

**SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

MARK LABEET,

PLAINTIFF,

V.

**ACUTE ALTERNATIVE MEDICAL
GROUP; AND
DR. LYN A. CAMPBELL,**

DEFENDANTS.

SX-16-CV-651

Cite as: 2019 V.I. Super. 105

FOR PUBLICATION

Appearances:

ESZART A. WYNTER, SR. ESQ.
Frederiksted, USVI
For Plaintiff

THOMAS KRAEGER, ESQ.
Christiansted, USVI
For Plaintiff

SEMAJ L. JOHNSON, ESQ.
Christiansted, USVI
For Defendants

KEVIN A. RAMES, ESQ.
Christiansted, USVI
For Defendants

MEMORANDUM OPINION and ORDER

WILLOCKS, Presiding Judge

¶1 **THIS MATTER** is before the Court on the Defendants' Motion for Judgment on the Pleadings, filed August 28, 2018. The Plaintiff's Opposition was filed on September 26, 2018, and the Defendants' Reply was submitted on or about November 14, 2018.

BACKGROUND

¶2 This case stems from an alleged act of negligence that occurred at a facility of Acute Alternative Medical Group. (Compl. 3-4.) The Plaintiff was being monitored overnight for a sleep condition and during the night an attendant left a container of hot water near the Plaintiff's bed that ultimately scalded

him, and the Plaintiff intermittently had difficulty breathing while using medical equipment. (*Id.*) The Defendants claim that this matter must be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Virgin Islands Rules of Civil Procedure because the Plaintiff's Complaint failed to allege compliance with the Medical Malpractice Act's (hereinafter "MMA") mandatory pre-filing requirements. (Mot. 7.) According to the Defendants, an amendment to the Complaint would be futile because the two-year statute of limitations on the injury claim has expired--the cause of action accrued in 2015. (*Id.* at 11-12.)

¶3 The Plaintiff counters that this is not a malpractice action as covered by the MMA but rather a simple case of negligence where the cause of action happens to have accrued in a medical office. (Opp'n 2.) The Plaintiff also alleges that a jury can hear this case without the need for expert testimony as contemplated by the MMA, and that whether a case constitutes medical malpractice must be determined on a case-by-case basis. (*Id.*, citing *Ference v. V.I. Family Sports & Fitness Center, Inc.*, 45 V.I. 345 (Terr. Ct. 2004)).

¶4 In their Reply, the Defendants note that the authority the Plaintiff's relies on in his argument that medical malpractice must be determined case-by-case is from the Territorial Court and not the Supreme Court. (Reply 3.) In sum, the case is not binding precedent. (*Id.*) Additionally, the Defendants claim that the Complaint clearly alleges medical malpractice and not simple negligence. (*Id.* at 4.) In fact, the Complaint specifically alleges negligence and medical malpractice in six out of eight counts. (*See generally* Compl.) Furthermore, the Defendants argue that the MMA covers all proposed tort actions against healthcare providers and that there will be a need for expert testimony because the Plaintiff has alleged incorrect use of medical testing equipment that caused his breathing difficulties. (*Id.* at 5-6.)

STANDARD OF REVIEW

¶5 Pursuant to Rule 12(b)(1) of the Virgin Islands Rules of Civil Procedure, a party may assert the defense of lack of subject-matter jurisdiction at any time. V.I.R. Civ. P. 12(b)(1). In dealing with

statutes that contain pre-filing requirements, the Court must determine whether the requirements are jurisdictional or claims-processing rules. *Brady v. Cintron*, 55 V.I. 802, 815 (V.I. Sup. Ct. 2011). “While claims-processing rules can be equitably tolled or even waived, courts have ‘no authority to create equitable exceptions to jurisdictional requirements and litigants cannot by waiver or forfeiture confer jurisdiction where it is otherwise lacking.’” *Brady*, 55 V.I. at 815 (citing *Menominee Indian Tribe of Wisconsin v. United States*, 614 F.3d 519, 524 (D.C. Cir. 2010)). In other words, compliance with jurisdictional statutes is necessary for the Court to have subject-matter jurisdiction over certain cases, and where subject-matter jurisdiction is lacking, the Court must dismiss the case.

DISCUSSION

A. This is a Medical Malpractice Action for the Purposes of the Medical Malpractice Act.

¶6 As an initial matter, the Court must determine whether this is a medical malpractice action. Medical malpractice is defined in the MMA “any tort or breach of contract based on health care or professional services rendered, or which should have been rendered by a health care provider, to a patient.” 27 V.I. §166(f). “‘Health care’ means any act, or treatment performed or furnished...by any health care provider for, to, or on behalf of a patient during the patient’s medical care, treatment or confinement.” 27 V.I.C. §166(b). Additionally, the term “health care provider” includes people, corporations, facilities, or institutions “who must be licensed by this territory to provide health care or professional medical services....” 27 V.I.C. §166(c).

¶7 In this case, the Complaint alleges eight counts of torts, including six counts specifically listed as “Negligence--Medical Malpractice.” (*See generally* Compl.) The operative facts establish that the Plaintiff was purportedly injured at a facility of Acute Alternative Medical Group while being overseen by Dr. Campbell, both licensed health care providers under the MMA (*see* Exhibits 1 & 2 to Mot.) The Plaintiff was at the facility for the purpose of health care related sleep tests and services that needed to be rendered by the Defendants as health care providers. As such, his causes of action are torts based on health care or professional services rendered by the Defendants to the Plaintiff as a patient. This

includes the Plaintiff's claims for intentional and negligent infliction of emotional distress even though those claims were not expressly listed in the Complaint as medical malpractice. As such, all of the Plaintiff's claims constitute medical malpractice as defined by the MMA.

B. Applicable Provisions of the Medical Malpractice Act and Jurisdictional Requirements

¶8 According to the MMA, the statute of limitations to bring a medical malpractice claim is two years from the date the cause of action accrued, absent concealment of the injury by the health care provider. 27 V.I.C. §166d(a). However, before a case may be commenced in the Superior Court for medical malpractice, a plaintiff must file a proposed complaint with the Medical Malpractice Action Review Committee. 27 V.I.C. §166i(b). The Committee is tasked with reviewing the proposed complaint and obtaining an expert opinion on whether malpractice took place. 27 V.I.C. §166i(d). If the Committee does not receive an expert opinion within ninety days of the filing of the proposed complaint, the plaintiff may file suit in court. 27 V.I.C. §166i(b).

¶9 In *Brady v. Cintron*, the Supreme Court of the Virgin Islands determined that filing a proposed complaint with the Committee is a jurisdictional requirement. *Brady*, 55 V.I. at 815-16. When a plaintiff fails to file a proposed complaint despite the instructions of the MMA, the court lacks subject-matter jurisdiction and must dismiss the plaintiff's claims. *See id.* at 817. The Supreme Court has also determined, based on the language of the revised statute of limitations, that the statute of limitations is to be construed strictly. *See Brady*, 55 V.I. n. 12 (finding that "the Virgin Islands Legislature intended that the statute of limitations section under 27 V.I.C. §166d(a) require that all claims against a health care provider based upon professional services or health care rendered or which should have been rendered be filed with the court within two (2) years from the date of the alleged act, omission, or neglect," and collecting cases). As such, a violation of the statute of limitations cannot be cured by equitable means.

¶10 Here, the Plaintiff did not file a proposed complaint with the Medical Malpractice Action Review Committee prior to filing suit in the Superior Court. The failure to do so has divested this

Court of jurisdiction to hear the medical malpractice claims, necessitating dismissal. Furthermore, once the claims are dismissed, they cannot be refiled because the causes of action for medical malpractice, including negligent and intentional infliction of emotional distress, accrued in 2015 and the two-year statute of limitations must be construed strictly.

CONCLUSION

¶11 In sum, the Plaintiff's claims constitute an action for medical malpractice pursuant to the Virgin Islands Medical Malpractice Act. However, the Plaintiff did not comply with the MMA's necessary jurisdictional requirements, and this matter must be dismissed for lack of subject-matter jurisdiction. Accordingly, it is hereby:

¶12

ORDERED that the Defendants' Motion to Dismiss is **GRANTED**; it is further

ORDERED that this matter and all of Plaintiff's claims are **DISMISSED WITHOUT PREJUDICE**; it is further

ORDERED that the Court will retain jurisdiction for a period of **THIRTY (30) DAYS** to allow the Plaintiff sufficient time to file a motion for reconsideration or relief if he deems it necessary.

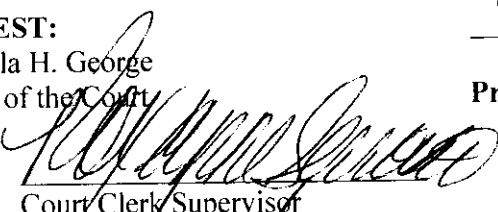
Upon the expiration of the thirty days, this matter will be permanently **CLOSED**.

DONE and so **ORDERED** this 11th day of December, 2019.

ATTEST:

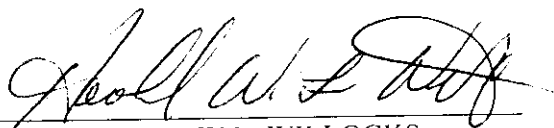
Estrella H. George
Clerk of the Court

By:


Court Clerk Supervisor

Dated:

12/12/19


HAROLD W.L. WILLOCKS
Presiding Judge of the Superior Court