 S.E.2d 413 (2003). Under the Act, a governmental employee has immunity from suit and liability if the employee acted within the scope of his official duties. S.C. Code Ann. § 15-78-70(a) (1976). However, the employee does not have immunity if his conduct was outside the scope of his employment or his acts constitute actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann. § 15-78-70(b) (1976).

Defendants argued at the motion hearing that the Court should dismiss all claims against the employees of the Department of Corrections because the allegations involve the Tort Claims Act, and Plaintiffs admitted in their complaint that the named parties were acting under the color of the law. Additionally, Defendants argued that Plaintiffs failed to allege any facts that Defendants were acting outside the scope of their employment. Plaintiffs argued that Defendants should be aware of the law governing their conduct and thus, should not avoid liability. At the motion hearing, Plaintiffs re-established the claims set forth in their Complaint. Among other claims, Plaintiffs alleged that Defendants failed to provide adequate medical care by not serving meals when giving Plaintiff Blakely insulin. Plaintiff Blakely further stated that he is being denied muscle rub to treat the pain in his arms and legs and Defendants will not provide a new

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pair of shoes and blanket. These claims and the other claims, not medically related, outlined in the Complaint do not allege Defendants were acting outside the scope of their employment. Thus, these claims against the individuals employed at the South Carolina Department of Corrections are dismissed.

Additionally, Defendants argued that the Court should also dismiss Plaintiffs claims of improper medical treatment because Plaintiffs failed to provide an affidavit of an expert witness to support their claims of medical negligence as required by the statute. S.C. Code Ann. § 15-79-125(A) states that “[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...” Courts have held that “expert testimony is required to establish both the duty owed to the patient and the breach of that duty, unless the subject matter of the claim falls within a layman's common knowledge or experience.” *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 176, 758 S.E.2d 501, 504 (2014) (citing *Linog v. Yampolsky*, 376 S.C. 182, 187, 656 S.E.2d 355, 358 (2008)). Because medical knowledge is generally outside of a juror’s common knowledge, expert testimony assists the jury in making a more accurate determination of the defendant’s fault in rendering medical care and the resulting injury. *Id.* 408 S.C. at 177. However, expert testimony is not required when the patient receives nonmedical or routine care. *Id.* at 177-78.

The “common knowledge” exception does not apply here since the basis of Plaintiffs’ claim is that it is improper medical care to serve meals hours after the patient is given insulin. The average juror does not have common knowledge or experience regarding the requirements of food and the use of insulin; thus, expert testimony is necessary. Plaintiffs also alleged that Defendants changed his medicine and it was ineffective. Plaintiffs must provide expert testimony to establish the standard of care required of medical staff with respect to administering insulin and other medication and to show that Defendants failed to conform to that standard. Thus, Plaintiffs’ medical claims are barred by the statute.

Exhibit B

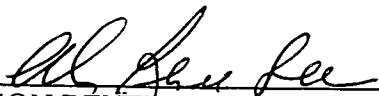
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**ORDER**

~~After considering the arguments presented by all parties and reviewing all materials submitted to the Court, it is **ORDERED** that Defendants' Motion to Dismiss is **GRANTED**; and this action is **DISMISSED**.~~

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge

November 9, 2016  
Columbia, South Carolina

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