

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
THELMA R. GARRICK,)	CASE NO. 2018-CP-10-1163
)	
)	
PLAINTIFF,)	
)	
vs.)	DEFENDANTS' ORDER GRANTING
)	MOTION TO DISMISS
)	
DR. GEORGE H. KHOURY AND BON)	
SECOURS ST. FRANCIS WEST)	
ASHLEY ,)	
)	
DEFENDANTS.)	

2018 JUL 25 PM 4:19
 JULIE J. ARMSTRONG
 CLERK OF COURT
 FILED

This matter was before the court on July 12, 2018 on a Motion to Dismiss filed on behalf of Defendants George H. Khoury, M.D. (“Dr. Khoury”) and Bon Secours St. Francis Xavier Hospital (“BSSF”) (hereinafter collectively referred to as “Defendants”). Present at the hearing was Joseph J. Tierney, Jr., counsel for the Defendants. The Plaintiff, Thelma R. Garrick, was provided notice of the date and time of the hearing but was not present at the hearing. After considering the pleadings, arguments of counsel, and relevant South Carolina statutes and case law, I hereby GRANT the Defendants’ Motion to Dismiss.

Factual and Procedural Background

On March 5, 2018, the Plaintiff filed a Summons and Complaint in which she asserts allegations of medical negligence the Defendants. The allegations in the Complaint relate to a back surgery performed by Dr. Khoury and allegedly negligent care and treatment provided by the nurses and other non-physician staff at BSSF. The Plaintiff alleges that she has sustained injuries and suffered damages as a result of the actions of the Defendants.

On March 22, 2018 the Defendants filed a Motion to Dismiss the Plaintiff's Complaint for failure to comply with S.C. Code Ann. §15-79-125. In pertinent part, S.C. Code Ann. §15-79-125(A) provides that "[p]rior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff *shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness*, subject to the affidavit requirements established in Section 15-36-100." (emphasis added) Section 15-36-100(C) provides, in pertinent part, that [i]f an affidavit is not filed within the period specified in this subsection...and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss...that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim." The Plaintiff filed a pleading entitled *Rebuttal to YCR 3810-20180252 Motion to Dismiss* on April 3, 2018.


Findings of Fact and Conclusions of Law

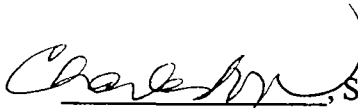
I find that the Plaintiff's Complaint alleges medical negligence against the Defendants and as such the Plaintiff is required to comply with S.C. Code Ann. §15-79-125. S.C. Code Ann. §15-79-125(A) provides, in part, that "[p]rior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff *shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness*, subject to the affidavit requirements established in Section 15-36-100."

I find that the Plaintiff has not filed a Notice of Intent to File Suit or the affidavit of an expert witness as required by S.C. Code Ann. §15-79-125(A) and therefore I find that the Plaintiff's Complaint is subject to dismissal in accordance with S.C. Code Ann. § 15-36-100(C) and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, it is hereby ORDERED that the Plaintiff's Complaint is hereby
without DSS
dismissed ~~with~~ prejudice in accordance S.C. Code Ann. §15-36-100(C) and Rule 12(b)(6) of the
South Carolina Rules of Civil Procedure for failure to comply with §15-79-125(A). Defendants'
Motion to Dismiss is hereby GRANTED.

AND IT IS SO ORDERED.


The Honorable Diane Schafer Goodstein
Presiding Judge, Ninth Judicial Circuit


South Carolina

Dated: 7-25-18