

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Jane Doe,

Plaintiff,

v.

Oconee Memorial Hospital, Greenville Health System,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2017-CP-37-00700

Order Granting Defendant Greenville Health System's Motion to Dismiss

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SC Court of Appeals

This matter came before the Court upon Defendant Greenville Health System's ("GHS") motion to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.¹ The motion was heard on June 4, 2018. Having listened to oral arguments and reviewed the submissions of the parties, for the reasons more fully set forth below, I hereby grant GHS's motion to dismiss as to the causes of action set forth in the Plaintiff's Complaint. This Order is, however, without prejudice to any future claims by the Plaintiff in a new action against the Defendant pertaining to different causes of action.

FACTS²

Plaintiff alleges that she was drugged and sexually assaulted in the early morning hours of December 5, 2015 while in Atlanta, Georgia. She alleges that following the assault, she drove

¹ Plaintiff identifies Oconee Memorial Hospital as a named defendant in her Complaint; however, Oconee Memorial Hospital is not an independent entity capable of being sued. Rather, it is a facility owned and operated by GHS.

² In ruling on Defendant's 12(b)(6) motion, the Court was constrained by the facts alleged in Plaintiff's Complaint. The Court notes that approximately one hour prior to the hearing on June 4, 2018, and without any prior notice to Defendant, Plaintiff electronically filed a motion to amend her complaint. While Plaintiff's counsel briefly mentioned the motion to amend during the hearing, the merits of Plaintiff's motion were not properly before the Court and were not discussed. Further, the Court could not consider the merits of Plaintiff's motion to amend even if it were inclined to do so, because no proposed amended complaint was ever submitted to the Court.

back home to South Carolina and went to Oconee Memorial Hospital ("OMH") where she requested a sexual assault forensic examination and stated her desire to report the assault to law enforcement. GHS employee, Mary Beth Hendricks, attended to Plaintiff and performed the sexual assault forensic examination, which included both swabs and a blood draw.

Upon completion of the examination, Hendricks contacted the Dekalb County Sheriff's Office in Georgia and reported the assault. Hendricks requested Dekalb County Sheriff's Office come collect the examination kit; however, she was advised by the Sheriff's Office that they were unwilling to travel to South Carolina to pick up the kit, and if Plaintiff wished to pursue her claim, she would personally need to take the kit to them in Georgia. Hendricks protested, but was advised by the Sheriff's Office that was the only option. Hendricks reluctantly relayed the Sheriff's Office's instructions to Plaintiff and signed over custody of the kit to Plaintiff.

Plaintiff took the kit to the Dekalb County Sheriff's Office the following day. She gave the kit and her statement to the investigating officer, who advised her that he would be back in touch at a later date. A few weeks later, the investigating officer allegedly reached out to Plaintiff and informed her that there was no blood sample included in the kit from which his office could determine whether Plaintiff had been drugged. She alleges that the officer decided to close the case and not pursue any further action against Plaintiff's alleged attacker due to the lack of the blood sample. In addition, she contends that the officer may have also considered the alleged break in the chain of custody when making the decision to close the case.

LEGAL ANALYSIS

Under Rule 12(b)(6), SCRPC, the Court, upon reviewing all the well pleaded facts in a light most favorable to the claimant, must dismiss the action if the Complaint fails to state a claim upon which relief can be granted. Charleston County Sch. Dist. v. Laidlaw Transit, Inc.,

348 S.C. 420, 559 S.E.2d 362 (Ct. App. 2001). The Court is to consider only the alleged facts and is not to consider the inferences or conclusions of law drawn by the Plaintiff from the facts. Charleston County Sch. Dist. v. S.C. State Ports Auth., 283 S.C. 48, 50, 320 S.E.2d 727, 729 (Ct. App. 1984). Each element of a cause of action must be alleged, and a complaint that omits an element fails to state a claim and must be dismissed. Inman v. Ken Hyatt Chrysler Plymouth, Inc., 294 S.C. 240, 363 S.E.2d 691 (1988).

I. Plaintiff Fails to Plead Facts Sufficient to Support the Duty and Damages Elements of Her Negligence-Causes of Action

Plaintiff's first five causes of action allege negligence on the part of GHS and its employees. In order to survive a motion to dismiss, Plaintiff must allege facts sufficient to establish that GHS owed Plaintiff a duty of care, GHS breached that duty, and Plaintiff sustained damages proximately resulting from the breach. South Carolina Insurance Company v. James C. Greene & Co., 290 S.C. 171, 348 S.E.2d 617 (Ct.App.1986). Plaintiff's claims fail because no legal duty was owed to her in regards to the sexual assault examination kit, and she failed to allege any cognizable damages.

A. No Duty was Owed to Plaintiff in Regards to the Sexual Assault Examination Kit

"A legal duty is that which the law requires to be done or forborne with respect to a particular individual or the public at large." Byerly v. Connor, 301 S.C. 441, 443 415 S.E.2d 796, 798 (1992). A legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance. Madison v. Babcock Ctr., Inc., 371 S.C. 123, 136, 638 S.E.2d 650, 656 (2007). The court must determine, as a matter of law, whether the law recognizes a particular duty. Id. If there is no duty, then the defendant is entitled to a dismissal as a matter of law. Id. The Court finds that GHS owed no duty to Plaintiff in regards to the sexual assault examination kit. Rather, the Court finds that GHS was performing a service on

behalf of law enforcement in collecting evidence for a criminal investigation.

Plaintiff alleges that GHS owed her a duty to collect, preserve, and properly transfer all physical evidence of her alleged sexual assault to law enforcement. She alleges that GHS breached that duty by failing to ensure that the blood samples were in the examination kit and by breaking the chain of custody by giving the kit to Plaintiff rather than giving it directly to law enforcement. However, Plaintiff identified no statute, regulation, rule, ordinance or standard which clearly established a duty owed to her in regards to the handling of the sexual assault examination kit. Like the law enforcement agency it was acting on behalf of, GHS was acting pursuant to statutes, ordinances, and regulations which protect the public at large, but provide no duty of care to individuals. See Wells v. City of Lynchburg, 331 S.C. 296, 308, 501 S.E.2d 746, 752 (Ct. App. 1998); see also Austin v. Beaufort County Sheriff's Office, 377 S.C. 31, 659 S.E.2d 122 (2008) (Court stating that sheriff's office owed no duty to plaintiff to preserve evidence that was collected for a criminal investigation).

Plaintiff argues that GHS's duty flowed from its obligation to provide medical treatment for her alleged sexual assault injuries. While GHS undoubtedly owed a duty of care in rendering medical services, Plaintiff has not alleged injuries stemming from those services.³ Her only alleged injuries stem from her allegations that GHS negligently handled the sexual assault examination kit. While gathering evidence for the sexual assault examination kit, GHS was not rendering medical services or treatment to Plaintiff. Providing medical care for alleged or suspected injuries is a wholly separate function from gathering evidence for a sexual assault examination kit. This is readily apparent by the fact that a person may come to the ED to seek

³ To the extent the allegations in Plaintiff's Complaint could be read to infer injuries stemming from the medical services rendered to her, her claims would sound in medical malpractice. In that case, dismissal would still be appropriate on the basis that Plaintiff failed to comply with the requirements of S.C. Code § 15-79-125.

treatment for an alleged sexual assault, but decline to report the assault to law enforcement and/or complete an examination kit. *See* S.C. § 16-3-1350.

B. Spoliation of Evidence is Not a Cognizable Cause of Action

The Court interprets Plaintiff's claims as an attempt to allege a negligent spoliation of evidence claim; however, South Carolina does not recognize an independent tort for spoliation of evidence. Cole Vision Corp. v. Hobbs, 394 S.C. 144, 151, 714 S.E.2d 537, 541 (2011); see also Austin, supra (refusing to adopt the tort of third party spoliation of evidence where plaintiff sued sheriff's office for destroying evidence that plaintiff alleged prevented her from being able to pursue wrongful death claim against another party).

Plaintiff contends she is asserting "general negligence claims" rather than a claim for spoliation of evidence; however, that same argument was rejected by the Court in *Hobbs*. As noted by the Court,

"Whether denominated as a claim for spoliation of evidence or as a general negligence claim based on spoliation of evidence, the substance of this claim is the same: both are based on the allegation that Cole Vision breached its duty to maintain a key document, the absence of which harmed Hobbs in the underlying lawsuit."

394 S.C. 144, 154, 714 S.E. 2d 537, 542 (2011). The instant case is indistinguishable. Plaintiff claims that she has been harmed by GHS's alleged failure to maintain the blood sample that she claims would have helped her prove she was sexually assaulted. Calling it general negligence doesn't change the fact that the substance of the relief being sought is still the same – she wants GHS held responsible for the allegedly missing evidence. *Id.*

As noted in both Hobbs and Austin, one of the primary policy reasons for refusing to acknowledge a cause of action for spoliation of evidence is the very speculative nature of the damages. Here, Plaintiff alleges the lack of a blood sample prevented her assaulter from being

prosecuted; however, it is extremely speculative to suggest he would have been prosecuted had the blood sample been in the kit.

C. Plaintiff Failed to Assert a Cognizable Injury

Finally, Plaintiff's negligence claims fail because she has not alleged a cognizable injury. In her Complaint, Plaintiff merely alleged that she has "suffered damages, in addition to the loss of her ability to proceed with criminal action against her attacker." (Compl. ¶¶ 27, 33, 43, 51, 56.) At the hearing, Plaintiff's counsel explained that the crux of Plaintiff's injury was the pain of not knowing for certain whether she was drugged and whether she was sexually assaulted. Plaintiff does not allege she sustained a physical injury as a result of GHS's alleged negligence. The only reasonable inference the Court can draw from Plaintiff's allegations is that she has endured emotional distress; however, it is well established that South Carolina does not recognize a claim for negligent infliction of emotional distress under these circumstances. See Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 336 S.E.2d 465 (1985); Doe v. Greenville County School Dist., 375 S.C. 63, 67-68, 651 S.E.2d 305 (2007) (limiting negligent infliction of emotional distress claims to bystander situations only).

II. Plaintiff's Claims do not Amount to an Intentional Infliction of Emotional Distress

For her sixth and final cause of action, Plaintiff asserted an intentional infliction of emotional distress claim. This cause of action further emphasizes that Plaintiff's only alleged injury is one of emotional distress. However, regardless of the label, Plaintiff's claim is unavailing, because the Court still views it as an attempt to assert a spoliation of evidence claim. Hobbs, 394 S.C. 144, 149, 714 S.E.2d 537, 540.

Nevertheless, Plaintiff failed to plead facts sufficient to establish the heightened standard of proof required for an intentional infliction of emotional distress claim. Argoe v. Three Rivers

Behavioral Health, L.L.C., 392 S.C. 462, 475, 710 S.E.2d 67, 74 (2011) (noting higher standard of proof and enumerating elements of intentional infliction of emotional distress claim to include intentional or reckless conduct that exceeds all possible bounds of decency and causes such severe distress that no reasonable man could bear it). The South Carolina Supreme Court has held the circuit courts undertake a “significant gatekeeping role” in analyzing whether the alleged conduct was sufficiently outrageous and the emotional distress sufficiently severe to survive a motion to dismiss. AJG Holdings LLC v. Dunn, 392 S.C. 160, 708 S.E.2d 218 (Ct. App. 2011) (citing Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68, 72 (2007)). In order to establish a claim for intentional infliction of emotional distress, plaintiff must allege that GHS employees intentionally or recklessly conducted themselves in a manner that was “extreme and outrageous,” exceeding “all bounds of decency,” “atrocious,” and “utterly intolerable.” See Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981) (recognizing tort of intentional infliction of emotional distress and adopting elements set forth in Restatement (Second) of Torts § 46).

First, nowhere in the Complaint did Plaintiff allege that GHS employees acted with the intent to cause her severe emotional distress, nor did she allege that the employees were certain or substantially certain that their actions would cause her such distress. Id. Second, the Court finds no reasonable person could determine that following the instructions of a law enforcement officer regarding the handling of evidence of a crime could be considered “extreme and outrageous” conduct. Id. Finally, Plaintiff did not allege such “severe” emotional distress that “no reasonable man could be expected to endure it,” as many, if not most, victims of sexual assault have to deal with the emotions associated with their attacker not being held accountable for his/her actions.

In addition, GHS is a governmental entity and healthcare facility within the meaning of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq. (1976, as amended), and it and its agents and employees are, therefore, entitled to all rights, privileges, defenses, limitations, and immunities afforded by the Act and afforded by the doctrine of sovereign immunity, as is retained by the Act. See Murphy v. Richland Mem. Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995) (citing Benton v Roger C Peace, 313 S.C. 520, 443 S.E.2d 537 (1994)). Pursuant to S.C. Code § 15-78-60(17), GHS has immunity for employee conduct outside the scope of his official duties or which constitutes actual malice or intent to harm. Therefore, even if the GHS employees' conduct could be said to rise to the level of "extreme and outrageous," exceeding "all bounds of decency," "atrocious," and "utterly intolerable," GHS would still be immune from liability. See Cornelius v. City of Columbia, 663 F.Supp.2d 471 (D.S.C. 2009).

WHEREFORE, for the reasons stated herein,

IT IS HEREBY ORDERED; ADJUDGED AND DECREED that the causes of action set forth in Plaintiff's Complaint are hereby dismissed with prejudice.

AND IT IS SO ORDERED.

The Honorable Judge R. Scott Sprouse
Tenth Judicial Circuit

July __, 2018



Oconee Common Pleas

Case Caption: Jane Doe VS Oconee Memorial Hospital , defendant, et al
Case Number: 2017CP3700700
Type: Order/Dismissal

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

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