

THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2012-212832

RECEIVED
APR 25 2013
SC Court of Appeals

Ann P. Adams, as Personal Representative of the
Estate of Jacob E. Adams, Deceased.Appellant,

v.

Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a
Piedmont Healthcare System;

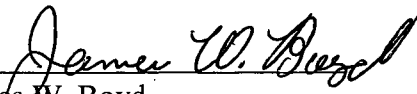
Staci L. Versen-Rampey, NP, Individually and as Agent, Servant or
Employee of South Carolina Emergency Physicians, LLC, and as Agent,
Servant, or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Healthcare System;

Jason Price, Radiologic Technologist, Individually and as Agent, Servant
or Employee of Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center
And d/b/a Piedmont Healthcare System; and

James E. Reinhardt, Jr., M.D., Individually and as Agent, Servant or
Employee of Rock Hill Radiology Associates, PA. and as Agent,
Servant or Employee of Amisub of South Carolina, Inc.
d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System,

Rock Hill Radiology Associates, P.A. South Carolina Emergency Physicians,
LLC,Respondent.

FINAL BRIEF OF APPELLANT


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TABLE OF CONTENTS

Table of Authoritiesii

Statement of Issues on Appeal1

Statement of the Case.....1

Facts2

Argument2

 I. THE COURT ERRED IN HOLDING THAT SOUTH CAROLINA
 CODE §15-36-100(C1) DOES NOT APPLY TO SOUTH
 CAROLINA CODE §15-79-1252

 II. DUE TO THE DISCOVERY RULE THE STATUTE OF
 LIMITATIONS AS TO THE DEFENDANTS, JAMES E.
 REINHARDT, JR., MD AND ROCK HILL RADIOLOGY
 ASSOCIATES, PA., BEGAN TO RUN ON NOBEMBER 3, 2011.....4

Conclusion.....7

TABLE OF AUTHORITIES

CASES

Ranucci v. Crain, 723 S.E. 2d 242; 397 S.C. 168 (S.C. App. 2012)3

Strong v. University of South Carolina School of Medicine 316 S.C. 189, 447 S.E. 2d 850 (SC 1994).....4

Arrant v. Kressler, 327 S.C. 225, 489 S.E. 2d. 206 (SC 1997).....5

Brown v. Finger, 240 S.C. 102, 124 S.E. 2d. 781 (S.C. 1962)7

STATUTES

S.C. Code § 15-36-100(C1)2

S. C. Code § 15-79-125.....2

STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE COURT ERR IN RULING THAT THE SOUTH CAROLINA CODE OF LAW §15-36-100 IS NOT APPLICABLE TO THE FILING OF AN EXPERT AFFIDAVIT.

- II. DID THE COURT ERR IN RULING THAT THE STATUE OF LIMITATIONS HAD EXPIRED AS TO THE DEFENDANTS, JAMES E. REINHARDT, JR., MD AND ROCK HILL RADIOLOGY ASSOCIATES, PA.

STATEMENT OF THE CASE

On October 20, 2011, the Plaintiff filed a Notice to File Suit alleging medical negligence against the Defendants, Amisub of South Carolina, Inc., Staci L. Versen-Rampey, NP, South Carolina Emergency Physicians, LLC and Jason Price. The Plaintiff thereafter on December 1, 2011, filed an Amended Notice of Intent to File Suit adding James E. Reinhardt, Jr., MD and Rock Hill Radiology Associates, PA as Defendants in this matter.

Each Defendant thereafter filed a Motion to Dismiss. The Defendants' Motions to Dismiss were heard before the Court on June 27, 2012. On July 12, 2012 the Court issued an Order dismissing Defendants' Amisub of South Carolina, Inc., Staci L. Versen-Rampey, NP, South Carolina Emergency Physicians, LLC and Jason Price as Defendants in this case. On July 31, 2012, the Court issued its Order dismissing James E. Reinhardt, Jr., MD and Rock Hill Radiology Associates, PA as Defendants in this action. On August 2, 2012, the Plaintiff filed a Notice of Intent to Appeal on the Defendants, James E. Reinhardt, Jr., MD and Rock Hill Radiology Associates, PA. On September 24, 2012, the Plaintiff filed a Notice of Intent to Appeal on the Defendants, Amisub of South Carolina, Inc., Staci L. Versen-Rampey, NP, South Carolina Emergency Physicians, LLC and Jason Price.

FACTS

On October 20, 2008, Jacob P. Adams sought medical treatment from Piedmont Medical Emergency room. The Plaintiff alleges that as a result of the care or the lack of care complained of, Jacob Adams died several days later. A Notice of Intent to Sue was filed on October 20, 2011, naming as Defendants, Tenet Healthcare Corporation, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System, Staci L. Versen-Rampey, NP, Individually and as Agent, Servant or Employee of Tenet Healthcare Corporation, Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, and d/b/a Piedmont Healthcare System, and Jason Price, Radiology Technologist, Individually and as Agent, Servant, or Employee of Tenet Healthcare Corporation, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center and d/b/a Piedmont Healthcare System. (R. p. 25) Notice stated that the Plaintiff was prevented from contemporaneously filing an affidavit of a medical expert, and that Plaintiff would file such an affidavit within the next forty-five (45) days. An Amended Notice of Intent was filed on December 1, 2011, which included affidavits from experts and adding James E. Reinhardt, Jr., M.D., Individually and as Agent, Servant or Employee of Rock Hill Radiology Associates, PA. and as Agent, Servant or Employee of Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center and d/b/s Piedmont Healthcare System, and Rock Hill Radiology Associates, P.A.A. (R. p. 43)

ARGUMENT

- I. THE COURT ERRED IN HOLDING THAT SOUTH CAROLINA CODE §15-36-100(C1) DOES NOT APPLY TO SOUTH CAROLINA CODE §15-79-125.

In *Ranucci v. Crain*, 723 S.E. 2d 242; 397 S.C. 168 (S.C. App. 2012) this Court ruled adversely to the Plaintiff's position on this issue. In *Ranucci* the Court of Appeals found that §15-79-125(A) invokes only the provisions of §15-36-100 governing the preparation and content of the affidavit. The Court held that the remaining §15-36-100 and §15-79-125 operate independently of one another. *Ranucci* is on appeal to the S.C. Supreme Court and this matter will ultimately be decided by the South Carolina Supreme Court. The ruling by the S.C. Supreme Court will be the disposition of this issue. The Plaintiff files this Brief to preserve all her rights in this matter.

South Carolina Code §15-36-100 is clearly applicable to the filing of the expert affidavit, and modifies the requirements of §15-79-125 regarding the contemporaneous filing of the expert affidavit when the Notice of Intent to File Suit is filed within ten (10) days of the statute of limitations for the actions which are the basis of the lawsuit. Section 15-79-125 is the only applicable statute relating to the filing of an expert affidavit, where a medical doctor is a defendant in the case. The language in the final §15-36-100 specifically states that the statute is applicable to medical doctors. The plain meaning of §15-79-125 which incorporates §15-36-100 combined with the clear language of this statute is applicable to medical doctors and means that the enlargement of time to file the expert affidavit is applicable to this case. Any other reading of the statute would create a special right to medical doctors that was denied to all other professions discovered by the applicable statute. Section 15-79-125 clearly sets forth that the requirements for an affidavit are contained in §15-36-100. The statute §15-79-125 does not limit the parts of §15-36-100 that applies to §15-79-125. Had the legislature intended to limit the parts of §15-36-100 that apply to §15-79-125 it could have done so by setting it forth in the statutes.

In the event that the Court in *Ranucci* is correct that §15-79-125(A) involves only the provisions of §15-36-100 governing the preparation and content of the affidavit, then the provision of §15-36-100 allowing 45 days for the supplementation of the pleading with an affidavit, would lead to a Plaintiff being allowed to wait until 10 days prior to the expiration of the statute of limitations and skip the Notice of Intent. This could not be the result the legislature intended.

II. DUE TO THE DISCOVERY RULE THE STATUTE OF LIMITATIONS AS TO THE DEFENDANTS, JAMES E. REINHARDT, JR., MD AND ROCK HILL RADIOLOGY ASSOCIATES, PA., BEGAN TO RUN ON NOVEMBER 3, 2011.

Ann P. Adams received the medical records in this matter back from the McGowan Hood Law firm on or about April 6, 2009. Ms. Adams turned over the records to her attorneys on or about October 2010. The records reviewed did not have an indication of a radiologist reading the CT scan and x-ray. For this reason, the original Notice of Intent to Sue did not name James E. Reinhardt or Rock Hill Radiology Associates. On November 3, 2011, the Plaintiff's attorney received from Piedmont Medical Center a printed copy showing a clear impression and bearing the name of James E. Reinhardt as the radiologist that interpreted the film. (R. p. 134) (Affidavit of Diane Berinsky)

In 1994, the Supreme Court of South Carolina held the statute of limitations began to run when the cause of a patient's injuries were noted in his medical records. See *Strong v. University of South Carolina School of Medicine*, 316 S.C. 189, 447 S.E. 2d 850 (SC 1994). In *Strong*, the appellant underwent several eye operations performed by Dr. Ferguson, an employee of the University of South Carolina School of Medicine. *Id* at 190. Gregory Strong was blind after his third eye operation on May 11, 1989. *Id*. In

June of that year, a colleague of Dr. Ferguson noted in Strong's medical records that his blindness was due to poor follow-up care. *Id.* Strong's medical records were received by his attorney in February of 1991 and an action was filed in May of 1992. *Id.* The respondents filed a motion for summary judgment, claiming that the statute of limitations had run on the plaintiff's action. *Id.* The trial Court granted summary judgment to the respondents, holding that the statute of limitations began to run when Strong knew he was blind. *Id.* Strong claimed that the statute began to run when he discovered that (1) he had an injury and (2) the injury was caused by the negligence of a third party. *Id.* He contended that, because of his educational background and blindness, he did not know he had a compensable injury until his medical records were forwarded to his attorney in February 1991. *Id.* The Court affirmed the decision of the trial Court, ultimately finding the statute of limitations to bar recovery. *Id.* at 192. However, the Court did not hold the statute of limitations to run in May of 1989 when Strong knew he was blind. *Id.* at 191. Rather, the Court held that the limitations period began to run in June of 1989, a month later, when a colleague of Dr. Ferguson noted in Strong's medical records that the cause of his blindness was poor follow-up care. *Id.*

Three years after Strong, the Court issued a similar decision when a patient brought a medical malpractice claim against her obstetrician and gynecologist. *Arrant v. Kressler*, 327 S.C. 225, 489 S.E. 2d. 206 (S.C. 1997). In *Kressler*, the appellant gave birth on December 30, 1989. The delivery was performed by Dr. Parr. *Id.* at 227. The delivery was normal except the placenta had to be removed manually. *Id.* On January 24, the appellant was still suffering bleeding and visited Dr. Kressler. *Id.* Suspecting that remnants of the placenta remained, Kressler recommended a procedure called dilation and curettage to remove them. *Id.* On January 25, Kressler performed the procedure. *Id.*

On March 27, the appellant was diagnosed with Asherman's Syndrome, a known complication of the procedure, in which the walls of the uterus grow together and result in infertility. *Id* at 227, 228. The action was commenced on February 2, 1993. *Id*. Because the appellant's complaint only alleged a cause of action from the surgery, the appellant sought to amend her complaint to conform to Dr. Parr's testimony. *Id*. The trial judge did not allow the amendment, citing the statute of limitations. *Id*. The Supreme Court affirmed. *Id* at 230. By the appellant's own admission, Dr. Kressler told her on January 24, 1990, that the reason she was bleeding and required surgery was because Dr. Parr had not removed all of the placenta. *Id* at 229. The Court held that the statute of limitations began to run when the appellant was informed by another physician that her injury was caused by the treating physician's negligence. *Id*.

In *Strong and Kressler*, the Supreme Court of South Carolina held that the statute of limitations began to run when medical specialists informed the plaintiffs of the cause of their injury. In the present case, the statute of limitations began to run on November 3, 2011 when records were obtained from Piedmont Medical Center showing that Dr. James E. Reinhardt was involved in reading the x-rays and CT scan films. Like the plaintiff in *Strong*, Ann P. Adams did not have notice of a claim against Dr. Reinhardt until the cause was noted in the medical records. All the medical records that had been previously obtained did not list Dr. Reinhardt. Applying these decisions the statute of limitations did not begin to run when Mr. Adams was injured but began to run when it became apparent that Dr. Reinhardt was involved in the matter.

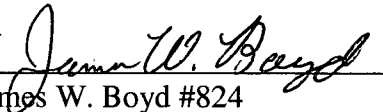
The Supreme Court of South Carolina has held that when there is conflicting testimony regarding the time of discovery of facts giving notice of a medical malpractice claim, the date on which discovery should have been made becomes an issue for the jury

to decide. *Arrant v. Kressler*, 327 S.C. 225, 489 S.E. 2d. 206 (S.C. 1997); *Brown v. Finger*, 240 S.C. 102, 124 S.E. 2d 781 (S.C. 1962) Dismissal of this case at this stage is a drastic remedy. Allowing the parties to go forward with discovery may shed additional light on the issue.

CONCLUSION

For the reasons stated this Court should reverse the judgment of the Circuit Court.

Respectfully Submitted,


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April 22, 2013

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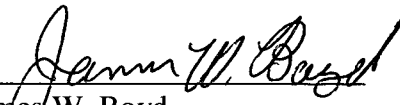
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LLC,Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief complies with Rule 211(b),
SCACR.


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April 23, 2013

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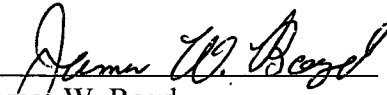
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Rock Hill Radiology Associates, P.A. South Carolina Emergency Physicians,
LLC,.....Respondent.

PROOF OF SERVICE

I, certify that I served the Final Brief of the Appellant on Amisub of South
Carolina, Inc., Staci L. Versen-Rampey, Jason Price, and , and James E. Reinhardt, Jr.
M.D. and Rock Hill Radiology Associates, P.A. by depositing a copies of the same in the
United States mail, postage prepaid, on April 23, 2013, addressed to its attorney of

record, George C. Beighley, Richardson Plowden Carpenter & Robinson PA, PO Drawer 7788, Columbia, SC 29202, N. Heyward Clarkson, III, 1164 A Woodruff Road, Greenville, SC 29607, and William U. Gunn, PO Box 1897, Spartanburg, SC 29304.



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