STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Harold Estes Blackwell, Jr., Plaintiff, vs. Miracle Hill Ministries, Inc., Anita Jane Miller (a.k.a Anita M. Blackwell), and William Fisk, Defendants.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. NO. 2017-CP-23-03754 **ORDER**

This matter came before me on motions to dismiss and to quash filed by Defendant Miracle Hill Ministries, Inc. ("Miracle Hill"). Present at the hearing on behalf of Miracle Hill was Adam C. Bach of the law firm Eller Tonnsen Bach, LLC. M. Lee Daniels, Jr. of the law firm M. Lee Daniels, Jr., P.C. appeared at the hearing on behalf of Defendant Anita Jane Miller ("Miller"), and Carrie H. O'Brien of the law firm Willson Jones Carter & Baxley, P.A. appeared on behalf of Defendant William Fisk ("Fisk"). The plaintiff appeared on his own behalf.

I. MIRACLE HILL'S MOTION TO DISMISS

Miracle Hill sought dismissal on the grounds that the plaintiff failed to allege facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6), SCRCP. The plaintiff's complaint makes numerous allegations related to Miracle Hill's admission and treatment of Miller, who is his former wife, in its "Renewal" program for alcohol treatment. Blackwell alleges that Miracle Hill encouraged Miller to refuse all contact with him during her treatment, that Miracle Hill employees falsely informed police that Blackwell committed a crime, and that Miracle Hill assisted Fisk's failure to act on Blackwell's behalf to address Miller's silence. Blackwell alleges that Miracle Hill's actions caused him emotional distress, eventually causing him to attempt to

commit suicide on or about December 9, 2015. The complaint includes nine causes of action against Miracle Hill: (i) intentional infliction of emotional distress; (ii) gross negligence; (iii) civil conspiracy; (iv) breach of fiduciary duty; (v) aiding and abetting breach of fiduciary duty; (vi) defamation; (vii) fraudulent concealment; (viii) "mental health facility failure to control patient;" and (ix) fraud.

A defendant may move to dismiss the plaintiff's complaint for "failure to state facts sufficient to constitute a cause of action" pursuant to Rule 12(b)(6), SCRCP. In considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). The question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001).

A. *Intentional Infliction of Emotional Distress*

The complaint fails to allege facts sufficient to constitute a cause of action for intentional infliction of emotional distress. In order to state a claim for intentional infliction of emotional distress, a party must establish (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiff's emotional distress; and (4) the emotional distress

suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 401, 596 S.E.2d. 42, 48 (2004).

Here, the complaint contains no allegations of sufficiently extreme or outrageous conduct on the part of Miracle Hill. In essence, Blackwell contends that Miracle Hill's alleged encouragement of Miller not to communicate with Blackwell amounts to extreme and outrageous conduct that exceeds all possible bounds of decency. As Miracle Hill argued at the hearing, there is no reported decision in South Carolina finding any similar conduct to be sufficiently outrageous or extreme for the tort of intentional infliction of emotional distress, and Blackwell brought no such authority to this Court's attention. Rather, as counsel for Miracle Hill contended, the complaint demonstrates that Miracle Hill acted in good faith to advise its patient in her recovery and to carry out the wishes of its patient not to communicate with her separated spouse. *See* Compl., at 24, ¶ 117(q) ("Mr. Lehman stated the decision not to provide an explanation for Defendant Miller's silence was entirely Defendant Miller [sic] decision and that Renewal clients routinely made such decisions without the influence of Renewal Staff."). Further, Blackwell argued at the hearing that Miller's decision not to contact him was her choice and decision, which he interpreted as "code" that she wanted to be contacted. Keeping in mind that the tort of intentional infliction of emotional distress is not a "panacea for wounded feelings rather than reprehensible conduct," *see Todd v. S.C. Farm Bur. Mut. Ins. Co.*, 283 S.C. 155, 171, 321 S.E.2d 602, 611 (Ct. App. 1984), the Court finds that the alleged conduct on the part of Miracle Hill is not sufficiently outrageous or reprehensible to constitute a claim of tort of intentional infliction of emotional distress.

B. *Gross Negligence*

The complaint fails to allege facts sufficient to constitute a cause of action for gross negligence. In order to state a claim for intentional infliction of emotional distress, Blackwell must show that (1) the defendants owed Blackwell a duty of care; (2) the defendants breached that duty by a negligent act or omission; and (3) Blackwell suffered damage as a proximate result of that breach. *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000). "First, the court must determine, as a matter of law, whether the law recognizes a particular duty." *Moore v. Weinberg*, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007). If the plaintiff fails to prove the defendants owed him a legal duty of care, he fails to prove actionable negligence. *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007).

Here, Blackwell has failed to allege any duty owed to him by Miracle Hill. In South Carolina, a negligence action against a medical provider may only be maintained by the patient. *See Bishop v. S.C. Dept. of Mental Health*, 331 S.C. 79, 91 (1998) ("If a physician deviated from accepted standards of professional care in treating a patient, he breached a duty of care to the patient and not a third party."). While the complaint contains numerous allegations relating to potential duties owed by Miracle Hill to Miller, it does not allege that Blackwell was ever treated by the institution. *See* Compl., ¶ 221. Accordingly, the Court finds that the complaint fails to sufficiently allege any legal duty owed by Miracle Hill to Blackwell, thus Blackwell's claim for gross negligence must be dismissed.

C. *Civil Conspiracy*

The complaint fails to allege facts sufficient to constitute a cause of action for civil conspiracy. The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages.

LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988). "A claim for civil conspiracy must allege additional facts in furtherance of a conspiracy rather than reallege other claims within the complaint." *Hackworth v. Greywood at Hammett, LLC*, 335 S.C. 110, 115 (Ct. App. 2009). Similarly, a plaintiff must allege special damages specifically caused by the civil conspiracy. *See id.*, at 117 ("If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed."); *see also Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989) ("The damages sought in the conspiracy cause of action are the same as those sought in the breach of contract cause of action. Because no special damages are alleged aside from the breach of contract damages, we hold the conspiracy action is barred.")

Here, the plaintiff's claim for civil conspiracy fails for three reasons. First, the complaint contains no allegations related to the commission of any act in furtherance of a conspiracy. Rather, a comparison of the plaintiff's intentional infliction of emotional distress allegations, *see* Compl. ¶¶ 215-220, with the civil conspiracy allegations, *see id.* at ¶¶ 226-229, reveals essentially the same factual allegations. Second, the complaint contains no allegations of any special damages as a result of the conspiracy. The damages claimed in respect to the plaintiff's claim for intentional infliction of emotional distress essentially mirror those of his claim for civil conspiracy. *See id*, at ¶¶ 215-200, 226-229. Third, Blackwell's allegations are that Miracle Hill's treatment of Miller incidentally caused him harm and not that the purpose of her treatment was to harm Blackwell. The Court finds that these deficiencies merit the dismissal of Blackwell's claim for civil conspiracy.

D. *Breach of Fiduciary Duty / Aiding and Abetting Breach of Fiduciary Duty*

The complaint fails to allege facts sufficient to constitute a cause of action for breach of fiduciary duty or aiding and abetting a breach of fiduciary duty. Generally, "a fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him." *Brown v. Pearson*, 326 S.C. 409, 422-23 (Ct. App. 1997). The question of whether a fiduciary duty should be "imposed between two classes of people is a question for the court." *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458–59, 578 S.E.2d 711, 715 (2003). "Historically, this Court has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters." *Id.*

Similar to the plaintiff's claim for gross negligence, the complaint must contain sufficient facts to allege a fiduciary relationship between Blackwell and Miracle Hill. However, the complaint contains neither a mutual imposition of a fiduciary duty or an implied fiduciary duty under the law. As to the first point, the complaint contains no allegation stating that Miracle Hill agreed to assume a fiduciary duty with respect to Blackwell. *See* Compl., at 57-58, ¶ 232(b). Rather, the complaint appears to assume an implied fiduciary relationship between Blackwell and Miracle Hill. As discussed above regarding the plaintiff's negligence claim, the plaintiff has provided no authority for his position that the law imposes a fiduciary relationship between a medical provider and a patient's spouse who did not receive any medical treatment. *See Bishop*, 331 S.C. at 91. For this reason, the Court finds that no such fiduciary duty should be presumed between Blackwell and Miracle Hill, and the plaintiff's claim for breach of fiduciary duty should be dismissed.

With respect to the plaintiff's cause of action for aiding and abetting a breach of fiduciary duty, the Court finds that this cause of action should be similarly dismissed. For example, while the complaint contains bare, general allegations about "each defendant," it contains no allegations stating that Miracle Hill knew of a fiduciary duty owed by some third party to Blackwell and knowingly assisted that third party in breaching said duty. *See* Compl., at 59-62, ¶ 233, 236-240.

E. *Defamation*

The complaint fails to allege facts sufficient to constitute a cause of action for defamation. The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). The complaint cites three occasions where Blackwell alleges he was defamed by Miracle Hill: (i) when Miracle Hill "published" "to third parties" information relating to Miller's accusations of Blackwell's "adultery under oath in her divorce proceedings," *see* Compl., at 64, ¶¶ 246-247; (ii) when Miracle Hill's employee stated to police officers that Blackwell "was guilty of public intoxication and domestic abuse," *see id.*, at 64, ¶ 250; and (iii) when Miracle Hill's employee "published defamatory material to a marriage counselor" who Miracle Hill provided to Miller. *See id.*, at 64, ¶ 252.

With respect to the first and second claims of defamation, these statements are subject to privilege. Our Supreme Court has held that "defamatory matter contained in pleadings filed according to law in a court having jurisdiction, if relevant and pertinent to the issues in the case, are absolutely privileged." *McKesson & Robbins, Inc. v. Newsome*, 206 S.C. 269, 33 S.E.2d 585 (1945). Accordingly, Miller's accusation of Blackwell's adultery in the context of a divorce

proceeding in a South Carolina Family Court is absolutely privileged and cannot form the basis of a defamation claim against Miracle Hill.

Similarly, Miracle's communications with police cannot form the basis of a defamation cause of action. In *Conwell v. Spur Oil Co. of Western South Carolina*, 270 S.C. 170, 178, 125 SE2d 270 (1962), our Supreme Court held that communications made in good faith on a subject matter where the persons involved in the communication share a common interest are privileged, even though the communication may otherwise be actionable if no privilege were involved, even where the common interest is not a legal one, but only a moral or social one. As the complaint alleges, Miller "accus[ed] Plaintiff of domestic abuse to the staff at Miracle Hill." *See* Compl., at 43, ¶ 215(a)(iii). Therefore, Miracle Hill had at least a moral or social obligation to protect its patient from someone who "she felt...sought to do her physical harm again." *See id.*, at 40, ¶ 194. Since these communications were between only Miracle Staff and police officers, this Court finds that such statements were privileged.

Finally, the complaint contains no allegations relating to legally presumed or special damages relating to the "defamatory material" communicated to a marriage counselor. In South Carolina, only four types of slander are actionable without the existence of special damages, which "include statements that impute unchastity, a criminal offense, a loathsome disease, or matter incompatible with business or trade." *Id.*, 332 S.C. at 525-26, 506 S.E.2d at 510. The complaint states only that "defamatory material" was communicated to a marriage counselor provided by Miracle Hill to Miller. *See* Compl., at 64, ¶ 252. The complaint does not specify what comprised the "defamatory material," thus there are no allegations implicating any of the four categories described for legally presumed damages. Furthermore, none of the allegations set forth any specific harm to Blackwell's reputation because as a result of Miracle Hill's communications with

the marriage counselor. Accordingly, the Court finds that the complaint does not set forth sufficient allegations to constitute a cause of action for defamation

F. *Fraudulent Concealment*

Blackwell's seventh cause of action for fraudulent concealment appears to be directed solely at Defendant Fisk. *See* ¶¶ 260-271. None of the allegations mention Miracle Hill or the defendants generally. *Id.* Accordingly, the complaint fails to allege facts sufficient constitute a cause of action for fraudulent concealment against Miracle Hill.

G. *Mental Health Facility Failure to Control Patient*

The complaint fails to allege facts sufficient to constitute a cause of action against Miracle Hill for its failure to control Miller. South Carolina law does not recognize a general duty to warn of the dangerous propensities of others. *Sharpe v. S.C. Dep't of Mental Health*, 292 S.C. 11, 354 S.E.2d 778 (Ct. App. 1987). However, when a defendant has the ability to monitor, supervise, and control an individual's conduct, a special relationship exists between the defendant and the individual, and the defendant may have a common law duty to warn potential victims of the individual's dangerous conduct. *Rogers v. S.C. Dep't of Parole & Community Corrections*, 320 S.C. 253, 464 S.E.2d 330 (1995). This duty to warn arises when the individual has made a specific threat of harm directed at a specific individual. *Id.* A defendant must "be aware or should have been aware of the specific threat made by the patient to harm a specific person." *Bishop*, 331 S.C. at 87-88.

Here, the complaint does not allege that Miracle Hill knew of any threat to the plaintiff. The complaint states that Miracle Hill "failed to take any steps to control the conduct of Defendant Miller" and "negligently treated a voluntary patient" who "executed her plan to injure Plaintiff." *See* Compl. at 67, ¶¶ 275-278. These allegations attempt to describe a negligence cause of action

against Miracle Hill regarding its treatment of Miller, however Miracle Hill owes no duty to Blackwell with regard to Miller's treatment. Importantly, these allegations do not describe a specific threat made by Miller against Blackwell or Miracle Hill's knowledge of any such threat. Therefore, the plaintiff's eighth cause of action fails to constitute a claim against Miracle Hill and shall be dismissed.

H. *Fraud*

To establish fraud, the following elements must be shown: (1) a representation; (2) the falsity of the representation; (3) the materiality of the representation; (4) knowledge of its falsity, or reckless disregard for its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Ardis v. Cox*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993). "Failure to allege all elements is fatal to a claim of fraud." *Hansen v. DHL Laboratories, Inc.*, 316 S.C. 505, 511 (Ct. App. 1994). "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Rule 9(b), SCRCP.

Here, all nine elements of fraud have not been plead with particularity as required by Rule 9(b). With respect to the nine elements enumerated in the *Ardis* case, Blackwell has alleged that false information was communicated to him (elements 1 and 2), *see* Compl., at 67, ¶ 282; (ii) that he had a right to rely upon that information which was material (elements 8 and 3), ¶ 281; (iii) that he relied upon the information (element 7), ¶ 280; and (iv) that his reliance proximately caused damages (element 9), at 68, ¶ 283. None of the allegations describe Miracle Hill's knowledge of the falsity of the information or reckless ignorance (element 4); Miracle Hill's intention that its representation be acted upon by Blackwell (element 5); or Blackwell's ignorance of the falsity

(element 6). Rather, Blackwell alleges that Miracle Hill was "ignorant of the claims made regarding their methods" and that Miracle Hill "has no incentive to provide a legitimate treatment protocol." *See* Compl, ¶¶ 284-285. These allegations, if proven at trial, would not establish Miracle Hill's knowledge of falsity, its intended inducement of Blackwell's reliance, or Blackwell's ignorance of falsity, the cause of action for fraud must be dismissed. None of the causes of action against Miracle Hill meet the standard required under Rule 12(b)(6), SCRCP.

Accordingly, the motion to dismiss filed by Defendant Miracle Hill Ministries, Inc. is hereby **GRANTED** and all of the plaintiff's causes of action against Miracle Hill contained within the complaint are hereby **DISMISSED WITH PREJUDICE**.

II. PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

On September 11, 2017, the plaintiff filed a motion entitled "Request for Temporary Injunction." In his motion, the plaintiff requests that the Court require Miracle Hill to "immediately cease providing treatment for the disease of addiction and remove all references to their claims their treatment program bears any semblance to 'the 12 Steps' in their handbooks and on their websites."

For a preliminary injunction to be granted, the plaintiff must establish that (1) he would suffer irreparable harm if the injunction is not granted; (2) that he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). "The remedy of an injunction is a drastic one and ought to be applied with caution." *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

First, the plaintiff cannot establish that he would suffer any irreparable harm if the injunction is not granted. As the plaintiff contends, Miracle Hill's former clients are "dying at a

significantly high rate than other addiction treatment facility 'graduates,'" and that he will "suffer guilt and remorse he did not know sooner he could file for injunctive relief to prevent Miracle Hill's treatment program from further damaging members of his community." *See* Pltf. Mot. for Temp. In. filed Sept. 11, 2017. Importantly, the plaintiff does not allege that he is currently or has ever been treated by Miracle Hill. Neither the plaintiff's motion nor his arguments at the hearing provide any indication that the plaintiff would personally suffer any harm if the injunction were not granted. To the contrary, Miracle Hill and its patients would suffer harm from being forced to halt the treatment program. *See Strategic Resources Co.*, 367 S.C. at 544, 627 S.E.2d at 689 ("In deciding whether to grant an injunction, the court must balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and grant an injunction which seems most consistent with justice and equity under the circumstances of the case.").

Second, the plaintiff is not likely to succeed on the merits of this litigation. As the parties conceded, participation in Miracle Hill's Renewal program is entirely voluntary and its patients choose to enter the program. Blackwell is not a patient, has never received treatment from Miracle Hill, and has no standing to represent third parties who voluntarily chose to undergo the Renewal program. Furthermore, as analyzed exhaustively above, Blackwell is not likely to succeed on the merits against Miracle Hill in light of the Court's dismissal of his causes of action against Miracle Hill.

Finally, the plaintiff has not established that there is no adequate remedy at law. Again, the plaintiff cannot establish his right to bring any cause of action against Miracle Hill on behalf of current or former patients. Since he has no standing to represent these individuals, he cannot establish that he has any remedy under the law for such claims. Regarding the claims has failed in this case, he has alleged nine causes of action against Miracle Hill, and all nine claims may be

reduced to a money judgment if Blackwell is successful at trial. Accordingly, the plaintiff's motion for a preliminary injunction is **DENIED**.

III. MIRACLE HILL'S MOTION TO QUASH SUBPOENAS

On October 3, 2017, Miracle Hill filed a motion to quash two subpoenas served to Miracle Hill employees commanding their appearance at the Greenville County Courthouse on October 4, 2017 at 9:00 AM. A hearing on the parties' pending motions was scheduled to begin that same time and location. The first subpoena was served upon Reid Lehman on or about September 18, 2017 and the second subpoenas was served upon Bill Slocum on or about September 28, 2017.

Pursuant to Rule 45(c)(1), SCRCP, "[a] party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." The court "shall quash or modify" a subpoena that subjects any person to an undue burden. *See* Rule 45(c)(3)(A), SCRCP.

First, the plaintiff intended to offer testimony from Lehman and/or Slocum in response to the defendants' separate motions to dismiss the complaint. A ruling on a motion to dismiss under Rule 12 "must be based solely upon the allegations set forth on the face of the complaint." *Tousaint v. Ham*, 292 S.C. 415, (1987). Therefore, these subpoenas impose an undue burden upon these witnesses as their purported testimony would not unnecessary to the Court's determination of the sufficiency of the pleadings. *See HDSherer, LLC v. Nat. Molecular Testing Corp.*, 292 F.R.D. 305, 308 (D.S.C. 2013) ("This undue category encompasses situations where the subpoena seeks information irrelevant to the case.").

Second, the plaintiff intended to offer these witnesses' testimony in support of his motion for a preliminary injunction. As analyzed above, the plaintiff cannot prove that he would suffer irreparable harm, that he is likely to succeed on the merits in this litigation, or that there is an

inadequate remedy at law. The Court finds that the subpoenas issued to Reid Lehman and Bill Slocum are hereby quashed pursuant to Rule 45(c), SCRCP. Accordingly, Defendant Miracle Hill Ministries, Inc.'s motion to quash is **GRANTED**.

IV. CONCLUSION

THEREFORE IT IS ORDERD THAT: (i) the motion to dismiss filed by Defendant Miracle Hill Ministries, Inc. is hereby **GRANTED** and all causes of action asserted against Defendant Miracle Hill Ministries, Inc. are hereby **DISMISSED WITH PREJUDICE**; (ii) the motion for a preliminary injunction is **DENIED**; and (iii) the motion to quash the subpoenas filed by Defendant Miracle Hill Ministries, Inc. is **GRANTED**.

IT IS SO ORDERED.

Judge, Thirteenth Judicial Circuit

, 2017
Greenville, South Carolina