

FILED-RECORDED
STATE OF SOUTH CAROLINA
2017 NOV -8 PM 9: 08

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

SIXTEENTH JUDICIAL CIRCUIT

TODD BULLMAN, as Personal Representative of THE ESTATE OF
CAITLIN BULLMAN,

Case No: 2017CP46-1096

Plaintiff,

v.

CHARLOTTE-MECKLENBURG
AUTHORITY d/b/a CAROLINA
PHYSICIAN NETWORK, LLC d/b/a
PIEDMONT GYN OB, LLC, DR. PRIYA
B. PILLA, MN, DR. WILLIAM S.
REVELL, CHARLOTTE
MECKLENBURG AUTHORITY d/b/a
CAROLINA MEDICAL CENTER-
PINEVILLE,

ORDER DENYING DEFENDANTS
CHARLOTTE-MECKLENBURG
AUTHORITY d/b/a CAROLINA
PHYSICIAN NETWORK, LLC d/b/a
PIEDMONT GYN OB, LLC., AND
CHARLOTTE MECKLENBURG
AUTHORITY d/b/a CAROLINA MEDICAL
CENTER-PINEVILLE'S MOTIONS TO
DISMISS

Defendants.

RECEIVED

NOV 21 2017

SC Court of Appeals

This matter came before the Court on September 21, 2017, upon the motions to dismiss of Defendants Charlotte-Mecklenburg Hospital Authority ("CMHA") d/b/a Carolinas Healthcare System ("CHS"), Carolinas Physician Network, Inc. ("CPN") d/b/a Piedmont Gyn OB, LLC, ("Piedmont Gyn OB"), and Charlotte-Mecklenburg Hospital Authority ("CMHA") d/b/a CMC-Pineville (collectively "Defendants" or "CMHA Defendants"). Robert V. Phillips and Daniel W. Luginbill appeared on behalf of Plaintiff, and Scott S. Addison appeared on behalf of Defendants. Based on the record presented, I make the following findings and conclusions.

FACTUAL/PROCEDURAL BACKGROUND

This is a medical malpractice action brought by Todd Bullman, as the personal representative of the estate of his daughter, Caitlin Bullman. Ms. Bullman presented to Piedmont Gyn OB in Rock Hill, S.C., on November 28, 2014, following the spontaneous rupture of her placental membrane. She was thereafter admitted to CMC-Pineville in Charlotte, N.C., for the delivery of her first child. The following day, November 29, 2014, Ms. Bullman underwent a Cesarean Section delivery by Dr. William S. Revell. After delivery, Ms. Bullman

ML
\$)

was admitted to the intensive care unit, and was ultimately discharged from CMC-Pineville on December 2, 2014. On December 6, 2014, Ms. Bullman presented to the emergency department at Piedmont Medical Center (“PMC”), in Rock Hill, S.C., where Ms. Bullman suffered a cardiac arrest, and died on December 7, 2014.

Plaintiff alleges that the CMHA Defendants failed to order the appropriate diagnostic testing to investigate Ms. Bullman’s signs of infection, failed to provide appropriate treatment, and improperly discharged Ms. Bullman from CMC-Pineville on December 2, 2014.

Plaintiff filed a Summons and Complaint on November 29, 2016, in York County, alleging that the care Ms. Bullman received from these Defendants fell below the standard of care, and that such deviation proximately resulted in, or proximately contributed to, Ms. Bullman’s premature death.

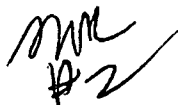
Defendants’ current motions assert (1) that this Court lacks personal jurisdiction over these Defendants; (2) that Plaintiff’s Complaint should be dismissed for insufficiency of process and insufficiency of service of process; (3) that Plaintiff’s Complaint fails to state facts sufficient to constitute a cause of action against these Defendants; and, (4) that Plaintiff’s Complaint should be dismissed for improper venue.

DISCUSSION/ANALYSIS

A. Motion to Dismiss – Personal Jurisdiction (Rule 12(b)(2), SCRPC).

Personal jurisdiction over out-of-state defendants is governed by South Carolina’s Long-Arm Statute (S.C. Code Ann. §§ 36-2- 802 and 803 (1976, as amended).), and the constitutional boundary of due process. The Long-Arm Statute addresses two categories of personal jurisdiction: (1) general personal jurisdiction under § 36-2-802, through which an out-of-state defendant may be hailed into South Carolina courts for any claim (including claims unrelated to the defendant’s contacts with the state); and, (2) specific personal jurisdiction under § 36-2-803, through which a defendant may be hailed into South Carolina courts for claims arising out of the contacts with South Carolina articulated in the statute. *Coggeshall v. Reproductive Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

South Carolina Courts acquire general personal jurisdiction of an out-of-state defendant when the defendant is “doing business” in South Carolina. S.C. Code Ann. § 36-2-802. As dictated by S.C. Code Ann. § 36-2-802, these defendants have established an “enduring relationship” with South Carolina which is “substantial, continuous, and systematic.” *Cockrell v. Hillerick & Bradsby Co.*, 363 S.C. 485, 495, 611 S.E.2d 505, 510 (2005).



Specific personal jurisdiction under § 36-2-803 exists if the defendant has one of the eight types of contacts with South Carolina listed in the statute, and the plaintiff's claims arise out of those contacts with the state. *Coggeshall*, 376 S.C. at 19, 655 S.E.2d at 480.

The Long-Arm Statute, as it has been interpreted, places no other limitation on personal jurisdiction over nonresidents, other than those established by federal due process concerns. *Meyer v. Paschal*, 330 S.C. 175, 181, 498 S.E.2d 635, 638 (1998). While traditionally courts have conducted a two-step analysis on personal jurisdiction, “. . . a more recent trend compresses the analysis into a due process assessment only.” *Cribb v. Spatholt*, 382 S.C. 490, 499, 676 S.E.2d 714, 719 (Ct. App. 2009). Due process requires that a state acquires jurisdiction over an out-of-state defendant only if there are “. . . minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Moosally v. WW Norton & Co., Inc.*, 358 S.C. 320, 330, 594 S.E.2d 878, 883 (Ct. App. 2004) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)).

The due process analysis has two prongs: (1) power prong in which the court looks to the contacts of the defendant with the forum state to determine whether the courts of the state have the power to exercise jurisdiction; and, (2) fairness prong in which the court determines whether exercising personal jurisdiction would be reasonable or fair to the defendant. *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992). The power prong considers whether a “. . . defendant purposefully avail[ed] itself of the privilege of conducting activities in the forum State, thus invoking the benefits and protections of its laws.” *Moosally*, 358 S.C. at 332, 594 S.E.2d at 884 (citing *Hanson v. Denckla*, 357 U.S. 235 (1958)). The fairness prong considers the burden on the defendant, the extent of the plaintiff's interest, South Carolina's interest, and the efficiency of adjudication. *Moosally*, 358 S.C. at 332, 594 S.E.2d at 885.

CMHA, d/b/a CHS, is a North Carolina corporation with extensive business interests, medical practices, and other continuous and systemic contacts within South Carolina, including businesses and facilities located in Anderson, Pickens, Indian Land, Rock Hill, Fort Mill, and Lancaster. Plaintiff asserts that CMHA controls CPN, and uses it as its agent to provide physician services at CMHA facilities.

CPN is a subsidiary of CMHA, which owns and operates physician practices in North and South Carolina, including Piedmont Gyn OB. (See Complaint at paragraph 2.) CPN has continuous and systematic contacts within South Carolina, as it owns and operates medical practices in York County. Piedmont Gyn OB is an unincorporated association of CPN, and thus

OML
123

is a "d/b/a", or tradename, of CPN. Thus, Piedmont Gyn OB employees are effectively employees of CPN. In support of this Motion, Defendants submitted an affidavit of CMHA's Deputy General Counsel, which evidences the close connection between CMC-Pineville to CMHA, as it states the following: "the hospital facility where Plaintiff's Decedent received medical care, [CMC-Pineville], is operated by a legal entity that is a wholly-owned subsidiary of the Authority and is an integral part of the Authority." (See Defendants' Memo. in Support of Motion to Dismiss, Exhibit 2 at pg. 2.)

It is clear that CMHA and CPN have continuous and systematic connections to South Carolina. In light of the close connection between CMHA and Piedmont Gyn OB, and CMHA and CMC-Pineville, these Defendants may not object to being named as defendants in a South Carolina suit. As stated above, general jurisdiction is determined under S.C. Code Ann. §36-2-802, which provides in pertinent part: "Personal jurisdiction is based upon enduring relationship. A court may exercise personal jurisdiction over a person . . . doing business . . . [in] this State as to any cause of action."

Considering the foregoing discussion of CMHA's business activities in South Carolina, and the relationships of these Defendants, I find and conclude that these Defendants all have contacts with South Carolina sufficient to create the "enduring relationship" required for general jurisdiction. I further find and conclude that it does not offend traditional notions of fair play and substantial justice for Piedmont Gyn OB and CMC-Pineville to be required to defend law suits in South Carolina. Accordingly, Plaintiff has made the required showing to support his Complaint's jurisdictional allegations, and Defendants' Motion to Dismiss pursuant to 12(b)(2) is denied.

B. Motion to Dismiss – Insufficiency of Process and Insufficiency of Service of Process (Rules 12(b)(4), SCRCPP, and 12(b)(5), SCRCPP).

An objection made under Rule 12(b)(4) for insufficient process addresses the content of the summons, and not the service. *See, Hammond v. Honda Motor Co., Ltd.*, 128 F.R.D. 638, 639 (D.S.C. 1989) (denying motion to quash under Rule 12(b)(4) that was based on grounds that the summons did not comply with the requirements of the Hague Convention); *State Bd. of Med. Exam'rs of South Carolina v. Fenwick Hall, Inc.*, 300 S.C. 274, 276, 387 S.E.2d 458, 459 (1990) (granting a Rule 12(b)(6) motion because summons requiring an appearance in less than 30 days was "fatally and jurisdictionally defective"). "Technically, therefore, a Rule 12(b)(4) motion is proper only to challenge noncompliance with the provisions of Rule 4(b) or any applicable provision incorporated by Rule 4(b) that deals specifically with the content of the summons." 5B

OMM
24

Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, *Federal Practice and Procedure* § 1353 (3d ed. 1998).

An objection made under Rule 12(b)(5) for insufficient service of process challenges only the service of the pleadings and not the contents. “An appropriate objection under Rule 12(b)(5) would be the nonreceipt by the defendant of a summons, the absence of an agency relationship between the recipient of process and the defendant, . . . or any other failure to comply with the procedural requirements in the applicable service provisions.” 5B Wright & Miller § 1353; *See also Unisun Ins. v. Hawkins*, 342 S.C. 537, 542, 537 S.E.2d 559, 562 (Ct. App. 2000). A motion made pursuant to Rule 12(b)(5) will be granted only if the defect is clearly prejudicial to the defendant. *See* 5B Wright & Miller § 1353.

Defendants assert that Plaintiff’s Complaint should be dismissed due to insufficiency of process and service of process, pursuant to Rules 12(b)(4) and 12(b)(5), SCRPC. Defendants argue that the summonses were not directed to the current Defendants, as Plaintiff misnamed Defendant Piedmont Gyn OB and Defendant CMC-Pineville. They assert that, therefore, Defendants were not properly served with the Summonses and Complaint. Although Plaintiff may have misidentified the CMHA Defendants, CMHA received unambiguous actual notice of Plaintiff’s claims, and that it, along with its d/b/a’s or subsidiaries, Piedmont Gyn OB and CMC-Pineville, were the actual parties from whom Plaintiff seeks damages. Accordingly, dismissal for insufficiency of process and service of process is not warranted, and Defendants’ Motions to Dismiss pursuant to Rule 12(b)(4) and Rule 12(b)(5) are denied.

Moreover, I find and conclude that Plaintiff should be granted leave to amend his complaint to correct Defendants’ names, as allowed by Rule 15, SCRPC. Such amendment will not prejudice Defendants in any way.

C. Motion to Dismiss – Failure to State Cause of Action (Rule 12(b)(6), SCRPC).

A defending party may assert in its answer or in a pre-answer motion a defense alleging the complaint against the defending party fails to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRPC. When reviewing a 12(b)(6) motion, a Court must view a complaint in the light most favorable to the plaintiff and every doubt must be resolved in the plaintiff’s favor. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). If the “. . . facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case,” then the Court may not grant a 12(b)(6) motion. *Sloan Constr. Co. v. Southco Grassing Co.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008). A Court may not

DM
BS

dismiss a complaint merely because the Court doubts the plaintiff will prevail. *Plyler*, 373 S.C. at 645, 647 S.E.2d at 192.

The CMHA Defendants assert that Plaintiff failed to state facts sufficient to constitute a cause of action against the CMHA Defendants.

A complaint need contain only a ". . . short and plain statement of the facts showing that the pleader is entitled to relief." Rule 8(a)(2), SCRPC. This requires a litigant to plead the ultimate facts which will be proved at trial, not the evidence which will be used to prove those facts. *Stroud v. Riddle*, 260 S.C. 99, 194 S.E.2d 235 (1973).

The Complaint alleges that the medical providers at Piedmont Gyn OB and CMC-Pineville were acting as CMHA's agents and/or employees for all medical care described in the complaint provided by these Defendants. Plaintiff's complaint alleges a number of instances in which these Defendants deviated from the accepted standards of medical care in their treatment of Ms. Bullman.

The Complaint properly states facts sufficient to satisfy the pleading standards of Rule 8. Accordingly, Defendants' Motion to Dismiss pursuant to 12(b)(6) must be denied.

D. Motion to Dismiss – Improper Venue (Rule 12(b)(3), SCRPC).

If there is more than one defendant and more than one county may be proper, ". . . the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section." S.C. Code Ann. § 15-7-30(B) (1976, as amended).

Defendants assert that their status as a North Carolina political body confers upon them the status of "public officers" in South Carolina, as that term is used in S.C. Code Ann. §15-7-20 (1976, as amended). As a result, they argue, they must be sued where Plaintiff's cause of action arose. In this instance, that would be in North Carolina.

As an initial matter, §15-7-30 is the general venue statute, and §15-7-20 is a specific venue statute that focusing on actions asserted against a "public officer." In such a case, the action must be tried where the cause of action arose. To invoke §15-7-20(2), these 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) (1976, as amended). This language expressly limits the application of the Act to the State of South Carolina and its political subdivisions. This does not include political subdivisions of other states which choose

DM
56

to engage in business pursuits in South Carolina, such as the delivery of health care. Thus, such entities are not afforded the protections accorded to the State of South Carolina, and its governmental entities, employees, and agents. Accordingly, I find that CMHA is not a "public officer" for purposes of §15-7-20(2).

When there are multiple defendants in a case, venue is generally proper in any county where the action may be brought. See S.C. Code Ann. § 15-7-30(b); Jeter v. South Carolina Dept. of Tranp., 369 S.C. 433, 633 S.E.2d 143 (2006). Plaintiff's complaint alleges that key "acts or omissions" underlying her causes of action occurred in York County, South Carolina. In Paragraph 3 of the Complaint, Plaintiff alleges that Defendant Pillai is a citizen and resident of York County, South Carolina. In Paragraph 4, Plaintiff alleges that Defendant Revell is also a citizen and resident of York County, South Carolina. Accordingly, venue is proper in York County, South Carolina.

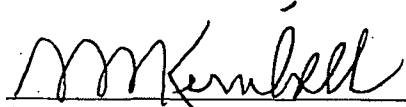
Thus, I find and conclude that Defendants' Motion to Dismiss pursuant to Rule 12(b)(3) must be denied.

CONCLUSION

Based on the findings, conclusions, and discussion herein, it is ordered that these Defendants' Motions to dismiss be denied.

AND IT IS SO ORDERED.

November 7, 2017



S. Jackson Kimball
Special Circuit Court Judge
York County

#4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2017CP4601096

Todd Bullman	Todd Bullman Personal Representative Caitlin Bullman Estate	Charlotte Mecklenburg Authority Piedmont Gyn OB LLC William S Revell	Carolina Physician Network LLC Priya B Pillai Carolina Medical Center Pineville
--------------	--	--	--

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

RECEIVED
 NOV 21 2017
 SC Court of Appeals

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION
ORDER DENYING DEFENDANTS MOTION TO DISMISS

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/ S JACKSON KIMBALL
 Circuit Court Judge

3063
 Judge Code

11/9/2017
 Date

For Clerk of Court Office Use Only

This judgment was entered on **11/9/2017**, and a copy mailed first class or placed in the appropriate attorney's box on **11/9/2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Verner Phillips 1539 Health Care Dr. Rock Hill, SC
29732
Daniel W. Luginbill PO Box 1150 Bamberg, SC 29003

Scott S. Addison 4350 Congress Street Suite 575 Charlotte,
NC 28209

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
