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Aug 26 2022

SC Court of Appeals

In the Court of Appeals
APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2022-000088

Mark Rutland, as Power of Attorney for Mary Hoover, Appellant,

v.

Jeremy Locklair and Orangeburg Post Acute LLL
d/b/a Edisto Post Acute, Respondents

REPLY BRIEF OF APPELLANT

August 26, 2022

s/ Virginia W. Williams
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REPLY ARGUMENT

I. South Carolina courts permit claims of ordinary negligence against healthcare providers

The thrust of Respondent's argument is that all of Appellant's allegations are founded in medical malpractice and thus the entirety of the complaint should be dismissed. This is incongruent with South Carolina law, which has historically shown a willingness to consider the simplicity of an argument even if there are medical components to the alleged liable conduct.

In *Brouwer v. Sisters of Charity Providence Hospitals*, the court held it was common knowledge not to expose someone with a latex allergy to latex and no special learning was needed to evaluate the medical defendants' conduct at the pre-litigation stage. 409 S.C. 514, 763 S.E.2d 200 (2014). In *Green v. Lilliewood*, a jury considered if an IUD should have been removed during a tubal ligation; the court subsequently considered at the directed verdict stage whether that was a matter of common knowledge. 272 S.C. 186, 192, 249 S.E.2d 910, 913 (1978). The court considered whether the jury needed special knowledge to understand that concept and found that it did not because it was "a matter of common knowledge that a tubal ligation renders an IUD or any other birth control device useless" and thus the IUD should have been removed in the tubal ligation. *Id.* Likewise, in *Dawkins v. Union Hospital District*, the Supreme Court a 12(b)(6) dismissal in a matter where a patient was injured while left unsupervised in the bathroom prior to receiving medical care, holding that this was a question of common knowledge and thus, ordinary negligence. 408 S.C. 171, 758 S.E.2d 501 (2014) Finally, in *Cox v. Lund*, on post-trial review the Supreme Court found the trial court properly instructed the jury on the common knowledge exception as to whether or not the doctor could actually see the plaintiff's colon during surgery. *Cox v. Lund*, 286 S.C. 410, 334 S.E.2d 116 (1985).

These cases specifically considered the standard of care and whether it was medical or not. All had facts closely intertwined with medical issues and the standard of care, yet the South Carolina Supreme Court still permitted issues of ordinary negligence. Here, in Appellant's case before this court, there is no medical standard of care at issue. Properly funding and managing the business and operation of a nursing home is not a medical question, but rather one of ordinary reasonableness. A jury does not need medical expertise to understand that running a business, be it medical or otherwise, requires the proper funds and requires adequately advising consumers of the services available as well as the quality of those services.

The South Carolina Medical Malpractice is triggered when evaluating whether a healthcare provider breached the standard of care. It is silent as to the resulting damages of that breach. Appellant alleges Respondents failed to run its business with ordinary prudence and reasonableness. And, because Appellant did not know otherwise, he not only chose Respondents' facility for Ms. Hoover's care but left her there believing she would get good care. Unfortunately, she didn't. Any medical issues involved are to the resulting damages, not the standard of care. While Appellant may require expert medical testimony to connect Ms. Hoover's medical injuries to the breach, the breach itself, as articulated in Appellant's complaint, is not that of medical negligence and thus, no affidavit or pre-suit requirements are required.

II. The issues decided by the lower court are not appropriate at the 12(b)(6) stage

As noted in the case cites above, the 12(b)(6) stage is too early in the game to decide whether or not this is a question of ordinary or medical negligence. Our courts have consistently allowed discovery and even trial to continue before finalizing the understanding of whether or matter is purely medical or has elements of ordinary negligence. Appellant has alleged concerns regarding the management and financing of Respondents' facilities which unfortunately led Ms. Hoover to

be medically harmed. The court erred by dismissing Appellant's ability to further explore the claims on ordinary negligence at such an early stage.

CONCLUSION

For the foregoing reasons, Appellant submits this Court vacate the lower court's ruling, allowing Appellant's Complaint to proceed.

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Reply to Respondent's Response Brief was served via email to opposing counsel, Ashley Heslop, on August 26, 2022, at aheslop@hallboothsmith.com.

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