

STATE OF SOUTH CAROLINA

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IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

2017 OCT -2 AM 8:42

SIXTEENTH JUDICIAL CIRCUIT

MELISSA SCOTT

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Plaintiff,

Case No: 2017-CP-46-00291

v.

PALMETTO MEDICAL GROUP, NIMISH PATEL, MD, KISHOR PATEL, PA-C, SHEPALI PATEL, MD, MAGAN GRIGG, PA, PIEDMONT HEALTHSOUTH REHABILITATION, LLC D/B/A HEALTHSOUTH REHABILITATION HOSPITAL OF ROCK HILL, CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY D/B/A CAROLINAS HEALTHCARE SYSTEM, CAROLINAS PHYSICIAN NETWORK, INC. D/B/A ID CONSULTANTS AND INFUSION CARE SPECIALISTS,

ORDER DENYING DEFENDANT CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY D/B/A CAROLINAS HEALTHCARE SYSTEM, CAROLINAS PHYSICIAN NETWORK, INC. D/B/A ID CONSULTANTS AND INFUSION CARE SPECIALISTS' RULE 59(E) MOTION TO RECONSIDER ORDER DENYING MOTIONS TO DISMISS

Defendants.

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SC Court of Appeals

This matter came before the Court on August 24, 2017, upon the Motion to Reconsider of Defendant Charlotte-Mecklenburg Hospital Authority ("CMHA") d/b/a Carolinas Healthcare System ("CHS"), Carolinas Physician Network, Inc. ("CPN") d/b/a Id Consultants and Infusion Care Specialists' ("ID Consultants") (collectively "Defendants" or "CMHA Defendants"), as to the Court's June 14, 2017, Order denying Defendant's Motions to Dismiss. Defendants were represented by Scott S. Addison, and Plaintiff was represented by Eve S. Goodstein.

Based on the arguments of counsel and after consideration of the record presented, and the supporting and opposing Memoranda and exhibits filed, I make the following findings and conclusions.

FACTUAL/PROCEDURAL BACKGROUND

For clarity and ease of reference, I restate the factual background of the June 14, 2017 Order.

This is a medical malpractice action wherein Plaintiff alleges injury due to Defendants'

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mistreatment of a bone infection, which allowed the infection to spread to Plaintiff's spine, and resulted in Plaintiff's paralysis from the waist down. Plaintiff was initially hospitalized in June 2015, at Defendant Piedmont Medical Center ("PMC") for a bone infection in her foot. She was then admitted to Defendant HealthSouth for approximately two weeks, where she came to be treated by Defendant Dr. N. Patel, and his practice, Defendant Palmetto Medical Group. While at HealthSouth, Plaintiff alleges she developed new and severe back pain that she alleges was not investigated by HealthSouth, Dr. Patel, or any members of his practice. Although Plaintiff had continued complaints of back pain at the time, she was sent home from Healthsouth on July 13, 2015. She was still able to walk.

Plaintiff presented to Defendant ID Consultants in Charlotte, N.C., on August 27, 2015, for follow-up care of her bone infection. ID Consultants is allegedly a d/b/a of CPN, a subsidiary of CMHA. Plaintiff was treated by Dr. Christopher Polk of ID Consultants. At the time of Plaintiff's appointment on August 27, 2015, she was in a wheelchair. Plaintiff alleges ID Consultants failed to order diagnostic testing to investigate Plaintiff's back pain or immobility.

Plaintiff alleges that on September 9, 2015, she returned to PMC's emergency room for severe low back pain and loss of feeling below the waist. Plaintiff was diagnosed with a severe bone infection in her spine that resulted in her permanent bi-lateral paralysis below the waist.

On February 6, 2017, Plaintiff filed this action based on the facts recited above.

On May 1, 2017, the CMHA Defendants moved to dismiss Plaintiff's claims pursuant to Rule 12(b)(2), SCRPC, for lack of personal jurisdiction, Rule 12 (b)(6), SCRPC, for failure to state a claim, and Rule 12 (b)(3), SCRPC, for improper venue. This Court entered an Order Denying Defendants' Motions to Dismiss on June 14, 2017. On June 26, 2017, these Defendants filed a Motion pursuant to Rule 59(e), SCRPC, requesting the Court reconsider its denial of Defendants' Motions to Dismiss, and to address the merits of Defendants' Rule 12(b)(3) argument that venue is improper.

STANDARD OF REVIEW

"The purpose of Rule 59(e), SCRPC, to alter or amend the judgment, is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Pye v. Estate of Fox*, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006) (quoting *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)). The Supreme Court has clarified the two situations in which a Rule 59(e) motion is appropriate:

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A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004)(emphasis in original).

DISCUSSION

As to Defendants' Rule 12(b)(2) and 12(b)(6) motion, upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly, or by clear implication, in the prior order. I further find no basis for reconsideration or amendment of the ruling rendered in the prior order.

As to Defendants' Rule 12(b)(3) motion, the Court will take this opportunity to address more fully Defendants' argument that venue is improper. In its Motion to Alter or Amend, Defendants specifically request the Court address "the merits of the Rule 12(b)(3) Motion, because if the Court determines that CMHA is a 'public officer' for purposes of S.C. Code Ann. § 15-7-20, then the only proper venue is the county where the cause of action arose." These Defendants assert that the proper venue is Mecklenburg County, North Carolina. (Def. Memo in Support of Rule 59(e) Motion at p. 5.)

Defendants argue that their status as a North Carolina political body necessarily means that they are also "public officers" in South Carolina, as that term is used in S.C. Code Ann. §15-7-20. Section 15-7-20 is a specific venue statute. It provides if an action is asserted against a "public officer", the action must be tried where the cause of action arose. There are no instances in any reported case where §15-7-20 has been applied to a foreign state entity.

To invoke §15-7-20(2), Defendants must be found to be "public officers." The South Carolina Tort Claims Act provides that the "'State' means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, . . . including state-supported governmental health care facilities." S.C. Code Ann. § 15-78-30(e). By expressly limiting the reach of the Act to this State and its political subdivisions, the General Assembly has necessarily excluded other states who choose to engage in entrepreneurial pursuits within our borders from the protections it has afforded to this State's governmental entities, its employees, and agents. This would apply to the provision of health care services. Accordingly, I find that CMHA is not a "public officer" for purposes of §15-7-20(2).

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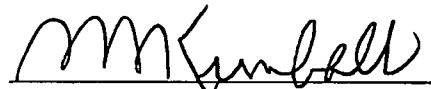
When there are multiple defendants in a case, venue is generally proper in any county where the action may be brought under the general venue statute, S.C. Code Ann. § 15-7-30(b). *See Jeter v. South Carolina Dept. of Transp.*, 369 S.C. 433, 633 S.E.2d 143 (2006). Plaintiff's complaint alleges key "acts or omissions" underlying her causes of action occurred in York County, South Carolina. Thus, I find and conclude that venue is proper in York County, and reaffirm the ruling of the prior order as to Rule 12(b)(3) and venue.

CONCLUSION

Except as amplified herein, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the ruling rendered in the prior order. Therefore, Defendants' Motion is denied.

AND IT IS SO ORDERED.

SEPTEMBER 29, 2017


S. JACKSON KIMBALL
SPECIAL CIRCUIT COURT JUDGE
YORK COUNTY

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