

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Op. No. 2013-UP-081
(S.C. Ct. App. filed February 20, 2013)

Ruth Sturkie LeClair, as Next of Kin
to and Personal Representative of the
Estate of Raymond Conrad LeClair, ... Respondent,

v.

Palmetto Health, ... Petitioner.

APPENDIX

Andrew F. Lindemann
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

Counsel for Petitioner

Stephen R. Soltis, Jr.
821 East Main Street
Lexington, South Carolina 29072
(803) 808-8060

Counsel for Respondent

S.C. Supreme Court

MAY 20 2013

RECEIVED

RECEIVED

MAY 20 2013

S.C. Supreme Court

James E. Parham, Jr.
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555

Counsel for Petitioner

INDEX

<i>Sturkie v. Palmetto Health</i> , Op. No. 2013-UP-081 (S.C. Ct. App. filed February 20, 2013)	1
Order Denying Petition for Rehearing	3
Petition for Rehearing	4
Memorandum in Support of Respondent's Petition for Rehearing	6
Memorandum in Opposition to Respondent's Petition for Rehearing	16
Reply Memorandum in Support of Respondent's Petition for Rehearing	23

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Ruth Sturkie LeClair, as Next of Kin to and Personal
Representative of the Estate of Raymond Conrad
LeClair, Appellant,

v.

Palmetto Health, Respondent.

Appellate Case No. 2011-195746

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2013-UP-081
Heard January 10, 2013 – Filed February 20, 2013

REVERSED AND REMANDED

Stephen R. Soltis, Jr., of Soltis Law Firm, of Lexington,
for Appellant.

James E. Parham, Jr., of James E. Parham, Jr., P.A., of
Irmo, and Andrew F. Lindemann, of Davidson &
Lindemann, P.A., of Columbia, for Respondent.

PER CURIAM: Ruth Sturkie LeClair (LeClair), as Next of Kin to and Personal Representative of the Estate of Raymond Conrad LeClair (Decedent), appeals the trial court's grant of summary judgment to Palmetto Health on her wrongful death claims, arguing the trial court erred in ruling the statute of limitations expired prior to the filing of her complaint. We reverse and remand.

LeClair's claim was based on an allegation of negligence that occurred on March 4, 2005. Decedent was admitted to the hospital and ultimately died on September 28, 2005. LeClair filed this action on July 2, 2008. After a hearing, the trial court granted Palmetto Health's motion for summary judgment based on the expiration of the statute of limitations. The court denied LeClair's motion for reconsideration.

A wrongful death action may be brought by the estate for the benefit of the decedent's heirs. S.C. Code Ann. § 15-51-20 (2005). "Our jurisprudence makes clear that if the decedent was barred from recovering damages for his injuries, the bar passes to the decedent's estate. Succinctly stated, if the decedent had no claim at his death, the estate has no claim." *Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 347, 699 S.E.2d 143, 145 (2010). "If the decedent had a right of recovery at the time of death, then the wrongful death action must be filed within three years, which begins to run 'upon the death of the person on account of whose death the action is brought.'" *Id.* at 349, 699 S.E.2d at 146 (quoting S.C. Code Ann. § 15-3-530(6) (2005)).

Decedent was injured on March 4, 2005, and died on September 28, 2005. Therefore, Decedent had a right of recovery at the time of his death. LeClair filed the complaint for wrongful death and other claims on July 2, 2008, which was within three years of Decedent's death. Thus, the filing was within the statute of limitations, and the trial court erred in granting summary judgment on this ground.

As to Palmetto Health's arguments concerning its additional sustaining ground, we decline to address the issue. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("It is within the appellate court's discretion whether to address any additional sustaining grounds.").

REVERSED AND REMANDED.

SHORT, KONDUROS, and LOCKEMY, JJ., concur.

The South Carolina Court of Appeals

Ruth Sturkie LeClair, as Next of Kin to and Personal
Representative of the Estate of Raymond Conrad
LeClair, Appellant,

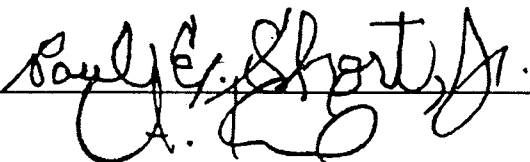
v.

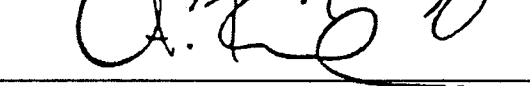
Palmetto Health, Respondent.

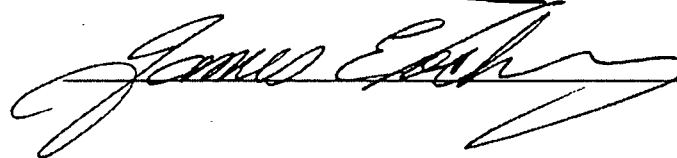
Appellate Case No. 2011-195746

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.


J.


J.

Columbia, South Carolina

cc:

Stephen R. Soltis, Jr.

Andrew F. Lindemann

James E. Parham, Jr.

FILED

April 18, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-4832

Ruth Sturkie LeClair, as Next of Kin
to and Personal Representative of the
Estate of Raymond Conrad LeClair, ... Appellant,

v.

Palmetto Health, ... Respondent.

PETITION FOR REHEARING

RECEIVED

MAR 07 2013

SC Court of Appeals

The Respondent Palmetto Health petitions the South Carolina Court of Appeals for a rehearing of the Court's recent decision in *LeClair v. Palmetto Health*, Op. No. 2013-UP-081 (S.C. Ct. App. filed February 20, 2013).

The grounds for the Respondent's petition for rehearing are addressed in detail in the supporting memorandum filed herewith and incorporated herein.

The Respondent's petition for rehearing is based on the Court's decision in *LeClair v. Palmetto Health*, Op. No. 2013-UP-081 (S.C. Ct. App. filed February 20, 2013); the supporting memorandum filed herewith; the briefs and Record on Appeal; Rule 221(a), SCACR; Rule 224, SCACR; and other rules of court.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

JAMES E. PARHAM, JR.
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555

Counsel for Respondent Palmetto Health

Columbia, South Carolina

March 7, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

RECEIVED

MAR 07 2013

Case No. 2008-CP-40-4832

SC Court of Appeals

Ruth Sturkie LeClair, as Next of Kin
to and Personal Representative of the
Estate of Raymond Conrad LeClair, ... Appellant,

v.

Palmetto Health, ... Respondent. .

**MEMORANDUM IN SUPPORT OF
RESPONDENT'S PETITION FOR REHEARING**

The Respondent Palmetto Health has petitioned this Court for a rehearing of the recent decision in *LeClair v. Palmetto Health*, Op. No. 2013-UP-081 (S.C. Ct. App. filed February 20, 2013). The Respondent respectfully submits that the following points were overlooked or misapprehended by this Court:

I.

In her Complaint, the Appellant as the Personal Representative of the Estate of Raymond Conrad LeClair brought *both* a wrongful death action and a survival action. In her order granting summary judgment, Judge Alison Renee Lee recognized that "[t]he Complaint contains causes of action for Survival and Wrongful Death." (R. 41). She then granted summary judgment based on the statute of limitations for *all claims*. (R. 46). As Judge Lee ruled, the statute of limitations for the survival action began to run on March 4, 2005, and by March 4, 2008, neither Mr. LeClair while still alive nor the Appellant after his death commenced the survival action within three years of the accident. (R. 46).

In her brief, the Appellant raised the following broadly-worded issue on appeal: "Did the trial court err in granting Defendant's motion for summary judgment?" She did not differentiate between the survival action and the wrongful death action. In her arguments, however, the Appellant did not appear to contest the dismissal of the survival action. As a result, the dismissal of the survival action on the basis of the statute of limitations defense should be affirmed.

In its per curiam opinion, the Court makes no mention of the survival action and fails to specify that the summary judgment on the survival action is affirmed. It seems apparent that the Court intended only to reverse summary judgment as to the wrongful death action. Nonetheless, the opinion concludes by indicating that

the lower court order is "reversed and remanded." The Respondent is therefore requesting, at a minimum, that the opinion be revised to clarify that the summary judgment for the survival action is affirmed and that the lower court order is "affirmed in part, reversed in part, and remanded." This will avoid any confusion or disagreements on remand with respect to whether the survival action is dismissed or not.

II.

The Court respectfully erred in its reliance on the South Carolina Supreme Court's decision in *Stokes v. Pee Dee Family Physicians*, 389 S.C. 343, 699 S.E.2d 143 (2010). In reversing summary judgment on the wrongful death action, the Court cited the following language from *Stokes* as dispositive of the issue before this Court: "If the decedent had a right of recovery at the time of death, then the wrongful death action must be filed within three years, which begins to run upon the death of the person on account of whose death the action is brought." *Stokes*, 699 S.E.2d at 146. This Court then reasoned that Mr. LeClair died on September 28, 2005, and thus had a right of recovery at the time of his death because the statute of limitations had not yet run. The Court further reasoned based on the foregoing language from *Stokes* that a new statute of limitations begins to run at the time of death, and as a result, the filing of the wrongful death component of the lawsuit on July 2, 2008 was timely.

This conclusion was in error specifically because the language in *Stokes*, on which this Court relied, is in error. As an initial matter, the Court was not required to rely on the erroneous language in *Stokes* because that language is dicta. It is well settled that dicta is not binding as precedent. *State v. Addison*, 338 S.C. 277, 525 S.E.2d 901, 904 (Ct. App. 1999). *See also, Nash v. Tindall Corp.*, 375 S.C. 36, 650 S.E.2d 81, 83 (Ct. App. 2007) (dicta "is not binding as authority").

In *Stokes*, a specific question was posed: "If 'A' has been injured and has a known claim against Defendant, but fails to file suit within the statute of limitations, and A thereafter dies as a result of the injury, may A's estate file and maintain a wrongful death claim against Defendant?" *Stokes*, 699 S.E.2d at 143. The Supreme Court answered "no." But the language from the *Stokes* opinion that was found dispositive by this Court was not in response to the question posed. Instead, it addressed an entirely different factual scenario – where the decedent dies *before* the statute of limitations expires. In sharp contrast, in *Stokes*, the decedent died *after* the three-year statute of limitations had already expired and the estate was trying to bring suit against new defendants by arguing that a previously-barred claim could be revived by commencing a wrongful death case after death occurs. Clearly, the Supreme Court in *Stokes* was not called upon and did not need to address what happens where the statute of limitations had not been expired at

the time of the decedent's death. Thus, the language at issue from the *Stokes* opinion was unnecessary to a resolution of the actual issue before the Supreme Court. It clearly constitutes dicta which is the "discussion of a legal principle in an opinion ... where it was clearly unnecessary to a resolution of the issue before the court." *State v. Addison*, 338 S.C. 277, 525 S.E.2d 901, 904 (Ct. App. 1999).

Furthermore, as indicated, the dicta from *Stokes* is in error. The Supreme Court in *Stokes* did not properly consider the impact of Section 15-51-10 of the Wrongful Death Act, which provides in pertinent part as follows:

Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default *is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued*, shall be liable to an action for damages, notwithstanding the death of the person injured. ...

S.C. Code Ann. § 15-51-10. (Emphasis added). Section 15-51-10 is designed to ensure that the defendant's liability to the estate is no greater and no different than its liability to the decedent. The estate, in essence, steps into the shoes of the decedent – similar to an assignee. If under the same procedural and substantive facts the decedent's claim is barred, so too is the estate's claim. That is the express intent, purpose, and application of Section 15-51-10. The estate should not be granted any greater rights than the decedent had.

Therefore, Section 15-51-10 requires a simple analysis. The Court should

look at whether the decedent could have brought suit. The Court should look at the date suit is filed and then determine whether the decedent could have brought suit on that date if he were still alive. If not, then the case is time-barred. Here, if Mr. LeClair had lived and brought suit on July 2, 2008, his suit would have been time-barred. His estate therefore should not have any greater rights.

Because the statute of limitations had not expired at the time of Mr. LeClair's death, this Court in effect concluded that Section 15-51-10 has no application and the statutory time for filing of a wrongful death action is enlarged beyond three years. Section 15-51-10, however, does not include any language that would limit or end its application at the date of death. Nor does Section 15-51-10 include any language that justifies or allows for an enlargement of the statute of limitations. In fact, if this Court is indeed correct based on the dicta from *Stokes*, the statute of limitations could conceivably be doubled from three to six years.¹ Yet, there is absolutely no provision in the Wrongful Death Act for the extension of the statute of limitations, and frankly, there is no reasonable basis in the law for enlarging the statute of limitations for the estate.

The Court's error also may be attributable to reliance on law holding that the

¹ It is undisputed that Mr. LeClair had until March 4, 2008 to file his action within the three year statute of limitations for alleged negligence occurring on March 4, 2005. According to this Court's ruling, assuming Mr. LeClair had died on March 4, 2008, without having filed suit, the wrongful death claim is not time-barred and the estate has three more years until March 4, 2011 to file suit – a total of six years after the incident giving rise to liability.

accrual date for a wrongful death case is the date of death. While that is true in most circumstances, it is not entirely an accurate statement. An accrual date when death occurs does not – as *Stokes* does make clear in the non-dicta portions of the opinion -- override the effect of Section 15-51-10, which gives the estate no greater rights than the decedent. In actuality, a wrongful death action, in reality, has an accrual date of the death-causing event. This is demonstrated by the following: If the death-causing event occurs on January 1, 2005, and death does not result until June 1, 2008, no wrongful death claim may be filed. That is consistent with Section 15-51-10 and *Stokes*. The accrual date in that instance is not the date of death.

The irrationality of the result in this case is perhaps best demonstrated by the following: The date of accident for Mr. LeClair was on March 4, 2005. If he died on March 5, 2008, no wrongful death action could be brought. But if he died on March 4, 2008 – just one day earlier – a wrongful death action may be brought *and the estate has an additional three years to commence that action*. That simply makes no sense, and statutes should not be construed to create absurd results. *See, Regions Bank v. Strawn*, 399 S.C. 530, 732 S.E.2d 230, 236 (Ct. App. 2012) ("[a]n appellate court will reject the interpretation of a statute that would lead to an absurd result the legislature could not have intended"). There is quite simply no reason for creating that distinction, and most importantly, that distinction has no

basis in the language of Section 15-51-10.

Again, the proper construction of Section 15-51-10 is that the estate has no greater rights than the decedent. If the decedent could not have brought suit on the date of filing had he lived, the estate cannot bring suit. Here, Mr. LeClair could not have sued on July 2, 2008, for the alleged negligence occurring on March 4, 2005, and hence, his estate is likewise barred. On rehearing, the Court is respectfully requested to view the language in *Stokes* found to be dispositive for what it is – non-binding dicta. The Court is further requested to find that the estate's wrongful death claim -- like the survival claim -- is barred because the Appellant did not file suit by March 4, 2008.

III.

Finally, the Court is respectfully requested on rehearing to adjudicate the additional sustaining ground. The Respondent Palmetto Health submits that summary judgment should be affirmed on the basis that the Appellant has failed to identify any expert witness to establish medical causation.

The Appellant has alleged that Mr. LeClair was injured when he fell and struck his head on March 4, 2005. He did not die until almost six months later. According to the Appellant, Mr. LeClair died of pneumonia; however, she is not competent to offer medical opinions to establish causation or link the pneumonia to the fall. (R. 17). Mr. LeClair was age 76 at the time of his fall. (R. 2). He had

also had numerous health issues. The Appellant clearly needed expert medical testimony to establish that the injury sustained on March 4, 2005 proximately resulted in his death on September 28, 2005. *See, Smith v. Michelin Tire Corp.*, 320 S.C. 296, 465 S.E.2d 96 (Ct. App. 1995) (proof of proximate causation in medically complex case requires expert medical testimony). *See also, Oglesby v. Smith*, 258 S.C. 392, 188 S.E.2d 856 (1972); *Jones v. Owings*, 318 S.C. 72, 456 S.E.2d 371 (1995). Yet, evidence of that requisite causal link is non-existent. The Appellant has not identified any expert to testify as to causation, and she has presented no such evidence in opposition to the summary judgment motion. Instead, counsel offered the unsupported opinion that "he died from the bump on his head and nothing else." (R. 35).

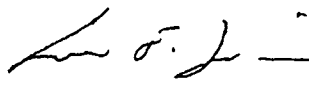
Therefore, the summary judgment in favor of the Respondent should have been affirmed on the basis that the Appellant failed to meet her burden of proving that the death proximately resulted from any alleged negligence by the Palmetto Health employee.

CONCLUSION

Based on the foregoing discussion, the Respondent Palmetto Health respectfully requests that the Court rehear its decision in order (1) to clarify that the summary judgment is affirmed as to the survival action and (2) to affirm the summary judgment as to the wrongful death action.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:  _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

JAMES E. PARHAM, JR.
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555

Counsel for Respondent Palmetto Health

Columbia, South Carolina

March 7, 2013



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Renee Lee, Circuit Court Judge

Case No: 2008-CP-40-4832

Ruth Sturkie LeClair, as Next
of Kin to and Personal
Representative of the Estate of
Raymond Conrad LeClair, ... Appellant,

v.

Palmetto Health, ... Respondent,

**MEMEORANDUM IN OPPOSITION TO
RESPONDENT'S PETITION FOR REHEARING**

RECEIVED

MAR 18 2013

SC Court of Appeals

ARGUMENT IN OPPOSITION TO THE PETITION FOR
REHEARING

In response to the Respondent's motion for reconsideration and memorandum in support, Appellant states that this is a wrongful death action. The wrongful death came about from the wrongful act or negligence of Respondent Palmetto Health.

The Court of Appeals reversed the trial court's granting of summary judgment and remanded the case back to the trial court.

Respondent filed a motion for reconsideration and memorandum alleging three points were overlooked or misapprehended by the Court of Appeals.

In his first argument, Respondent alleges that the Court of Appeals in its ruling made no mention of a survival action. Respondent now alleges that there were two summary judgment issues; one for survival action and another for wrongful death. However, the trial court did not rule that there was a survival action and Respondent did not appeal the trial court's decision. (ROA p. 46). Regardless, in his amended motion for summary judgment, Respondent classified the case as a malpractice action that should be barred by the statute of limitations action based upon the then recently decided opinion of South Carolina Supreme Court in Stokes v. Pee Dee

Family Physicians, LLP, S. C. Supreme Court Opinion #26867) (Sup ROA p. 1) (now 389 S.C. 343, 699 S.E. 2d 143(2010)). Respondent erroneously argued at the motion for summary judgment and again today that *Stokes* does not permit the Appellant to bring the cause of action because at the time it was brought the deceased was barred by the three year statute of limitations. (Memorandum p. 3 and ROA p. 33 lines 9-11) (emphasis added). However the South Carolina Supreme Court did not choose to use the Respondent's language "at the time it was brought". Instead the Supreme Court stated in *Stokes*: "If the decedent had a right of recovery at the time of death, then the wrongful death action must be filed within three years, which begins to run upon the death of the person on account of whose death the action is brought." Citing *Stokes* (emphasis added). Appellant brought the cause of action within three years of the death of Mr. LeClair.

There is no question that at the time of his death, and the Respondent agreed that Mr. LeClair that was not barred from bringing a cause of action against Palmetto Health. (ROA p. 33, lines 19-20). Respondent's argument has no merit.

In his second allegation for reconsideration; Respondent alleges that "the language in *Stokes*, on which this Court relied, is in error."

(memorandum p.4)

It is unclear from the question as to whether the Respondent means that the Court of Appeals erred in relying upon the *Stokes* case or whether the Supreme Court erred in its decision in *Stokes*.

In addressing the first contention of the Respondent's second allegation that the Court of Appeals erred in relying upon "dicta" in *Stokes*; (memorandum p. 4). This issue was not addressed in the trial court ruling. It was not appealed by the Respondent and it was not addressed in the Respondent's brief. Furthermore, I do not agree with Respondent's argument that the Court of Appeals relied upon the alleged dicta cited by the Respondent and I do not agree that "the language in *Stokes*, on which this Court relied, is in error." (memorandum p.4). The Court of Appeals relied upon the fact that if A died as a result of the negligence of B and A at the time of his death was not barred from bringing any suit against B. B cannot now argue that A's estate is barred from bringing the lawsuit on the ground that the statute of limitations ran. Any other ruling would be illogical and completely nonsensical in light of common sense and *Stokes*.

In addressing the second contention of the Respondent's second allegation that the "Supreme Court in *Stokes* did not properly consider the impact of Section 15-51-10 of the Wrongful Death Act" (memorandum p 5). Respondent did not appeal this issue and it is therefore not proper argument at this time. But, regardless of the language used by the Supreme Court, *Stokes* prohibits an individual from relying upon the wrongful death statute of limitations if at the time of the death the decedent was barred from bringing the suit. There is no question and it is not contested that at the time of his death Mr. LeClair was NOT barred from suit. (R. p. 33, lines 19-20) (emphasis added). Respondent argues now that the decedent could have brought a negligence action before he died and therefore he cannot rely on Section 15-51-10 and 15-3-530(6) for additional time.

Additionally this same argument was advanced by the Respondent, both in his brief and during oral argument, so it hasn't been overlooked or misapprehended by the Court of Appeals.

In his third allegation for reconsideration; Respondent again alleges that the summary judgment should be sustained because the Appellant failed to identify any expert witnesses to establish medical causation.

This argument was rejected by the trial court and it was not appealed by the Respondent.

IN CONCLUSION

This is a wrongful death case that was properly brought pursuant to Section 15-51-10 of the South Carolina Code of Laws.

15-51-10 states:

“Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, although the death shall have been caused under such circumstances as make the killing in law a felony. In the event of the death of the wrongdoer, such cause of action shall survive against his personal representative.

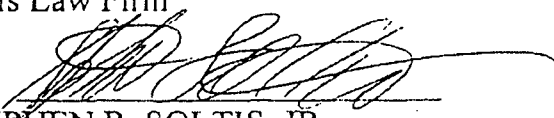
Section 15-3-530 (6) of the South Carolina Code of Laws provides the applicable statute of limitation and states:

"An action under Sections 15-51-10 to 15-51-60 for death by wrongful act, the period to begin to run upon the death of the person on account of whose death the action is brought."

The Court of Appeals clearly understood the case law and made the correct decision when it reversed the trial court's ruling and remanded the matter back to the trial court.

Respectfully submitted,

Soltis Law Firm

BY: 

STEPHEN R. SOLTIS, JR.

821 E. Main Street, Suite A

Lexington, South Carolina 29072

803-808-8060

Attorney for the Appellant

Lexington, South Carolina
March 18, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-4832

Ruth Sturkie LeClair, as Next of Kin
to and Personal Representative of the
Estate of Raymond Conrad LeClair, ... Appellant,

v.

Palmetto Health, ... Respondent. .

REPLY MEMORANDUM IN SUPPORT OF
RESPONDENT'S PETITION FOR REHEARING

The Respondent Palmetto Health has petitioned this Court for a rehearing of the recent decision in *LeClair v. Palmetto Health*, Op. No. 2013-UP-081 (S.C. Ct. App. filed February 20, 2013). The Appellant has now filed a return in opposition

RECEIVED
MAR 27 2013

SC Court of Appeals

to the petition for rehearing, to which the Respondent is compelled to respond briefly.

As an initial issue, the Respondent points out that in its per curiam opinion this Court makes no mention of the survival action and fails to specify that the summary judgment on the survival action is affirmed. The Respondent has therefore requested, at a minimum, that the opinion be revised to clarify that the summary judgment for the survival action is affirmed and that the lower court order is "affirmed in part, reversed in part, and remanded." This will avoid any confusion or disagreements on remand with respect to whether the survival action is dismissed or not.

In reply, the Appellant curiously argues that "the trial court did not rule there was a survival action and Respondent did not appeal the trial court's decision." *See*, Memorandum in Opposition to Respondent's Petition for Petition for Rehearing, p. 2. That makes no sense. Certainly, Judge Lee did construe the Complaint as alleging both a wrongful death and survival action. *See*, Order filed June 10, 2011 ("The Complaint contains causes of action for Survival and Wrongful Death"). (R. 41). Judge Lee further made several references to "all claims" brought by the Appellant in that same order. (R. 45-46). Moreover, the Complaint seeks damages for "the pre-death pain, injuries, and conscious suffering of her spouse" which are recoverable only in a survival action. *See*, Complaint,

para. 18. (R. 4). Therefore, if the Appellant now contends that she did not file a survival action and that Judge Lee did not grant summary judgment on a survival action, that position is inconsistent with the pleadings and orders in the Circuit Court.

Further, the Appellant's statement that the Respondent did not appeal the trial court's decision equally makes no sense. Judge Lee ruled in the Respondent's favor and dismissed the entire case – both the survival and wrongful death action. There was no need for the Respondent to appeal from that order and certainly not the dismissal of the survival action.

As for the second issue, the Appellant failed to refute the Respondent's arguments. Specifically, the Appellant failed to refute the argument that the language in *Stokes v. Pee Dee Family Physicians*, 389 S.C. 343, 699 S.E.2d 143 (2010), on which this Court relied, is dicta. Instead, the Appellant argues that Judge Lee did not discuss whether the language in *Stokes* is dicta and that the Respondent did not appeal. Again, Judge Lee ruled in favor of the Respondent on the statute of limitations defense and, as a result, there was no reason to appeal that favorable ruling. Further, in a conclusory manner, the Appellant only says that "I do not agree with the Respondent's argument" and that "[a]ny other ruling would be illogical and completely nonsensical in light of common sense and *Stokes*." See, Memorandum in Opposition to Respondent's Petition for Petition for Rehearing, p.

4. But, the Appellant never explains her conclusory response. In short, a fair reading of *Stokes* shows that the language on which this Court relied is dicta – that language from the *Stokes* opinion was not in response to the question posed. Instead, that allegedly dispositive language from *Stokes* addressed an entirely different factual scenario – where the decedent dies *before* the statute of limitations expires – which was not the issue or factual scenario raised in *Stokes* where the decedent died *after* the statute of limitations expired. There should be no doubt – the allegedly dispositive language from *Stokes* is dicta.

In addition, the Appellant has not offer any cogent or reasoned explanation that the dicta from *Stokes* is a correct reading of the law. She again argues that the Respondent did not appeal this issue. Again, that argument is flat wrong. The Respondent prevailed on the statute of limitations defense in the lower court and was not required to appeal in order to argue in favor of upholding Judge Lee's summary judgment ruling. As to the merits, the Appellant offers no argument – she offers no explanation as to why Section 15-51-10 has no application where the statute of limitations has not expired at the time of death. The reason may be that there is no logical explanation to support the inapplicability of Section 15-51-10 to the present case.

For the reasons discussed in detail in the petition for rehearing, this Court is urged to view the allegedly dispositive language from *Stokes* for what it is –

erroneous and non-binding dicta. The Court is further requested to find that the estate's wrongful death claim – like the survival claim – is barred because the Appellant did not file suit by March 4, 2008.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

JAMES E. PARHAM, JR.
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555

Counsel for Respondent Palmetto Health

Columbia, South Carolina

March 25, 2013

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Rene Lee
Circuit Court Judge

Case No. 2008-CP-40-4832

Ruth Sturkie LeClair as next of kin to
and Personal Representative of the Estate
Of Raymond Conrad LeClair

v.

Palmetto Health

RECORD ON APPEAL

Stephen R. Soltis, Jr.
Soltis Law Firm
821 E. Main Street, Suite A
Lexington, South Carolina 29072
803-808-8060

Attorney for Appellant

Andrew F. Lindemann
Davidson & Lindemann, P.A.
PO Box 8568
Columbia, South Carolina 29202
803-806-8222
and
James E. Parham, Jr.
James E. Parham, Jr., P.A.
PO Box 1576
Irmo, South Carolina 29063
803-749-8555

Attorneys for Respondent

RECEIVED
DEC 28 2011
SC Court of Appeals

TABLE OF CONTENTS

Plaintiff's Complaint.....	1-5
Defendant's Answer.....	6-10
Defendant's Motion for Summary Judgment.....	11-12
Plaintiff's Response to Defendant's Motion.....	13-17
Transcript (full).....	18-38
Judge's Directives as to Order.....	39
Order Granting Summary Judgment.....	40-46
Plaintiff's Request for Reconsideration.....	47-49
Defendant's response to Reconsideration.....	50-51
Order Denying Plaintiff's Request for Reconsideration.....	52

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2008-CP-40-4832

RUTH STURKIE LECLAIR
 as next of kin to and Personal
 Representative of the estate of
 RAYMOND CONRAD LECLAIR
 Plaintiff

COMPLAINT

Vs.

PALMETTO HEALTH

Defendant,

The Plaintiff, Ruth Sturkie LeClair, complaining of the Defendant, hereby
 alleges as follows:

1. That the Plaintiff is the next of kin to and the duly appointed Personal Representative of the Estate of, Raymond Conrad LeClair, her deceased spouse. Plaintiff is a citizen and resident of the County of Lexington in the State of South Carolina.
2. That the Defendant is a corporation and or a business entity organized and operating under the laws of the State of South Carolina. Defendant owns and or operates Palmetto Senior Care, (hereafter PSC).
3. PSC is a special service of Palmetto Health that provides medical and health-related care to older individuals and is located in and does business in Richland County.

4. Raymond Conrad LeClair, (hereafter Mr. LeClair), was the spouse of the Plaintiff and was a long time patient of PSC.

5. On March 4, 2005, Mr. LeClair was 76 years of age and was in good health with the exception of his need of a "walker" to assist him in walking and standing.

6. PSC provided transportation to Mr. LeClair for the purpose of transporting him to and from treatment facilities owned by or used by the Defendant.

7. PSC undertook the care and duties of transporting Mr. LeClair to and from facilities operated by the Defendant and the Defendant profited from both the transportation and the health care service rendered.

8. PSC breached its duty to Mr. LeClair when the driver/aid operating the Palmetto Senior Care bus, under the control of the Defendant, ignored, neglected or otherwise permitted or encouraged Mr. LeClair to stand without the assistance of his walker and without the care and assistance due from the Defendant. Per medical care and instructions of the Defendant, Mr. LeClair was not permitted to stand or walk without the assistance of the walker.

9. On March 4, 2005 Mr. LeClair was severely injured when, while in the care and control of the Defendant and while waiting to ride the PSC bus for his return home trip from PSC, the bus driver/attendant took the walker from Mr. LeClair and instead of assisting him to his seat on the bus, the driver allowed him to stand unattended. During this time the driver/attendant placed the walker in the storage compartment of the bus. Upon the return of the driver/attendant, Mr. LeClair was lying unconscious on the ground.

10. Mr. LeClair was seriously injured, sustaining a severe blow to the head.

11. Mr. LeClair was transported by ambulance to Palmetto Health Richland where he was admitted to the hospital and treated for his injuries. Upon his release from Palmetto Health Richland, Mr. LeClair was transferred to the Lowman Home where, after suffering for more than six months, he died on September 28, 2005.

12. That all of the foregoing allegations are realleged and incorporated herein by reference as if stated verbatim.

13. That on March 4, 2005, while in the care of PSC, as a result of lack of supervision, neglect or other causes, Mr. LeClair sustained an injury to his body.

14. That PSC and Palmetto Health were negligent, willful, wanton, careless and grossly negligent at all times and dates above in one or more of the following:

- a. By failing to provide adequate supervision and care while transporting Mr. LeClair to and from PSC.
- b. By permitting Mr. LeClair to be left unattended while the driver of the bus was stowing Mr. LeClair's walker.
- c. By the improper training or supervision of the bus driver/attendant.
- d. By the improper or fraudulent certification or control of PSC by the operation of the bus service.

15. That as a direct and proximate result of the negligent, willful, wanton, careless, and grossly negligent acts and omissions of PSC, the Plaintiff is entitled to recover for the loss of consortium, society and companionship she has sustained due to the death of her spouse, and PSC and Palmetto Health, which was caused by the Defendants as set forth above.

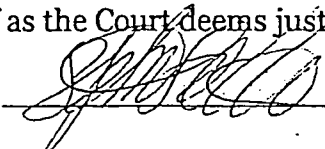
16. That as a direct and proximate result of the negligent, willful, wanton, careless and grossly negligent acts and omissions of PSC and Palmetto Health, who directly and proximately caused the death of Mr. LeClair, his surviving spouse and as the personal representative of his estate, the Plaintiff is entitled to damages as follows:

- a. Medical bills;
- b. Pecuniary loss;
- c. Mental shock and suffering;
- d. Grief and sorrow;
- e. Loss of companionship;
- f. Deprivation of the use and comfort of Mr. LeClair's society;
- g. Loss of Mr. LeClair's experience, knowledge and judgment in managing the affairs of their marriage and of the marital home; and
- h. Loss of any income for the support, maintenance, care and protection of his spouse.

17. That all of the foregoing allegations are realleged and incorporated herein by reference as if stated verbatim.

18. That as a direct and proximate result of the Defendants' negligent, willful, wanton, careless and grossly negligent acts and omissions, as more particularly set forth above, the Plaintiff is entitled to recover for the pre-death pain, injuries, and conscious suffering of her spouse, the decedent Raymond Conrad LeClair, all of which were caused by the Defendants as set forth above.

WHEREFOR, the Plaintiff prays for a jury trial, for judgment against the Defendants in a sum to include actual damages together with punitive damages and the costs of this action in a the amount of \$20,000,000.00 and for such other and further relief as the Court deems just and proper.



Stephen R. Soltis, Jr.
101 East Main Street
Lexington, South Carolina 29072
(803) 808-8060 Phone
(803) 808-1211 Fax

Attorney for Plaintiff Ruth Leclair.

Lexington, South Carolina
February 29, 2008

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ruth Sturkie LeClair, as Next of Kin to
and Personal Representative of the
Estate of Raymond Conrad LeClair,

Civil Action Number: 08-CP-40-4832

Plaintiff,

ANSWER

ON BEHALF OF THE DEFENDANT

vs.

Palmetto Health,

Defendant.

The Defendant, reserving all rights pursuant to the Motion previously filed, answers the Complaint, as follows:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Complaint except those hereinafter specifically admitted, qualified or explained.

2. The Defendant is without sufficient knowledge or information upon which to form a belief with respect to the allegations of Paragraph 1 of the Complaint, denies the same and demands strict proof thereof.

3. The Defendant makes reference to Raymond Conrad LeClair's medical records for the exact nature and extent of the medical/nursing care rendered to him by the Defendant and by other health care providers, and the Defendant denies every allegation in the Complaint to the contrary.

4. The Defendant denies all of the remaining allegations contained in the Complaint, denies that it was negligent or grossly negligent and denies that it violated

any standards of medical/nursing practice or of supervision in its care and treatment of Raymond Conrad LeClair that are a proximate cause of his injuries and death.

FOR A SECOND DEFENSE

5. Any injury or damage sustained by the Plaintiff and Raymond Conrad LeClair as a result of the matters alleged in the Complaint were due to and caused by Raymond Conrad LeClair's physical infirmities and a natural disease process, and the Defendant pleads such physical infirmities and natural disease process as a complete bar to this action.

FOR A THIRD DEFENSE

6. Any injury or damage sustained by the Plaintiff and Raymond Conrad LeClair as a result of the matters alleged in the Complaint could not be avoided, and the Defendant pleads an unavoidable accident as a complete bar to this action.

FOR A FOURTH DEFENSE

7. Any injury or damage sustained by the Plaintiff and Raymond Conrad LeClair as a result of the matters alleged in the Complaint were a proximate result of one or more independent, efficient and intervening causes which the Defendant affirmatively pleads as a complete bar to this action.

FOR A FIFTH DEFENSE

8. Any injury or damage sustained by the Plaintiff and Raymond Conrad LeClair as a result of the matters alleged in the Complaint were caused and occasioned by events over which the Defendant had no control or right of control, thereby relieving the Defendant from any liability or responsibility herein.

FOR A SIXTH DEFENSE

9. The Defendant pleads the applicable statute of limitations as an affirmative defense and a complete bar to this action.

FOR A SEVENTH DEFENSE

10. The Complaint fails to state a claim against the Defendant upon which relief can be granted, and the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR AN EIGHTH DEFENSE

11. Any injury or damage sustained by the Plaintiff and Raymond Conrad LeClair as a result of the matters alleged in the Complaint were due to Raymond Conrad LeClair's negligent, careless, reckless, wanton, willful and grossly negligent acts or omissions which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to produce such injury and damage, if any, and without which such injury and damage would not have occurred; such negligent, careless, reckless, wanton, willful and grossly negligent acts or omissions on the part of Raymond Conrad LeClair being more particularly set forth as follows:

74P
#3

- a. in failing to exercise due care, reasonable care, or any care whatever for his safety;
- b. in failing and omitting to follow instructions, advice and orders given by the Defendant and by other health care providers; and
- c. in failing and omitting to take proper precautions for his health and physical well-being which he knew or should have known would affect his health and well-being;

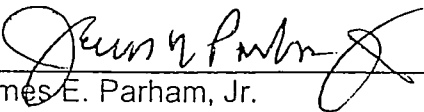
all of which were the direct and proximate cause of any injury or damage sustained by the Plaintiff and Raymond Conrad LeClair, and the Defendant pleads such negligence, carelessness, recklessness, wantonness, willfulness and gross negligence on the part of Raymond Conrad LeClair and would ask that the Court compare the negligence of Raymond Conrad LeClair and the Defendant, which is specifically denied, and if it is determined that Raymond Conrad LeClair's negligence, carelessness, recklessness, wantonness, willfulness and gross negligence was greater than the negligence, carelessness, recklessness, wantonness, willfulness and gross negligence of the Defendant, which is specifically denied, then the Plaintiff and Raymond Conrad LeClair should be totally barred from recovery, and if it is determined that Raymond Conrad LeClair's negligence, carelessness, recklessness, wantonness, willfulness and gross negligence is equal to or less than the negligence of the Defendant, which is specifically denied, then the amount of recovery available to the Plaintiff and Raymond Conrad LeClair should be reduced by the percentage of Raymond Conrad LeClair's negligence, carelessness, recklessness, wantonness, willfulness and gross negligence.

JP
#4

FOR A NINTH DEFENSE

12. At all times referenced in the Complaint, the Defendant was a charitable organization as defined by S.C. Code Ann. Sections 33-56-20 and 33-56-170. Therefore, the allegations of the Complaint as to the Defendant are governed by the terms and provisions of the South Carolina Solicitation of Charitable Funds Act (hereinafter the "Act") found at S.C. Code Ann. Section 33-56-10, et. seq., which provides limitations upon liability and damages and exemptions from liability and damages, and the Defendant pleads the Act and its provisions, as they may be applicable, as an affirmative defense.

WHEREFORE, having fully answered the Complaint, the Defendant prays that it be dismissed with costs assessed against the Plaintiff.


James E. Parham, Jr.
Attorney for the Defendant
220 Ministry Drive
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555
(803) 749-0277 (Facsimile)

August 4, 2008

CERTIFICATE OF SERVICE

I, Sherri Johnson, do hereby certify that on the 4th day of August, 2008, I mailed a copy of the foregoing Answer on Behalf of the Defendant by depositing a copy of the same in the United States Post Office at Columbia, South Carolina, with proper postage affixed addressed to the following:

Stephen R. Soltis, Jr., Esquire
Law Office of Stephen R. Soltis, Jr.
831 East Main Street
Lexington, South Carolina 29072


Sherri Johnson

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ruth Sturkie LeClair, as Next of Kin to
and Personal Representative of the
Estate of Raymond Conrad LeClair,

Civil Action Number: 08-CP-40-4832

Plaintiff,

MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF THE DEFENDANT

vs.

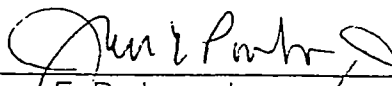
Palmetto Health,

Defendant.

TO: STEPHEN R. SOLTIS, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendant, will move before the Court on the tenth (10th) day after the service hereof or as soon thereafter as counsel may be heard, for an Order of Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that there is no evidence of any deviations from accepted standards of medical/hospital practice on the part of the Defendant that are a proximate cause of Raymond Conrad LeClair's injuries and death.

The Motion will be based upon the applicable statutory law, regulatory law and case law, upon any Affidavits filed with the Court, upon any pleadings of record, upon any and all depositions, upon any and all discovery and upon such further information as may be received by the Court.

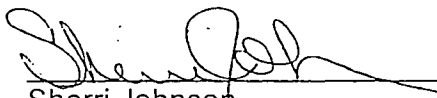

James E. Parham, Jr.
Attorney for the Defendant
220 Ministry Drive
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555
(803) 749-0277 (Facsimile)

December 16, 2010

CERTIFICATE OF SERVICE

I, Sherri Johnson, do hereby certify that on the 16th day of December, 2010, mailed a copy of the foregoing Motion for Summary Judgment on Behalf of the Defendant by depositing a copy of the same in the United States Post Office at Columbia, South Carolina, with proper postage affixed addressed to the following:

Stephen R. Soltis, Jr., Esquire
Law Office of Stephen R. Soltis, Jr.
831 East Main Street
Lexington, South Carolina 29072


Sherri Johnson

COF

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2008-CP-40-4832

RUTH STURKIE LECLAIR
 as next of kin to and Personal
 Representative of the estate of
 RAYMOND CONRAD LECLAIR
 Plaintiff

RESPONSE TO DEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT

Vs.

PALMETTO HEALTH

Defendant,

2011 MAY 23 AM 11:35
 C.C. RICHMOND
 S.C.

The Plaintiff, Ruth Sturkie LeClair, complaining of the Defendant, hereby responds to the Defendant's motion for summary judgment as follows:

STANDARD OF REVIEW

The South Carolina Rules of Civil Procedure provide that summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56 c, SCRPC in determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. David v. McLeod Regional Medical Center, 367 S.C. 242, 247, 626 S.E.2d 1,3 (2006).

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 865, 874 (2001).

Plaintiff alleged in her complaint that the deceased was in the care and control of the Defendant at the time of his injury which later resulted in the death of Mr. LeClair.

Ron Shelton an agent of the Defendant Palmetto Health testified at a deposition that he was responsible for the patient (Mr. LeClair) from the time he left the front door of his home until the time he was returned to the front door of his home. On March 4, 2005 Mr. LeClair was being treated by Palmetto Health. Palmetto Health provided transportation to and from its facility. After Mr. LeClair was treated at Palmetto Health he was allowed to remain unattended and during this time he fell to the ground and was later discovered by Mr. Shelton. Mr. LeClair was then treated by Palmetto Health and later died.

The Defendant has offered no other alternative scenario. Assuming that their defense is that they were not responsible for the fall that injured Mr. LeClair, there was and still remains a substantial issue of fact.

The Defendant assumed the duty to transport Mr. LeClair to and from its facilities and breached its duty to Mr. LeClair when the driver operating the Palmetto Senior Care bus, under the control of the Defendant, ignored, neglected or otherwise permitted or encouraged Mr. LeClair to stand without supervision and without the care and assistance due from the Defendant. Per medical care and instructions of the Defendant, Mr. LeClair was not permitted to stand or walk without the assistance of the walker.

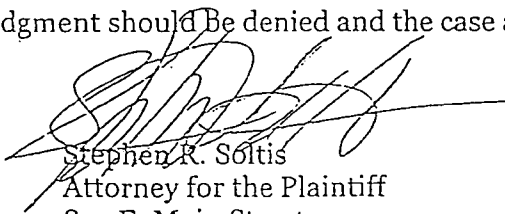
Mr. LeClair was seriously injured, sustaining a severe blow to the head.

Mr. LeClair was transported by ambulance to Palmetto Health Richland where he was admitted to the hospital and treated for his injuries. Upon his release from Palmetto Health Richland, Mr. LeClair was transferred to the Lowman Home where, after suffering for more than six months, he died on September 28, 2005.

That all of the foregoing allegations are realleged and incorporated herein by reference as if stated verbatim.

Rule 56 (c) provides that " ... The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (emphasis added)

Plaintiff submits all interrogatories, and other pleadings and all affidavits and personal knowledge. Regardless of the number of affidavits or even the lack of affidavits there is a clear factual issue as to this material fact that cannot be determined by the Court as a matter of law. In cases applying the preponderance of the evidence burden of proof, the non moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. The pleadings and the testimony of Ron Shelton provide at least a scintilla of evidence. Therefore the motion for summary judgment should be denied and the case allowed to proceed to trial.



Stephen R. Soltis
Attorney for the Plaintiff
821 E. Main Street
Lexington, SC 29072

803-8088060

Lexington, South Carolina
May 9, 2011

CC

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

RUTH STURKIE LECLAIR
 as next of kin to and Personal
 Representative of the estate of
 RAYMOND CONRAD LECLAIR
 Plaintiff)

IN THE COURT OF COMMON PLEAS

2008-CP-40-4832

AFFIDAVIT OF RUTH LECLAIR

Vs.)

PALMETTO HEALTH)

Defendant,)

I Ruth Sturkie LeClair, having personal knowledge of the facts set forth here
 state as follows:

On March 5, 2005 my husband Raymond LeClair was picked up by Palmetto
 Health and transported to their facility for treatment.

Later that day I was contacted by Palmetto Health and told that my husband
 while waiting for the Palmetto Health bus was injured and will be hospitalized
 overnight.

Later I found out through personal conversation with Ron Shelton who was
 transporting him that he had fallen while waiting to get on the bus. Mr. Shelton told me
 that "the knuckle head wanted to finish his cigarette so I left him alone. When I
 returned he was lying on the ground."

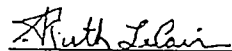
Mr. Shelton also testified at a deposition that he was responsible for all of the
 patients from the time they left the hospital until the time they were delivered to their

front door. I believe his exact words were "I am responsible for them from door to door."

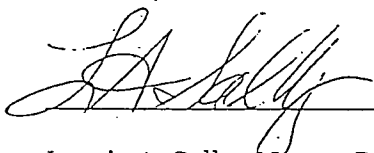
Palmetto Health told my husband to use his walker at all times. They further told him and me that he should not be left alone without supervision. Palmetto Health allowed him to stand alone and without supervision.

My husband died as a result of concocting pneumonia as a result of the fall and as a result of his coma.

FURTHER AFFLIANT SAYETH NOT.


Ruth Sturkie LeClair

Sworn to before me this 10th day of May 2011



Lourie A. Salley Notary Public

My commission expires on 1-28-2013

STATE OF SOUTH CAROLINA.,)

IN THE COMMON PLEAS

COURT OF COLUMBIA

CASE NO.: 2008-CP-40-04832

COUNTY OF RICHLAND.,)

RUTH STURKIE LECLAIR.,)

PLAINTIFF,)

-VS.-)

TRANSCRIPT OF RECORD

PALMETTO HEALTH.,)

DEFENDANT.)

MAY 23, 2011

COLUMBIA, SOUTH CAROLINA

B E F O R E:

HONORABLE ALLISON LEE, JUDGE.

A P P E A R A N C E S:

MMR. STEPHEN SOLTIS
SOLTIS LAW FIRM
821 EAST MAIN STREET
LEXINGTON, SOUTH CAROLINA 29072
803-808-8060
Criminallaw1@AOL.COM
FOR THE PLAINTIFF

MR. JAMES PARHAM
P.O. BOX 1576
IRMO, SOUTH CAROLINA 29063
803-749-8555
JEPLAW@BELLSOUTH.NET
FOR THE DEFENDANT

ORIGINAL

WANDA NELSON, CVR
CIRCUIT COURT REPORTER
SIXTEENTH CIRCUIT, AT LARGE
Wnelson@sccourts.org

1 (ON THE RECORD MONDAY, MAY 23, 2011 AT 02:20 PM.)

2 THE COURT: Good morning. Be seated please.

3 Counsel, if you will step forward.

4 (STATUS OF CASES ON TRIAL ROSTER HEARD OFF THE
5 RECORD.)

6 THE COURT: Counsel, I know I've got two hearings and
7 I'm going to -- I hope it's not an inconvenience I'm going
8 to switch the order so that I can take up Ruth Sturkie
9 LeClair versus Palmetto Health first and then go to the
10 other one.

11 MR. PARHAM: You ready to hear it now, Your Honor?

12 THE COURT: Yes, sir.

13 Do you have a caption?

14 MADAME COURT REPORTER: Yes, ma'am.

15 THE COURT: Okay. This is Docket Number 2008-CP-40-
16 04832 Ruth Sturkie LeClair versus Palmetto Health. The
17 plaintiff is represented by Stephen Soltis and the
18 defendant is represented by James Parham. We are here this
19 afternoon on a motion for summary judgment that was filed
20 by the defendant. This case is scheduled for a day certain
21 trial to begin on May the 31st and the motion is pending
22 and so I ask that you all come forward so to be able to
23 hear the motion before next week. Hopefully we will be
24 able to resolve some issues before that particular case
25 comes up for trial.

1 And so Mr. Parham, I believe I seen your motion and I
2 believe you cited a case of Michael Stokes versus PD Family
3 Physicians which I pulled a copy of that case and so I'll
4 hear your motion at this time.

5 MR. PARHAM: Yes, ma'am. May it please the court.
6 Your Honor, I hand up, I had a copy of the case for you.
7 Also the medical malpractice statute of limitations and
8 also just a little time line for you to follow along.

9 THE COURT: You need to provide copies to Mr. Soltis.

10 MR. PARHAM: Yes, ma'am.

11 MR. SOLTIS: Judge, you may not have in the file
12 because it was just filed today, it was sent to Mr. Parham
13 on the 10th of May is our response to the motion.

14 THE COURT: Okay. Thank you very much. This is a
15 copy of - -

16 MR. SOLTIS: That's a copy, Judge. The original is
17 filed today.

18 THE COURT: Okay. Thank you.

19 Yes, sir.

20 MR. PARHAM: May it please, Your Honor. If you look
21 at the little time line I have, this case involves a fall
22 by Mr. LeClair who is dead on March 4, 2005. He was a
23 resident or a participant in the Palmetto Senior Care
24 Program that has a facility over in West Columbia but it's
25 owned and operated by Palmetto Health, Richland mainly.

1 It's like a day care, he went, he got picked up by a bus in
2 the morning around Eight and then he was returned to his
3 home around Four or Five in the afternoon, five days a
4 week. He was in his seventies at the time, had significant
5 health problems with probably fifteen different diseases
6 and problems. He was using a walker to walk to ambulate
7 but he ambulated on his own without any other human
8 assistance but he used a walker when he wanted to. And he
9 fell, Your Honor, attempting to get on the bus to go home
10 in the afternoon of March 4, 2005. At that time he was
11 assessed and he was sent to Richland Memorial Hospital
12 where he remained for seven days. He was then transferred
13 to the Lowman Home out on White Rock and he stayed there,
14 Your Honor, until he died about six months later, six and a
15 half months later on September 28, 2005. Your Honor,
16 what's significant in this case and the grounds for my
17 motion are two, One, the statute of limitations has run on
18 both the survivor plan and the wrongful death. And my
19 second ground is that the plaintiff does not have an expert
20 witness to testify about the standard of care for this type
21 of situation of Mr. McClair. But the important date, Your
22 Honor, that I believe is the summons and complaint that's
23 filed with the Clerk on July 2nd, 2008. And, Your Honor,
24 if you grab the Stokes case the Stokes case says that a
25 cause of action cannot be brought by an estate if the

1 descendent in this case Mr. LeClair if he was still alive
2 could not bring it. And again the deciding date of when
3 Mr. LeClair knew or should have known that he had a cause
4 of action against someone including Palmetto Health would
5 have been the day he fell and hit his head and was
6 transferred to the hospital which is March 4, 2005. Based
7 on the statute of limitations, Your Honor, Mr. LeClair
8 himself if he was alive had three years from that date to
9 bring a law suit against Palmetto Health and that would
10 have been no later than March 4, 2008.

11 That also applies, Your Honor, what the Stokes case
12 tells us that the wrongful death can only be brought if the
13 decedent had a right to bring that wrongful death action
14 had he still been alive. And, Your Honor, even though he
15 died on September, 2005 the Stokes case tells us that his
16 cause of action accrued on March 4 he had three years to
17 bring it to March of 2008, the estate did not bring it
18 until July of 2008 some four months later, three years and
19 four months later. So the proper, our contention is the
20 proper forum of action that the estate should have taken
21 would have been to bring a survival action or any wrongful
22 death action within three years of the injury and they
23 didn't. And Stokes clearly lays that out. Stokes says
24 that the controlling question is whether the deceased if he
25 had not died could maintain the action. And if Mr. LeClair

1 had been alive he had until March of 2008 to bring the law
2 suit and it was not brought until four months later July of
3 2008. Same thing applies, the Stokes case tells us and
4 quite frankly I was actually there waiting for another
5 motion the day this was argued over in Forest County on the
6 trial court level and I didn't understand it at all but
7 then the opinion, I thought the Judge was wrong, the
8 opinion came out the more I read it the more it made sense
9 but the Stokes case tells us that you've got to bring the
10 action even though death may not have occurred and in this
11 case the death didn't occur. In Stokes the man had
12 diagnosed with cancer and actually brought a proper
13 survival action he later died but didn't bring the action
14 against the additional defendant until later on and he
15 should have brought it then. But this case is a little
16 different, Your Honor, Mr. Stokes died six months after the
17 fall but still he or his estate should have brought the
18 original action within three years and they didn't. It's
19 not the date of death that applies any more like I thought
20 for years and years it's when the action accrued for notice
21 of the statute of limitations. Very simply, Your Honor,
22 Mr. LeClair or his estate had three years to bring a cause
23 of action at least for survival, he was already dead he had
24 three years to bring it from his injury they did not and
25 they missed it by four months, three years and four months.

1 Your Honor, the second ground - -

2 THE COURT: Well wait a minute. Before you go on, is
3 there a question about retroactive application?

4 MR. PARHAM: No, ma'am, Stokes doesn't, did not allow
5 that. In fact instead the plaintiff argued that the
6 wrongful death didn't accrue until Mr. Stokes died and the
7 Court said no that's not the date of death that applies
8 it's when the decedent if he were alive could have brought
9 the cause of action and in that case they could have sued
10 the surgeon within the three years of the time of the
11 diagnoses and they didn't even though he didn't die until a
12 year later. So no there's no retroactive application
13 according to Stokes, Your Honor. Its again if the decedent
14 were alive could he bring this action and they filed it on
15 July 2, 2008 it was three years and four months beyond the
16 injury and I don't think there's any question that if Mr.
17 LeClair fell and hit his head and was admitted to the
18 hospital he knew or should have known he had a cause of
19 action against someone then they missed it and he could
20 have brought the action if he was alive and then the estate
21 steps into his shoes and they can't get a tolling of the
22 statute just because they come in after his death to expand
23 it by this six months that he was alive.

24 The second ground, Your Honor, is if you look at the
25 bottom of my little sheet those are the five allegations

1 against Palmetto Health and they even in Paragraph Eight of
2 the complaint talk about a breach of duty and I've listed
3 the five things that the plaintiff has alleged against
4 Palmetto Health. And I submit, Your Honor, these five
5 things need an expert to tell a jury what the standard
6 would be for supervision, training, the fraudulent
7 certification or control of the bus service, the improper
8 use of the bus service; all these things need an expert,
9 Your Honor, and they even talk about a breach of duty.
10 This is not something that is lay knowledge there would be
11 a question I believe you know whether Mr. LeClair could
12 stand there without his walker if he wanted to. He was
13 left unattended all throughout the day he could go where he
14 wanted to go do what he wanted to do and that's what he
15 did. In fact even in the light most favorable to the
16 plaintiff, Your Honor, he tried to get on the bus and fell
17 but I contend that an expert is needed. Your Honor, the
18 reason I didn't file a motion sooner is because this case
19 did not fall within the tort reform act in March of 2005
20 which was four years before July 1st, 2005 for requisite
21 affidavit and a notice of intent to file suit so they
22 didn't need an expert on the front end I wanted to get some
23 discovery and actually file this motion back in December of
24 2010 it's somewhat old but I contend, Your Honor, if you
25 don't want to go with the statute of limitations I believe

1 Mr. LeClair through his estate needs an expert. If Your
2 Honor doesn't believe that Mr. LeClair needs an expert for
3 the standard of care for supervision, training and the over
4 seeing of Mr. LeClair in the facility and getting on and
5 off buses an additional ground for statute, Your Honor, is
6 that there is no expert witness testimony that's been
7 provided by the plaintiff to tie in Mr. LeClair's injuries
8 to his death. So, Your Honor, the third ground would be as
9 a fall back would be that right now they have not named an
10 expert in their discovery, they have not produced any type
11 of expert CD or expert report and Your Honor we are seven
12 days from trial and at a minimum, Your Honor, there is no
13 expert testimony to tie in the approximate cause between
14 Mr. LeClair falling off the bus and him dying six months
15 later. And that would go to wrongful death. And quite
16 frankly, Your Honor, if you want to go even further there
17 really is no expert testimony to tie in right now any of
18 the damages Mr. LeClair suffered by the fall saying the
19 fall caused the damages that he's not named any more,
20 provided a name or anything like that.

21 THE COURT: Let me just ask you, how was this case
22 different from I don't want to say a normal slip and fall
23 but this isn't a simple fall but how is this different from
24 just a normal negligence action which they're claiming that
25 the defendant was negligent and not realizing or following.

1 through with the idea that Mr. LeClair given the fact that
2 he had, that he was on a wheelchair would have needed some
3 type of assistance or some type of supervision to make sure
4 that he was stepping up properly or safely getting on the
5 bus and that that would just be the normal personal injury
6 type claim?

7 MR. PARHAM: Yes, ma'am. Again I think you've spoken
8 to why it is different just because it's not that he was
9 walking along and there was defect in the side walk and
10 there wasn't a puddle of water in the parking lot there is
11 no allegations of something that's there that doesn't need
12 an expert to tell us what we're dealing with is the fact
13 that Mr. LeClair was there to get on the bus. Their own
14 allegations I believe establish the requirement of the
15 expert affidavit, Your Honor. And since that they are
16 permitting him to stand or walk without assistance I think
17 a jury would have to hear expert testimony to tell them why
18 Palmetto Health needed to provide him assistance to stand
19 or walk. I don't think there would be that but I think an
20 expert would have to say yes his comorbidities require that
21 in addition to his walker that he had. The same thing
22 provide avid supervision and care while transporting him to
23 and from senior care that that's not the typical slip and
24 fall. I think an expert witness would have to tell a jury
25 this is why there is a law suite because Palmetto Health

1 should be doing X Y Z for Mr. LeClair and they weren't and
2 that's why he fell. Same thing left unattended. Again
3 the standard required him to be attended while he's
4 standing there and we contend no but an expert witness
5 would have to say that is the standard of care required of
6 the hospital to provide that supervision. And they've even
7 called into question whether we provide, we handled the bus
8 service properly, our procedures were proper and I think a
9 jury would have to hear that kind of testimony. It goes
10 beyond you know the grate on the floor in the grocery store
11 or I handed something over to me recently where there was a
12 constructionary with orange tape and a woman decides to go
13 over it because it was a five foot walk this way and a
14 hundred foot walk the other way and she ignored it but she
15 brought a law suit and they didn't need an expert because
16 the question of whether it was defect that we properly
17 blocked or not because of all the orange tapes. So I think
18 it goes beyond that and I'm basing that solely, Your Honor,
19 on the allegations in the complaint.

20 THE COURT: So even though it's captioned or it's
21 styled like a negligence supervision or negligent,
22 negligent training of an employee you still believe that
23 there has to be some expert testimony to establish what the
24 standard should have been?

25 MR. PARHAM: Yes, ma'am. In my opinion it's because

1 it is styled as a negligent supervision and negligent
2 training and negligent failure to assist or negligent of
3 failing to provide proper bus service I think that does
4 require the expert witness even beyond the statute.

5 THE COURT: Are there procedures and guidelines that
6 are in place for what's to occur or how the bus system is
7 to be operated or what the employees are supposed to do?

8 MR. PARHAM: Yes, ma'am. There is one policy for the
9 bus. I did provide that to Mr. Soltice and again because
10 there is a policy I think Mr. Soltice would need someone to
11 explain to the jury why that policy was not followed. I
12 don't think right now, Your Honor, the only witness I know
13 that Mr. Soltice has outside of my employees is Ms.
14 LeClair. And certainly she isn't qualified to talk about
15 whether this was done right or wrong. But now she has
16 testimony in her deposition that one of my employees said
17 he did X Y and Z but whether that's within policy or not I
18 think they need an expert to say that that's truly what the
19 employee did for her husband that day and why he fell. I
20 think an expert needs to come in and say well that's not
21 proper even though we contend Mr. LeClair had the ability
22 to walk and do whatever he wanted to in that senior care
23 facility any time. I mean he was a smoker which is what
24 was happening that day he was taking a smoke before he was
25 getting on the bus but he freely, I would provide testimony

1 at trial that he freely walked in and out of the facility
2 to smoke all the time without anybody following him or
3 doing in support of him other than his walker. And I think
4 that's where the difference is, Your Honor, that an expert
5 would have to establish that standard that we breached even
6 based on Ms. LeClair's testimony about what she thinks
7 happened based on some statements my employee allegedly
8 made to her.

9 THE COURT: Thank you. Mr. Soltis.

10 MR. SOLTIS: I'm addressing that second issue first.
11 If that were the case in any negligence action I would have
12 to bring in an expert to say that the grape was wet that
13 the grape made the floor slippery. I don't think so. I
14 think this is simply a negligence case where my client
15 unfortunately passed away. To make me bring in an expert
16 to show what that my client was with their medical records
17 tethered to a walker, walked out, he was waiting to get on
18 the bus, he was left unattended by the bus driver, the bus
19 driver comes back out after leaving him unattended and he's
20 laying on the ground with his head split open and they want
21 me to bring an expert to show what? I'm not sure what they
22 want to bring. This is not a medical malpractice case.
23 We're not saying that the doctor's are wrong in any of
24 their treatment we're just saying that Mr. LeClair fell
25 when he was in their care and custody. Their own employee

1 says that he was in their care and custody and the bus
2 driver told us that he was responsible for Mr. LeClair from
3 the time he left the door till the time he got to his door.
4 It was during this period of time from the time he left
5 Palmetto Senior Care until the time that he was at his door
6 that he fell. I don't know how to bring an expert to say
7 anything other than that it's pretty straight forward. I
8 don't want to belabor that point but I mean I don't know
9 where else to go with that. We're not asking for like I
10 say medical malpractice case. As far as the statute of
11 limitations goes we brought this case back in 2005 prior to
12 any of this being heard by the Supreme Court. I think this
13 case is different from that Supreme Court case although I
14 only had a minute or so to take a look at it. It looks to
15 me like a law suit had already been filed and then after
16 the time of death they tried to bring in yet a third party.
17 I know the defendants so to speak and it was that other
18 defendant that was eliminated. It wasn't the first
19 defendant it was that other defendant because they could
20 have brought him that first time they brought the action.
21 So I don't think we could have filed a wrongful death prior
22 to my client's dying. My client being in a coma and being
23 at the nursing home until he died I don't think he would
24 have been in a position to bring an action not knowing what
25 happened until he died. So I'm kind of at a loss as to

1 where the argument meets the LeClair case.

2 THE COURT: Now in essence what you're claiming is
3 that he suffered injuries as a result of his fall that was
4 due to the negligence of the defendant. Are you saying
5 that you could not have had a guardian or someone appointed
6 on his behalf in order to - -

7 MR. SOLTIS: No, ma'am, I'm not saying that at all.
8 Now clearly that could have been done but I don't think,
9 you know if I brought that cause of action then after he
10 died I would have had to bring another one for the wrongful
11 death. And what he's saying is even if I brought that
12 wrongful death action I couldn't go forward with it today
13 because the Supreme Court said in this Stokes case you
14 can't do that. So I think that's what they eliminated to
15 you brought the cause of action in Stokes prior to the man
16 dying and therefore they're not allowing a third party to
17 come into the law suit after you've already brought it.
18 It's a completely different than the LeClair case.

19 MR. PARHAM: Your Honor, if I may. That's not what
20 I'm saying at all. In the Stokes case, Your Honor, they
21 already filed a survival action, a negligence injury action
22 before the man died. And the Supreme Court says that's
23 what you need to do within that three years. And then five
24 years after he was diagnosed with the cancer is when he
25 died and so there was no question about the original

1 defendant's able to amend their complaint for the wrongful
2 death because they had already sued under the cause of
3 action for the original injury that he had notice of when
4 he was diagnosed. That's no different from this case.
5 What happened here is Ms. LeClair or his estate had three
6 years from when he fell on March 4, 2008, Excuse me, 2005
7 to bring an action for his injuries or his death and they
8 didn't. And the Stokes case tells us that the date of
9 death doesn't matter any more. It's whether a decedent
10 could have brought that action at that time whether if he
11 had still been alive and in this case he could not. If he
12 was alive and waited until July of 2008 he could not have
13 brought an action because the survival would have been gone
14 and the wrongful death would have been gone. And that's
15 you know the statute of limitations again we only cited the
16 fact that gives us those two or three years to investigate
17 the case and bring it. It doesn't mean we all wait until
18 the last day which we all do but you know you have lots of
19 time in there. Mr. LeClair could have brought it in those
20 six months he was still alive because everybody knew he had
21 fallen and injured himself. Your Honor, and again the
22 expert witness, Your Honor, what the court's going to hear
23 whoever hears this case and the jury's going to hear is
24 that Mr. LeClair could walk freely anywhere he wanted to go
25 just like someone down here in the City of Columbia bus

1 system. What he's saying is we didn't supervise him
2 properly even though we're going to put up testimony --
3 well if we get there but he has the burden of proof but
4 we're going to put up testimony that we didn't have to
5 supervise him so I believe he needs an expert to say we had
6 to supervise him. Our policy that I provided to Mr. Soltis
7 simply says that our bus driver's will provide assistance
8 if requested. And in this case Mr. LeClair decided to at
9 least the testimony is unfortunately there's no eye witness
10 but the theory is that he tried to get on the bus by
11 himself and he fell and didn't ask for assistance. You
12 will hear testimony he was a stubborn man and in this case
13 I believe an expert witness is necessary to say okay even
14 though he could walk where he wanted to you had to do X
15 above that. Ms. McClair can't come in and say that and
16 neither can Mr. Soltis say hey he fell it was your
17 responsibility. And that's why I think the expert comes
18 in. And, Your Honor, again beyond that there's no
19 testimony to tie in any damages right now to even the fall
20 and bump on his head. I don't think there's any common
21 ology. You've got to have a doctor who would say these
22 flow from the injury and the death flows from the injuries
23 so at a minimum I don't think you can tie in the wrongful
24 death but even beyond that I don't think he has any body
25 right now that he's provided to me to tell me those

1 injuries fall, flow from the bump on the head because this
2 man had seventeen problems.

3 MR. SOLTIS: When he went to the hospital for the bump
4 on the head was being treated until he died from the bump
5 on the head and nothing else.

6 MR. PARHAM: Your Honor, - -

7 MR. SOLTIS: If I may finish.

8 MR. PARHAM: Sorry.

9 MR. SOLTIS: Been treated by the defendant and now the
10 defendant wants to come in and say no we were treating him
11 for a bunch of other things as well. Yes but the reason
12 he was in the hospital and the reason he was in that
13 nursing care was because of the bump on the head. And
14 there is no question of that. He was in the hospital they
15 treated him until they transferred him.

16 MR. PARHAM: Your Honor, he's going to be surprised
17 when he hears my doctor evidence saying that it's a very
18 high likelihood that Mr. LeClair fell because of, he had
19 multiple infarcts, he was demented, he had Parkinson
20 disease and he done that even by Ms. LeClair's testimony at
21 home numerous times unfortunately for us he gets injured in
22 our place, fortunately Ms. LeClair when he fell in the
23 bathroom numerous times, in fact he broke his neck one
24 time, it's because of his dementia and Parkinson disease so
25 that's the medical testimony he's going to hear when he

1 finally gets to the defense case but he has no one to tie
2 that to.

3 MR. SOLTIS: And they're saying all that knowledge
4 meant that they could just toss him loose and let him go.
5 That's what they're saying.

6 MR. PARHAM: No that's what my experts going to say,
7 Your Honor.

8 THE COURT: All right. I'll look at the brief that
9 was filed and I'll reread Stokes. I will tell you from me
10 I think the issue is going to be the statute of limitations
11 as to whether or not he needs a medical expert on the
12 approximate cause. I think that's something that I think
13 the testimony -- I will have to wait to hear the testimony
14 and determine based upon what happened and what he was
15 being treated for at the time he went to the hospital
16 whether or not the experts needed to tie it together. And
17 as to the allegations about negligent training and
18 supervision I will look at that but my initial thought is
19 that I don't think there needs to be expert testimony on
20 that. I will look at the allegations again and consider
21 the argument. And I will give you an answer before
22 Thursday. Probably tomorrow or Wednesday.

23 MR. SOLTIS: Thank you, Your Honor.

24 MR. PARHAM: Your Honor, I don't know if you're
25 presiding over the case.

1 THE COURT: I am. I'm the only judge here.

2 MR. PARHAM: It's probably a two day case. I don't
3 know if that helps you make plans for us the rest of the
4 week but I'm not sure how many witnesses Mr. Soltis has.

5 THE COURT: What I will initially do is probably, do a
6 form Four and just so that I can give you all notice so you
7 know what to do about preparing for trial. And if I need a
8 Form Order I'll get that to you.

9 MR. PARHAM: Thank you very much.

10 MR. SOLTIS: Thank you, Judge.

11 THE COURT: Thank you. I appreciate you all being
12 available.

13 (END OF TRANSCRIPT OF RECORD IN THE MATTER OF RUTH
14 STURKIE LECLAIR VERSUS PALMETTO HEATH, CASE NO. 2008-CP-40-
15 04832.)

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, THE UNDERSIGNED WANDA NELSON, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE SIXTEEN JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY
THAT THE FOREGOING TRANSCRIPT IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD
AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED
CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR
RICHLAND COUNTY, SOUTH CAROLINA, ON THE 23TH DAY OF MAY,
2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Wanda Nelson

WANDA NELSON, CVR
OFFICIAL COURT REPORTER
NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA
DATE:

MY COMMISSION EXPIRES:
01/21/2021

DATE: 8 / 18 / 2011

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2009-CP-40-4832

Ruth Sturkie LeClair

vs.

Plaintiff

 Defendant
 Almetto Health
 Defendant
CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

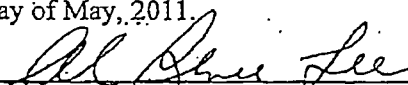
☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order;☐ Statement of Judgment by the Court:

Defendant's Motion for Summary Judgment based upon the statute of limitations is granted based upon Stokes v. Pee Dee Family Physicians, LLC, et al, 389 S.C. 343, 699 S.E.2d 143 (2010). The remaining bases for the summary judgment motion are denied. Counsel for Defendant shall prepare the Order.

Dated at Columbia, South Carolina, this 24th day of May, 2011.

 PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this _____ day of May, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

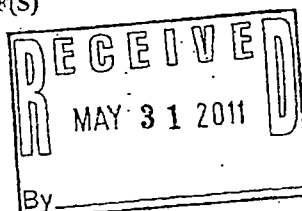
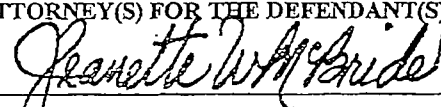
Stephen Soltis

James Parham

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4



 Clerk of Court

SCANNED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ruth Sturkie LeClair, as Next of Kin to)
 and Personal Representative of the)
 Estate of Raymond Conrad LeClair,)

Civil Action Number: 08-CP-40-4832

Plaintiff,)
 _____)

ORDER GRANTING
 SUMMARY JUDGMENT
 ON BEHALF OF THE DEFENDANT

vs.)
)

Palmetto Health,)
)

Defendant.)
 _____)

JEANETTE W. MCBRIDE
 2011 JUN 10 AM 11:35
 RICHLAND COUNTY
 FILED

This matter is before me on Defendant's Motion for Summary Judgment. A hearing was held on May 23, 2011. Stephen R. Soltis, Jr., Esquire, represented Plaintiff, and James E. Parham, Jr., Esquire, represented Defendant.

On July 2, 2008, Plaintiff filed a Summons and Complaint in which she alleges the following: that she is the Personal Representative of the Estate of Raymond Conrad LeClair (Mr. LeClair), her deceased spouse; that Defendant owns and operates Palmetto Senior Care, a senior day care program; that Mr. LeClair was a participant in the senior day care program; that Mr. LeClair needed a walker to assist him in walking and standing; that Palmetto Senior Care transported Mr. LeClair by van from his house to the day care facility in the morning and returned him to his house in the afternoon; that Mr. LeClair was not permitted to stand or walk without the assistance of the walker; that on March 4, 2005, Mr. LeClair was severely injured when the van driver took the walker from Mr. LeClair, and instead of assisting Mr. LeClair to his seat on the van, the driver allowed Mr. LeClair to stand unattended while he placed the walker in the van's

ad
 #1

storage compartment; that when the van driver returned, Mr. LeClair was lying unconscious on the ground; that Mr. LeClair sustained a severe blow to his head; that Mr. LeClair was transported to Palmetto Richland Hospital where he was admitted; that upon his release from the Hospital, Mr. LeClair went to the Lowman Home; and that Mr. LeClair died on September 28, 2005.

The Complaint contains causes of action for Survival and Wrongful Death and further alleges that Defendant breached its duty and was negligent, willful, wanton, careless and grossly negligent, by permitting or encouraging Mr. LeClair to stand without the assistance of his walker (S & C, Paragraph 8), by failing to provide adequate supervision and care while transporting Mr. LeClair to and from Palmetto Senior Care (S & C, Paragraph 14a), by permitting Mr. LeClair to be left unattended while the driver of the van was stowing Mr. LeClair's walker (S & C, Paragraph 14b), by the improper training or supervision of the van driver (S & C, Paragraph 14c), and by Defendant's improper or fraudulent certification or control of the operation of the van service (S & C, Paragraph 14d).

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (SCRCP), on February 17, 2011, Defendant filed an Amended Motion for Summary Judgment based on the grounds that (1) there is no evidence of any deviations from accepted standards of practice on the part of Defendant that are a proximate cause of Mr. LeClair's injuries and death, and (2) the case is barred by the applicable statute of limitations.

SUMMARY JUDGMENT

Under Rule 56(c), SCRCP, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers,

ad
#2

355 S.C. 104, 584 S.E.2d 375 (2003); Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Sauner v. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003); Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003); McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998); see also Laurens Emergency Med. Specialists, 355 S.C. at 108, 584 S.E.2d at 377 (stating that in reviewing summary judgment motion, facts and circumstances must be viewed in light most favorable to non-moving party). If triable issues exist, those issues must go to the jury. Baril v. Aiken Reg'l Med. Ctrs., 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003); Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Rule 56(c), SCRCP. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Regions Bank, 354 S.C. at 659, 582 S.E.2d at 438; Trivelas v. South Carolina Dep't of Transp., ent #3

348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank, 354 S.C. at 660, 582 S.E.2d at 438. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRCP. The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003); George v. Fabri, 345 S.C. 440, 548 S.E.2d 868 (2001).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From the arguments of counsel and viewing the submitted evidence and all inferences that can reasonably be drawn therefrom in the light most favorable to Plaintiff, I find and conclude, as follows:

Mr. LeClair fell and was injured on March 4, 2005. He died on September 28, 2005. Plaintiff filed the Summons and Complaint on July 2, 2008.

Negligence actions are governed by a three-year statute of limitations. S.C. Code Ann. § 15-3-510 (Supp. 2003); S.C. Code Ann. 15-3-530(5) (Supp. 2003). The statute of limitations begins to run on the date the injury resulting from the alleged wrongful conduct "either is discovered or may be discovered by the exercise of reasonable diligence." *Garner v. Houck*, 312 S.C. 481, 485, 435 S.E.2d 847, 849 (1993). "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." *Bayle v. S.C. Dep't of Transp.*, 344

and
#4

S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). Pursuant to the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. *Burgess v. Am. Cancer Soc'y. S.C. Div., Inc.*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct.App.1989). The statute of limitations is triggered not merely by knowledge of an injury but by knowledge of ~~diligently acquired~~ facts sufficient to put an injured person on notice of the existence of a cause of action against another. *Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005). Furthermore, "[t]he statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct.App.1998) (internal citations omitted).

"One purpose of a statute of limitations is 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (quoting *McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 49-50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." *Moates*, 322 S.C. at 176, 470 S.E.2d at 404.

Statutes of limitations are not simply technicalities. *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996). On the contrary, they have long been respected as fundamental to a well-ordered judicial system. *Hooper v. Ebenezer Senior Serv. & Rehab., Ctr.*, 377 S.C. 217, 227, 659 S.E.2d 213, 218 (Ct.App.2008). Statutes of limitations embody important public policy concerns as they stimulate activity, punish

ad
#5

negligence, and promote repose by giving security and stability to human affairs. *Moates*, 322 S.C. at 172, 470 S.E.2d at 404.

When there is no conflicting evidence or when only one reasonable inference can be drawn from the evidence, the determination of when a party knew or should have known that he or she had a claim becomes a matter of law to be decided by the trial court. *Cf. Johnston v. Bowen*, 313 S.C. 61, 65, 437 S.E.2d 45, 47 (1993) (finding grant of summary judgment in medical malpractice case was proper based on statute of limitations for medical malpractice claim because even taking the facts in the light most favorable to the plaintiff, only one reasonable inference existed as to when the plaintiff knew or should have known she had a claim).

It is clear that the facts and circumstances of Mr. LeClair's injury on March 4, 2005, put him on notice that some claim against another party might exist. The only reasonable inference that can be drawn from the evidence is that Mr. LeClair knew or should have known beginning on March 4, 2005, that he had a claim against someone, and as such, he had 3 years from that date to bring a lawsuit. Therefore, the statute of limitations for all claims related to Mr. LeClair's fall and injuries began to run on March 4, 2005.

Furthermore, the Wrongful Death Act provides:

Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default *is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured....*

S. C. Code Ann. § 15-51-10 (2005 & Supp.2009) (emphasis added).

ad
#6

The estate may bring a wrongful death action for the benefit of the decedent's heirs. S. C. Code Ann. § 15-51-20 (2005 & Supp.2009). If the decedent was barred from recovering damages for his injuries, the bar passes to the decedent's estate. *Stokes v. Pee Dee Family Physicians, LLP*, 389 S.C. 343, 699 S.E.2d 143 (2010).

In the present case, Mr. LeClair had until March 4, 2008, to bring a lawsuit for all claims against Defendant. The Summons and Complaint was not filed until almost 4 months later on July 2, 2008. Accordingly, there is no genuine issue as to any material fact and Defendant is entitled to judgment as a matter of law.

Now, therefore, it is

ORDERED that Defendant's Motion for Summary Judgment based upon the statute of limitations is granted, and the above-entitled action against Defendant Palmetto Health is hereby dismissed, discontinued and forever ended with prejudice.

IT IS FURTHER ORDERED that the remaining grounds for summary judgment are denied.

AND IT IS SO ORDERED.



Alison R. Lee
Presiding Judge
5th Judicial Circuit

Columbia, South Carolina
June 9, 2011

ad
#7

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

) COURT OF COMMON PLEAS

) 2008-CP-40-4832

RUTH STURKIE LECLAIR
 as next of kin to and Personal
 Representative of the estate of
 RAYMOND CONRAD LECLAIR
 Plaintiff

) MOTION TO RECONSIDER

Vs.)

PALMETTO HEALTH
 Defendant,

Plaintiff hereby requests that this Court reconsider its ruling granting

summary judgment to the Defendant received by Counsel for the Plaintiff on June 15,
 2011 and attached to this motion for the following reasons to wit:

This Court relied in its grant of summary judgment against the Plaintiff on the
 South Carolina Supreme Court ruling in Estate of Stokes ex rel. Spell v. Pee Dee Family
 Physicians, LLP..... (hereafter Estate of Stokes). However, your interpretation and
 subsequent reliance on this case is in error. The facts in Estate of Stokes are
 distinguishable from the facts in LeClair.

The Statute of Limitations is clear and unambiguous and therefore under even the
 vaguest of interpretations a Plaintiff or his Estate must make a choice of whether to bring
 the cause of action while the Plaintiff is alive and within 3 years of the tort or if the tort
 caused the death of the Plaintiff within 3 years of the death of the Plaintiff.

The relevant statutes regarding this issue are below:

**A. Plaintiff must commence a lawsuit within 3 years of the
 injury. (15-3-530)**

Justice Kittredge of the South Carolina Supreme Court in Stokes at page 146

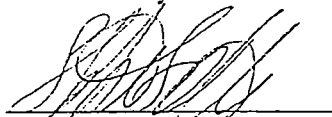
stated:

“We reaffirm today that a claim under the Wrongful Death Act lies in the decedent’s estate only when the decedent possessed the right of recovery at his death... If the decedent had a right of recovery at the time of death, then the wrongful death action must be filed within three years, which begins to run ‘upon the death of the person on account of whose death the action is brought’ S.C.Code Ann. Sec 15-3-530(6)” (emphasis added)

Since Mr. LeClair died before the three year statute of limitations, and since there is no question that Mr. LeClair’s complaint could have been brought by him before he died he possessed the right of recovery at the time of his death; there can also be no question that he was not barred from his cause of action and therefore his estate was well within their right to rely upon S.C.Code Ann. Sec 15-3-530 (6) and bring the lawsuit at the time they did.

Plaintiff therefore requests that this Court reconsider its grant of summary judgment in favor of the Defendant and restore the case to the active trial roster.

Submitted by



Stephen R. Soltis, Jr.
Attorney for the Plaintiff
Soltis Law Firm
821 E. Main Street
Lexington, South Carolina 29072

June 23, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Ruth Sturkie LeClair, as Next of Kin to
and Personal Representative of the
Estate of Raymond Conrad LeClair,

Civil Action Number: 08-CP-40-4832

Plaintiff,

vs.

Palmetto Health,

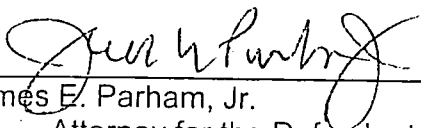
Defendant.

RESPONSE IN OPPOSITION
TO PLAINTIFF'S MOTION TO
RECONSIDER AND IN THE
ALTERNATIVE MOTION TO
RECONSIDER ON BEHALF
OF THE DEFENDANT

Defendant opposes Plaintiff's Motion to Reconsider. The Court correctly granted Defendant's Motion for Summary Judgment based on *Stokes v. Pee Dee Family Physicians, LLP*, 389 S.C. 343, 699 S.E.2d 143 (2010).

In the alternative, if the Court reconsiders its ruling and denies Defendant's Motion for Summary Judgment based on the *Stokes* case, Defendant moves for the Court to reconsider its denial of Summary Judgment based on Plaintiff's failure to have a medical/hospital expert to testify in the case.

Without the testimony of a medical/hospital expert, Plaintiff cannot prove a violation of any standards of medical/hospital practice that caused Raymond Conrad LeClair's fall and cannot prove a proximate cause between Mr. LeClair's fall and his death over 6 months later. Because there is no expert witness testimony or evidence of any deviations from accepted standards of medical/hospital practice on the part of the Defendant that are a proximate cause of Mr. LeClair's injuries and death, summary judgment should be granted in favor of Defendant.

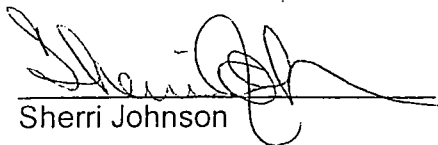

James E. Parham, Jr.
Attorney for the Defendant
220 Ministry Drive
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555
(803) 749-0277 (Facsimile)

June 27, 2011

CERTIFICATE OF SERVICE

I, Sherri Johnson, do hereby certify that on the 27th day of June, 2011, I mailed a copy of the foregoing Response in Opposition to Plaintiff's Motion to Reconsider and in the alternative Defendant's Motion to Reconsider on Behalf of the Defendant by depositing a copy of the same in the United States Post Office at Columbia, South Carolina, with proper postage affixed addressed to the following:

Stephen R. Soltis, Jr., Esquire
Law Office of Stephen R. Soltis, Jr.
831 East Main Street
Lexington, South Carolina 29072


Sherri Johnson

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Ruth Sturkie LeClair, as Next of Kin to)
 and Personal Representative of the Estate)
 of Raymond Conrad LeClair,)

Docket No.: 2008-CP-40-4832

Plaintiff,)

v.)

Palmetto Health,)

Defendant.)

ORDER

RICHLAND COUNTY
 FILED
 2011 JUL - 6 PM 2:25
 JEANETTE M. MCBRIDE
 C.O.P. & C.S.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Plaintiff's Motion pursuant to Rule 59(e) SCRCF to Alter or Amend Judgment of this Court's Order filed June 10, 2011. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


 ALISON RENEE LEE
 Presiding Judge

Columbia, South Carolina
 July 1, 2011

SCANNED

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Rene Lee
Circuit Court Judge

Case No. 2008-CP-40-4832

Ruth Sturkie LeClair as next of kin to
And Personal Representative of the Estate
Of Raymond Conrad LeClair

v.

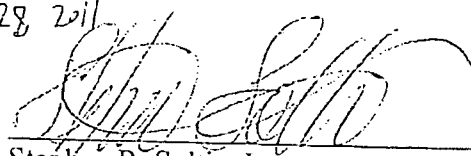
Palmetto Health

PROOF OF SERVICE

December 28, 2011

The undersigned as counsel for appellant hereby certifies that Andrew F. Lindemann, attorney for Respondent, of Davidson and Lindemann, PA has been served by placing in the U.S. Mail to his office of record PO Box 8568 Columbia, South Carolina 29202 on November-28, 2011 and James E. Parham, Jr., attorney for Respondent, by placing in the U.S. Mail to his office of record James E. Parham, Jr., PA, PO Box 1576 Irmo, South Carolina 29063 on November-28, 2011.

December 28, 2011



Stephen R. Soltis, Jr.
Soltis Law Firm
821 E. Main Street, Suite A
Lexington, South Carolina 29072
803-808-8060
Attorney for Appellant

December 28, 2011
November-28, 2011
Lexington, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Renee Lee
Circuit Court Judge

Case No: 2008-CP-40-4832

RECEIVED
MAY 03 2012
SC Court of Appeals

Ruth Sturkie LeClair, as Next
of Kin to and Personal
Representative of the Estate of
Raymond Conrad LeClair, ... Appellant,

v.

Palmetto Health, ... Respondent,

SUPPLEMENTAL RECORD ON APPEAL

Stephen R. Soltis, Jr.
Soltis Law Firm
821 East Main St. Suite A
Lexington, S.C. 29072
(803) 808-8060
Attorney for Appellant

Andrew F. Lindemann
Davidson & Lindemann, P.A.
P.O. Box 8568
Columbia, SC 29202
803-806-8222
James E. Parham, Jr.
P.O. Box 1576
Irmo, SC 29063
803-749-8555
Attorneys for Respondent

TABLE OF CONTENTS

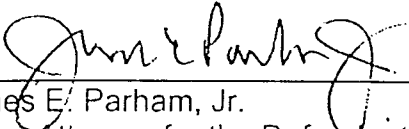
Defendant's amended motion for summary judgment.....	1-2
Appellant's certificate of service of supplemental record on appeal.....	3
Appellant's certificate of compliance.....	4

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Ruth Sturkie LeClair, as Next of Kin to	)	Civil Action Number: 08-CP-40-4832
and Personal Representative of the	)	
Estate of Raymond Conrad LeClair,	)	
	)	AMENDED
Plaintiff,	)	MOTION FOR SUMMARY JUDGMENT
	)	ON BEHALF OF THE DEFENDANT
vs.	)	
	)	
Palmetto Health,	)	
	)	
Defendant.	)	
_____	)	

TO: STEPHEN R. SOLTIS, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Defendant, will move before the Court on the tenth (10th) day after the service hereof or as soon thereafter as counsel may be heard, for an Order of Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that (1) there is no evidence of any deviations from accepted standards of medical/hospital practice on the part of the Defendant that are a proximate cause of Raymond Conrad LeClair's injuries and death, and (2) the case is barred by the applicable statute of limitations (see Stokes v. Pee Dee Family Physicians, LLP, S. C. Supreme Court Opinion #26867).

The Motion will be based upon the applicable statutory law, regulatory law and case law, upon any Affidavits filed with the Court, upon any pleadings of record, upon any and all depositions, upon any and all discovery and upon such further information as may be received by the Court.

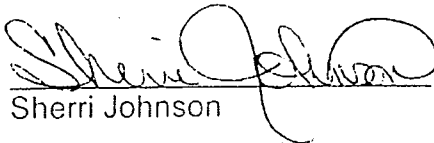

James E. Parham, Jr.
Attorney for the Defendant
220 Ministry Drive
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555
(803) 749-0277 (Facsimile)

February 17, 2011

CERTIFICATE OF SERVICE

I, Sherri Johnson, do hereby certify that on the 17th day of February, 2011, I mailed a copy of the foregoing Amended Motion for Summary Judgment on Behalf of the Defendant by depositing a copy of the same in the United States Post Office at Columbia, South Carolina, with proper postage affixed addressed to the following:

Stephen R. Soltis, Jr., Esquire
Law Office of Stephen R. Soltis, Jr.
831 East Main Street
Lexington, South Carolina 29072


Sherri Johnson

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Rene Lee
Circuit Court Judge

Case No. 2008-CP-40-4832

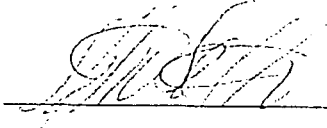
Ruth Sturkie LeClair as next of kin to
And Personal Representative of the Estate
Of Raymond Conrad LeClair

v.

Palmetto Health

PROOF OF SERVICE

The undersigned as counsel for Appellant hereby certifies that Andrew F. Lindemann, attorney for Respondent, of Davidson and Lindemann, PA has been served a copy of the Supplemental Record on Appeal, by placing it in the U.S. Mail to his office of record: PO Box 8568 Columbia, South Carolina 29202 and to James E. Parham, Jr., PA at his office of record: PO Box 1576 Irmo, South Carolina on May 4, 2012.



Stephen R. Soltis, Jr.
Soltis Law Firm
821 E. Main Street, Suite A
Lexington, South Carolina 29072
803-808-8060

Attorney for Appellant

March 21, 2012
Lexington, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Rene Lee
Circuit Court Judge

Case No. 2008-CP-40-4832

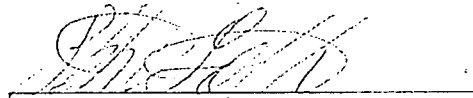
Ruth Sturkie LeClair as next of kin to
And Personal Representative of the Estate
Of Raymond Conrad LeClair

v.

Palmetto Health

PROOF OF COMPLIANCE

The undersigned as counsel for Appellant hereby certifies that the Supplemental Record on Appeal complies with Rules 210 (b) and 211 (a), SCACR.



Stephen R. Soltis, Jr.
Soltis Law Firm
821 E. Main Street, Suite A
Lexington, South Carolina 29072
803-808-8060

Attorney for Appellant

May 4, 2012
Lexington, South Carolina

COPY

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Rene Lee
Circuit Court Judge

Case No. 2008-CP-40-4832

Ruth Sturkie LeClair as next of kin to
And Personal Representative of the Estate
Of Raymond Conrad LeClair

v.

Palmetto Health

FINAL BRIEF OF APPELLANT

Stephen R. Soltis, Jr., SC Bar No. 12599
Soltis Law Firm
821 E. Main Street, Suite A
Lexington, South Carolina 29072
803-808-8060

Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issues on Appeal.....	1
Statement of the Case.....	2
Argument.....	3-6
Conclusion.....	7
Proof of Service.....	8
Proof of Compliance.....	9

TABLE OF AUTHORITIES

CASES

Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P., 289 S.C. 343, 699 S.E. 2d 143 (S.C.2010)

Price v. Richmond & Danville R.R. Co., 33 S.C. 556, 12 S.E. 413 (1890)

Quattlebaum v. Carey Canada, Inc., 685 F. Supp. 939 (D.S.C. 1988)

STATUTES

S.C. CODE ANN SECTION 15-51-10

S.C. CODE ANN SECTION 15-51-20

S.C. CODE ANN SECTION 15-3-530(6)

S.C. CODE ANN SECTION 15-3-540

S.C. CODE ANN SECTION 15-3-550

S.C. CODE ANN SECTION 15-3-560

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT?
2. DID THE TRIAL COURT ERR IN RULING THE STATUTE OF LIMITATIONS BEGAN AT THE TIME OF INJURY?

STATEMENT OF THE CASE

On July 8, 2008, the action was brought by Ruth LeClair as next of kin to and personal representative of the estate of Raymond Conrad LeClair.

The nature of the action was an action alleging wrongful death of the decedent by the negligence of the defendant Palmetto Health.

The Defendant Palmetto Health answered the complaint denying the allegations and alleging the case was barred by the statute of limitations.

Just prior to the trial the Defendant filed a motion for summary judgment alleging that the then recent case of Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P., 389 S.C. 343, 699 S.E.2d 143(S.C.2010) Hereinafter Stokes, prohibited the case from proceeding.

On May 23, 2011, the motion was heard by the Honorable Allison R. Lee, Circuit Court Judge sitting in Richland County.

On June 10, 2011, Judge Lee signed an order granting summary judgment on behalf of the Defendant based on statute of limitations. Plaintiff counsel received the order and a timely motion to reconsider was filed. The Motion to reconsider was denied on July 6, 2011. On July 20, 2011 Plaintiff filed and served the notice of intent to appeal on the Defendant and requested a copy of the transcript from the hearing held on May 23, 2011.

ARGUMENT ON APPEAL

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGEMENT IN FAVOR OF THE DEFENDANT CITING ESTATE OF STOKES EX REL. SPELL V PEE DEE FAMILY PHYSICIANS, L.L.P. 389 S.C. 343, 699 S.E.2d 143 (S.C.2010) HEREINAFTER STOKES AS CONTROLLING IN ITS RULING THAT THE STATUTE OF LIMITATIONS BEGAN TO RUN AT THE TIME OF THE INJURY MARCH 5, 2005. ROA 40-46

Appellant alleges today that the order granting the Defendant's motion for summary judgment was improper and the case should be allowed to proceed to trial. The case before the trial court was a wrongful death case. The statute of limitations in any tort case is normally three years from the date of the injury. In this particular case, Appellant urged in its complaint that the injuries caused by the Defendant resulted in the death of the Decedent and the Appellant brought a wrongful death case against the Defendant Respondent. ROA 1-5. Further so long as the decedent was not barred at the time of his death from bringing the cause of action the statute of limitations began to run at the time of his death.

Appellant brought the action against the Respondent Palmetto Health within three years of the date of the death of Mr. LeClair; that Mr. LeClair was not at the time of his death barred from recovery and the Appellant was thereby justified in relying upon S.C. Code Ann 15-3-530(6) when it brought the cause of action against the Respondent Palmetto Health within three years of the death of Mr. LeClair. ROA 1-5. The statute of limitations is set forth in Section 15-3-530 and "Three Years" Subsection (6) of the statute provides "an action under 15-51-10 to 15-51-60 for death by wrongful act, the period to begin to run upon the death of the person on account of whose death the action is brought."

The trial court relied upon the case of Stokes and granted summary judgment. ROA 40-46. Appellant urges that the Stokes case is controlling, but that reliance on Stokes to grant summary judgment in favor of the respondent was in error.

Appellant concedes that normally in a personal injury case the statute of limitations is three years from the date of injury. But where death results the three year statute of limitations begins to run on the date of death of the Plaintiff. S.C.Code Ann 15-3-530(6).

A careful and thorough reading of Stokes indicates that the issue has been discussed in detail by the United States District Court in Quattlebaum v. Carey Canada, Inc., 685 F. Supp. 939 (D.S.C. 1988) and by the South Carolina Supreme Court in Estate of Stokes ex. Rel. Spell v. Pee Dee family Physicians, L.L.P., 389 S.C. 343, 699 S.E.2d 143 (S.C. 2010)

"A wrongful death action may be brought by the estate for the benefit of the decedent's heirs. S. C. Code Ann. Section 15-51-20. Our jurisprudence makes clear that if the decedent was barred from recovering damages for his injuries, the bar passes to the decedent's estate. Succinctly stated, if the decedent had no claim at his death, the estate has no claim." Stokes at 145.

The question then becomes; was the decedent barred from recovery at the time of his death? The South Carolina Supreme Court in Stokes cited precedent from 1890 stating: "In all cases...the controlling question, therefore, is whether the deceased, if he had not died, could have maintained the action." Price v. Richmond & Danville R.R. Co., 33 S.C. 556, 560, 12 S.E. 413, 413-414 (1890). Respondent admitted at the summary judgment hearing that the deceased Mr. LeClair at the time of his death was not barred from bringing a cause of action on his own. "Mr. LeClair therefore could have brought it (the cause of action) in those six months he was still alive..." ROA 33 LL 19-20.

Stokes, although factually different than the case at bar, states "... the wrongful death statute of limitation does not serve to revive a previously barred claim. Section 15-3-530(6) is triggered only where it is first established that the decedent had a right of recovery at the time of death. If the decedent had a right of recovery at the time of death, then the wrongful death action must be filed within three years, which begins to run 'upon the death of the person on account of whose death the action is brought.'" 389 S.C. 146.

There is no question that Mr. LeClair was injured on March 5, 2005. There is no question that Mr. LeClair, following the injury, remained in the hospital until he was transferred to a nursing home where he died in October of 2005. There is nothing in the record to indicate that Mr. LeClair was barred from bringing suit or recovering damages for a cause of action against the Respondent before he died in October of 2005. ROA 33. He died before the statute of limitation ran and the Respondent admitted that "Mr. LeClair could have brought it (the cause of action) in those six months he was still alive..." ROA 33 LL 19-20.

Respondent relied entirely on Stokes and alleged that the Appellant was prohibited from bringing the action as the statute of limitations ran prior to the lawsuit. Appellant does not contest the logic or the ruling in Stokes. In fact Appellant agrees that Stokes is the only case on point interpreting this particular statute of limitations issue. Appellant does argue however that if this Court applies the facts of this case to the ruling in Stokes, the reliance by the trial court on Stokes for the granting of summary judgment is improper. 15-3-530(6) provides for the limitations issue as follows: In "an action under 15-51-10 to 15-51-60 for death by wrongful act, the period to begin to run upon the death of the person on account of whose death the action is brought."

COMPARISON OF STOKES V. LECLAIR

STOKES

Stokes is a medical malpractice case. Mr. Stokes was first seen by Dr. Steadman in 2001. Dr. Steadman allegedly diagnosed and was treating Mr. Stokes for SVT (superficial venous thrombosis). Mr. Stokes was later seen by Dr. Bolick in 2002 and was diagnosed with cancer in March of 2003. Mr. Stokes brought a timely medical malpractice action in 2005, against Dr. Steadman, for misdiagnosis of the cancer. In December 2006 and prior to trial Mr. Stokes died. (When he died in December of 2006, the only lawsuit pending was against Dr. Steadman and the three year statute of limitations ran on all other defendants.)

In November 2007 more than 4 years after the 2003 diagnosis and more than 5 years after being seen by Dr. Bolick, Stokes estate amended its cause of action to add Dr. Bolick and Pee Dee Surgical Group as Defendants alleging it had three years from the date of the death of Mr. Stokes to bring the cause of action. Assumedly relying upon S.C. Code Ann 15-53-530(6). It is this misplaced reliance upon 15-53-530(6), by the Estate of Stokes, that allowed the trial Court to correctly conclude that the three year statute of limitations began to run in March of 2003.

Therefore in ruling as it did, the trial court correctly ruled that Mr. Stokes was barred from bringing the cause of action against Dr. Bolick and the others as the three year statute of limitations ran before he died AND Since Mr. Stokes was barred so was his estate and the trial Court dismissed the wrongful death claim of Stokes's estate.

LECLAIR

In LeClair, Mr. LeClair was injured by the Defendant Palmetto Health on March 5, 2005. He was immediately hospitalized at Palmetto Health; he never regained the ability to leave the hospital and he died in October 2005. Respondent, as the personal representative of the estate and next of kin to Mr. LeClair, brought suit in July of 2008.

Appellant alleges that the injury of March 2005 caused Mr. LeClair's death in October of 2005. ROA 6 LL 1-5. Appellant was not barred from bringing the cause of action and therefore by bringing the cause of action in July of 2008, the lawsuit was brought within three years of the death of Mr. LeClair consistent with Section 15-53-530(6) and consistent with Stokes.

The Court in granting the Respondents motion for summary judgment was either confused by the ruling in Stokes or did not understand the issue.

In Stokes, Mr. Stokes brought suit while he was alive against one defendant.

In LeClair, Mr. LeClair did not bring suit while he was alive.

In Stokes, Mr. Stokes died after the statute of limitations ran.

In LeClair, Mr. LeClair died before the statute of limitations ran.

In Stokes, at the time of Mr. Stokes death he was barred from bringing an action against anyone other than Dr. Steadman.

In LeClair, at the time of his death Mr. LeClair was not barred from bringing an action against anyone related to his injury.

In Stokes, the estate amended the cause of action to add additional defendants which were clearly not available to Mr. Stokes at the time of his death.

In LeClair, no amendments were made and at the time of his death Mr. LeClair was not barred.

In Stokes, the estate unjustifiably relied on 15-53-530(6).

In LeClair, the estate was justified in relying upon 15-53-530(6).

The *Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 699 S.E.2d 143(S.C.2010) does not stand for the proposition that Respondent is precluded from bringing this cause of action against the Defendant.

CONCLUSION

Appellant therefore requests that this Court set aside the ruling by Judge Allison Lee granting summary judgment to the Defendant, and remand the matter to the trial court so that the case can continue to trial.

Respectfully submitted



Stephen R. Soltis, Jr.

Soltis Law Firm

821 E. Main Street, Suite A

Lexington, South Carolina 29072

803-808-8060

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Rene Lee
Circuit Court Judge

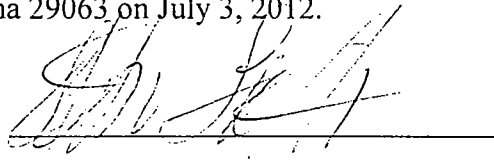
Case No. 2008-CP-40-4832

Ruth Sturkie LeClair as next of kin to
And Personal Representative of the Estate
Of Raymond Conrad LeClair
v.

Palmetto Health

PROOF OF SERVICE

The undersigned as counsel for Appellant hereby certifies that Andrew F. Lindemann, attorney for Respondent, of Davidson and Lindemann, PA has been served a copy of the Supplemental Record on Appeal, by placing in the U.S. Mail to his office of record: PO Box 8568 Columbia, South Carolina 29202 and to James E. Parham, Jr., PA at his office of record: PO Box 1576 Irmo, South Carolina 29063 on July 3, 2012.



Stephen R. Soltis, Jr.
Soltis Law Firm
821 E. Main Street, Suite A
Lexington, South Carolina 29072
803-808-8060

Attorney for Appellant

July 3, 2012
Lexington, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Rene Lee
Circuit Court Judge

Case No. 2008-CP-40-4832

Ruth Sturkie LeClair as next of kin to
And Personal Representative of the Estate
Of Raymond Conrad LeClair
v.

Palmetto Health

PROOF OF COMPLIANCE

The undersigned as counsel for Appellant hereby certifies that the Appellants Final Brief complies with Rules 210 (b) and 211 (a), SCACR.



Stephen R. Soltis, Jr.
Soltis Law Firm
821 E. Main Street, Suite A
Lexington, South Carolina 29072
803-808-8060

Attorney for Appellant

July 3, 2012
Lexington, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-4832

Ruth Sturkie LeClair, as Next of Kin
to and Personal Representative of the
Estate of Raymond Conrad LeClair,

Appellant,

v

Palmetto Health,

Respondent.

BRIEF OF RESPONDENT

Andrew F. Lindemann
DAVIDSON & LINDEMANN, P.A.
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

James E. Parham, Jr.
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555

Counsel for Respondent

TABLE OF CONTENTS

Table of Authorities	ii
Statement of the Case	1
Arguments	3
I. The Circuit Court correctly ruled that the survival claim and the wrongful death claim are barred by the three-year statute of limitations.	3
II. As an additional sustaining ground, the summary judgment in favor of Palmetto Health may also be affirmed because the Appellant has presented no expert medical testimony to establish a causal link between the alleged negligence and the decedent's death.	9
Conclusion	11

TABLE OF AUTHORITIES

Cases

<i>I'On v. Town of Mt. Pleasant</i> , 338 S.C. 406, 526 S.E.2d 716 (2000).	9
<i>Jones v. Owings</i> , 318 S.C. 72, 456 S.E.2d 371 (1995).	10
<i>Oglesby v. Smith</i> , 258 S.C. 392, 188 S.E.2d 856 (1972).	10
<i>Quattlebaum v. Carey Canada, Inc.</i> , 685 F.Supp. 939 (D.S.C. 1988).	8
<i>Smith v. Michelin Tire Corp.</i> , 320 S.C. 296, 465 S.E.2d 96 (Ct. App. 1995).	10
<i>Stokes v. Pee Dee Family Physicians</i> , 389 S.C. 343, 699 S.E.2d 143 (2010).	5, 6

Statutes and Rules

S.C. Code Ann. § 15-3-530(6).	4
S.C. Code Ann. § 15-51-10.	passim
Rule 59(e).	2
Rule 207(b)(2), SCACR.	9
Rule 220(c), SCACR.	9, 10

STATEMENT OF THE CASE

On July 2, 2008, the Appellant Ruth Sturkie LeClair, as Personal Representative of the Estate of Raymond LeClair, filed a wrongful death action and survival action against the Respondent Palmetto Health. The Appellant alleges that Palmetto Health operates Palmetto Senior Care, which is a senior day care program. (R. 1). Mr. LeClair, the decedent, was a participant in that program. Palmetto Senior Care transported Mr. LeClair by van from his home to the day care facility in the morning and transported him home in the afternoon. (R. 2). The Appellant alleges that on March 4, 2005, Mr. LeClair was severely injured when he was allowed to stand unattended while the driver placed Ms LeClair's walker in the van's storage compartment. Mr. LeClair allegedly fell and struck his head. (R. 2). He was admitted to the hospital and later was transferred to the Lowman Home, where he died almost six months later on September 28, 2005. (R. 3).

In her Complaint, the Appellant asserted claims for both survival and wrongful death. (R. 1-5). The action was filed more than three years after the accident whereby Mr. LeClair was injured. (R. 1). The Respondent Palmetto Health moved for summary judgment based on a statute of limitations defense.

Palmetto Health also maintains that there is no evidence of any negligence proximately causing Mr. LeClair's death. (Supp. R. 1-2).

By order filed June 10, 2011, Circuit Court Judge Alison Renee Lee granted Palmetto Health's motion for summary judgment on the statute of limitations defense. (R. 40-46). The Appellant later filed a Rule 59(e) motion which was denied by order filed July 6, 2011. (R. 52).

The Appellant thereafter filed a timely appeal to this Court.

ARGUMENTS

I. The Circuit Court correctly ruled that the survival claim and the wrongful death claim are barred by the three-year statute of limitations.

The Appellant Ruth Sturkie LeClair, as Personal Representative of the Estate of Raymond LeClair, filed a wrongful death action and survival action arising out of an accident occurring on March 4, 2005, whereby Mr. LeClair fell striking his head. Mr. LeClair later died on September 28, 2005. Mr. LeClair did not file a civil action against Palmetto Health during his lifetime. The Appellant did not file suit until July 2, 2008, which was more than three years after the date of the occurrence. (R. 1).

On Palmetto Health's motion for summary judgment, Circuit Court Judge Alison Renee Lee ruled as a matter of law that "the facts and circumstances of Mr. LeClair's injury on March 4, 2005, put him on notice that some claim against another party might exist." (R. 45). The Appellant does not challenge that ruling on appeal.

Judge Lee further ruled that the Appellant's survival action is barred by the three-year statute of limitations. As indicated, the statute of limitations began to run on March 4, 2005, and by March 4, 2008, neither Mr. LeClair while still alive nor the Appellant after his death commenced the survival action within three years

of the accident. The Appellant has not appealed from this ruling. Consequently, the dismissal of the survival action on the basis of the statute of limitations defense should be affirmed.

The Appellant has, however, appealed Judge Lee's ruling that the wrongful death claim is also barred by the statute of limitations. The Appellant maintains that she had three years from the date of death in order to commence the wrongful death action in accordance with S.C. Code Ann. § 15-3-530(6). Because Mr. LeClair died on September 28, 2005, she contends that the filing of this action on July 2, 2008 was timely.

The issue before the Court turns on the application of the Wrongful Death Act, which provides in part:

Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default *is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued,* shall be liable to an action for damages, notwithstanding the death of the person injured. ...

S.C. Code Ann. § 15-51-10. (Emphasis added). As Judge Lee determined, the Act provides that a wrongful death claim is barred if the decedent would have been barred from bringing the action had he lived. It is clear that Mr. LeClair, if he had not died in the interim, could have brought suit against Palmetto Health; however, that suit would have had to be commenced by March 4, 2008. If Mr. LeClair had

brought suit on July 2, 2008, then that action would have been untimely. Judge Lee correctly ruled that the time bar on the action had it been brought by Mr. LeClair passes to his estate. As a result, under the dictates of S.C. Code Ann. § 15-51-10, the Appellant's lawsuit filed on July 2, 2008, including the wrongful death action, was untimely.

The application of S.C. Code Ann. § 15-51-10 was recently addressed by the South Carolina Supreme Court in *Stokes v. Pee Dee Family Physicians*, 389 S.C. 343, 699 S.E.2d 143 (2010). The Supreme Court stated: "Our jurisprudence makes clear that if the decedent was barred from recovering damages for his injuries, the bar passes to the decedent's estate." 699 S.E.2d at 145. The Court likewise wrote: "[O]ur law has remained steadfast to the principle of limiting the right of recovery under the wrongful death statute to those cases in which the party injured would have been entitled to recover if death had not ensued." *Id.*

The Appellant contends on appeal that Judge Lee misapplied the *Stokes* case. She claims that S.C. Code Ann. § 15-51-10 should be construed as barring a wrongful death case only in cases where the decedent's claim is already barred at the time of death. She reads into S.C. Code Ann. § 15-51-10 an additional provision that is not there.

The confusion likely stems from the facts of *Stokes*, where the decedent's claim was time barred at the time of the decedent's death. In *Stokes*, which is a

medical malpractice action, the alleged negligence occurred on March 20, 2003. The decedent actually filed suit before his death. Suit was filed in August 2005, and the decedent died on December 12, 2006. However, In November 2007, after the decedent's death, the personal representative attempted to add a wrongful death claim against new defendants. The Circuit Court dismissed the wrongful death claim against the new defendants as untimely.

Accordingly, in *Stokes*, at the time the wrongful death case was brought in November 2007 against the new defendants, the suit was time-barred. In addition, at the time of the decedent's death, any action against the new defendants was time-barred. The Supreme Court thus focused on the plaintiff's argument that a previously-barred claim could be revived by commencing a wrongful death case after death occurs. The Court rejected that argument. Because the decedent could not sue the new defendants at the time of death, the Court, in applying S.C. Code Ann. § 15-51-10, explained that the estate's claim was barred. In applying the facts of *Stokes*, the Court stated "if the decedent had no claim at his death, the estate has no claim." *Stokes*, 699 S.E.2d at 145.

Relying on *Stokes*, the Appellant claims that because the three-year statute of limitations had not expired at the time of Mr. LeClair's death, S.C. Code Ann. § 15-51-10 has no application and the statutory time for filing of a wrongful death action is enlarged beyond three years. Palmetto Health, as did Judge Lee,

disagrees with that analysis. As indicated, S.C. Code Ann. § 15-51-10 does not include any language that would limit its application to the date of death. Nor does S.C. Code Ann. § 15-51-10 include any language that justifies an enlargement of the statute of limitations. In fact, if the Appellant's analysis were correct, the statute of limitations could conceivably be doubled from three to six years.¹ There is no provision in the Wrongful Death Act for the extension of the statute of limitations, and frankly, there is no reasonable basis in the law for enlarging the statute of limitations for the estate.

The purpose of S.C. Code Ann. § 15-51-10 is indeed the exact opposite. The Act is designed to ensure that the defendant's liability to the estate is no greater and no different than its liability to the decedent. The estate, in essence, steps into the shoes of the decedent – similar to an assignee. If under the same procedural and substantive facts the decedent's claim is barred, so too is the estate's claim. That is the express intent, purpose, and application of S.C. Code Ann. § 15-51-10. The estate should not be granted any greater rights than the decedent had.

Thus, the Appellant's reliance on *Stokes* to the extent that case presents a different factual scenario is unavailing. The same is also true with respect to the

¹ It is undisputed that Mr. LeClair had until March 4, 2008 to file his action within the three year statute of limitations. Under the Appellant's approach, if Mr. LeClair had died on March 4, 2008, without having filed suit, the wrongful death claim is not time-barred unless filed by March 4, 2011 – a total of six years after the incident giving rise to liability. Mr. LeClair's claim was not time-barred at his death, and as a result, his estate would have an additional three years to file suit.

federal district court's decision in *Quattlebaum v. Carey Canada, Inc.*, 685 F.Supp. 939 (D.S.C. 1988), in which the facts are similar to *Stokes*. In *Quattlebaum*, the decedent filed suit and settled during his lifetime. After his death, the estate attempted to sue again except this time for wrongful death, and the court found that the second action was foreclosed, in part, on the basis of a statute of limitations defense. The court explained that the Wrongful Death Act is in derogation of the common law and created a new statutory right in the personal representative. The court explained that "the right exists only if the decedent could have maintained such an action had he lived. The right to bring a wrongful death claim is thus conditioned upon the decedent's right to maintain a claim or action. Under the terms of the wrongful death statute, the representative has no statutory right to pursue a wrongful death claim if the decedent's cause of action was barred by the statute of limitations." 685 F.Supp. at 940.

In sum, the decisions in *Stokes* and *Quattlebaum* are instructive in explaining the intent and purpose of S.C. Code Ann. § 15-51-10. The case at bar, however, presents a different factual scenario from those cases because the statute of limitations on the decedent's claim had not expired at the time of his death. Yet, that fact does not render S.C. Code Ann. § 15-51-10 inapplicable. That fact does not justify granting the estate greater rights than the decedent had. That fact does not justify enlarging the statute of limitations. Instead, as S.C. Code Ann. § 15-51-

10 requires, the estate possesses a statutory right to sue under the same conditions and limitations as the decedent had. If the decedent is required to sue within three years of the occurrence giving rise to the death, then the estate is bound by that same limitation.

Based on the foregoing analysis, the Respondent Palmetto Health submits that Judge Lee ruled correctly in concluding that *all* claims brought by the Appellant, including the survival claim and the wrongful death claim, are barred by the statute of limitations because the Appellant did not commence this action within three years of March 4, 2005.

II. As an additional sustaining ground, the summary judgment in favor of Palmetto Health may also be affirmed because the Appellant has presented no expert medical testimony to establish a causal link between the alleged negligence and the decedent's death.

As an additional sustaining ground, Palmetto Health submits that summary judgment may also be affirmed on the basis that the Appellant has failed to identify any expert witness to establish medical causation.²

² In the case of *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), the Supreme Court explained that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." 526 S.E.2d at 723. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id.* See also, Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record"); Rule 207(b)(2), SCACR ("[r]espondent's brief may also

The Appellant has alleged that Mr. LeClair was injured when he fell and struck his head on March 4, 2005. He did not die until almost six months later. According to the Appellant, Mr. LeClair died of pneumonia; however, she is not competent to offer medical opinions to establish causation. (R. 17). The Appellant needs expert medical testimony to establish that the injury sustained on March 4, 2005 proximately resulted in his death on September 28, 2005. *See, Smith v. Michelin Tire Corp.*, 320 S.C. 296, 465 S.E.2d 96 (Ct. App. 1995) (proof of proximate causation in medically complex case requires expert medical testimony). *See also, Oglesby v. Smith*, 258 S.C. 392, 188 S.E.2d 856 (1972); *Jones v. Owings*, 318 S.C. 72, 456 S.E.2d 371 (1995). Here, evidence of that requisite causal link is lacking. The Appellant has not identified any expert to testify as to causation, and she has presented no such evidence in opposition to the summary judgment motion. Instead, counsel offered the unsupported opinion that "he died from the bump on his head and nothing else." (R. 35).

Therefore, the summary judgment in favor of Palmetto Health may also be affirmed on the basis that the Appellant cannot meet her burden of proving that the death proximately resulted from any alleged negligence by the Palmetto Health employee.

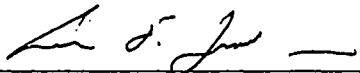
contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)").

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Palmetto Health respectfully requests that this Court affirm the order of Judge Alison Renee Lee granting summary judgment in favor of Palmetto Health.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 
ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

JAMES E. PARHAM, JR.
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555

Counsel for Respondent Palmetto Health

Columbia, South Carolina

May 24, 2012

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondent Palmetto Health certifies that the Final Brief of Respondent complies with the Supreme Court's Order of August 13, 2007, regarding personal identifiers and sensitive information.

DAVIDSON & LINDEMANN, P.A.

BY: _____

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

JAMES E. PARHAM, JR.
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555

Counsel for Respondent Palmetto Health

Columbia, South Carolina

May 24, 2012

CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondent Palmetto Health certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

JAMES E. PARHAM, JR.
Post Office Box 1576
Irmo, South Carolina 29063
(803) 749-8555

Counsel for Respondent Palmetto Health

Columbia, South Carolina

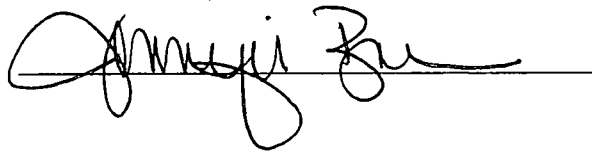
May 24, 2012

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondent, does hereby certify that service of the **Brief of Respondent** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 24th day of May 2012:

Stephen R. Soltis, Jr., Esquire
821 East Main Street
Lexington, South Carolina 29072

James E. Parham, Jr., Esquire
Post Office Box 1576
Irmo, South Carolina 29063



A handwritten signature in black ink, appearing to read "James E. Parham, Jr.", is written over a horizontal line.