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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2016-000495

Jim Washington,.....Appellant,

V.

Trident Medical Center, ...Respondent.

FINAL BRIEF IN REPLY OF APPELLANT

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November 28, 2016

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Rules

Statutes

Statement of Issues on Appeal

I. **The circuit court erred in it's order ruling that Washington fail to file a pre-litigation Notice of Intent prior to filing the complaint.**

II. **The circuit court also erred to dismissal of the complaint because Washington Did not comply with the pre-litigation affidavit requirements prior to filing the complaint.**

III. **This court should not affirm on the additional sustaining ground that Washington failed to initiate the required presuit mediation.**

Statement of the Case and Facts

In this medical malpractice action, Appellant Jim Washington (" Washington") Appeals the order granting the motion to dismiss of Respondent Trident Medical Center, LLC (" Trident") based on the circuit errors that Washington failure to comply with the Pre-suit requirements mandated by Sections 15-79-125 and 15-36-100 and ruling from The bench denial amendment of the complaint. { Rpp. 1-5; Tr., p. 3, line 1-p. 8, line 4, Rpp.56-61}. Trident move to dismiss the complaint because Washington (1) failed to File the presuit Notice of Intent to file suit required by Section 15-79-125(A) of the South Carolina Code and (2) failed to file an expert witness affidavit that Trident violated any Applicable standard of care as required by S.C. Statute Code 15-36-100 and (3) The Notice of Intent and Expert Witness Affidavit filed under these same statutes **pleadings Were defective.** { Rpp. 15-19 ; Rpp. 62 Proc. Backgd., line 1-P.63 line 13; Rpp. 63-68; Respondent proposed order and Order granting Motion to Dismiss, Rpp. 1--5; App. Initial Brief, p. 1, line 1-p. 2, line 4 }.

After a hearing, the circuit court granted the motion to dismiss. Thereafter, the Circuit court filed a formal order confirming dismissal of the complaint. The circuit court Erroneously relied on the facts and conclusions in respondent's memorandam of law and Proposed order citing case laws as authority for the propostion that Washington failed to State sufficient facts to constitute a cause of action in the pleadings filed with the court. Therefore, the circuit court according to citation of authority the action was subject to Dismiss for pleadings were defective for pleadings under S.C. Statutes 15-79-125(A) NOI and 15-36-100. Order, Rpp.1-6; Rpp. 15-19 ; Rpp. 56-61 and Tr.,p. 3-8; Rpp. 62-63..

Washington filed a Notice of Appeal. { Notice of Appeal, R.____}.

Standard of Review

The appellate court applies the same standard of review as the circuit court in Reviewing the dismissal of an action pursuant to Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure. Wilkinson v. East Cooper Community Hospital, Inc., 410 S.C. 163, 763 S.E.2d 426 (2014). That standard requires the court to construe the complaint in A light most favorable to the nonmoving and determine if the facts alleged and the Inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on Any theory of the case. Rydde v. Morris, 381 S.C. 643,646, 675 S.E.2d 431, 433 (2009). The question is whether, in the light most favorable to the plaintiff and with every doubt Resolved in his behalf, the complaint states any valid claim for relief. Cole Vision Corp. v. Hobbs, 394 S.C. 144, 149, 714 S.E.2d 539 (2011)(same).

Argument

Respondent is incorrect that appellant did not comply with the mandatory pre-suit Notice of Intent under S.C. Statute Code 15-79-125(A). The construction of the medical Malpractice statute by respondent has by consistently rejected by the S.C. Supreme Court To dismiss cases on technical noncompliance grounds. The S.C. Supreme Court has Interpreted sections 15-79-125(A) and 15-36-100 and has stated **"As evident from our From decisions in Grier and Ross, this Court has sought to interpret sections 15-79-125(A) and 15-36-100 in a manner that effectuates the intent of the general Assembly to establish a unique two-step procedure that filters out frivolous claims But permit's the filing of potentially meritorious claims. Because the pre-litigation**

Filtering out process is not meant as an impassible boundary that denies a claimant Access to the courts, we have attempted to "avoid dismissal of cases on technical Grounds and to allow adjudication on the merits."" Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189(2014)(citing Ross, 404 S.C. at 65, 744 S.E.2d at 551); Wilkinson v. East Cooper Comm. Hosp., 410 S.C. 163, 763 S.E.2d 426(2014)(same).

Washington, on October 25, 2012 file a claim with the Social Security Adminis-Tration for a determination of his entitlement to disability benefits. On the documents Provided by that agengy to Washington is a notice and disclosure provision section which Explain the necessity of Washington's signature to disclose all medical information from Health Care Providers to agency for a determination of Washington's medical impair-ments. The notice provision of these documents states " the information provided to that Agengy concerning Washington condition may be used in any related civil proceeding". Washington and that agengy both signed these documents on October 25, 2012. Rp.72. The documents provided by Washington's Health Care Providers to that agency relates to Same medical issues in this medical malpractice action. Wilkinson, supra. Rpp.70-96.

Therefore, on September 11, 2015 appellant relying on the notice of intent Allowing the information in any related proceeding to be used from the signed October 25, 2012 documents disclosing the related treatments and diagnosis claim for disability, Incorporated by reference S.C. Statute Code 15-79-125(A) Notice of Intent and 15-36-100 Expert Witness Affidavit to the caption of these documents to comply with pre-liti-Gation Notice of Intent and Expert Witness Affidavit requirements and incorparated by Reference these statutes to the complaint litigation pleadings on September 11, 2015.

Respondent challenge thus is without merit to affirm. {Rpp. 70-96; App. Fi. Br.,p.15-18}.

Thus, Washington complied with pre-litigation 15-79-125(A) Notice of Intent Requirements, but the clerk of court filed the prelitigation Notice of Intent as an exhibit From a separate case. But the assignment of a different cases numbers to the pre-litiga-Tion pleadings and the litigation pleadings is of no consequence because they both Comprise a single medical malpractice claim. Wilkinson v. East Cooper Comm. Hosp., 410 S.C. 163,173, 763 S.E.2d 426(2014)(quoting Fisher v. Pelstring,817 F. Supp. 2d 791, 807 n.8 (D.S.C. 2011)(analyzing procedures for initiating medical malpractice claims and Stating "[s]ection 15-79-125 also does not include any language indicating that the case Number under which a Notice of Intent is served on a defendant must be the same as the Case number assigned to the complaint served on a defendant if a civil action is ultimate-Ly initiated")).Rpp.69-96. Therefore, based upon Wilkinson, this court should not affirm.

Likewise, respondent's contention that filing of the Notice of Intent and the Complaint at the same time would render statute 15-79-125 (E) superfluous is without Merit and not sufficient ground to affirm the circuit court's order to dismiss. Respondent Interpretation of the medical malpractice statute 15-79-125 (A) Notice of Intent as an Absolute bar to filing of the pre-litigation Notice of Intent and litigation complaint at the Same time has been rejected in Brouwer v. Sisters of Charity Provident Hospitals, 408 S.C. 514, 763 S.E.2d 200 (2014). In Brouwer the S.C. Supreme Court held that the Notice of Intent was sufficient to satisfy the pre-litigation requirements of 15-79-125(A), And that the lawsuit remain viable as the statute of limitation has been tolled during the Pendency of appeal. Id. {Respondent Initial Brief, p. 6 fn. 3}. Therefore, the circuit court Order should not be affirmed because like Brouwer, appellant filed the Notice of Intent

And the complaint at the same time prior to expiration of the statute of limitation.

I. The circuit court erred in it's order ruling that Washington did not file a Pre-litigation notice of intent prior to filing the complaint.

As argued earlier in Appellant Reply Brief, the pre-litigation mandates of 15-79-125 (A) Notice of Intent has been complied with. And as also stated earlier, the S.C. Supreme Court has consistently interpreted 15-79-125(A) and 15-36-100 in a Manner that effectuates the intent of the General Assembly to establish a unique two-step Procedure that filter out frivolous claims but permit's the filing of potentially meritorious Claims. Because the pre-litigation filtering process is not meant as an impassible Boundary that denies a claimaint access to the courts, it has attempted to "avoid dismissal Of cases on technical grounds and to allow adjudication on the merits". Ranucci v. Crain, 409 S.C. 493, 763 S. E.2d 189 (2014)(quoting Grier and Ross); Wilkinson v. East Cooper Comm.Hosp., 410 S.C. 163, 763 S.E. 2d 426 (2014)(quoting Grier and Ross).

A copy of a document which is an exhibit to a pleading is a part of the plead-Ing . Rule 10(c), SCRCP. Brazell v. Windsor, 384 S.C. 512, 682 S.E.2d 824 (2009)(Same). Furthermore, because the pre-litigation pleading in the Social Security Admin-Istration documents were signed on October 25, 2012 but filed separately from the compl-Aint litigation pleading on September 11, 2015 is of no consequence because they compr-Ise a single medical malpractice claim. Wilkinson v. East Cooper Comm. Hosp., 410 S. C. 163, 763 S.E.2d 426 (2014)(same)(quoting Fisher v. Perlstring, 817 F. Supp.2d 791, 807n.8(D.S.C.2011)(analyzing procedures for initiating medical malpractice claims under 15-79-125(A) stating that statute does not include language that the case number in the Notice of Intent and the complaint has to be the same if civil action is ultimately initiated)

); Wilkinson,supra(we hold circuit court erred, complaint was timely and sufficient). Id.

Therefore, because Wilkinson is controlling authority based on the facts and Circumstances in this action, the circuit court's order is in error that Washington fail to Comply with 15-79-125(A) pre-litigation Notice of Intent. Likewise, dismissal was not Warranted. Therefore, respondent's argument stating otherwise is incorrect and not a Complete and accurate detail of the argument raised in appellate Initial Brief and this Court should not affirm. {Rpp. 21-23; Resp. In. Br., p. 3-6; Rp.98}. Higgins v. Medical University of S.C., 326 S.C. 592, 486 S.E.2d 269 (1997)(This is not to say that circuit Orders cannot be summitted to a trial judge as one would submit a memorandum of law On a particular issue, but judges may not accept the facts found therein as proof for sum-Mary judgment,nor may they expressly rely on the order as authority for any proposition).

Likewise, Respondent argument that 15-79-125(E) would be superfluous if a party Could file the Notice of Intent at the same time of the complaint as argue by Washington Lacks merit. {Respodent Initial Brief, p. 6 fn.3). However, in construing these two seem-Ingly conflicting portions of the same Act, the respondent and the circuit court does not Appear to have utilized the same basic precepts of statutory construction, namely Harmonization. Grazia v. S.C. State Plastering, 390 S.C. 562, 703 S.E.2d 197(2010) (However in construing these two seemingly conflicting portions of the same Act the Circuit court does not appear to have utilized the same basic precepts of statutory cons-Truction, namely harmonization). 15-79-125(A) Notice of Intent and 15-79-125(E)(2) Complaint filing at the same time can be harmonized by staying the medical malpractice Action and cure any defect in the procedures by participating in mediation mandated

Under 15-79-125(F) after the complaint is filed. The words in **15-79-125(E)(2) must not Be used to limit the statute operation of section (F).** CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877(2011)(quoting Sloan v. Hardee, 371 S.C. 495,498, 640 S.E.2d 457, 459(2007)(we must give the words found in the statute their Plain and ordinary meaning without resort to subtle or forced construction to limit or Expand the statute's operation). {App. Final BR.,p. 11-18; Rpp. 97-98; Rpp. 21-23}.

Therefore, this court should not affirm the circuit court to limit the statute. Id.

II. The circuit court also erred to dismissal of the complaint because Washington Did not comply with the prelitigation affidavit requirements prior to filing the complaint.

The circuit court ruled that Washington could not used the treating physicians From The Regional Medical Center(TRMC) statements in his medical records as quali-Fying Expert Witnesses Affidavit statutory requirements. { Rpp. 1-5; Rpp. 56-61 }.

The S.C. Supreme Court in Ranucci v. Crain,409 S.C. 493, 763 S.E.2d 189(2014) Has rejected the circuit court's interpretation of medical malpractice statutes by stating: **Because there are no words of limitation surrounding the reference to section 15-36-100, we expressly hold that section 15-79-125(A)'s reference to the "affidavit Requirements established in Section 15-36-100" constitutes an adoption of all provi-Sions of section 15-36-100. Id.**

The circuit court order is therefore in error since the two TRMC treating physic-Ians in Washington medical records (1) met requirements in provision 100-36-100 (A) Meaning of expert witness, and (2) met the qualification as to the acceptable conduct for Treatment of possible embolism of a cardiac source (3) met the qualification of the accep-

Table conduct for diagnosis of possible embolism of a cardiac source (4) met 15-36-100 (A)(1), (2) and or (3) qualifications about which the opinion on the standard of care is Offered that **"given the multi focality the appearance was suggestive of an embolic Phenomenon" and "Because of these findings, I called the patient at Home yesterday requesting him to come back to the hospital regarding the need for Possible anticoagulation given the possibility of embolic stroke"** by stating **" Trident did not show evidence of an embolic source on MRI then".**{ Rp. 70; Rpp. 79-83}.

Respondent, challenges the two TRMC treating physician statemens from TRMC Medical records as defective not set forth any expert opinion as to the standard of care or Deviation therefrom by Drs. Greene and Ludington. {Respondent Initial Brief, p. 8-9}. However, respondent's facts to affirm are incorrect because (1) Drs. Greene and Ludin-Gton are the treating physicians from TRMC from September 30, 2012 -October 8, 2012 After discharge from respondent Trident negligent diagnosis and treatment on September 23-26, 2012. Therefore, Drs. Greene and Ludington's negligent conduct are not at issue But, rather Trident's Drs. Bothelo, Rosenthal, Rios, and other employees from Trident Whose negligent treatment of **Plavix and Aspirin 325mg for the possibility of Embolism of a cardiac source** as stated in TRMC physician's statements are at issue.

In other word Trident conduct deviated from the very standard of care as required for Diagnosis and treatment as generally recognized and accepted by Hospitalist and Radiologist under the same or similar circumstances as TRMC physicians Drs. Greene And Ludington. Implicit in Dr. Greene's notes, treatment records, medical records Of Washington care from Trident that the injury of **possible embolism** occurred at Trident but was not diagnosed there nor treated with **anticoagulation Heparin and**

coumadin on discharge under the same or similar circumstances was a deviation from the Standard of care. King v. Williams, 276 S.C. 478, 279 S.E.2d 618(1981)(allowing to Testify to a national standard of care and standard of care is the same throughout the Country, that he generally familiar with it, and that Dr. Williams failed to meet this Standard of care in diagnosis and treatment); Stallings v. Ratliff, 292 S.C., 356 S.E.2d 414(1987)(The issue of breach of duty does not turn on a ritual incantation of certain Magic words by an expert witness. In this case, Brill testified , and Radliff himself admit-Ted, there was a duty to disclose the risk of a perforated esophagus before obtaining Consent. Implicit, in this testimony was the reasonable inference that failure to make the Disclosure is a breach of the standard of care); Dozier v. Clayton County Hosp. Auth., 206 Ga. App. 62, 424 S.E.2d 632(1992)(quoting Gadd v. Wilson & Co. &c.,262 Ga. 234 (416 S.E.2d 285)(although affidavit did not expressly ascribe the alleged negligence to Appellee, the requirement that the alleged negligence had to be linked to appellee was Substantially met as appellee was the only defendant and therefore was implicitly the Party to whom negligence was being attributed; when viewed from this prospective, no Question of frivolity of claim exists): Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189 (2014)(As to Dr. Crain's assertions regarding defects in the authorship and content of Dr. Boortz-Marx's affidavit, we find this is not an appropriate ground to affirm the circuit Court's order because the affidavit is facially sufficient given it is sworn and identifies a Potentially meritorious medical malpractice claim. Moreover, there is no factual basis in The record to challenge either the expert's qualifications or the content of the affidavit); Cf. Poch v. Bayshore Concrete Prods. /S.C., Inc., 405 S.C. 359, 378 n. 13, 747 S.E.2d

757, 767 n. 13(2013)(declining to reject affidavit presented as proof of worker's comp. Insurance as there was " no basis for which to reject the affidavit as it is by its very nature A sworn statement intended as documentary evidence in a legal proceeding"). { App. Final Br., p. 20-25; App. Fi. Reply Br. P. 8-15; Rpp. 70-96}.

Furthermore, Dr. Greene's statement that **" of note we did received document-Ation from Trident which showed a small acute stroke but no evidence of a cardio embolic source on MRI then or during work-up"** implicitly stated the negligent Act or omission of Trident to not diagnose the multi foci as embolism of a cardiac source On MRI then at Trident but found under same or similar circumstances at TRMC, was the Generally recognized and accepted practices in the radiology profession. King v. Will-Iams, 276 S.C. 478, 279 S.E.2d 618(1981)(The degree of care which must be observed Is, of course, that of an average, competent practitioner acting in the same or similar cir-Cumstances); Doe v. Amer. Red Cross Blood Services, 297 S.C. 430, 377 S.E.2d 323 (1989)(We now hold that in a professional negligent cause of action, the standard of care That the plaintiff must prove is that the professional failed to conform to the generally Recognized and accepted practices in his profession); Dozier v. Clayton County Hosp. Auth., 206 Ga. App. 62, 424 S.E.2d 632(1992)(quoting Gadd v. Wilson & Co. & c, 262 Ga. 234(416 S.E.2d 285(although affidavit did not expressly ascribe the alleged negli-Gence to appellee, the requirement that alleged negligence had to be linked to appellee Was substantially met as appellee was the only defendant and therefore was implicitly The party to whom negligence was being attributed, when viewed from this prospect-Ive, no question of frivolity of claim exists); Stallings v. Radliff, supra, (same). { App. Final Brief, p. 2-4 and 20-23; Rpp. 70-96; Rpp. 99 (b), line 1-p. 100, line 10}.

(2) Dr. Ludington, from TRMC was authorized to investigate

The reason for Washington's admission, hospital course of care and plans for long term Treatment after discharge from TRMC to his Primary Health Care Provider(PCP) as Required by Hospitalist for adjustments to INR as needed to prevent future clots and Strokes. Trident, had undertaken to diagnose and treat Wahington to prevent embolism, Clots and future strokes.{Rpp. 9-11;Rpp.31-40; App. In. Br., p.20-25}. However, Trident Fail to take corrective action to prevent a second stroke, embolism or future clots even After Trident knew Washington's condition had change or worsen since admission.up Until discharge, by failing to treat with anticoagulation nor warn Washington of the need To seek immediate treatment with his PCP upon discharge for anticoagution to meet a Hospitalist standard of care. {Rpp. 31-45; Rpp. 56-61;Rpp. 70-96; App. Fi. Br. P. 20-28}.

Dr. Ludington, from TRMC, incorporate by reference Dr. Greene's statements That " Washington was dischanged from Trident prior to admission to TRMC. The next Day I reviewed the MRI results which showed multiple small foci of restricted diffusion. It was noted that given the multi focality the appearance was suggestive of an embolic Phenomenon. Because of these findings, **I called the patient at home yesterday reque-Sting him to come back to the hospital regarding the need for possible anticoagulat-Ion given the possibility of embolic stroke"** . Therefore, since Trident implicitly stated It was treating and diagnose for prevention of embolism, future clots and stroke prior to Discharge, and Dr. Ludington's statement is that the standard of care upon discharge for Future clots and stroke prevention is anticoagulation treatment with adjustment of INR With PCP. Implicit in Dr. Greene statement which is verified by Ludington is that Trid-

Ent breached the standard of care in it's treatment of aspirin for a cardio embolic stroke and not take corrective action upon discharge to treat and give instruction for need to seek Immediate treatment of anticoagulation was negligent. {App. Fi.Br., P. 20-28; Rpp. 31 -32; Tr., p. 4, Rp.57; Rpp. 70-96}. Stallings v. Radliff, 292 S.C. 349, 356 S.E.2d 414 (1987)(implicit in this testimony was the reasonable inference that a failure to make the Disclosure is a breach of the standard of care required in the circumstances); Mousseau v. Schwartz, 756 N.W.2d 345, 2008 S D 86(2008)(citing cases from South Carolina and Other jurisdictions whereby the doctors testimony in effect under various circumstances Gave an expert opinion on the standard of care even though not expressly stated); Ranuc-Ci v. Crain, 409 S.C. 493, 763 S.E.2d 189(2014)(As to Dr. Crain's assertions regarding Defects in the authorship and content of Dr. Boortz-Marx's affidavit , we find this is not An appropriate ground to affirm the circuit court's order because the affidavit is facially Sufficient given it is sworn and identifies a potentially meritorious medical malpractice Claim. Moreover, there is no factual basis in the record to challenge either the expert's Qualifications or the content of the affidavit); Dozier v. Clayton County Hosp. Auth., 206 Ga. App. 62, 424 S.E.2d 632(1992)(quoting Gadd v. Wilson & Co.&c., 262 Ga. 234(416 S.E.2d 285(although affidavit did not expressly ascribe the alleged negligent to appellee, The requirement that the alleged negligence had to be linked to appellee was substantially Met as appellee was the only defendant and therefore was implicitly the party to whom Negligence was being attributed; when viewed from this prospective, no question of friv-Olity of claim exists); Galik v. Clara Maase Med., 771 A.2d 1141,167 N.J. 341(2001).

Therefore, based upon the above facts and citation of authority, this court should Not affirm the circuit court's order to dismiss for failure to file an expert witness affida-

Vit to satisfy the requirements of 15-36-100 since the statute requirements were met.

(3) Finally, this court should not affirm because the two affidavits are facially sufficient Given they were sworn, witness and signed on October 25, 2012 before the Social Secur-Ity Administration authorize agent attesting to identity of Washington and TRMC on 10/8/12 verifying the medical records information relating to medical disability impair-Ments, treatments and diagnostic findings met the statute requirement. Galik, Supra citing Mayfield v. Comm. Med. Assoc., 762 A.2d 237, 239-240, 335 N.J. Super. 198(2000)(Af-Firm denial motion to dismiss affidavit no anticoagulation coumadin refill).{Rpp. 70-96}.

This method of sworn attestation, verification and authentication is an alterna-Tive method used by the Social Security Adm. and TRMC to meet state statutory laws for Notary purposes in any administrative or legal proceeding. Thus, respondent's argument Challenging the sufficiency of the documents for affidavit purposes as lacking sworn or Attestation before a notary or an officer prescribed by law is not an appropriate ground To affirm the circuit court's order. Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189(2014) (same)(quoting Poch v. Bayshore Concrete Prods. /S.C., Inc., 405 S.C. 359, 378 n. 13, 747 S.E.2d 757, 767 n. 13 (2013)(declining to reject affidavit presented as proof of Worker's compensation insurance as there was " no basis for which to reject the affida-Vit as it is by very nature a sworn statement intented as documentary evidence in a legal Proceeding"); S.C. Ins. Co. v. Barlow, 301 S.C. 502, 392 S.E.2d 795(1990)(declining to Interpret statute requiring to submit affidavit so narrowly to defeat the very purpose of The statute. The failure of the department to have the signature of its officer notarized

On Form FR-9 cannot we hold, defeat the clear intent of the statute. To hold otherwise, Would amount to a sacrifice of substance over form); Apsey v. Memorial Hospital, 730 N.W.2d 695, 477 Mich. 120(2007)(The final sentence must be read in light of what Precedes it. The second sentence of MCL 565.268 indicates that the URAA is an Additional or alternative method of proving notarial acts). Affirm is not appropriate.

III. This court should not affirm the circuit court's order on the additional sustaining ground that Washington failed to initiate the required presuit Mediation.

First, it would have been a futile act to continue to urge the clerk of court To file for mediation with ADR before the circuit court decide the Notice of Intent and Expert Witness Affidavit issue. On September 11, 2015 Washington, in the docketing Information section to the cover sheet of complaint/NOI section check the box stating **This case is subject to Mediation pursuant to this court ADR rules.** However, the Clerk of court never issue Washington the standard form required notice that the case was Subject to mandatory presuit mediation pursuant to 15-79-125. Further, the cerk of court Did not supply the form where the clerk could write in name of a primary and secondary Mediator. {Rpp. 7-9; Rpp. 70-96}. A few days after filing the above named documents Washington, called the circuit court and spoke to the clerk responsible for scheduling Mediation. Washington, requested that both parties be scheduled for mediation. The Clerk told Washington that he had not filed a NOI pursuant to 15-79-125 yet for mediat-Ion. Wasington, then told the clerk that he had filed a NOI and the complaint together. The clerk stated that this was an issue Washington would probably have to agrue to The circuit court judge and also stated Washington would have to wait approximately 180 days for the mediation to occur. Following, this failed mediation attempt, both parties

Continued filing response, motion in opposition to dismiss, Memorandum of Law on These issues. On January 7, 2016 a hearing was held. The circuit court granted Trident Motion to Dismiss. { Rpp. 1-5 }.

This court should not affirm dismissal of the action on this ground for failure to Mediation within 120 days because if the circuit court had denied Trident's motion to Dismiss on January 7, 2016 the case could have proceeded and mediation before the 120 Days deadline, which was 4 more days remaining. Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189(2014)(same); Rickerson v. Karl, 412 S.C. 215, 770 S.E.2d 767(2015)(same).

Conclusion

Based on the foregoing, this court should not affirm the order granting Trident Motion to dismiss.

Respectfully submitted,

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