THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2017-CP-37-00700

Jane Doe ..... Appellant,

v.

Oconee Memorial Hospital, Greenville Health System ..... Respondents.

INITIAL BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 1

STANDARD OF REVIEW 2

ARGUMENTS 3

I. The Circuit Court Correctly Found That Appellant Failed to Plead Facts Sufficient to Support the Duty and Damages Elements of Her Negligence Causes of Action 3

A. The Circuit Court Correctly Found No Duty Was Owed to Appellant in Regards to the Sexual Assault Examination Kit 3

B. The Circuit Court Correctly Interpreted Appellant's Claims as an Attempt to Assert a Spoliation of Evidence Cause of Action 7

C. The Circuit Court Correctly Found That Appellant Failed to Assert a Cognizable Injury 9

II. The Circuit Court Correctly Found That Appellant's Claims Do Not Amount to an Intentional Infliction of Emotional Distress 10

III. The Circuit Court Correctly Determined That It Could Not Address the Merits of Appellant's Motion to Amend Before Granting GHS' Motion to Dismiss 12

CONCLUSION 14

TABLE OF AUTHORITIES

Cases

AJG Holdings LLC v. Dunn, 392 S.C. 160, 708 S.E.2d 218 (Ct. App. 2011) 10, 11

Argoe v. Three Rivers Behavioral Health, L.L.C., 392 S.C. 462, 710 S.E.2d 67 (2011) 10

Austin v. Beaufort County Sheriff's Office, 377 S.C. 31, 659 S.E.2d 122 (2008) 4, 7, 8

Benton v. Roger C. Peace, 313 S.C. 520, 443 S.E.2d 537 (1994) 12

Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (1997) 12

Byerly v. Connor, 301 S.C. 441, 415 S.E.2d 796 (1992) 3

Charleston County Sch. Dist. v. S.C. State Ports Auth., 283 S.C. 48, 320 S.E.2d 727 (Ct. App. 1984) 3

Cole Vision Corp. v. Hobbs, 394 S.C. 144, 714 S.E.2d 537 (2011) 7, 8, 10

Cornelius v. City of Columbia, 663 F.Supp.2d 471 (D.S.C. 2009) 12

Doe v. Greenville County School Dist., 375 S.C. 63, 651 S.E.2d 305 (2007) 9, 10

Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2007) 7

Dye v. Gainey, 320 S.C. 65, 463 S.E.2d 97 (Ct. App. 1995) 7

Food Mart v. South Carolina Dep't of Health and Envtl. Control, 322 S.C. 232, 471 S.E.2d 688 (1996) 12

Ford v. Hutson, 276 S.C. 157, 276 S.E.2d 776 (1981) 11

Hansson v. Scalise Builders of S.C., 374 S.C. 352, 650 S.E.2d 68 (2007) 10

Inman v. Ken Hyatt Chrysler Plymouth, Inc., 294 S.C. 240, 363 S.E.2d 691 (1988) 3

Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 336 S.E.2d 465 (1985) 9

Madison v. Babcock Ctr., Inc. 371 S.C. 123, 638 S.E.2d 650 (2007) 3

Murphy v. Richland Mem. Hosp., 317 S.C. 560, 455 S.E.2d 688 (1995) 12

Portman v. Garbade, 337 S.C. 186, 522 S.E.2d 830 (Ct. App. 1999) 12

Rice-Marko v. Wachovia Corp., 398 S.C. 301, 728 S.E.2d 61 (Ct. App. 2012) 2

South Carolina Ins. Co. v. James C. Greene & Co., 290 S.C. 171, 348 S.E.2d 617 (Ct. App. 1986) 3

Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016) 13

Trask v. Beaufort County, 392 S.C. 560, 709 S.E.2d 536 (2011) 4

Wells v. City of Lynchburg, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998) 4

Statutes

Restatement (Second) of Torts § 46 11

South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq. (1976, as amended) ... 11, 12

S.C. Code § 15-78-60(17) 12

S.C. Code § 15-79-125 6

S.C. Code § 16-3-1350 ..... 4, 5, 6

S.C. Const. Art. I, § 24 5

Other Authorities

South Carolina Attorney General's Sexual Assault Protocol for the Investigation, Prosecution, and Judgment of Sexual Assault, 2nd Ed., 2015 ..... 5, 6

STATEMENT OF ISSUES ON APPEAL

I. **Did the Circuit Court err in holding that Appellant failed to plead facts sufficient to support the duty and damages elements of her negligence causes of action?**

II. **Did the Circuit Court err in holding that Appellant's claims did not amount to intentional infliction of emotional distress?**

III. **Did the Circuit Court err in granting GHS's motion to dismiss without addressing the merits of Appellant's motion to amend?**

STATEMENT OF THE CASE

Jane Doe ("Appellant") filed this action on December 5, 2017 against Oconee Memorial Hospital[1] and Greenville Health System ("Respondent" or "GHS"). The Complaint included the following causes of action, all of which stem from a sexual assault forensic examination performed by a GHS employee at Appellant's request following her allegations that she had been drugged and sexually assaulted in the early morning hours of December 5, 2015: (1) negligence – failure to properly collect and protect evidence; (2) negligence – failure to order necessary tests; (3) gross negligence – failure to properly collect and protect evidence; (4) gross negligence – failure to order necessary tests; (5) negligent supervision; and (6) intentional infliction of emotional distress. GHS filed a motion to dismiss the Complaint on January 10, 2018.

A hearing on the Motion to Dismiss was held on June 4, 2018. Just prior to the start of the hearing, Appellant filed a motion to amend her Complaint. On June 8, Appellant filed a Memorandum in Opposition to the Motion to Dismiss and GHS filed a reply memorandum. The circuit court issued an Order granting the Motion to Dismiss on July 9, 2018. By way of the Order, the circuit court dismissed with prejudice the six causes of action set forth in Appellant's

[1] Oconee Memorial Hospital is not a distinct entity capable of being sued, but rather is the name of a hospital owned and operated by GHS.

Complaint. (July 9, 2018 Order, pg. 1). However, the circuit court provided that its ruling was "without prejudice to any future claims by the Plaintiff in a new action against the Defendant pertaining to different causes of action." (Id.).

Contrary to what is stated in the Appellant's Brief, the Order did address Appellant's Motion to Amend. The circuit court included the following as a footnote to the "Facts" section:

> "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." (Order, pg. 1).

Appellant filed a Motion to Reconsider on July 16, 2018, which was followed by GHS' Memorandum in Opposition on July 18, 2018. The circuit court issued a written order denying Appellant's Motion for Reconsideration on July 19, 2018. Appellant filed the instant Notice of Appeal of August 8, 2018.

STANDARD OF REVIEW

In reviewing the dismissal of an action for failure of the pleading to state facts sufficient to constitute a cause of action, the appellate court applies the same standard of review as the trial court. *Rice-Marko v. Wachovia Corp.*, 398 S.C. 301, 728 S.E.2d 61 (Ct. App. 2012). In deciding whether the trial court properly granted the motion to dismiss based on a failure to state facts sufficient to constitute a cause of action, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Id.* 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).

ARGUMENTS

I. THE CIRCUIT COURT CORRECTLY FOUND THAT APPELLANT FAILED TO PLEAD FACTS SUFFICIENT TO SUPPORT THE DUTY AND DAMAGES ELEMENTS OF HER NEGLIGENCE CAUSES OF ACTION.

Appellant's first five causes of action allege negligence on the part of GHS and its employees. In order to survive a motion to dismiss, a plaintiff asserting a negligence cause of action must allege facts sufficient to establish that defendant owed plaintiff a duty of care, defendant breached that duty, and plaintiff sustained damages proximately resulting from the breach. *South Carolina Ins. Co. v. James C. Greene & Co.*, 290 S.C. 171, 348 S.E.2d 617 (Ct.App.1986). The circuit court correctly found that Appellant failed to plead facts sufficient to establish two of the three elements – namely that GHS owed Appellant a duty and that Appellant suffered a cognizable injury.

A. The Circuit Court Correctly Found No Duty Was Owed to Appellant 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 circuit court correctly found that GHS owed no duty to Appellant in

regards to the sexual assault examination kit.

In her Complaint, Appellant alleged GHS owed her a duty to collect, preserve, and properly transfer all physical evidence of her alleged sexual assault to law enforcement. (*See i.e.* Compl., ¶ 20). She further alleged GHS breached that duty by failing to ensure the blood samples were in the examination kit and by breaking the chain of custody by giving the kit to Appellant rather than giving it directly to law enforcement. (*See i.e.* Compl., ¶ 23).

In a negligence cause of action, it is the plaintiff's burden to establish that a duty of care is owed to her by the defendant. *Trask v. Beaufort County*, 392 S.C. 560, 709 S.E.2d 536 (2011). In her Brief, Appellant argues GHS owed a specific duty to her (App. Brief, p. 6); however, Appellant has identified no legal authority for her proposition that a hospital owes a duty of care to a patient in regards to its handling of a sexual assault examination kit. Rather, the circuit court correctly found GHS was acting pursuant to statutes which protect the public at large, but provide no duty of care to specific 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).

In response, Appellant seems to acknowledge there is no legal authority for her proposed duty when she contends there are no statutes or laws which define the duties owed by a hospital regarding the treatment of rape victims. (App. Brief, p. 7.) GHS would agree with Appellant that there are no statutes or laws that define the duties owed by a hospital to a specific individual; however, there are laws which establish a public duty. S.C. Code § 16-3-1350 outlines the medicolegal examination process, including the gathering of "evidence from the body;" provides information in regards to compensation for such examinations; and, charges the Office of the

Attorney General with the responsibility of developing a medicolegal examination protocol. As recognized by Appellant in her Brief, the South Carolina Attorney General's Sexual Assault Protocol for the Investigation, Prosecution, and Judgment of Sexual Assault, 2nd Ed., 2015 (hereinafter "AG Protocol") provides further guidance to hospitals on the medicolegal examination process, including guidance for the collection and handling of evidence to be included in a sexual assault examination kit. However, the legislature has made clear that to the extent a hospital owes a duty under the sexual assault laws, the duty is owed to the public at large and not to any one individual. *See* S.C. Const. Art. I, § 24 (referring to S.C. Code Ann. § 16-3-1350 and stating that "[n]othing in this section creates a civil cause of action on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section.")

Appellant extensively argues that privacy laws and the fact that she had to consent to the assault being reported to law enforcement are inconsistent with the circuit court's ruling that GHS was acting on behalf of law enforcement. (App. Brief, pp. 8-10.) Appellant repeatedly cites to the AG Protocol in support of her argument; however, she omits key sections of the AG Protocol, which undermine her position. Pursuant to the AG Protocol, a sexual assault victim who reports to the hospital has three options: 1) she can opt to receive just medical care without undergoing a forensic exam and the collection of evidence for a sexual assault examination kit; 2) she can elect to undergo a forensic exam and report the assault to law enforcement pursuant to traditional law enforcement-involved reporting protocol, or; 3) she can undergo a forensic exam and report the assault anonymously. AG Protocol, p. 79. If a victim were to choose option 3, the hospital would still be required to provide the sexual assault examination kit without any personal identifying information to law enforcement for safe keeping until such time as the victim may decide to pursue

legal action. *Id.* Again, when read as a whole, it is clear from the AG Protocol, that while performing duties related to the sexual assault examination kit, a hospital is performing a legal function on behalf of law enforcement, as the sole purpose of the examination kit is to preserve evidence in case a criminal action is pursued.

Appellant further argues GHS's duty flowed from its obligation to provide medical treatment for her alleged sexual assault injuries. (App. Brief, p. 7). While GHS undoubtedly owed a duty of care in rendering medical services, Appellant has not alleged injuries stemming from those services.[2] Her only alleged injuries stem from her allegations that GHS negligently handled the sexual assault examination kit.

A sexual assault examination performed at a hospital has two distinct aspects – a medical aspect whereby the patient is examined and treated as necessary by healthcare professionals for physical injuries caused by the rape, and a legal aspect, whereby evidence is gathered for legal purposes. This duality is demonstrated by the fact that S.C. Code § 16-3-1350 refers to the examination as "medicolegal." While gathering evidence for the sexual assault examination kit, GHS was not treating Appellant for any medical needs; rather, as previously discussed, it was performing a legal function on behalf of law enforcement.

Perhaps recognizing that no common law or statutory duty exists, Appellant next argues GHS owed her a contractual duty when GHS "agreed to provide services, including a sexual assault forensic examination, in exchange for compensation by the Appellant and/or her agents." (App. Brief, p. 11). She also argues GHS owed her a duty "as a result of [her] property interest in the

[2] To the extent the allegations in Appellant'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 have still been appropriate on the basis that she failed to comply with the requirements of S.C. Code § 15-79-125.

contents of the rape kit" and "a special circumstance, namely, that the Respondents assumed a duty to the Appellant when they volunteered to provide the services rendered for compensation when performing the Sexual Assault Forensic Examination requested by Appellant." (*Id.*) However, the Complaint lacks any factual allegations to support such arguments. The Complaint lacks any reference to a contractual relationship, nor does it contain any reference as to how, or even if, GHS was compensated for any of the services it provided. As Appellant stated in her Brief, such arguments were "explained in her memorandum submitted to the circuit court" (App. Brief, p. 11), but arguments made or facts alleged for the first time in a memorandum in opposition are not sufficient to survive a motion to dismiss, as the court, when ruling on a motion to dismiss, must confine itself to only those facts alleged within the four corners of the complaint. *See Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007); *Dye v. Gainey*, 320 S.C. 65, 67, 463 S.E.2d 97, 98 (Ct. App. 1995). Based upon the allegations actually set forth in the Complaint, the circuit court correctly found Appellant failed to plead facts sufficient to establish GHS owed her a duty of care in regards to the sexual assault examination kit.

B. The Circuit Court Correctly Interpreted Appellant's Claims as an Attempt to Assert a Spoliation of Evidence Cause of Action.

The circuit court interpreted Appellant's claims as an attempt to allege a negligent spoliation of evidence claim, which is not recognized as an independent tort under South Carolina law. *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 a wrongful death claim against another party).

Appellant contends she was asserting 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."

Id. at 154, 714 S.E. 2d 537, 542 (2011).

Appellant argues the instant case is distinguishable from *Hobbs*, because Appellant's claims were not based solely on the loss of evidence necessary for a lawsuit. As an initial matter, Appellant cites no authority for her proposed limitation of the holding in *Hobbs*. But regardless, while the Complaint contained the naked assertion that Appellant sustained "damages, beyond the inability to proceed with criminal action against her attacker," the only facts alleged by Appellant in support of her damages claim relate to her criminal case being closed due to the lack of blood evidence and possibly due to the break in the chain in custody. (*See* Compl., ¶ 16.)

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. *Hobbs* at 152, 714 S.E. 2d 537, 541 (2011). Here, Appellant alleged in her Complaint the lack of a blood sample prevented the prosecution of her attacker; however, it is extremely speculative to suggest that he would have been prosecuted had the blood sample been in the kit. First off, the blood sample may or may not have revealed if Appellant was drugged, but even if it showed evidence of a drug in her system, prosecutors would still have to determine there was sufficient evidence to suggest her alleged attacker was responsible for drugging her. There is no indication whether any such evidence existed.

The "significant other damages" outlined in Appellant's Brief (App. Brief, pg. 15) were not alleged in the Complaint, but those damages are also very speculative in nature. Appellant

contends that as a result of GHS's negligence she has been unable to confirm the identity of her attacker, and whether he achieved penetration or ejaculated while raping her. First off, her contention that the lack of a blood sample prevented her from being able to confirm the identity of her attacker appears to be in direct contrast to her allegation in the Complaint wherein she affirmatively stated she knew her attacker. (*See* Compl., ¶ 6). If the allegation in her Complaint was false and she is actually unsure of his identity, that uncertainty was not in any way caused by GHS's alleged mishandling of her blood sample, as it is inconceivable how a sample of Plaintiff's blood could possibly be used to confirm someone else's identity. The same is true in regards to her allegation that it could let her know if he achieved penetration or ejaculated. If Appellant does not already know those things, a sample of her blood would not help resolve the mystery.

C. The Circuit Court Correctly Found That Appellant Failed To Assert A Cognizable Injury.

As previously noted, Appellant merely alleged she "suffered damages, in addition to the loss of her ability to proceed with criminal action against her attacker." (*See i.e.* Compl, ¶ 27.) At the June 4, 2018 hearing, Appellant's counsel explained that the crux of Appellant's injury was the pain of not knowing for certain whether she was drugged and whether she was sexually assaulted. Again, as discussed above, such facts were not plead, but presumably those are things Appellant already knows, or they are too speculative to be cognizable damages. The only other inferable injury is emotional distress, but contrary to what she suggests in her Brief (App. Brief, pg. 15), Appellant did not allege she sustained a physical injury as a result of GHS' alleged negligence in her Complaint. As a result, the trial court correctly found the only reasonable inference to be drawn from Appellant's allegations is that she endured purely emotional distress, which is not a cognizable injury under the 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. THE CIRCUIT COURT CORRECTLY FOUND THAT APPELLANT'S CLAIMS DO NOT AMOUNT TO AN INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

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

However, even if analyzed as an intentional infliction of emotion distress cause of action, the circuit court was still correct to dismiss it on the basis that Appellant 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, Appellant needed to have alleged 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). Appellant failed to make any such allegations.

First, nowhere in the Complaint did Appellant allege GHS employees acted with the intent to cause her severe emotional distress, nor did she allege the employees were certain or substantially certain their actions would cause her such distress. *Id.* Appellant acknowledged this deficiency when she affirmatively stated in her Brief, "[n]or is there an allegation that any employee acted in a manner that constituted actual fraud, actual malice, intent to harm..." (App. Brief, p. 20.) By definition, an intentional infliction of emotional distress claim cannot exist if there was no intent to harm.

Further, while Appellant may have nakedly pled GHS's conduct was "so extreme and outrageous as to exceed all possible bounds of decency," that amounted to a legal conclusion, which the court was not required to accept as true. *See Dunn, supra.* In this case, the court correctly held 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. Similarly, Appellant's conclusory statement that she suffered such "severe emotional distress" that "no reasonable man could be expected to endure it" was factually unsupported and unavailing under the facts alleged.

Finally, the circuit court correctly held GHS would be entitled to immunity. It is undisputed that the named defendant in this action and the actual entity responsible for Appellant's care, Greenville Health System, was, at all times relevant to this action, 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)).[3] 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).

III. THE CIRCUIT COURT CORRECTLY DETERMINED THAT IT COULD NOT ADDRESS THE MERITS OF APPELLANT'S MOTION TO AMEND BEFORE GRANTING GHS' MOTION TO DISMISS.

A trial judge's finding as to whether to allow an amendment to pleadings beyond time allowed for amendment will not be overturned without an abuse of discretion or unless manifest injustice has occurred. *Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (1997). An abuse of discretion occurs when the trial court's order is controlled by some error of law or where the order,

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[3] In her brief, Appellant argues there is a question of fact as to whether GHS is a governmental entity. As an initial matter, Appellant did not raise the issue in her motion for reconsideration; therefore it is not preserved for appellate review. *Portman v. Garbade*, 337 S.C. 186, 189-90, 522 S.E.2d 830, 832 (Ct. App. 1999) (citing *Food Mart v. South Carolina Dep't of Health and Envtl. Control*, 322 S.C. 232, 471 S.E.2d 688 (1996)). Further, Appellant misrepresents the statement GHS made in its Reply Memorandum. As noted therein, GHS entered into an agreement with Upstate Affiliate Organization (UAO) on October 1, 2016 whereby UAO assumed operations of the hospitals while continuing to operate under the GHS name. Following the transaction, the governmental entity changed its name to Greenville Health Authority. However, all of that is irrelevant to Appellant's claims as it occurred nearly a year after her claims arose. It is undisputed that at all times relevant to this action, Oconee Memorial Hospital was owned and operated by the governmental entity, Greenville Health System.

based upon the findings of fact, is without evidentiary support. *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016).

GHS filed its Motion to Dismiss on January 10, 2018. The motion included a memorandum which fully set forth GHS's basis for dismissal. On May 3, 2018, the circuit court notified the parties a hearing on GHS' Motion to Dismiss would take place on June 4, 2018. Despite knowing the basis of GHS's Motion to Dismiss for months and having more than one month's notice of the hearing date, Appellant waited until about one hour before the start of the June 4th hearing to file her Motion to Amend. Appellant's Motion to Amend was filed without a proposed amended complaint attached, and GHS had no knowledge of the motion until Appellant's counsel mentioned it just before the start of the hearing.

Appellant argues the circuit court should have considered and ruled on her Motion to Amend before granting GHS' Motion to Dismiss, because her "Motion to Amend and proposed Amended Complaint sought to address some of the concerns raised by [GHS] regarding the sufficiency of the allegations set forth in Appellant's Complaint." (App. Brief, p. 21.) In so arguing, Appellant seems to be ignoring the fact the circuit court's Order did address Appellant's Motion to Amend. Specifically, the circuit court acknowledged the motion to amend had been filed, but held it was not properly before the court, because it had been filed just before the start of the hearing without any prior notice to GHS and without attaching a proposed amended complaint. Due to the lack of notice and without a proposed amended complaint to consider, the circuit court found it could not address the merits of the motion to amend even it wanted to.

Regardless, while correctly constraining itself to the facts alleged in deciding to dismiss with prejudice all of the causes of action set forth in the Complaint, the court specifically granted Appellant leave to file a new civil action asserting different causes of action. (Order, p.1 at n. 2.)

Given the totality of the circumstances and the leave granted to Appellant to file a new civil action, the circuit court did not abuse its discretion in refusing to consider the merits of Appellants motion to amend prior to granting GHS's motion to dismiss.

CONCLUSION

While arguing for a reversal, Appellant has made numerous conclusory statements and repeatedly gone outside the four corners of her Complaint; however, based upon the actual facts alleged, the circuit court correctly dismissed the Complaint on the basis that it failed to plead facts sufficient to establish a cause of action against GHS. Specifically, the circuit court correctly held: GHS owed no duty to Appellant while performing the law enforcement functions related to the sexual assault examination kit; Appellant sustained no cognizable injury as a result of GHS's handling of the kit; Appellant failed to plead the intentional conduct necessary to support her intentional infliction of emotional distress claim, and; Appellant was essentially attempting to assert a negligent spoliation claim, which is not a recognizable cause of action under South Carolina law.

Wherefore, for the reasons stated herein, Respondent Greenville Health System respectfully requests this Court affirm the Order issued by Circuit Judge R. Scott Sprouse granting the motion to dismiss the Complaint in favor of Respondent.

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Respectfully submitted,

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Dated: December 21, 2018

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Jane Doe ..... Appellant,

v.

Oconee Memorial Hospital, Greenville Health System ..... Respondents.

PROOF OF SERVICE

This is to certify that the foregoing INITIAL BRIEF OF RESPONDENTS AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL were served in the above-referenced case by placing copies of said documents in the United States Mail on this the 21st day of December, 2018, addressed as follows:

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Dated: December 21, 2018
Greenville, South Carolina

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December 21, 2018

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Jane Doe v. Oconee Memorial Hospital, Greenville Health System
Appellate Case No.: 2018-001480
HSB File No.: 08565.0890

Dear Ms. Kitchings:

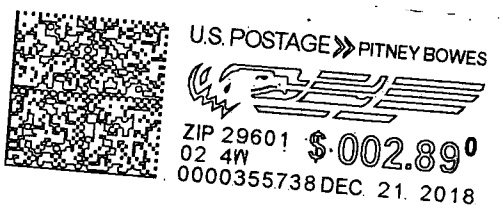
Please find enclosed the original and one copy of the Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal, together with our Certificate of Service of same. After filing, please return a file-stamped copy to me in the self-addressed, postage paid envelope enclosed for your convenience. By copy of this letter, I am serving a copy of same upon counsel for the Appellant, Hannah Metcalfe, Esq. and Courtney Atkinson, Esq. Please feel free to contact me should you have any questions or concerns.

Sincerely,

Kenneth N. Shaw

Enclosures

cc: Hannah Metcalf
Courtney Atkinson
Metcalfe & Atkinson
PO Box 1826
Greenville, SC 29602



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