THE STATE OF SOUTH CAROLINA

Supreme Court of South Carolina

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

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

Jim Washington,.....Appellant.

V.

Trident Medical Center,LLC.....Respondent.

MOTION FOR WRIT OF CERTIORARI

Jim Washington
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Respodent Counsels of Record:
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CERTIFICATION

TO: Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box Columbia, S.C. 29211

March 22, 2018

You will please take notice that the petitioner Appellant, Jim Washington certifies that a petition for rehearing was made and finally ruled upon on Feburary 22, 2018 by South Carolina Court of Appeals.

S/ Jim Washington

Jim Washington
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Appellant/ProSe
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CERTIFICATION

To: Daniel E. Sherouse, Clerk
South Carolina Supreme Court
1231 Gervais Street
Columbia, S.C. 29201

March 22,2018

Please take note that petitioner Appellant, Jim Washington do certify that a petition for rehearing was made and finally ruled upon on Feburary 22, 2018 by the South Carolina Court of Appeals.

S/ _____

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QUESTIONS FOR REVIEW

I. DID THE COURT OF APPEALS ORDERS DENYING REHEARING AND AFFIRMING DISMISSAL OF THE CIRCUIT COURT ORDER WERE IN ERROR UNDER THE FACTS AND CIRCUMSTANCES OF THIS ACTION CONFLICTS WITH WILKINSON AND RANUCCI II?

II. DID THE COURT OF APPEALS ORDERS DENYING REHEARING AND AFFIRMING DISMISSAL OF THE CIRCUIT COURT ORDER WERE IN ERROR UNDER THE FACTS IN THIS CASE THAT APPELLANT FAILURE TO FILE AN EXPERT WITNESS AFFIDAVIT MANDATED DISMISSAL OF THE ACTION CONFLICTS WITH BROUWER AND COX v. LUND ?

Statement of the Case

In this medical malpractice action, on 10/1/12 TRMC received documentation from

Trident. Appellant, Jim Washington (" Washington") filed a NOI to filed a claim on **10/25/12** with the Disability Administration which is based on the same claim filed under S.C. Code Statutes 15-79-125(A) and 15-36-100 documents appellant signed for respondent to receive a copy of notice of the claims and authorizing disclosure of medical records entitling appellant to relief based on Respondent's negligent diagnosis and treatments . {Appendix-Record on Appeal, pp. 20-55; pp. 70-73; pp. 79-95 }.

On **9/11/15** Appellant, Washington filed in the Court of common pleas an amended copy of the pre-suit NOI and Expert Witness Affidavit pleadings under S.C. Code Statutes 15-79-125 (A) and 15-36-100 and attached these two presuit statutory pleadings to complaint incorporated by reference showing Appellant entitle to relief and named Respondent Trident as proper defendant. { Appendix-Record on Appeal, pp.9-11; pp. 70-73; pp. 79-95 }. On October 16, 2015 Respondent Trident filed motion to dismiss claiming Appellant fail to filed pre-suit NOI and an Expert Witness Affidavit prior to filing the medical malpractice action, also contending that the circuit court lack subject matter jurisdiction and the complaint fail to state a claim for relief and requested a hearing on the motion. { Appendix-Record on Appeal, pp. 17-19 }. Appellant filed oppostion to the motion to dismiss contending he did filed pre-suit NOI prior to filing the complaint on **9/11/15**. Appellant move the court to take judicial notice of these filed documents dated **10/25/12** which also included the Expert Witness Affidavits as supplement to his filings because the documents were relevant, material and admissible evidence that support a claims for relief and move the court to compel ADR mediation. {Appendix-Record on Appeal, pp. 108-112 }. Appellant filed Memorandum of Law in support to oppose motion

to dismiss on the same basis in his motion in oppostion to dismiss. {Appendix-Record on Appeal, pp. 97-101}. Respondent filed Memorandum of Law in support of motion to dismiss erroneously constructing the two statutes in isolation rather than to construct the two presuit statutes pleadings in the complaint together with the attached two presuit statutes pleadings in the NOI and Expert witness Affidavits. {Appendix-Record on Appeal, pp. 7-11; pp. 62-63; pp. 70-73 and 79-95}. Respondent contended Appellant filed pleading under S.C, Code Statutes 15-79-125 (A) and 15-36-100 were "defective for a total absence of the statutorily-required NOI and expert witness affidavit as a prerequisite to filing the instant malpractice action" and therefore concluding Appellant did not filed a presuit NOI nor an Expert affidavit and common knowledge affidavit exception did not apply to the claim of anticoagulant treatment. {Appendix-Record on Appeal, pp. 62-67}.

A hearing was held on January 7, 2016 on the motion to dismiss in the Court of common pleas. Appellant raise objection to the motion to dismiss on the grounds he did filed the presuit NOI and Expert Witness Affidavit which support his claims for relief under the two statutes and filed the same statutes pleadings in the complaint and common knowledge did applied to his claims for relief but that the court was ruling on these issues separately. {Appendix-Record on Appeal, pp. 56-61}. Appellant also requested a ruling on his Memorandum of Law in Support opposing the motion to dismiss. The circuit court ruled the Memorandum of Law was irrelevant, immaterial and the documents to take judicial notice could not be supplemented to the filing. The circuit court agreed with Respondent on all of the above issues orally and in Respondent Memorandum of Law.

The circuit court judge denied Appellant arguments and dismiss the action based on Respondent arguments orally and documents filed. {Appendix-Record on Appeal, pp. 56-61}. A formal order granting the motion to dismiss the action with prejudice followed, based on all of the above same grounds and further ruling Appellant did not move the court in briefing or orally to supplement the complaint with and Expert Witness Affidavit. {Appendix-Record on Appeal, pp. 1-6}. A motion for rehearing was filed. An appeal was filed.

Appellant, in his Initial Brief in the Court of Appeals relying on Wilkinson and Ranucci II; and other citation for common knowledge affidavit exception for radiologist negligent in diagnose and treatment to support reversal of the circuit court order, and on the issues of NOI and Expert Witness Affidavits was affirmed. On Rehearing Washington argued that the Court of Appeals overlooked, misinterpreted this Courts decisions in Wilkinson and Ranucci, II and 15-36-100(C)(2). The Court of Appeals denied rehearing stating they did not overlooked any material issues. {Appendix-Record on Appeal, Appellant Initial Brief, pp. 11-29; Appendix-Record on Appeal, Appellant Brief in Reply, pp. 3-15; Appendix- Court of Appeals orders affirming dismissal of action and Rehearing}.

ARGUMENTS

I. Rules of Statutory Construction

Because the disposition of this case is dependent on this court's interpretation of sections of S.C. Code Statutes 15-79-125 and 15-36-100 petitioner Washington cites controlling cases laws from this court which have decided the interpretation, construction and

application of these statutes. Petitioner Washington first reference the well established rules of statutory construction. " the cardinal rule of statutory interpretation is to ascertain and effectuated the intention of the legislation." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457,459(2007). In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute operation." Id. At 499, 640 S.E.2d at 459. Further, "the statute must be read as whole and sections which are part of the same general statutory law must be construce together and each one given effect." S.C. State Ports Auth. V. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

In Ranucci v. Crain, 409 S.C. 493, 501, 763 S.E.2d 189 (2014) this court stated that [" in 2005, the General Assembly passed Act No. 32, 2005 S.C. Acts 133. In prefacing Act No. 32 , the General Assembly included express finings stating that the statutes within the Act constitute one subject and are intended to operate together to achieve a common purpose"]. This court concluded that ["Based on the legislative history the General Assembly enacted: (1) section 15-36-100 to establish the general construct regarding expert witnesses for all professional negligent cases and section 15-79-125 as a supplement to section 15-36-100 to provide for pre-litigation requirements and it is evident the General Assembly intended for sections 15-36-100 and 15-79-125 to be read in pari mater"](quoting Joiner v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000)("It is well settle that statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single harmonious result.")). Id.

On 1/5/16 Respondent Trident filed a "Memorandum of Law in Support of the Motion to Dismiss" Petitioner Washington's civil action in the circuit court. {Appendix-Record on Appeal, pp. 62-63 }. Respondent contented [" In this matter, the pro se Plaintiff Jim Washington filed a pleading style as a " Complaint" on September 11, 2015 alleging medical negligent against Trident. See Summons and Complaint attached as Exhibit " A." Plaintiff's Civil Coversheet indicated, among other things, that this matter was filed as a medical malpractice action. Id. The Civil Coversheet was signed and dated by plaintiff. Id. Both the Summons and Complaint were styled as " medical malpractice" pleadings, and Plaintiff indicated that these documents were being filed pursuant to S.C. Code Statutes 15-79-125 and 15-36-100. Id.

Plaintiff's "Complaint" alleges that Plaintiff received medical treatment at Trident Medical Center between September 23-26, 2012 and that various care providers were negligent in their respective treatment of Plaintiff. See Complaint, Exhibit "A." Plaintiff on September 11, 2015, twelve (12) days before the three-years statute of limitations expired. Id.

Plaintiff, never issued or filed the required pre-suit Notice of Intent to file Suit ("NOI") pursuant to S.C. Code Statute 15-79-125(A) and has yet to to submit an affidavit from any qualified expert witness willing to testify that Trident breached any applicable standard of care. Id. Instead of filing the required expert affidavit, Plaintiff submitted to the Court as follows: "Verified Complaint Treated As a Affidavit of Expert Witness S.C. Code Statutes 15-79-125(A) and 15-36-100."

Trident submits that the pleadings filed by Plaintiff herein are defective for a total

absence of the statutorily-required NOI and expert witness affidavit as a prerequisite to filing the instant action."]. Id. {Appendix-Record on Appeal, pp. 62-63}.

However, viewing Washington's actual statutory pleadings of S.C. Code Statutes 15-79-125(A) NOI to file suit and 15-36-100 Expert Witness Affidavit that were submitted to the Circuit Court in documents **"{ Appendix-Record on Appeal, pp. 9-11; pp. 70-73; pp. 79-95 }"** there are written opinions from qualified experts witnesses meeting the S.C. Code Statute 15-36-100 definition, qualifications and content statutorily required to give an opinion as to the acceptable conduct at issue whom duly **noted "we did received documentation from Trident** which showed a small stroke on work-up. Echocardiogram was normal with no echocardiographic evidence for a cardiac source of embolism. After I personally reviewed the results from the two different hospital MRI reports which showed the same multi foci restrictive diffusion under similar condition and like circumstances stated that the standard of care generally recognized and accepted is the same and Trident breached this same standard of care in failing to diagnose the source of multi foci restrictive diffusion as evidence suggesting a cardio embolic phenomenon and prior chronic hemorrhage injury on MRI and on work-up which is the likely source of the CVA injury." Therefore, Washington contends viewing this Courts' prior decision Ranucci, II, and the rules of statutory construction dealing with the same subject matter the affidavits are sufficient to meet the statutory requirements. Ranucci v. Crain, 409 S.C. 493, 501-508, 763 S.E.2d 189(2014)(Because there are no word of limitation surrounding the reference to section 15-36-100, we find it is incorporated into section 15-79-125 in its entirety. ... . 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., 409 S.C. 359, 378 n. 13, 747 S.E.2d 757, 767 n. 13 (2013)(declining to reject affidavit presented as proof of workers' compensation insurance as there was "no basis for which to reject the affidavit as it is by it's very nature a sworn statement intended as documentary evidence in a legal proceeding"); Cf. Romano v. Stanley, 90 N.Y.2d 444, 448-452,684 N.E.2d 19, 661 N.Y.S.2d 589(1987); Adams v. Pilarte, 152 A.D.3d 97, 100-102, 2017 N.Y. Slip Op 04913, 54 N.Y. S.3d 398(2017); Salch v. Pasatore, 60 N.Y.2d 851, 852-853(1983) (Complaint verified by personal knowledge detailed sufficient for affidavit of merit). Id. Therefore, Washington contents Trident's conclusion that Washington did not filed a NOI and qualified expert witness affidavit and the pleadings were defective to comply with S.C. Code Statutes 15-79-125(A) and 15-36-100 and the circuit order granting motion to dismiss were error of law and conflicts with the statute and this Court's decision Ranucci, II. Id. {Appendix-Record on Appeal, pp. 1-6; pp. 56-61; pp. 62-63}. Id., S.C. Code Statutes 15-79-125(A), 15-36-100, Ranucci, II.

Finally, the complaint pleadings referenced S.C. Code Statute 15-36-100(C)(2) statutory requirements common knowledge exception to expert witness affidavit. {Appendix-Record on Appeal, pp. 9-11; pp. 70-73; pp. 79- 95}. The doctors opinion established the required standard of care of a Radiologist and a Hospitalist when embolism of a cardiac

source is a possibility **noted** " After reading the MRI last night, the radiologist called Dr. Khokhar and informed Dr. Khokhar that the patient had multiple foci of restrictive diffusion in the left parietal lobe with evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain chronicity. Given the multifocality it was suggested that the acute cerebrovascular accident was due to a cardio embolic phenomenon. In addition there were additional areas of chronic ischemic changes in the left occipital lobe. I called Mr. Washington at home and told him he needed to come back to the hospital immediately and be put on anticoagulation because embolism was the likely source of his CVA injury. **Of note** we did received documentation from Trident which showed a small stroke but no evidence of a cardio embolic source on MRI then or during his work-up. I did order a Heparin drip given that embolism is a possibility, consult Neurology to treat per Neurology protocol. Further testing will follow." and verified " Patient admitted atrial thrombus detected on TEE. Was placed on heparin gtt to transition to coumadin; Discharge plan is follow up INR in 2 days with adjustments made by PCP, needs follow up with PCP in 1-2 weeks." Grier v. Amisub, 397 S.C. 532, 537-538, 725 S.E.2d 693(2012)(This section in turn states the plaintiff has to submit "an affidavit of an expert witness which must speci fy at least one negligent act or omission claimed to exist and the factual basis for each claim....We therefore hold under these well-established principles that section 15-36-100(B) requires that an expert render an opinion only as to breach of the standard of care.") Id., 15-36-100(B).

Washington, contention is the doctors already established what the generally recognized and accepted standard of care MRI required to show and Trident negligent/acts or omissions in failure to follow them **a jury** could determined the **factual issues** of simply

who to believe was telling the truth of the condition of the heart whether or not it was normal with no echocardiograpic source of cardioembolism, no hemorrhage; MRI result with multi foci restrictive diffusion suggest a cardio embolic phenomenon; Trident knew he needed anticoagulation treatment with instruction for follow up care for adjustment of INR with PCP to prevent future clots, stroke, and embolism rather than aspirin treatment. Cox v. Lund, 286 S.C. 410, 414-417, 334 S.E.2d 116(1985)(same). Additionally since the second EKG results at Trident showed evident of a cardiac source restrictive blood flow and recommended further testing to consider anterolateral ischemia that Trident knew to immediately follow these same generally recognized and accepted procedures is common knowledge. {Appendix-Record on Appeal, p. 35). COX v. Lund, 286 S.C. 410, 414-417, 334 S.E.2d 116(1985(same). Therefore, Washington contend the circuit order ruling that medical malpractice treatment of anticoagulation was not a matter of common and lacks merit that a jury could infer but required an expert witness affidavit filed under S.C. Code Statute 15-36-100 and ruled Washington did not comply with the statute requirement therefore the action must be dismiss was an error of law and conflicts with prior decisions of this court. {Appendix-Record on Appeal, pp. 1-6; pp. 9-11; pp. 56-61; pp. 70-73; pp. 79-95}. Cox v. Lund, 286 S.C. 410, 414-417, 334 S.E.2d 116(1985)(same) ; Brouwer v. Sisters of Charity Providence Hospitals, 409 S.C. 514, 522, 763 S.E.2d 200(2014)(We find the substance of Brouwer's allegation, I,e., that the negligent exposure of a patient to latex with a known allergy can result in an allergic reaction in that patient, is a matter within the common knowledge or experience so that no special learning is needed to evaluate Respondents' conduct at the pre-litigation stage)(citing cases).

On **10/25/**12 Appellant Washington signed a notice of claim form claiming he suffered medical injury as a patient at Trident authorizing the disclosure of all medical records from Trident pertaining to his medical condition and as applicable under S.C. Code Statutes release of medical records. On September 11, 2015 Washington amended and refiled the **10/25/12** pre-suit NOI to file suit under S.C. Code Statute 15-79-125(A) and expert witness affidavits under S.C. Code Statute 15-36-100 attached and incorporated by reference into the complaint pleadings filed under the same statutes and pleadings {Appendix-Record, pp. 9-11; pp. 20-55; pp. 70-73; pp. 79-95} alleging Trident was negligent in failing follow the generally recognized and accepted practices/procedures to diagnose and treat his injury embolism of a cardiac source; atrial thrombus and hemorrhage The affidavits specified the negligent acts and omissions claimed to exist and the factual basis for each claim based on the available evidence when the affidavits were filed on **10/25/12** were attached and incorporated by reference to complaint naming Trident as the proper party defendant and statements of the facts showing, Washington was entitled to damage relief and requested ADR mediation. {Appendix-Record on Appeal, pp. 7-11; pp. 20-55; pp. 70-73; 79-95; pp. 108-110}. Washington contends consistent with this Courts' prior decisions he should be allowed to invoke S.C. Code Statutes 15-36-100(E) because the attached amended **10/25/12** S.C. Code Statutes 15-79-125(A) pre-suit NOI to file suit and 15-36-100 expert witness affidavits incorporated by reference the pre-litigation pleadings in the complaint because all pre-litigation statutory pleadings requirements were **sufficiently satisfied** within the 30 days allowed to cure any

procedural defects in the NOI and the affidavits and tolled all applicable statute of limitations. Therefore, the Circuit Court erred and conflicts Wilkinson. {Appendix-Record on Appeal, pp. 1-6; pp. 7-11; pp. 20-55; pp. 70-73; pp. 79-95}. Wilkinson v. East Cooper Community Hospital, 410 S.C. 163, 171-172, 763 S.E.2d 426(2014)(same). Id. Likewise, Washington contends he should be allowed the pleadings in the two pre-suit S.C. Code Statutes 15-79-125(A) NOI to file suit attached and incorporated by reference to the complaint to be construed together as a single pleading dealing with same subject matter read as a whole to produce a single harmonious result as required under the rules of statutory construction. Ranucci v. Crain, 409 S.C. 493, 500, 763 S.E.2d 189(2014)("the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." Id. Citing S.C. Ports Auth. V. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629(2006). Id. Thus, Washington contends under this well-established rule and prior decisions of this Court his amended/refiled NOI to file suit dated and signed on **10/25/12** and complaint must be construed together and considered timely filed as well as the supplemented affidavits statutorily allowed under S.C. Code Statute 15-36-100(E) to cure the defective the 10/25/12 NOI and expert witness affidavit pleadings. Washington, should be allowed to invoke 15-36-100(E) because on 1/5/16 Respondent Trident challenged the above documents pleadings in the complaint citing 15-79-125(A) and 15-36-100 as " malpractice litigation pleadings" and contended the same cited statutes pleadings attached to the complaint are " defective for a total absence of the statutorily required NOI and expert witness affidavit as a prerequisite to filing the instance medical malpractice action." { Appendix-Record on Appeal, pp. 62-63}. At a hearing held on

1/7/16 the circuit court ruled Washington did not filed a NOI and expert witness affidavit prior to filing the action and rejected oral arguments requested by Washington to admit the amended documents into evidence and rejected amendment of complaint for the same reason. The court ruled the documents were not qualified to meet the statutes requirements of pre-suit NOI to file suit and expert witness affidavits and could not be used in medical malpractice case and dismissed the action. {Appendix-Record on Appeal, pp. 1-6; pp. 56-61}. Therefore, Washington contention is the courts' ruling and order was an error of law and conflicts with Wilkinson and S.C. Code Statute 15-36-100(E) legislative intent that the " defective NOI and Affidavits are exempted from dismissal within (30) thirty days of service of the motion alleging that the affidavit is defective to cure the defects by amendment" . Id. Likewise, since the Court of Appeals affirmed the dismissal and denied rehearing on the same grounds these orders are erroneous and conflicts with 15-36-100(E) and Wilkinson. {Appendix-Orders of the Court of Appeals}.

In Wilkinson v. East Cooper Community Hospital, Inc., 410 S.C. 163, 171-175, 763 S.E.2d 426(201) this Court stated: (Recently, this Court reversed Ranucci I. Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189(2014) ("Ranucci II"). In so ruling, we held that section 15-79-125(A) incorporates section 15-36-100 in its entirety. {Appendix-Record on Appeal, Washington's Motion for rehearing in the Court of Appeals, pp. 10-16}. Thus, we ruled that a medical malpractice claimant may invoke section 15-36-100(C)(1), which permit's the claimant to file an expert witness affidavit within forty-five days after filing the NOI. Wilkinson acted within the statutorily designated time and filed the affidavit of Dr. Newkirk On October 5, 2011. {Appendix-Record on Appeal, pp. 70-73;

pp. 79-95}. As a result, Wilkinson's properly filed NOI Tolled all statute of limitation. Accordingly, the circuit court erred. After the NOI was properly filed the parties strictly adhered to the pre-litigation procedure outlined in 15-79-125 by engaging in discovery and participated in mediation. {Appendix-Record on Appeal, p. 7; pp. 20-55; pp. 70-73; pp. 79-95; 108-109}. Following fail mediation attempt, Wilkinson initiated her civil action by timely filing summons and complaint as required by section 15-79-125(E). {Appendix-Record on Appeal, pp. 7-11}. Consequently, Wilkinson complied with the pre-litigation requirements and timely initiated her civil action. {Appendix-Record on Appeal, pp. 7-11; pp. 70-73; pp.79-95}. Having found that Wilkinson timely initiated her civil action, the question becomes whether the Complaint was sufficient to comply with the requirements of section 15-36-100 as Wilkinson never supplemented this pleading with and expert witness affidavit. As a threshold matter, we disagree with any contention that the clerk of court's assignment of separate Common Pleas numbers to the NOI and the Complaint converted Wilkinson's medical malpractice case into two civil cases that required two expert affidavits. {Appendix-Record on Appeal, pp.9-11; pp. 62-63; pp. 70-73; pp. 79-95}. The assignment of a different case number case number to the pre-litigation pleadings and the litigation pleadings is of no consequence because they both comprise a single medical malpractice claim. See 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 NOI is serve on a defendant must be the same as the case number assigned to the complaint served on that defendant if a civil action is ultimately initiated"). As we interpret S.C. Code Statute 15-36-100(B), the plain language of the

first sentence expressly exempts a ... claimant from filing a second expert affidavit as one has already been filed with NOI pursuant to section 15-79-125. Such a construction harmonizes the two statutes and is consistent with the intent of the legislature ..... Finally, such an interpretation is consistent with the Court's decisions to permit medical malpractice cases to proceed on the merits rather than affirm unwarranted dismissal on technical noncompliance with the medical malpractice statutes. {Appendix-Record on Appeal, pp. 9-11; pp. 20-55; pp. 79-95; Court of Appeals Orders; Appellant Final Brief in Reply, pp. 3-16 and Motion for Rehearing, pp. 10-17 in the Court of Appeals}. See Ross v. Waccamaw Cmty. Hosp., 404 S.C. 56, 744 S.E.2d 547(2013)(same); Grier v. AMISUB of S.C.., Inc., 397 S.C. 532, 725 S.E.2d 693(2012)(same). Based on the foregoing, we hold the circuit court erred in granting Respondents' motion to dismiss as Wilkinson's Complaint was timely and sufficient to properly initiate a civil action for medical malpractice. {Appendix-Record on Appeal, pp. 1-6; pp. 7-11; pp. 56-61}. Having reversed Ranucci I, we hold Wilkinson could invoke section 15-36-100(C)(1), which extend the time for filing the expert witness affidavit with her NOI and tolled the statute of limitations. As a result Wilkinson timely filed her complaint. ..... Accordingly, we reverse the decision of the circuit court and remand the case for further proceedings. REVERSED AND REMAND. Id. Accordingly, Washington contends based upon the above application of Wilkinson in its entirety to the facts and circumstances in his case he has clearly met the conditions in Wilkinson that he is in compliance with the statutorily mandated pre-suit NOI and expert witness affidavit requirements and the Complaint was timely filed citing the Appendix-Record on Appeal as it applies to this action. Wilkinson is controlling in its entirety.

Washington, reference decisions from other jurisdictions to support his contention and provide guidance that the amended refiled authorization disclosure notice of claim filed under 15-79-125(A) pre-suit **10/25/12** NOI to file suit and 15-36-100 expert witness affidavits attached and incorporated into the complaint filed on 9/11/15 were sufficient and timely filed to satisfy the statutorily requirements to initiate the action.{ Appendix-Record on Appeal, pp. 7-11; pp. 20-55; pp. 70-73 and pp. 79-95}.See Texas West Oaks Hosp., LP v. Williams, 371 S.W.3d 171,189-190 (2012)(The dissent argue several other points...The dissent contends that other provisions of TMLA should trump the definition of HCLCs. (1) Notice of suit and medical records release provisions. The dissent similarly notes that inclusion of non-patients as claimants would render the notice of the suit to health care providers, and accompanying medical-records releases, to health care providers questionable. Disagreeing with Justice Lehrmann's dissent on all points. (2) Expert report provisions The dissent similarly asserts that the Act's definition of "expert report" and discussion of expert qualifications means that HCLCs must be based on a patient -physician relationship because those provisions contain references to departures from from accepted standards by physicians or health care providers and knowledge of accepted standards for diagnosing , caring, or treating the injury, or condition at issue in the claim. The fact that experts submitting reports have knowledge of the alleged standards at issue does not logically lead to a conclusion that only a patient's suit against a health care provider can constitute an HCLC, especially, especially when such a conclusion conflicts with the Legislature's substitution for "claimant" for "patient" in the TMLA's definition of HCLAs. ..... . Disagreeing with dissent on all points again);Baxter v. Dignity Health, 357 P..3d 927, 931(2015)(Baxter's complaint

incorporates Dr. Cadden's declaration and alleges that the declaration was being filed "at or about the time of filing of the complaint." Dr. Cadden's declaration, filed just five judicial hours after the complaint, verifies the truth of the allegations; it is sworn under penalty of perjury and dated August 16, 2013, three days before Baxter filed the complaint. Better practice would have been to attach the declaration to the complaint and file the two documents together. But the fact remains that Baxter literally complied with NRS 41A.071 and respondent medical providers were not negatively affected in any way by the separate submissions. The complaint incorporates the declaration and both were served together on medical providers, who were able to challenge the sufficiency of the declaration in their motion to dismiss. They thus were in "no worse position" than if Baxter's had attached the affidavit to the complaint instead of filing it one day later); Boodt v. Borgess Medical Center, 751 N.W.2d 44, 51 n. 1(2008)(The dissent contends that the notice of intent does not contain such a statement because, according to dissent, it states that "Lauer negligently cause Waltz's death by the continued administration of an anticoagulation after internal bleeding was detected." Post at 49. However, contrary to the dissent's contention, this statement cannot be found anywhere in the notice of intent. Instead, the notice only states that defendants "[f]ailed to timely recognize the perforation and stop the anticoagulation and order an echocardiogram[.]" Nowhere in the notice does plaintiff states the "manner in which [this failure] was the proximate cause of his injury claimed in the notice."); Galik v. Clara Masse Med. Center, 771 A.2d 1141, 1142-1153, 167 N.J. 341(2001)(concluding plaintiff before and after the complaint were filed based on the two expert report substantially complied with statutorily intent of affidavit of merit}.

CONCLUSION

Having shown that this Court reversed Ranucci I, Washington has clearly shown that the Circuit Court erred in it's conclusion that Washington did not filed a qualified expert witness affidavit under 15-36-100. Furthermore, based upon Wilkinson in it's entirety as applied to the facts and circumstances to this case the Circuit Court erred that Washington did not filed a pre-suit 15-79-125(A) NOI prior to filing this action. Alternatively, Washington, could invoke 15-36-100(E) and cure any defects in NOI and the expert witness affidavits within 30 days of Trident challenged the defects in its responsive pleadings but the Circuit Court denied motion to amend. Likewise, Washington has shown the Circuit Court erred in ruling the 15-36-100(C)(2) common Knowledge Exception did not apply to his case. Finally, Washington action was properly and timely initiated. Accordingly, the Court of Appeals orders affirming dismissal of the action and denying rehearing are erroneous and conflicts this Courts decisions and should be reversed and remanded for further proceedings consistent with this Court's prior decisions not to affirm unwarranted dismissal based on technical noncompliance with the medical malpractice statutes rather than to proceed on the merits.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day a copy of the foregoing documents were duly served upon each party to the cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, **VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED,** properly addressed as follows:

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This 22nd dat of March, 2018.

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