

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Ortagus Bennett,)
)
 Plaintiff,)
)
 vs.)
)
 Greenville County Detention Center,)
 And Greenville County Detention)
 Center Medical Clinic,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2020-CP-23-02001

**ORDER GRANTING DEFENDANTS’
 MOTION TO DISMISS**

RECEIVED
May 17 2022
SC Court of Appeals

Defendants Greenville County Detention Center and Greenville County Detention Center Medical Clinic¹ moved for an order dismissing the above-referenced case in accordance with Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. A hearing was held in this matter on March 23, 2021.

The Plaintiff, who was *pro se* at the time of filing but now is represented by attorney Adrienne Turner, failed to file his lawsuit within the two-year statute of limitations pursuant to the South Carolina Tort Claims Act. Further, the *pro se* Plaintiff failed to satisfy the mandatory pre-suit requirements set forth in S.C. Code Ann. § 15-79-125. As such, I find that the Plaintiff’s case should be dismissed with prejudice.

Background

On the face of the Plaintiff’s Complaint, it states the Plaintiff is seeking monetary damages as a result of incidents which allegedly occurred on April 9, 2017. Further, the Plaintiff states in his Complaint that he was released from the Greenville County Detention Center on April 28, 2017. The Plaintiff’s Complaint was filed on April 6, 2020 by Ortagus Bennett, *pro se*.

¹ This alleged Defendant is not a separate legal entity and should be dismissed as a party.

Specifically, the Complaint states in paragraph 7 that:

On or about April 10, 2017 I submitted a medical complaint regarding my condition and requested to have a CT scan along with any other necessary observations that were needed to have adequate service provide (sic). Instead of GCDC allowing me to receive additional medical assistance, they reviewed the records from GHS and ignored my concerns/complaints. On this same date, my fiancé made a manual complaint expressing how I felt my jaw was fractured which was ignored as well.

In paragraph 8 of the Complaint, the Plaintiff states:

On or about April 11, 2017 and (sic) Xray was performed for mandible comparison. It was noted that due to the angled view the comparison was rather limited, but it was noted in my records that a mandibular fracture was not located, which based on factual information was incorrect. Throughout the passing days I continued to make several complaints regarding my condition and all were ignored. I was also accused of making false complaints regarding my condition and as a result was denied access for canteen purchases, telephone usage, and blocked from the ability of noting concerns in the kiosk system. I was also advised that I would be accessed (sic) a \$5 charge per approved doctor visit request moving forward.

In paragraph 9 of the Complaint, the Plaintiff states:

On or about April 14, 2017 I made a complaint through the inmate kiosk system to gain clarification on why I was being denied the right to purchase as my claims were not false and **I really needed medical attention.**

In paragraph 10 of the Complaint, the Plaintiff states:

On or about April 24, 2017 I was still making medical complaints regarding my condition and was denied any type of assistance that would improve my health condition. (Emphasis added).

In paragraph 11 of the Complaint, the Plaintiff states:

On or about April 28, 2017 I was released from the Greenville Detention Center and shortly after went to Greenville Health System to seek the medical attention that was previously denied at the Greenville County Detention Center. I immediately received results that I did in fact suffer from a mandibular fracture and was assigned to have immediate surgery because due to the lack of medical attention received from the Greenville County Detention Center, my fracture was healing incorrectly which would

ultimately cause long-term issues if not surgically corrected. (Emphasis added).

In paragraph 12 of the Complaint, the Plaintiff states:

The above set forth incidents and I, the Plaintiff's resulting sufferings and damages were proximately caused by the grossly negligent, reckless, willful and wanton acts of the employees of the Defendants (acting individually and together), in the following particulars:

- a. In failing to make a proper assessment as to the injuries I sustained which resulted in lack of proper treatment and timely diagnosis;
- b. In failing to disregard my medical concerns after proper reports were filed;
- c. In causing a delay in treatment;
- d. In failing to follow the mandates of the Minimum Standards for Local Detention Centers in South Carolina;
- e. In failing to exercise due care; and
- f. In failing to render appropriate care in general.

The allegations of the Plaintiff as set forth in his Complaint are allegations of medical malpractice by the medical staff at the Greenville County Detention Center. The untimely filing of the Plaintiff's Complaint and his failure to follow pre-suit procedures are addressed below.

Standard

The ruling on a Rule 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602–03 (1995); citing State Board of Medical Examiners v. Fenwick Hall, Inc., 300 S.C. 274, 387 S.E.2d 458 (1990). A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Id.; citing Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

Statute of Limitations

The Defendant is a “governmental entity” whose employees were acting within the course and scope of their employment as defined in the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-30(d) at the time of the acts complained of in the Complaint. The Act, which governs all tort claims against governmental entities, see, e.g., Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct.App.1994); Searcy v. Dep't of Educ. Transp. Div., 303 S.C. 544, 402 S.E.2d 486 (Ct.App.1991), provides a strict statute of limitations period:

Except as provided for in Section 15-3-40 [which is not applicable to this case], any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

Joubert v. S.C. Dep't of Soc. Servs., 341 S.C. 176, 185–86, 534 S.E.2d 1, 6 (Ct. App. 2000); citing S.C. Code Ann. § 15-78-110 (Supp.1999). The Tort Claims Act contains a general two-year statute of limitations. Id.

On the face of the Plaintiff’s Complaint, it states the Plaintiff is seeking monetary damages as a result of incidents which allegedly occurred on April 9, 2017. Further, the Plaintiff states in his Complaint that he was released from the Greenville County Detention Center on April 28, 2017. The Plaintiff’s Complaint was filed on April 6, 2020 by Ortagus Bennett, *pro se*.

The entire thrust of the Plaintiff’s Complaint is focused on alleged medical malpractice. However, to the extent the Complaint can be construed to assert any claims other than medical malpractice, as demonstrated by the dates and allegations set forth in the Complaint (some of which are summarized above), I find and conclude the Plaintiff was clearly on notice of those

claims and events at the time they occurred, which was more than two years before the filing of the subject lawsuit.

Any lawsuit filed by the Plaintiff must have been filed within two years of the date of the subject incident or, at a minimum, from the date he was released from the Greenville County Detention Center. Due to the Plaintiff's failure to file the above-captioned lawsuit until April 6, 2020, which is just a few days short of three years since the subject incident, I find and conclude it should be dismissed due to the fact that it was not timely filed within the applicable statute of limitations.

There is clearly no date of discovery issue, as opined by Plaintiff's newly retained counsel at the hearing, regarding any events that allegedly transpired in the Detention Center outside of the medical claims. The statute of limitations begins to run when a person of common knowledge and experience would be on notice a claim might exist, not when the plaintiff discovers a witness to support or prove the case. Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 122, 542 S.E.2d 736, 739 (Ct. App. 2001); citing In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998).

When statutory language is unambiguous, this Court may not impose a contrary meaning. Id. The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Id. at 122–23, 542 S.E.2d at 739–40; citing Joiner v. Rivas, 342 S.C. 102, 536 S.E.2d 372 (2000). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Id.; citing Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. What a legislature says in the text of a statute is considered the best

evidence of the legislative intent or will. Id. Therefore, the courts are bound to give effect to the expressed intent of the legislature. Id.

Provisions of the Tort Claims Act establishing limitations upon and exemptions from liability of a governmental entity must be liberally construed in favor of limiting the liability of the State. Id.; citing S.C. Code Ann. §§ 15-78-20(f) & -200 (Supp.1999); Steinke v. South Carolina Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999); Baker v. Sanders, 301 S.C. 170, 391 S.E.2d 229 (1990). According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. Id. at 123-24, 542 S.E.2d at 740-41; citing Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. Id. citing Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999). The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question. Id.; citing Joubert, supra; Young, supra. “In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.” Id.; quoting Young, 333 S.C. at 719, 511 S.E.2d at 416. In Young, the Court of Appeals held **that an inmate was not required to know the sight in his right eye was permanently lost to be put on notice the Department of Corrections had caused him injury by delaying appropriate medical treatment.** Id. (Emphasis added).

Taking Plaintiff's counsel's arguments at the hearing to be true solely for the purposes of this Motion to Dismiss, a date of discovery issue (meaning the Plaintiff knew or should have

known he had a claim on that date) was only raised by Plaintiff's counsel regarding an alleged subsequent diagnosis that she claims an Amended Complaint can cure. However, any such diagnosis would have nothing to do with any mistreatment or torts alleged by the Plaintiff (if his Complaint is construed to allege such, which it does not) at the Detention Center or the fact that he would know he had a claim (and his statute of limitations would start) when the alleged mistreatment or tort occurred. Likewise, the Plaintiff was also aware of any related claims such as any potential failure to supervise, on the date the conduct occurred. As such, those claims, to the extent they exist and were pled, are dismissed with prejudice. Further, as discussed below, the entire thrust of the Plaintiff's Complaint is centered on medical malpractice and the mandatory pre-suit requirements were not met. As such, the entire case is dismissed with prejudice.

Failure to Comply with Mandatory Pre-Suit Requirements

S.C. Code Ann. § 15-79-125 sets forth, in part, that:

(A) Prior 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, in a county in which venue would be proper for filing or initiating the civil action. The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations. The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure.

Id.

The *pro se* Plaintiff did not file a Notice of Intent to File Suit and an affidavit of an expert witness as required by Section 15-79-125(A) prior to filing his Summons and Complaint. Ms.

Turner, the Plaintiff's newly retained counsel, conceded that Mr. Bennett failed to make this filing during oral argument on the pending Motion to Dismiss.

As set forth above, the entire thrust of the Plaintiff's Complaint is focused on alleged medical malpractice. The Plaintiff, who was *pro se* at the time of filing his Complaint, failed to adhere to the statutory requirements that mandate certain pre-filing procedures for medical malpractice claims. See generally Duckett v. SCP 2006-C23-202, LLC, 225 F. Supp. 3d 432, 437 (D.S.C. 2015); citing S.C. Code Ann. § 15-79-125 (requiring, among other things, a notice of intent to file suit as a prerequisite to filing action); S.C. Code Ann. § 15-36-100 (requiring an expert witness affidavit to accompany the complaint). If a claim fails to satisfy these requirements and does not fall into an applicable exception, it must be dismissed for failure to state a claim. Id.; citing Millmine v. Harris, No. CA 3:10-1595-CMC, 2011 WL 317643, at *2 (D.S.C. Jan. 31, 2011) (“The South Carolina Code sections relating to professional negligence claims are the substantive law of South Carolina.”). See also Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189 (2014) (discussing at length S.C. Code Ann. § 15-79-125 and S.C. Code Ann. § 15-36-100, the applicability of both statutes, legislative intent and the timing of filing the Notice of Intent and the expert affidavit and the gatekeeping function). While timing of filing of the expert affidavit was at issue in Ranucci, with the Supreme Court ultimately interpreting the two statutes together and finding that the filing of the expert affidavit was timely filed within 45 days of the Notice of Intent - overturning the trial court and the Court of Appeals which had granted dismissal on the ground the expert affidavit was not timely, the rulings and discussion make it clear that the failure to file a Notice of Intent and timely Expert Affidavit are fatal to a case. Due to the fact that Mr. Bennett never filed a Notice of Intent and never filed an Expert Affidavit

before filing suit, combined with the fact he untimely filed suit after expiration of the applicable statute of limitations, results in dismissal of this case with prejudice.

Based on the foregoing, IT IS HEREBY ORDERED that the Defendants' Motion to Dismiss is GRANTED and the above-captioned case is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

The Honorable R. Lawton McIntosh
Presiding Judge

Date: _____
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Ortagus Bennett vs. Detention Center Greenville County ,
defendant, et al
Case Number: 2020CP2302001
Type: Order/Dismissal

S/R. LAWTON McINTOSH

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