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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No.: 2022-001175

Hunsten B. Ragin as Personal Representative for the Estate of Samel
Ragin.....Appellant,

v.

Pilgrim's Pride Corporation, Mary McBride, and Susan
Jones.....Respondents

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CIVIL ACTION NO.: 2021-CP-43-00307
	)	
Hunsten B. Ragin as Personal	)	
Representative for the Estate of Samel	)	
Ragin,	)	
	)	
Plaintiff,	)	ORDER DENYING
	)	MOTION FOR SUMMARY JUDGMENT
v.	)	
	)	
Pilgrim's Pride Corporation, Mary	)	
McBride, and Susan Jones,	)	
	)	
Defendants.	)	

This matter is before the Court on a Motion for Summary Judgement brought by Defendants Pilgrim's Pride Corporation, Mary McBride, and Susan Jones under Rule 56, SCRCF, on the grounds that the Estate of Samel Ragin did not have standing to bring suit, and also that Workers' Compensation is the exclusive remedy for this matter. At the hearing, Defendants were represented by Douglas Leadbitter, Esq. and Plaintiff was represented by Neil E. Alger, Esq.. For the following reasons, Defendants' Motion for Summary Judgment is denied.

STATEMENT OF RELEVANT FACTS

Decedent Samel Ragin was an employee at the Pilgrims' Pride factory in Sumter, South Carolina. The Pilgrims' Pride factory is a large chicken processing plant. On November 24, 2017, Decedent Ragin arrived for her shift at the factory. Decedent Ragin visited the nursing clinic with complaints of shortness of breath and chest pains. After being seen by the nurses at that nursing clinic, Ms. Ragin was directed back to work. Around 4 p.m., Decedent Ragin was discovered in the women's restroom where she was determined to be unresponsive, yet still warm to touch. She was declared

deceased upon arrival to Palmetto Health Toumey Hospital due to a heart attack from Cardiomyopathy and irregular heartbeat.

Decedent Ragin's estate was opened by Personal Representative Hunsten B. Ragin, her mother, on April 3, 2018. On November 6, 2020, the Estate of Samel Ragin filed their Notice of Intent. Unbeknownst to the Estate, Ms. Hunsten B. Ragin had passed away on September 27, 2020.

The Estate of Samel Ragin proceeded forward with the Notice of Intent process and on February 23, 2021, filed this Summons and Complaint. On October 19th, 2021, Ms. Syreea Baxter was appointed by the Sumter County Probate Court as the Successor Personal Representative.

STANDARD OF REVIEW

A court should not grant summary judgment unless the moving party shows "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. The pleadings, depositions, affidavits, and discovery on file, and all reasonable inferences from the evidence, must be viewed in the light most favorable to the non-moving party when determining if any genuine issues of fact exist. *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002); Rule 56(c), SCRPC. Once the moving party carries its initial burden, the non-moving party must come forward with specific facts showing that there is a genuine issue for trial. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "In order to withstand a motion for summary judgment '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.'" *Fountain v. First Reliance Bank*, 398 S.C. 434, 441, 730 S.E.2d 305, 308 (2012) (emphasis added) (quoting *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330 673 S.E.2d 801, 803 (2009)).

LEGAL ANALYSIS & DISCUSSION

I. Estate of Samel Ragin Properly Commenced and Ratified this Suit.

Defendants argued that the death of Ms. Hunsten B. Ragin effectively operates as an impediment to the initiation of legal action because there was no living personal representative at the time that the filing was made. In support of their position Defendants cited to *Glenn v. E.I. DuPont De Nemours & Co.*, 254 S.C. 128, 174 S.E.2d 155 (1970) in which the Court noted that “a complaint brought in the name of a plaintiff which is not a legal entity is a nullity and there is no foundation upon which to base an amendment.” *Id.* at 158.

However, the Estate of Samel Ragin has remained open and in administration throughout these proceedings despite the passing of its Personal Representative, Ms. Hunsten Ragin. Thus, the Estate of Samel Ragin was in fact existing as a legal entity at the time that these pleadings were filed.

After the filings were made, Ms. Syreea Baxter was appointed by the Sumter County Probate Court as the Successor Personal Representative on October 19, 2021.

Under the South Carolina Probate Code, “the powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter.” S.C. Code § 62-3-701 (2014). Further, “A personal representative may ratify and accept acts ***on behalf of the estate done by others*** where the acts would have been proper for a personal representative.” *Id.* (emphasis added). Thus, Ms. Baxter is statutorily permitted to relate back under the Probate Code and adopt and ratify the prior actions of both Ms. Hunsten B. Ragin, as well as the actions of her attorneys.

Pursuant to South Carolina Rules of Civil Procedure, Rule 8, Rule 15 and Rule 17, Plaintiff Syreea Baxter as Successor Personal Representative is allowed to ratify the prior pleadings of Ms. Hunsten B. Ragin. The Notes of SCRCP Rule 17(a) are particularly instructive and provide that this

Rule “is intended to prevent forfeiture is those cases in which the determination of the proper party to sue is difficult or when there has been an honest mistake.” Lastly, SCRCP Rule 8(f) provides “[a]ll pleadings shall be so construed as to do substantial justice to all parties.”

The Supreme Court also recognized that the adoption of SCRCP 17(a) was intended to allow the real party in interest to be permitted to maintain a suit, after the statute of limitations has run on a claim timely filed, by one who lacked capacity to sue because he was not the real party in interest. *Thomas v. Grayson*, 318 S.C. 82, 456 S.E.2d 377, 380 (1995). Moreover, the Rules do not “defeat the legitimate use of the statute of limitations,” but “[Rule 15(c)] however, prevents the defendant from defeating the plaintiff’s claim on a technicality in the pleading.” *Id.*

Therefore, it is the Order of this Court that the pleading technicality raised by Defendants is not a valid basis for dismissal of this complaint. The Estate of Samel Ragin is and remains a valid legal entity. Defendants’ motion for summary judgment as to the issue of the party-plaintiff is denied.

II. This Suit Against Defendant has been Properly Brought in the Court of Common Pleas.

Defendants argued that this matter is barred by the exclusive remedy of Workers’ Compensation, i.e. that employers are immune from suit by the employees when the injury is “arising out of and in the course of employment.” S.C. Code § 42-1-160.

This Court takes the following facts in a light most favorable to Plaintiff as the non-moving party. At the hearing, Plaintiff did not dispute that this incident involving Decedent Ragin occurred while she was on the job and while she was at her place of employment. Defendants operate a chicken processing factory. Decedent specifically worked as a pallet jack operator. Essentially, Decedent’s primary responsibility was to move large bins of Defendants’ products and inventory from the line to refrigeration units and elsewhere throughout the large facility. However, Plaintiff contends that neither the injury sustained by Decedent Ragin, i.e., the undiagnosed and untreated heart condition,

nor the circumstances of the accident itself, i.e., the nurses' negligible conduct, arose out of the Decedent Ragin's employment at Pilgrims' Pride.

“‘[A]rising out of’ refers to the origin and cause of the accident; the phrase ‘in the course of’ refers to the time, place, and circumstances under which the accident occurred.” *Patel v. BVM Motel, LLC*, 433 S.C. 337, 857 S.E.2d 564, 568 (Ct. App. 2021). This Court’s finding and ruling is based on the “arising out of” factor and the casual connection with Decedent’s injuries. “An accident arises out of the employment when the accident happens because of the employment, as when the employment is a contributing proximate cause.” *Id.*; see also *Osteen v. Greenville Cnty. Sch. Dist.*, 333 S.C. 43, 508 S.E.2d 21, 25 (1998) (“The injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury.”). “In determining if an accident arose out of and in the course of employment, each case must be decided with reference to its own attendant circumstances.” *Id.*

This Court finds that although the need or necessity of having a nursing clinic may be attendant to operating a large chicken processing factory, it cannot be stated that it has anything to do with the job or responsibilities that Decedent Ragin undertook during the scope of her employment. This is consistent with *Fuller v. Blanchard*, 358 S.C. 536, 595 S.E.2d 831, 834 (Ct. App. 2004) which held that physicians are considered third parties to the employer-employee relationship and do not fall within the immunity provisions of the Workers’ Compensation Act. In *Fuller*, Dr. Blanchard was the referring physician for work-related employee physicals. Importantly, the *Fuller* Court ruled that even if such a medical provider were a co-employee, the exclusive remedy provision would not be applicable if the injury was not work-related. *Id.* (finding a co-employee physician may be liable because an employee’s death from cancer is not work-related). This Court is persuaded by *Fuller*

Court's reasoning and finds that the nursing care provided in this instance was analogously not work-related.

This Court also considered the rationale and argument present by Plaintiff that an exclusive remedy may not exist for Plaintiff because Worker's Compensation Commission recognizes that most idiopathic injuries, i.e., heart attack, stroke, or cancer, have nothing to do with work. Rather these conditions are brought on by a condition particular to that employee that could have manifested itself anywhere. *Foran v. Murphy USA*, 420 S.C. 377, 803 S.E.2d 311, 314 (Ct. App. 2017) (citing *Barnes v. Charter 1 Realty*, 411 S.C. 391, 395, 768 S.E.2d 651, 653 (2015)). "An idiopathic fall is one that is brought on by a purely personal condition unrelated to the employment, such as heart attack or seizure." *Id.* This is significant in this instance because Plaintiff's ultimate idiopathic heart attack injury, including the failure of Defendants to diagnose it, would be entirely unrelated to Decedent's employment. This Court is not concerned with the availability of a remedy for Plaintiff; however, the inference from these precedents is that Workers' Compensation recognizes that these injuries do not "arise out of" a claimant employment. This Court agrees and holds that Decedent's claims did not arise out of her employment.

CONCLUSION

Accordingly, this Court denies Defendants' Motion for Summary Judgement on both grounds. Plaintiff has properly brought, filed, and maintained its action. Plaintiff's claims did not arise within the scope of Decedent's employment and therefore, are not excluded from suit in Common Pleas by Workers' Compensation.

IT IS SO ORDERED!

The Honorable Kristi F. Curtis
Presiding Judge, Sumter County Circuit Court



Sumter Common Pleas

Case Caption: Hunsten B. Ragin , plaintiff, et al VS Pilgrim'S Pride Corporation ,
defendant, et al

Case Number: 2021CP4300307

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CIVIL ACTION NO.: 2021-CP-43-00307
	)	
Hunsten B. Ragin as Personal	)	
Representative for the Estate of Samel	)	
Ragin,	)	
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANTS'
	)	MOTION TO RECONSIDER
v.	)	
	)	
Pilgrim's Pride Corporation, Mary	)	
McBride, and Susan Jones,	)	
	)	
Defendants.	)	

This matter is before the Court on a Motion to Reconsider the Court's Denial of Defendants' Motion for Summary Judgement filed by Defendants Pilgrim's Pride Corporation, Mary McBride, and Susan Jones under Rule 59(e), SCRCF, on the grounds that Workers' Compensation is the exclusive remedy for this matter and the Estate of Samel Ragin did not have standing to bring suit. At the hearing, Defendants were represented by Kristian M. Cross, Esq. and Plaintiff was represented by Neil E. Alger, Esq. For the following reasons, Defendants' Motion to Reconsider is GRANTED.

LEGAL STANDARD

Rule 59(e), SCRCF, allows a court to alter or amend a judgment upon a party's timely motion. "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

Summary Judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCF. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn

from the evidence must be viewed in the light most favorable to the nonmoving party. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

STATEMENT OF UNDISPUTED FACTS

Decedent Samel Ragin was an employee at the Pilgrims' Pride factory in Sumter, South Carolina. The Pilgrims' Pride factory is a large chicken processing plant. On November 24, 2017, Decedent Ragin arrived for her shift at the factory. Decedent Ragin visited the nursing clinic at Pilgrim's Pride with complaints of shortness of breath and chest pains. The nursing clinic at Pilgrim's Pride was staffed by nurses employed by Pilgrim's Pride. Around 4 p.m., Decedent Ragin was discovered in the women's restroom where she was determined to be unresponsive. She was declared deceased upon arrival to Palmetto Health Toumey Hospital due to a heart attack from Cardiomyopathy and irregular heartbeat.

Decedent Ragin's estate was opened by Personal Representative Hunsten B. Ragin, her mother, on April 3, 2018. Ms. Hunsten B. Ragin passed away on September 27, 2020. Following the death of the Personal Representative, on November 6, 2020, the Estate of Samel Ragin filed their Notice of Intent.

The Estate of Samel Ragin proceeded forward with the Notice of Intent process and on February 23, 2021, filed this Summons and Complaint. On October 19th, 2021.

DECISION AND COURT RULING

The Court finds the Defendants Mary McBride and Susan Jones were co-employees of the decedent Samuel Ragin, and that this matter is therefore barred by the Exclusivity Remedy Doctrine of the South Carolina Worker's Compensation Act. While the Court recognizes that other jurisdictions have adopted a "dual capacity exception" to the immunity provided by worker's compensation when it comes to company-employed physicians, the vast majority of states have

refused to recognize such an exception, finding that doing so would be antithetical to the overall purpose of worker's compensation. The majority of states further recognize that it is a function of the legislature to create any such exceptions; had they intended for a dual capacity exception to apply to company physicians, they would have done so. I find the rationale of the majority to be compelling in this matter as well.

More specifically, the allegations of the Complaint state the Plaintiff was at work, and that her employer or co-employees were negligent for failing to take action when the Decedent ostensibly sought medical care at the nurse's station at the plant. The South Carolina Workers' Compensation Act provides immunity to employers and co-employees from suits brought by employees except in certain factual circumstances involving intentional conduct. *S.C. Code Ann. Section 42-1-540 (as amended)*. Exclusivity provision of the Workers' Compensation Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury. *Posey v. Proper Mold & Engineering, Inc.*, 378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008)

Plaintiff admits "this incident" involving Decedent Ragin "occurred while she was on the job and while she was at her place of employment." (*See* Plaintiff's Memo in Opp. To MSJ at p. 7). Moreover, Plaintiff concedes *Fuller v. Blanchard*, is controlling case law as to this matter. *Fuller v. Blanchard*, 358 S.C. 536, 595 S.E.2d 831 (Ct. App. 2004). However, Plaintiff's argument misinterprets the *Fuller* opinion. This case is distinguishable from *Fuller* because, unlike the physician in *Fuller* who was an independent contractor, Mary McBride and Susan Jones were undisputed full-time employees of Pilgrim's Pride. As such, McBride and Jones were Decedent's co-employees.

An employee negligently injured by a co-employee conducting the employer's business may not hold the co-employee personally liable in tort but must instead rely upon the remedies provided by the Workers' Compensation Act. Fuller v. Blanchard, 358 S.C. 536, 595 S.E.2d 831 (Ct. App. 2004). Decedent received treatment as an employee of Pilgram's Pride. The nurses who treated Decedent were employees of Pilgram's Pride whose purpose was to provide medical treatment to Pilgram's Pride employees. As such, Decedent would not have been exposed to the risk of the alleged negligent medical treatment by Pilgram's Pride's nursing staff apart from her employment at Pilgram's Pride.

The Court is also not persuaded by Plaintiff's argument that the Defendants' Workers' Compensation Insurer's denial letter as proof of a decision of under the S.C. Workers' Compensation Act. The purported negligence of Pilgram's Pride's nursing staff and whether it relates to the Decedent's injury/illness or employment, is a question for the South Carolina Workers' Compensation Commission. Boulware v. Mills, 294 S.C. 24, 362 S.E.2d 184 (Ct. App. 1987); Fuller v. Blanchard, 358 S.C. 536, 595 S.E.2d 831 (Ct. App. 2004).

CONCLUSION

As a matter of law, this Court dismisses this lawsuit pursuant to the exclusive remedy doctrine contained in the *South Carolina Workers' Compensation Act*, which clearly provides immunity to employers and co-employees from negligence suits by employees. *Rule 56, SCRCP*; *S.C. Code Ann. Section 42-1-540 (as amended)*; Boulware v. Mills; Fuller v. Blanchard; Posey v. Proper Mold & Engineering, Inc. Accordingly, this Court GRANTS Defendants' Motion to Reconsider; and therefore, GRANTS Defendants' Motion for Summary Judgement based on the Exclusivity Doctrine.

IT IS SO ORDERED.

The Honorable Kristi F. Curtis
Presiding Judge, Sumter County Circuit Court



Sumter Common Pleas

Case Caption: Hunsten B. Ragin , plaintiff, et al VS Pilgrim'S Pride Corporation ,
defendant, et al

Case Number: 2021CP4300307

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	CIVIL ACTION NO.: 2020-NI-43-
	)	
Hunsten B. Ragin as Personal	)	
Representative for the Estate of Samel	)	
Ragin,	)	
	)	NOTICE OF INTENT TO FILE SUIT
Plaintiffs,	)	<i>(Wrongful Death & Survival)</i>
	)	
v.	)	
	)	
Pilgrim's Pride Corporation, Mary	)	
McBride, and Susan Jones,	)	
	)	
Defendants.	)	

The Plaintiffs, HUNSTEN B. RAGIN, as Personal Representatives of the Estate of SAMEL RAGIN, does hereby submit this Notice of Intent to File Suit and seek a jury trial pursuant to the Survival Action S.C. Code Ann. §15-5-90 *et seq.* and other applicable statutory and/or common law and the Wrongful Death Act of South Carolina, S.C. Code Ann. § 15-51-10 *et seq.* and other applicable statutory and/or common law on behalf of the statutory beneficiaries.

1. ADVERSE PARTIES.

- a. The adverse parties to this action are, upon information and belief Pilgrim's Pride Corporation is a business corporation organized under the laws of South Carolina with its principal place of business in the County of Sumter, South Carolina.

- b. Defendant Mary McBride upon information and belief is a resident of Sumter County, South Carolina and provides care at the Defendant's facility in Sumter, South Carolina.
- c. Defendant Susan Jones upon information and belief is a resident of Sumter County, South Carolina and provides care at the Defendant's facility in Sumter, South Carolina.

SHORT AND PLAIN STATEMENT OF THE FACTS SHOWING THAT THE PARTY FILING THE NOTICE IS ENTITLED TO RELIEF.

- a. The Plaintiff, Hunsten B. Ragin, is a citizen and resident of the County of Clarendon, State of South Carolina. She is the Personal Representative of the Estate of Samel Ragin. She files this action to give notice of her intent to file a Survival Action and Wrongful Death on behalf of the Estate of Samel Ragin for conscious pain and suffering and all other damages offered at law. (See Attached Summons and Complaint marked as Exhibit A.)
- b. Ms. Ragin was working as an employee at Pilgrim's Pride in Sumter, South Carolina on the morning of November 24, 2017.
- c. Around 10:30 a.m., Ms. Ragin reported to the nurse's desk with complaints of chest pains, shortness of breath, and dizziness.
- d. No care, treatment or instructions were provided to Ms. Ragin by the nursing staff to address her chest pains, shortness of breath, or dizziness.

- e. She was instructed by the nurse to return back to work.
- f. Ms. Ragin returned to work and continued to experience chest pains, shortness of breath, and dizziness.
- g. Later that afternoon, a witness saw Ms. Ragin being pulled out of the ladies' restroom unconscious and apparently deceased.
- h. Ms. Ragin was transported to Palmetto Health Tuomey and pronounced dead on November 24, 2017.
- i. That upon information and belief, due to the information available to the Plaintiff and her counsel, the cause of her death may be due to the negligence of the Defendants and its staff.
- j. The Defendants and their staff, employees and agents failed to provide the requisite care and, as such, deviated from the standard of care in the following particulars:
 - 1. In failing to monitor Ms. Ragin's condition properly;
 - 2. In failing to properly assess Ms. Ragin's condition and provide care and treatment including referral to a higher level provider;
 - 3. In failing to provide appropriate administrative oversight and management to assure Ms. Ragin was appropriately cared for;
 - 4. In failing to have sufficient and properly trained staff to care for its employees;

5. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
 6. In such other particulars as the evidence may establish.
- k. That as a direct and proximate result of the aforesaid deviations from the standard of care, which constituted negligent, reckless, willful, careless, negligent *per se*. and grossly negligent acts of the Defendant, Ms. Ragin suffered damages which caused her to incur medical bills, endure pain, suffering, mental anguish, and other damages recognized by law.
- l. That by reason of the foregoing, the Plaintiff is entitled to judgment against the Defendants on behalf of the Estate of the deceased Plaintiff, for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or missions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

3. **STANDARD INTERROGATORIES - *Rule 33(b) SCRCP*.**

The information specified in the standard interrogatories *Rule 33(b)SCRCP* is attached hereto as Exhibit B. Exhibit C is Plaintiff's Answers to Standard Interrogatories.

4. **AFFIDAVIT OF EXPERT.**

The affidavit of an expert specifying at least one negligent act or omission

claimed to exist and the factual basis for each claim based upon the available evidence at this time is attached hereto pursuant to § 15-36-100 SCCA. (See Attached Affidavit of Audrey Holmes as Exhibit D and Affidavit of Venson Brown as Exhibit E.)

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY:



Neil E. Alger
SC Bar # 100530
P.O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR THE PLAINTIFF

November 6, 2020
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	CIVIL ACTION NO.: 2020-NI-43-
	)	
Hunsten B. Ragin as Personal	)	
Representative for the Estate of Samel	)	
Ragin,	)	
	)	Affidavit of Merit
Plaintiffs,	)	Audrey Rabon Holmes, MSN-Ed, BSN, RN
	)	
v.	)	
	)	
Pilgrim's Pride Corporation, Mary	)	
McBride, and Susan Jones,	)	
	)	
Defendants.	)	

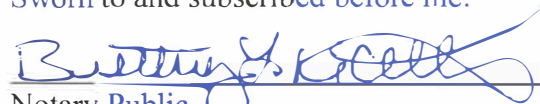
The Affiant, Audrey Homes, having been duly sworn testifies as follows:

- 1) I am over 18, legally competent, and I make this affidavit based upon medical records provided to me as well as my background, education, training, and experience.
- 2) I am a registered nurse in South Carolina. I received my Bachelor of Science in Nursing from University of South Carolina and my Masters in Nursing from Western Governors University. I have practiced in the field of Nursing for the past sixteen years as an Registered Nurse.
- 3) I have been provided the records from Sumter County EMS, Palmetto Health, Autopsy Report from Newberry Pathology, and affidavit of Venson Brown.
- 4) Ms. Ragin presented to the nurse's station of Pilgrim Pride on or about 10:30 am on November 24, 2017 with complaints of chest pain, shortness of breath, and dizziness.
- 5) Ms. Ragin was sent back to work, and EMS was not called despite symptoms of a life threatening acute condition.
- 6) Ms. Ragin was found down in the bathroom of Pilgrim's Pride Corporation.
- 7) The Defendants failed to provide basic nursing care of Ms. Ragin, and failed to transfer to a higher level of care for assessment and evaluation.

- 8) I reserve the right to alter, amend, add, or delete opinions as new information becomes available.


Audrey Holmes, MSN-Ed, BSN, RN

Sworn to and subscribed before me:


Notary Public

My Commission Expires June 07, 2025

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EXHIBIT

D

ROA-021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	CIVIL ACTION NO.: 2021-CP-43-
	)	
Hunsten B. Ragin as Personal	)	
Representative for the Estate of Samel	)	
Ragin,	)	
	)	
Plaintiff,	)	SUMMONS
	)	<i>(Wrongful Death & Survival)</i>
	)	<i>(Jury Trial Requested)</i>
v.	)	
	)	
Pilgrim's Pride Corporation, Mary	)	
McBride, and Susan Jones,	)	
	)	
Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at P.O. Box 457 Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: s/ Neil E. Alger

Neil E. Alger
P.O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

February 23, 2021
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	CIVIL ACTION NO.: 2021-CP-43-
	)	
Hunsten B. Ragen as Personal	)	
Representative for the Estate of Samel	)	
Ragin,	)	
	)	
Plaintiff,	)	<u>COMPLAINT</u>
	)	<i>(Wrongful Death & Survival)</i>
	)	<i>(Jury Trial Requested)</i>
v.	)	
	)	
Pilgrim's Pride Corporation, Mary	)	
McBride, and Susan Jones,	)	
	)	
Defendant.	)	

The Plaintiff alleges:

1. That the Plaintiff is a citizen and resident of Clarendon County, South Carolina and brings this action as the Personal Representative of the Estate of Samel Ragin, pursuant to the S.C. Code Ann. §15-5-90, the Survival Action Act, the Wrongful Death Act S.C. Code Ann. §15-51-10, and other applicable statutory and/or common law.
2. That upon information and belief, Defendant Pilgrim's Pride Corporation is a business corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in the County of Sumter, South Carolina.
3. That upon information and belief, Defendant Mary McBride is a resident of Sumter County, South Carolina and provides care at the Defendant's facility in Sumter, South Carolina.
4. That upon information and belief, Defendant Susan Jones is a resident of Sumter County, South Carolina and provides care at the Defendant's facility in Sumter, South Carolina.
5. That on November 24, 2017, Samel Ragin was working as an employee at Pilgrim's Pride in Sumter, South Carolina.

6. Around 10:30 a.m., Ms. Ragin reported to the nurse's desk with complaints of chest pains, shortness of breath, and dizziness.

7. No care, treatment or instructions were provided to Ms. Ragin by the nursing staff to address her chest pains, shortness of breath, or dizziness.

8. Ms. Ragin returned to work and continued to experience chest pains, shortness of breath, and dizziness.

9. Later that afternoon, a witness saw Ms. Ragin being pulled out of the ladies' restroom unconscious and apparently deceased.

10. Samel Ragin was transported to Palmetto Health Tuomey where she was pronounced dead on November 24, 2017.

FOR A FIRST CAUSE OF ACTION

(Negligence/Gross Negligence)

11. As to all Defendants, while in the Defendants' care, custody and control, Ms. Ragin did suffer grave and severe injuries and humiliation as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendant, combining and concurring:

- a. In failing to monitor Ms. Ragin's condition properly;
- b. In failing to properly assess Ms. Ragin's condition and provide care and treatment including referral to a higher level provider;
- c. In failing to provide adequate transport and appropriate care to Ms. Ragin;
- d. In failing to provide appropriate administrative oversight and management to assure Ms. Ragin was appropriately cared for;
- e. In failing to have sufficient and properly trained staff to care for its employees;

- f. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
- g. In such other particulars as the evidence may establish.

11. That as a direct and proximate result of the aforesaid negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, the deceased Plaintiff suffered grave and severe injuries prior to her death; her estate incurred medical expenses, funeral expenses and other damages recognized by the law.

12. That as a direct and proximate result of the aforesaid negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, the deceased Plaintiff's beneficiaries have suffered grief, sorrow, mental anguish, and all of the damages which accompany the loss of a loved one; the beneficiaries have suffered pecuniary loss, all to the Plaintiff's actual and punitive damages.

13. That by reason of the foregoing, the Plaintiff is informed and believes that she is entitled to judgment against the Defendants on behalf of the Estate of the deceased Plaintiff, for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

SIGNATURE PAGE TO FOLLOW

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: s/ Neil E. Alger

Neil E. Alger
P.O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

February 23, 2021
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SUMTER	)	CIVIL ACTION NO.: 2021-CP-43-00307
	)	
Hunsten B. Ragin as Personal	)	
Representative for the Estate of	)	
Samel Ragin,	)	
	)	
Plaintiff,	)	ANSWER OF DEFENDANTS
	)	(Jury Trial Demanded)
v.	)	
	)	
Pilgrim's Pride Corporation,	)	
Mary McBride, and Susan Jones,	)	
	)	
Defendants.	)	
	)	

COME NOW the Defendants Pilgrim's Pride Corporation, Mary McBride, and Susan Jones (collectively, the "Defendants"), by and through their undersigned counsel, and pursuant to the South Carolina Rules of Civil Procedure file these responses and affirmative defenses to the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. Defendants deny each and every allegation of the Plaintiff's Complaint not specifically admitted, qualified or explained herein.
2. Defendants are without sufficient knowledge as to the allegations contained in Paragraph 1 of Plaintiff's Complaint and therefore deny those allegations and demand strict proof thereof.
3. Defendants admit the allegations contained in Paragraphs 2, 3, 4 and 5 of Plaintiff's Complaint.
4. Defendants deny each and every allegation contained in Paragraphs 6, 7 and 8 of Plaintiff's Complaint and demand strict proof thereof.

5. Defendants are without sufficient knowledge as to the allegations contained in Paragraphs 9 and 10 of Plaintiff's Complaint and therefore deny those allegations and demand strict proof thereof.

6. Defendants deny each and every allegation contained in Paragraph 11 of Plaintiff's Complaint and demand strict proof thereof.

7. Defendants deny each and every allegation contained in the second Paragraph 11 of Plaintiff's Complaint and demand strict proof thereof.

8. Defendants deny each and every allegation contained in Paragraphs 12 and 13 of Plaintiff's Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE

9. This Court lacks subject matter jurisdiction over this matter.

FOR A THIRD DEFENSE

10. Plaintiff's Complaint fails to state a claim against Defendants upon which relief can be granted pursuant to Rule 12(b)(6), SCRCP.

FOR A FOURTH DEFENSE

11. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations and/or repose.

FOR A FIFTH DEFENSE

12. To the extent Samel Ragin ("Ragin") has incurred the injuries or damages alleged in the Complaint, Ragin voluntarily and knowingly assumed the risk of incurring said injuries or damages.

FOR A SIXTH DEFENSE

13. Plaintiff's claims are barred, in whole or in part, by Ragin's own comparative negligence. Alternatively, any award to Plaintiff should be reduced by the percentage that Ragin's own negligence caused Ragin's damages.

FOR A SEVENTH DEFENSE

14. To the extent Ragin has incurred the damages alleged in the Complaint, such damages did not result, directly or indirectly, from the acts or omissions of Defendants; rather, such damages, if any, resulted from the acts or omissions of persons other than Defendants for whom Defendants are in no way responsible.

FOR AN EIGHTH DEFENSE

15. Plaintiff failed to join one or more parties to this action who should or must be joined and, without the joinder of those parties, complete relief cannot be accorded among those that Plaintiff has already attempted to make parties to this action. Accordingly, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(7), SCRCP.

FOR A NINTH DEFENSE

16. To the extent that Plaintiff has received payment from any alleged joint tortfeasors in full satisfaction of any of the alleged injuries or claims against Defendants and/or other alleged joint tortfeasors, Plaintiff's claims against Defendants are barred for accord and satisfaction.

FOR A TENTH DEFENSE

17. To the extent that Plaintiff has settled or should hereafter settle any of the claims alleged in the Complaint with any other parties to this action, Defendants are entitled to a credit or set-off in the amount of said settlement.

FOR AN ELEVENTH DEFENSE

18. Plaintiff's claims are barred by the exclusivity provisions of the South Carolina Worker's Compensation Act, S.C. Code Ann. § 42-1-540.

FOR A TWELFTH DEFENSE

19. To the extent that Plaintiff's Complaint seeks punitive damages, Defendants affirmatively plead as follows:

20. Defendants deny their conduct, however characterized, constitutes an intentional act or omission, gross negligence, or willful, wanton or reckless conduct, the thresholds necessary for Plaintiff's establishment of her evidentiary burden against Defendants to assert a claim for punitive damages.

21. The imposition of punitive or exemplary damages would be unconstitutional and in violation of the due process clause of the Fifth Amendment of the United States Constitution, as applied to the States in the Fourteenth Amendment, and as set forth in applicable case law, including but not limited to *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513 (2003); *Cooper Indus. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 121 S. Ct. 1678 (2001); *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589 (1996); *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S. Ct. 1032 (1991);

22. Plaintiff's claim for punitive damages in violation of the Fifth Amendment to the United States Constitution likewise violates Article I, Section 3 of the South Carolina Constitution in one or more of the following particulars:

- a) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees;
- b) Even if a standard governing the award of punitive damages does exist, this standard is void for vagueness or arbitrariness;
- c) The amount of punitive damages awarded is based upon the wealth of the defendant in violation of its right to equal protection of the laws;
- d) The amount is left to the discretion of the jury and judge;
- e) The award is based on a *clear and convincing* standard, not based upon a *beyond a reasonable doubt standard*, as should be required in assessing a punishment;
- f) The punishment is against defendants who lack the right to refuse to testify against themselves, either live at trial or in a deposition, thereby violating their right against self-incrimination;
- g) The lack of a clearly defined statutory enactment setting forth a specific underlying *mens rea* requirement and/or prerequisites of a criminal fine, which, in effect, allows the assessment of such awards despite the absence of specific standards or other statutory requirements defining the *mens rea* and scope of such awards;
- h) The award subjects defendants to all of the hazards and risks of what is, in actuality, a fine while the defendant is denied the basic rights afforded a criminal defendant subjected to possible criminal penalties or fines;

23. An award of punitive or exemplary damages against Defendants would violate the Eighth and Fourteenth Amendments, as well as Articles 1 and 13 of the United States Constitution, in the following particulars:

- a) such an award constitutes an excessive fine;
- b) such an award amounts to an infliction of cruel and unusual punishment; and
- c) such an award constitutes a deprivation of property and protected interests in the absence of fundamentally fair proceedings and safeguards of procedural due process.

24. The policy goals supporting the imposition of punitive or exemplary damages are deterrence and punishment. Neither goal is furthered by the imposition of punitive or exemplary damages against Defendants.

FOR A THIRTEENTH DEFENSE

25. In the event punitive or exemplary damages are awarded against Defendants, such damages shall not exceed the limitations provided in S.C. Code Ann. § 15-32-530. Defendants affirmatively assert the protections and defenses set forth in S.C. Code Ann. § 15-32-510, *et seq.*

FOR A FOURTEENTH DEFENSE

26. Defendants reserve the right to amend their answer to assert such affirmative defenses as may become available or apparent during the course of discovery.

WHEREFORE, having fully and completely responded to the allegations of Plaintiff's Complaint, Defendants pray that it be dismissed, for the taxable costs of this action, and for such other and further relief as this Court may deem just and proper.

s/Kirby D. Shealy III

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*Attorney for Defendants Pilgrim's Pride
Corporation, Mary McBride, and Susan
Jones*

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Hunsten B. Ragin as Personal
Representative for the Estate of Samel
Ragin,

Plaintiff,

vs.

Pilgrim's Pride Corporation, Mary
McBride, and Susan Jones,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2021-CP-43-00307

**MOTION FOR SUMMARY
JUDGMENT**

COME NOW, Defendants Pilgrim's Pride Corporation, Mary McBride, and Susan Jones pursuant to requirements of Rule 56, SCRCP, hereby provides notice that it will move for summary judgment within ten (10) days of the service of this motion. This Motion is based upon the pleadings in this matter; affidavits; depositions; discovery; the statutes and case law of the State of South Carolina; memoranda of law, should any be filed; arguments of counsel; the South Carolina Rules of Civil Procedure; and any other authority as the Court may deem appropriate.

Construing all evidence in the light most favorable to the Plaintiff in this case, there is no genuine issue of material fact for a jury to determine, and the Defendant is entitled to a grant of Summary Judgment in this civil action as a matter of law. Rule 56, SCRCP.

The Defendants base this Motion For Summary Judgment on the following: (a) that the Wrongful Death and Survival action was filed approximately five months after the statute of limitations had expired; and (b) that the Exclusive Remedy provisions of the South Carolina Workers' Compensation Act bars civil suits, including Wrongful Death and Survival suits brought by employees against employers and co-employees.

A. The three year Statute of Limitations applicable to Wrongful Death and Survival lawsuits bars this lawsuit

1. The decedent in this matter, Samel Ragin, was an employee of the Pilgrim's Pride chicken processing plant in Sumter, South Carolina on November 24, 2017 and died of a heart attack that day during her work shift at the plant.

2. Hunsten B. Ragin (Samel's mother) was duly appointed as the Personal Representative for the Estate of Samel Ragin by the Probate Court on April 3, 2018.

3. Hunsten B. Ragin subsequently died on September 27, 2020 and no substitute Personal Representative was or has been appointed by the Probate Court to replace her as the Personal Representative for the Estate of Samel Ragin.

4. Despite the fact that the Hunsten B. Ragin died on September 27, 2020, on November 6, 2020 Counsel for the Estate of Samel Ragin ostensibly filed a Notice of Intent to Sue the herein named Defendants for medical malpractice pursuant to S.C. Code Ann. Section 15-79-125 (as amended).

5. On January 8, 2021, without a duly authorized living Personal Representative for the Estate participating, and no substitute Personal representative

appointed by the Probate Court, an ADR pre-suit medical malpractice mediation conference was conducted. It was declared an impasse on January 8, 2021 as shown by the documents filed with the Clerk of Court.

6. On February 23, 2021, almost five months after Hunsten B. Ragin had died, and still with no substitute Personal Representative appointed by the Probate Court, Counsel for the Estate of Samel Ragin ostensibly filed a Summons and Complaint for Wrongful Death and Survival alleging Samel's death was caused by the negligence and gross negligence of the Defendants.

7. When the Notice of Intent to Sue for medical malpractice was filed, and when the instant Wrongful Death and Survival action was filed, the duly appointed Personal Representative, Hunsten B. Ragin, was deceased. There was no substitute personal representative duly appointed by the Probate Court when both the Notice of Intent to Sue action and Wrongful death and Survival action was filed. As such, there was no person or entity in existence authorized or empowered to commence or maintain a civil action on behalf of the Estate of Samel Ragin under the law of South Carolina. Glenn v. E. I. DuPont De Nemours & Co., 254 S.C. 128, 174 S.E.2d 155 (1970).

8. With no entity or person in existence authorized or empowered to commence or maintain a civil action, the filing of the Notice of Intent and the Wrongful Death and Survival actions are both considered a nullity as a matter of law. Glenn v. E. I. DuPont De Nemours & Co., 254 S.C. 128, 174 S.E.2d 155 (1970).

9. Since the Notice of Intent to Sue action filing was a nullity, the applicable three year statute of limitations was not tolled pursuant to S.C. Code Ann. Section 15-79-125 (A) (as amended).

10. Because there was no tolling of the statute of limitations, the Wrongful Death and Survival action was filed approximately five months after the statute of limitations in this case had expired. Again, as stated above, the Wrongful Death and Survival action filing on February 23, 2021 was also a nullity since there was no person or entity in existence at the time that possessed the power or authority to file or maintain a civil action.

11. The statute of limitations to bring a Wrongful Death and Survival lawsuit in this matter expired on November 24, 2020, and failed Court filings, which were a nullity as a matter of law did not toll the statute of limitations. Accordingly, this motion for summary judgment should be granted and this civil action should be dismissed with prejudice.

B. The South Carolina Workers' Compensation Act Exclusive Remedy provision bars this lawsuit

12. The South Carolina Workers' Compensation Act bars employees from suing employers and co-employees except in certain factual circumstances involving intentional conduct. S.C. Code Ann. Section 42-1-540 (as amended).

13. Pilgrim's Pride was Samel Ragin's employer; Mary McBride, and Susan Jones were co-employees of Samel Ragin.

14. There have been no allegations and no evidence or proof asserted, alleged, or adduced of any intentional acts committed by the Defendants, therefore no exception to the Exclusive Remedy applies in this case.

15. This civil lawsuit is barred as a matter of law by the Exclusive Remedy provisions of the South Carolina Workers' Compensation Act and should be dismissed with prejudice.

16. For the above reasons, the Defendants are entitled to the grant of this Motion For Summary Judgment on both grounds asserted and requests the Court to dismiss this action with prejudice. Rule 56, SCRCP; S.C. Code Ann. Section 15-79-125; Glenn v. E. I. DuPont De Nemours & Co., 254 S.C. 128, 174 S.E.2d 155 (1970); S.C. Code Ann. Section 42-1-540 (as amended).

This the 17th day of September, 2021.

VERNIS & BOWLING OF COLUMBIA, LLC

s/ Douglas E. Leadbitter

Douglas E. Leadbitter (S.C. Bar No.: 68430)

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Columbia, SC 29201

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Attorneys for Defendants

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Hunsten B. Ragin as Personal
Representative for the Estate of Samel
Ragin,

Plaintiff,

vs.

Pilgrim's Pride Corporation, Mary
McBride, and Susan Jones,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2021-CP-43-00307

**MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

PROCEDURAL HISTORY

The Plaintiff filed the Summons and Complaint alleging negligence against Pilgrim's Pride Corporation, Mary McBride, and Susan Jones for the alleged wrongful death of the Plaintiff. Defendants submit the following Memorandum of Law in support of their Summary Judgment Motion.

FACTUAL BACKGROUND

The decedent in this matter, Samel Ragin, was an employee of the Pilgrim's Pride chicken processing plant in Sumter, South Carolina on November 24, 2017. In the later part of the afternoon on November 24, in the time frame of 3:00 pm to 4:00 pm, Ragin went to the women's restroom and died during her work shift at the plant from a massive heart attack. The coroner autopsy report

found that she had died from natural causes: cardiac arrhythmia, and cardiomyopathy.

Hunsten B. Ragin (Samel's mother) was duly appointed as the Personal Representative for the Estate of Samel Ragin by the Probate Court on April 3, 2018. Hunsten B. Ragin subsequently died on September 27, 2020 and no substitute Personal Representative was appointed by the Probate Court to replace her as the Personal Representative for the Estate of Samel Ragin until late October 2021.

Despite the fact that Hunsten B. Ragin died on September 27, 2020, Counsel for the Estate of Samel Ragin ostensibly filed a Notice of Intent to Sue the herein named Defendants on November 6, 2020 for medical malpractice pursuant to *S.C. Code Ann. Section 15-79-125 (as amended)*.

On January 8, 2021, still lacking a duly authorized living Personal Representative for the Estate participating, and no substitute Personal representative appointed by the Probate Court at that time, an ADR pre-suit medical malpractice mediation conference was conducted. It was declared an impasse on January 8, 2021 as shown by the documents filed with the Clerk of Court.

On February 23, 2021, almost five months after Hunsten B. Ragin had died, and still with no substitute Personal Representative appointed by the

Probate Court, Counsel for the Estate of Samel Ragin ostensibly initiated the case at bar by filing a Summons and Complaint for Wrongful Death and Survival alleging Samel's death was caused by the negligence and gross negligence of the Defendants. Pilgrim's Pride was the Decedent's employer. Mary McBride, and Susan Jones were co-employees of the Decedent at the Pilgrim's pride plant.

**STANDARD OF REVIEW
FOR A SUMMARY JUDGMENT MOTION**

Summary Judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP.

In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Construing all evidence in the light most favorable to the Plaintiff in this case, there is no genuine issue of material fact for a jury to determine, and the Defendants are entitled to a grant of Summary Judgment in this civil action as a matter of law. Rule 56, SCRCP.

ARGUMENT

I. The Three Year Statute of Limitations applicable to Wrongful Death and Survival lawsuits bar this lawsuit

The three year statute of limitations bars this lawsuit. Samel Ragin died on November 24, 2017 and the three year statute of limitations expired on November 24, 2020. *S.C. Code Ann. Section 15-3-545 (1976)*.

Decedent'S estate lawyer filed the original Notice of Intent asserting the Personal Representative, Hunsten Ragin, allegedly had authority to bring that action on November 6, 2020. The Notice of Intent was filed eighteen days before a Wrongful Death/Survival action would be time barred. However, there was no Personal Representative appointed that was still living when the pleading was filed.

The former Personal Representative, Hunsten Ragin (Decedent's mother), was appointed as the PR on April 3, 2018. However, Hunsten Ragin also passed away on September 27, 2020, approximately five weeks before the Notice of Intent for the wrongful death case was filed. *See, Exhibit - Hunsten Ragin obituary*. A new substitute Personal Representative, Syreaa M. Baxter, was not appointed by the Sumter County Probate Court until late October 2021.

Since Hunsten died on September 27, 2020, prior to the filing of the Notice of Intent, that Notice of Intent filing on November 6, 2020 was a nullity. *Glenn v. E.I. DuPont De Nemours & Co.*, 254 S.C. 128, 174, S.E.2d 155 (1970). Under South

Carolina law since that filing was a nullity, it did not toll the applicable statute of limitations. Again, the statute of limitations for this action expired on November 24, 2020 which was three years from the date of Samel Ragin's death. The filing of a lawsuit where no person or entity has the power to commence or maintain the action under the South Carolina Probate Code is a nullity. *Id.* In Glenn v. E.I. DuPont De Nemours & Co., a civil lawsuit suit was brought by an Administratrix (now known as a personal representative) *after* she had already been dismissed by the Probate Court from that fiduciary position. The Court held that the lawsuit was a nullity because the former Administratrix no longer possessed the power granted by the Probate Code and the Probate Court to do so. The Court held there was no legal entity in existence authorized or empowered to commence or maintain the action. The filing of the action was therefore a nullity. *Id.* The Court also did not allow the Administratrix to maintain the action under a "relation back doctrine" to the time when she did possess the authority as the Administratrix. *Id.*

In this case, while the Samel Ragin Estate is currently still open, and a substitute Personal Representative was finally appointed in October of 2021, there was no Personal Representative appointed when the Notice of Intent was filed on November 6, 2020, so there was no tolling of the statute of limitations.

More importantly, when the instant action was filed on February 23, 2021,

there was still no legal entity or person in existence that possessed the authority to file any civil action and that filing was also a nullity *Id.*

Since the Notice of Intent and subsequent Summons and Complaint were both a nullity, then the statute of limitations expired on November 24, 2020 (three years after Samel Ragin died at work). There are no facts or argument that support any type of tolling that would have extended the applicable three year statute of limitations in this case. The Courts do not recognize a "relation back doctrine" that would allow current Personal Representative to initiate the action as if she had been appointed prior to the expiration of the statute of limitations. *Id.* When this instant action was filed on February 23, 2021 there was still no Personal Representative appointed by the Probate Court possessing the authority to commence or maintain a lawsuit.

Moreover, even assuming that the Notice of Intent filing was not a nullity, and the statute of limitations was tolled until sixty days after the medical malpractice mediation impasse, the tolling dictates of *S.C. Code Ann. Section 15-79-125* also expired on March 9, 2021 because there was no Personal Representative appointed by the Probate Court with the authority to commence or maintain a lawsuit when the instant action was ostensibly commenced on February 23, 2021.

There is no genuine issue of material fact for a jury to consider regarding

the statute of limitations expiration on November 24, 2020. Even if the Court finds that the Notice of Intent did toll the statute of limitations until sixty days after the medical malpractice mediation was at an impasse, there was still no Personal Representative appointed on February 23, 2021 when the instant case was filed. That filing on February 23, 2021 was a nullity as a matter of law. Glenn v. E.I. DuPont De Nemours & Co.

Therefore, even if the Notice of Intent tolled the statute of limitations, the statute of limitations still expired on March 9, 2021 pursuant to *S.C. Code Ann. Section 15-79-125* because there was no Personal Representative appointed. Again, the current Personal Representative was not appointed by the Probate Court until October 2021. *Rule 56, SCRPC; Glenn v. E.I. DuPont De Nemours & Co.*

As a matter of law, the the statute of limitations expired in this case. Accordingly, this Court should grant Summary Judgment in favor of the Defendants. *Rule 56, SCRPC; Glenn v. E.I. DuPont De Nemours & Co.; S.C. Code Ann. Section 15-79-125; S.C. Code Ann. Section 15-3-545 (1976)*

II. This matter is barred by the Exclusivity Remedy Doctrine of the South Carolina Workers' Compensation Act.

This matter should be dismissed as a matter of law because the exclusive remedy mandates of the *South Carolina Workers Compensation Act* provide immunity from negligence lawsuits by employees against employers and co-employees.

In this case, it has been alleged that the Plaintiff was at work, and that her employer or co-employees were negligent for failing to take action when the Decedent ostensibly sought medical care at the nurse's station at the plant.

By the very allegations of the Complaint, this action is barred by the exclusive remedy provisions of the *South Carolina Workers Compensation Act*. The South Carolina Workers' Compensation Act provides immunity to employers and co-employees from suits brought by employees except in certain factual circumstances involving intentional conduct. *S.C. Code Ann. Section 42-1-540 (as amended)*. Exclusivity provision of the Workers' Compensation Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury. *Posey v. Proper Mold & Engineering, Inc.*, 378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008)

An employee negligently injured by a co-employee conducting the employer's business may not hold the co-employee personally liable in tort, but must instead rely upon the remedies provided by the Workers' Compensation Act. *Fuller v. Blanchard*, 358 S.C. 536, 595 S.E.2d 831 (Ct. App. 2004).

Claimant has no right to proceed with a common law claim against an employer where he has recovered on workers' compensation claim, because the right to seek workers compensation claim from an employer is intended to bar all actions against employer where personal injury to employee comes within

Act; while Act does not exclude remedy in tort where assault was committed by employer, assault by fellow employee does fall within remedy under Act. Boulware v. Mills, 294 S.C. 24, 362 S.E.2d 184 (Ct. App. 1987).

In this case, the allegations of the Complaint are that the Decedent was an employee and that she was working at her employer's plant at the time of her death. She alleged that the co-employees in the nurse station negligently failed to recognize and diagnosis her symptoms of a heart attack just before she died. To be sure, there are no allegations of intentional conduct by the employer or the co-employees. Even if there were allegations of intentional acts by co-employees, the exclusive remedy would still apply and provide immunity to the co-employees. Boulware v. Mills.

As a matter of law, this Court should dismiss this lawsuit pursuant to the exclusive remedy doctrine contained in the *South Carolina Workers' Compensation Act* which clearly provides immunity to employers and co-employees from negligence suits by employees. *Rule 56, SCRCP; S.C. Code Ann. Section 42-1-540 (as amended); Boulware v. Mills; Fuller v. Blanchard; Posey v. Proper Mold & Engineering, Inc.*

CONCLUSION

For the reasons stated herein, this Court should grant Defendants' Motion for Summary Judgment on both grounds asserted above: (1) that the statute of

limitations expired; (2) that the exclusive remedy provisions of the *South Carolina Workers' Compensation Act* provides immunity from negligence lawsuits by employees against their employers and co-employees.

January 27, 2022
Columbia, South Carolina

s/Douglas E. Leadbitter
Douglas E. Leadbitter
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Hunsten Ragin

Passed 09/27/2020



[OBITUARY & SERVICES](#) [GUEST BOOK \(4\)](#) [SEND FLOWERS](#) [PLANT A TREE](#)

Obituary For Hunsten Ragin

Summerton, SC

Hunsten Baxter Ragin, 65, widow of James Ragin, died Sunday September 27, 2020 at McLeod Regional Medical Center, Florence, SC. She was born July 14, 1955 in Summerton, SC, a daughter of the late Willie McBride and Helen Baxter.

Memorial services for Mrs. Ragin will be held 2:00PM Saturday, October 3, 2020 at the Weldon Auditorium, 7 Maple Street, Manning, SC.

The family is receiving friends at the home of her daughter, Syreea Baxter, 1107 Meadowfield Drive, Apt. 2-C, Summerton, SC from 5:00 PM until 8:00 PM. Due to COVID 19, masks are required.

In lieu of flowers, monetary donations will be accepted.

Send flowers to the service of Hunsten Ragin

Share



SHARE A MEMORY

SEND FLOWERS

PLANT A TREE

SUBSCRIBE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CIVIL ACTION NO.: 2021-CP-43-00307
	)	
Hunsten B. Ragin as Personal	)	
Representative for the Estate of Samel	)	
Ragin,	)	
	)	
Plaintiff,	)	MEMORANDUM IN OPPOSITION
	)	TO MOTION FOR SUMMARY JUDGMENT
v.	)	
	)	
Pilgrim's Pride Corporation, Mary	)	
McBride, and Susan Jones,	)	
	)	
Defendants.	)	

Defendants Pilgrim's Pride Corporation, Mary McBride, and Susan Jones have moved the Court for an Order granting summary judgment under Rule 56, SCRCPP, on the grounds that the Estate of Samel Ragin did not have standing to bring suit, and also that Workers' Compensation is the exclusive remedy for this matter. Defendants present antiquated case law in support of the standing argument that fail to recognize South Carolina's adoption of Rule 15(c) and Rule 17(a) of the South Carolina Rules of Civil Procedure. Defendants also misconstrue to the Exclusive Remedy Doctrine to support their claims that this matter must be pursued in exclusively Workers' Compensation. For the following reasons, the Defendants' motion for summary judgment should be denied.

STATEMENT OF FACTS

Decedent Samel Ragin was an employee at the Pilgrims' Pride factory in Sumter, South Carolina. The Pilgrims' Pride factory is a large chicken processing plant. On November 24, 2017, Decedent Ragin arrived for her shift at the factory. Upon information and belief, shortly after starting her shift that morning, Decedent Ragin visited the nursing clinic with complaints of shortness of breath and chest pains. After being seen by the nurses at that nursing clinic, Ms. Ragin was directed

back to work. Around 4 p.m., Decedent Ragin was discovered in the women's restroom where she was determined to be unresponsive, yet still warm to touch. She was declared deceased upon arrival to Palmetto Health Toumey Hospital due to a heart attack from Cardiomyopathy and irregular heartbeat.

Plaintiff alleges that both of these conditions that resulted in Decedent's heart attack could have been easily managed and treated if proper medical attention had been provided. Decedent Ragin's estate was opened by Personal Representative Hunsten B. Ragin, her mother, on April 3, 2018. On November 6, 2020, the Estate of Samel Ragin filed their Notice of Intent. Unbeknownst to the Estate, Ms. Hunsten B. Ragin had passed away on September 27, 2020.

The Estate of Samel Ragin proceeded forward with the Notice of Intent process and on February 23, 2021, filed this Summons and Complaint. On October 19th, 2021, Ms. Syreea Baxter was appointed by the Sumter County Probate Court as the Successor Personal Representative.

STANDARD OF REVIEW

A court should not grant summary judgment unless the moving party shows "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. The pleadings, depositions, affidavits, and discovery on file, and all reasonable inferences from the evidence, must be viewed in the light most favorable to the non-moving party when determining if any genuine issues of fact exist. *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002); Rule 56(c), SCRPC. Once the moving party carries its initial burden, the non-moving party must come forward with specific facts showing that there is a genuine issue for trial. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "In order to withstand a motion for summary judgment '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.” *Fountain v. First Reliance Bank*, 398 S.C. 434, 441, 730 S.E.2d 305, 308 (2012) (emphasis added) (quoting *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330 673 S.E.2d 801, 803 (2009)).

ARGUMENTS

I. Estate of Samel Ragin Properly Commenced and Has Ratified this Suit.

Under South Carolina law, the Personal Representative of an estate is charged with the duty of protecting and preserving the assets of the Estate. Prior to the filing of the Notice of Intent and the Summons and Complaint, Ms. Hunsten B. Ragin had authorized her attorneys to act on the Estate of Samel Ragin’s behalf with legal action. Thus, the Notice of Intent was filed on November 6, 2020 and the Summons and Complaint were filed on February 23, 2021. Although, it is now known that Ms. Hunsten B. Ragin was deceased at that time, she had already authorized the filing of those legal actions as the Personal Representative of the Estate with her attorneys.

Upon learning of Ms. Hunsten B. Ragin’s passing in August of 2021, the Estate’s attorney sought out a successor personal representative in the midst of the Covid-19 pandemic and initiated that process in the Sumter County Probate Court. As noted above, Ms. Syreea Baxter was appointed by the Sumter County Probate Court as the Successor Personal Representative on October 19, 2021.

Under the South Carolina Probate Code, “the powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter.” S.C. Code § 62-3-701 (2014). Further, “A personal representative may ratify and accept acts *on behalf of the estate done by others* where the acts would have been proper for a personal representative.” *Id.* (emphasis added). Thus, Ms. Baxter is statutorily permitted to relate back under the Probate Code and adopt and ratify the prior actions of both Ms. Hunsten B. Ragin, as well as the actions of her attorneys.

Pursuant to South Carolina Rules of Civil Procedure, Rule 8, Rule 15 and Rule 17, Plaintiff Syreea Baxter as Successor Personal Representative is allowed to ratify the prior pleadings of Ms. Hunsten B. Ragin. SCRCRCP Rule 15 provides that pleadings may be amended as follows:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

Rule 15, SCRCRCP. In a similar fashion Rule 17(a) discusses the continuity of parties insomuch as the Relation Back Doctrine applies:

No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Rule 17(a), SCRCRCP. The Notes of SCRCRCP Rule 17(a) are particularly instructive and provide that this Rule “is intended to prevent forfeiture in those cases in which the determination of the proper party to sue is difficult or when there has been an honest mistake.”

Lastly, SCRCRCP Rule 8(f) provides “[a]ll pleadings shall be so construed as to do substantial justice to all parties.”

The South Carolina Supreme Court considered the interplay of these three Rules of Civil Procedure in *Thomas v. Grayson*, 318 S.C. 82, 456 S.E.2d 377 (1995). In *Thomas*, the Supreme Court was presented with certified questions regarding the application of the Relation Back Doctrine in light of the adoption of the Rules of Civil Procedure that had occurred in 1985. Similar to the present case, the Defendants argued that Plaintiff was not a proper personal representative and lacked capacity to sue at the time that the complaint was filed. The Supreme acknowledged that this flaw would have

been fatal under prior South Carolina law. *Thomas*, 456 S.E.2d at 379. But under the new Rule 17(a) that had been enacted in 1985, such a flaw is not fatal when the “amended pleading merely amplifies the old cause of action, provided that the defending party was originally placed on notice of the events involved.” *Id.* The Supreme Court also recognized that the adoption of SCRCP 17(a) was intended to allow the real party in interest to be permitted to maintain a suit, after the statute of limitations has run on a claim timely filed, by one who lacked capacity to sue because he was not the real party in interest. *Id.* at 380. Moreover, the Rules do not “defeat the legitimate use of the statute of limitations,” but “[Rule 15(c)] however, prevents the defendant from defeating the plaintiff’s claim on a technicality in the pleading.” *Id.*

Defendants have argued that the death of Ms. Hunsten B. Ragin effectively operates as an impediment to the initiation of legal action because there was no living personal representative at the time that the filing was made. These arguments by Defendants are flawed in a number of respects. Defendants have completely disregarded that Ms. Hunsten B. Ragin was qualified and appointed by the Probate Court. During her life, she granted the authority to her attorneys to act and to commence these lawsuits on the Estate of Samel Ragin’s behalf. There is no legal authority that says that facts of a legal complaint must be absolutely verified and certified to be completely accurate. Rather, pursuant SCRCP Rule 8 and Rule 11, an attorney can file any pleading that contains “a short and plain statement of the facts” and “that to the best of his knowledge, information, and belief that is good ground to support it.” At the time of the filing of this present action, the Estate’s attorneys were acting under that belief. To the extent that those beliefs were incorrect, Rule 8, Rule 15, and Rule 17, would allow the Plaintiff to cure the flawed technicality of its pleadings.

Furthermore, in support of their position Defendants have cited to *Glenn v. E.I. DuPont De Nemours & Co.*, 254 S.C. 128, 174 S.E.2d 155 (1970) for the proposition that Plaintiff’s

commencement of this legal action was a nullity. In *Glenn*, an estate was opened and an administratrix was appointed in July of 1961 and subsequently closed and forever discharged in January of 1962. After another five years in January of 1967, that same administratrix filed a lawsuit on behalf of the estate without having re-opened the estate. The Court noted that “a complaint brought in the name of a plaintiff which is not a legal entity is a nullity and there is no foundation upon which to base an amendment.” *Id.* at 158. Defendants argue that Ms. Hunsten was deceased at the time of filing and accordingly, she was unable to bring suit. However, Defendants’ reliance on this case is misplaced because in this case, the Estate of Samel Ragin was and is still open in the Probate Court for Sumter County. Despite the passing of Ms. Hunsten B. Ragin, the Estate of Samel Ragin was not affected, and that legal entity continued to operate and exist.

But Defendants’ reliance on *Glenn v. E.I. DuPont De Nemours & Co.* is more significantly misplaced because it pre-dated the adoption of Rule 8, Rule 15, and Rule 17 of the South Carolina Rules of Civil Procedure which were enacted in 1985. Just as noted in *Thomas v. Grayson*, the adoption of these rules rectified what would have once been fatal flaws to pleading technicalities. *Thomas*, 456 S.E.2d at 379. Once again, the Notes to SCRCPP Rule 17(a) are instructive because it states, “[t]his provision may change existing State law, because precedents hold that lack of the proper party is jurisdictional.” “[T]he filing of the suit might not bar the applicable statute of limitations, absent this provision.” SCRCPP Rule 17(a), Notes. Moreover, the enactment of Rule 17(a) was “intended to prevent forfeiture” based on pleading technicalities like this precise instance in which the death of a personal representative occurred in close in time to the commencement of this suit. Therefore, this pleading technicality is not a valid basis for dismissal of this complaint. Dismissal of this suit would result in substantial injustice and would simply enable a forfeiture at the expense of the Plaintiff.

II. This Suit Against Defendant is Properly Brought in the Court of Common Pleas.

Ordinarily in South Carolina, employers are immune from suit by the employees when the injury is “arising out of and in the course of employment.” S.C. Code § 42-1-160. “‘Arising out of’ refers to the origin and cause of the accident; the phrase ‘in the course of’ refers to the time, place, and circumstances under which the accident occurred.” *Patel v. BVM Motel, LLC*, 433 S.C. 337, 857 S.E.2d 564, 568 (Ct. App. 2021). “An accident arises out of the employment when the accident happens because of the employment, as when the employment is a contributing proximate cause.” *Id.*; see also *Osteen v. Greenville Cnty. Sch. Dist.*, 333 S.C. 43, 50, 508 S.E.2d 21, 25 (1998) (“The injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury.”). “In determining if an accident arose out of and in the course of employment, each case must be decided with reference to its own attendant circumstances.” *Id.*

Plaintiff does not dispute that this incident involving Decedent Ragin occurred while she was on the job and while she was at her place of employment. However, Plaintiff contends that neither the injury sustained by Decedent Ragin, i.e., the undiagnosed and untreated heart condition, nor the circumstances of the accident itself, i.e., the nurses’ negligible conduct, arose out of the Decedent Ragin’s employment at Pilgrims’ Pride. In other words, Plaintiff’s argument is that she is unable to make medical negligence for this case in Workers’ Compensation because it does not relate to Decedent Ragin’s employment. In fact, Plaintiff filed such a claim against Defendants’ Workers’ Compensation Insurer and was denied. (Exhibit A – Denial Letter).

Defendants operate a chicken processing factory and Decedent specifically worked as a pallet jack operator. Essentially, Decedent primary responsibility was to move large bins of Defendants’ products and inventory from the line to refrigeration units and elsewhere throughout the large facility.

While the need or necessity of having a nursing clinic may be attendant to operating a large chicken processing factory, it cannot be stated that it has anything to do with the job or responsibilities that Decedent Ragin undertook during the scope of her employment.

Analogously to the present case, physicians are considered third parties to the employer-employee relationship and do not fall within the immunity provisions of the Workers' Compensation Act. *Fuller v. Blanchard*, 358 S.C. 536, 595 S.E.2d 831, 834 (Ct. App. 2004). In *Fuller*, Dr. Blanchard was the referring physician for work-related employee physicals. As part of an annual physical, Dr. Blanchard performed routine lab tests including a PSA test. When a lab test would come back with an abnormality, Dr. Blanchard would inform the employee and recommend that they consult their own family physician. Unfortunately, Dr. Blanchard did not report the result of the lab test to Decedent Fuller and he developed cancer and died. His estate brought suit against Dr. Blanchard for his failure to advise the Decedent of his medical condition. Dr. Blanchard filed a motion for summary judgment on the premise of the exclusive remedy since he was the company physician. The Court considered the argument that Dr. Blanchard was merely a company medical provider and therefore should be immunized by the Exclusive Remedy of Workers' Compensation. While the main premise of the Court's ruling was that Dr. Blanchard was an independent contractor, the Court also ruled that even if such a medical provider were a co-employee, the exclusive remedy provision would not be applicable if the injury was not work-related. *Id.* (finding a co-employee physician may be liable because an employee's death from cancer is not work-related).

Importantly, the case law in Worker's Compensation recognizes that most idiopathic injuries, i.e., heart attack, stroke, or cancer, have nothing to do with work, but are brought on by a condition particular to that employee that could have manifested itself anywhere. *Foran v. Murphy USA*, 420 S.C. 377, 803 S.E.2d 311, 314 (Ct. App. 2017) (citing *Barnes v. Charter I Realty*, 411 S.C. 391, 395,

768 S.E.2d 651, 653 (2015)). “An idiopathic fall is one that is brought on by a purely personal condition unrelated to the employment, such as heart attack or seizure.” *Id.* This is significant in this instance because Plaintiff’s ultimate idiopathic heart attack injury, including the failure of Defendants to diagnose it, would be entirely unrelated to Decedent’s employment. Thus, if Plaintiff were to pursue a remedy in Workers’ Compensation, then such remedy would likely be denied on the premise that it is not related to her employment.

Courts have also considered the possibility that an injury arose from acts that are outside of the scope of an employee’s regular duties. In such an instance, if the act was undertaken in good faith to advance the employer’s interest, whether the employee’s assigned work is or is not furthered, then it is within the course of employment. *Grant v. Grant Textiles*, 372 S.C. 196, 641 S.E.2d 869, 871-72 (2007). To answer this question, it first has to be determined what was Decedent Ragin’s act that is being considered. In this instance, the act would be her visit to the nursing clinic. Clearly, such an act by Decedent Ragin of visiting the nursing clinic is not in furtherance of her employer’s interest. Because Decedent Ragin did not act within her employment by visiting the nursing clinic, and such acts do not further her employer’s interest, the exclusive remedy of Workers’ Compensation is not appropriate and cannot support grounds for dismissal of this lawsuit.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants’ motion for summary judgment.

[Signature Page to Follow]

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-AND-

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ATTORNEY FOR PLAINTIFF

January 31, 2022
Ridgeland, South Carolina

Sedgwick Claims Management Services, Inc.
P O Box 14480
Lexington, KY 40512-4480



Phone: (800)426-9218
Fax: (803)750-2885

January 27, 2020

Samel S. Ragin
Po Box 586
Summerton, SC 29148

SCMS Client:	Pilgrim's
Claimant Name:	Samel S. Ragin
Date of Loss:	11/24/2017
Claim Number:	100064136

Dear Mr./Ms. Ragin:

Sedgwick Claims Management Services administers Workers' Compensation claims on behalf of the above captioned client.

After careful consideration of all available information, it is our opinion that your claim for Workers' Compensation benefits is not compensable.

Should you have additional information which could alter our opinion, please submit the information to my attention.

If you have any questions, please contact the examiner at the number listed above.

Sincerely,

Anthony Toto
Claims Examiner

Sedgwick manages claims for American Zurich Insurance Company on behalf of Pilgrim's.

!C27528784.339-6051!

ROA-061

ELECTRONICALLY FILED - 2022 Jan 31 9:35 AM - SUMTER - COMMON PLEAS - CASE#2021CP4300307

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Hunsten B. Ragin as Personal Representative
for the Estate of Samel Ragin,

Plaintiff,

vs.

Pilgrim's Pride Corporation, Mary McBride,
and Susan Jones,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2021-CP-43-00307

**NOTICE OF MOTION AND
MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO
RECONSIDER DENIAL OF SUMMARY
JUDGMENT**

Defendants Pilgrim's Pride Corporation, Mary McBride and Susan Jones by and through their undersigned counsel pursuant to S.C. R. Civ. P. 59(e) and any other applicable authority, and upon grounds set forth herein, hereby move this Honorable Court, Kristi F. Curtis, presiding judge, for reconsideration, alteration and/or amendment of this Court's denial of Defendants' Motion for Summary Judgment filed in this matter on April 7, 2022.

I. MCBRIDE AND JONES WERE DECEDENT'S CO-EMPLOYEES; AND THEREFORE, THIS MATTER IS BARRED BY THE EXCLUSIVITY REMEDY DOCTRINE OF THE SOUTH CAROLINA WORKERS' COMPENSATION ACT.

This matter should be dismissed as a matter of law because the exclusive remedy mandates of the *South Carolina Workers Compensation Act* provide immunity from negligence lawsuits by employees against employers and co-employees.

In this case, it has been alleged that the Plaintiff was at work, and that her employer or co-employees were negligent for failing to take action when the Decedent ostensibly sought medical care at the nurse's station at the plant.

By the very allegations of the Complaint, this action is barred by the exclusive remedy provisions of the *South Carolina Workers Compensation Act*. The South Carolina Workers' Compensation Act provides immunity to employers and co-employees from suits brought by

employees except in certain factual circumstances involving intentional conduct. *S.C. Code Ann. Section 42-1-540 (as amended)*. Exclusivity provision of the Workers' Compensation Act precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury. *Posey v. Proper Mold & Engineering, Inc.*, 378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008)

Moreover, Plaintiff admits “this incident” involving Decedent Ragin “occurred while she was on the job and while she was at her place of employment.” (*See* Plaintiff’s Memo in Opp. To MSJ at p. 7). Moreover, Plaintiff agrees *Fuller v. Blanchard*, is controlling case law as to this matter. *Fuller v. Blanchard*, 358 S.C. 536, 595 S.E.2d 831 (Ct. App. 2004). However, Plaintiff has misread and misstated the *Fuller* opinion. This case is distinguishable from *Fuller* because, unlike *Fuller*’s Dr. Blanchard who was an independent contractor, Mary McBride and Susan Jones were **full-time employees** of Pilgrim’s Pride. As such, McBride and Jones were Decedent’s co-employees.

An employee negligently injured by a co-employee conducting the employer's business may not hold the co-employee personally liable in tort, but must instead rely upon the remedies provided by the Workers' Compensation Act. *Fuller v. Blanchard*, 358 S.C. 536, 595 S.E.2d 831 (Ct. App. 2004). Decedent received treatment as an employee of Pilgram’s Pride. The nurses who treated Decedent were employees of Pilgram’s Pride whose purpose was to provide medical treatment to Pilgram’s Pride employees. As such, Decedent would not have been exposed to the risk of the alleged negligent medical treatment by Pilgram’s Pride’s nursing staff apart from her employment at Pilgram’s Pride.

Although the Plaintiff would have the Court believe the Defendants’ Workers’ Compensation Insurer’s denial letter is proof of proper filing in this Court, the purported negligence of Pilgram’s Pride’s nursing staff and whether it relates to the Decedent’s injury/illness or employment, is a question for the South Carolina Workers’ Compensation Commission.

Boulware v. Mills, 294 S.C. 24, 362 S.E.2d 184 (Ct. App. 1987); Fuller v. Blanchard, 358 S.C. 536, 595 S.E.2d 831 (Ct. App. 2004).

Claimant has no right to proceed with a common law claim against an employer where he has recovered on workers' compensation claim, because the right to seek workers compensation claim from an employer is intended to bar all actions against employer where personal injury to employee comes within Act; while Act does not exclude remedy in tort where assault was committed by employer, assault by fellow employee does fall within remedy under Act. Boulware v. Mills, 294 S.C. 24, 362 S.E.2d 184 (Ct. App. 1987).

In this case, the allegations of the Complaint are that the Decedent was an employee and that she was working at her employer's plant at the time of her death. She alleged that the co-employees in the nurse station negligently failed to recognize and diagnosis her symptoms of a heart attack just before she died. To be sure, there are no allegations of intentional conduct by the employer or the co-employees. Even if there were allegations of intentional acts by co-employees, the exclusive remedy would still apply and provide immunity to the co-employees. Boulware v. Mills.

As a matter of law, this Court should dismiss this lawsuit pursuant to the exclusive remedy doctrine contained in the *South Carolina Workers' Compensation Act* which clearly provides immunity to employers and co-employees from negligence suits by employees. *Rule 56, SCRPC; S.C. Code Ann. Section 42-1-540 (as amended); Boulware v. Mills; Fuller v. Blanchard; Posey v. Proper Mold & Engineering, Inc.*

II. THE STATUTE OF LIMITATIONS BARS THIS LAWSUIT, WHICH CANNOT BE CURED; AND THEREFORE, SUMMARY JUDGMENT SHOULD BE GRANTED.

The three year statute of limitations bars this lawsuit. Samel Ragin died on November 24, 2017 and the three year statute of limitations expired on November 24, 2020. *S.C. Code Ann. Section 15-3-545 (1976)*.

Decedent's estate lawyer filed the original Notice of Intent asserting the Personal Representative, Hunsten Ragin, allegedly had authority to bring that action on November 6, 2020. The Notice of Intent was filed eighteen (18) days before a Wrongful Death/Survival action would be time barred. However, there was no Personal Representative appointed that was still living when the pleading was filed.

The former Personal Representative, Hunsten Ragin (Decedent's mother), was appointed as the PR on April 3, 2018. However, Hunsten Ragin also passed away on September 27, 2020, approximately five (5) weeks before the Notice of Intent for the wrongful death case was filed. *See, Exhibit - Hunsten Ragin obituary.* A new substitute Personal Representative, Syreaa M. Baxter, was not appointed by the Sumter County Probate Court until late October 2021.

Since Hunsten died on September 27, 2020, prior to the filing of the Notice of Intent, that Notice of Intent filing on November 6, 2020 was a nullity. *Glenn v. E.I. DuPont De Nemours & Co.*, 254 S.C. 128, 174, S.E.2d 155 (1970). Under South Carolina law since that filing was a nullity, it did not toll the applicable statute of limitations. Again, the statute of limitations for this action expired on November 24, 2020 which was three years from the date of Samel Ragin's death. The filing of a lawsuit where no person or entity has the power to commence or maintain the action under the South Carolina Probate Code is a nullity. *Id.* In *Glenn v. E.I. DuPont De Nemours & Co.*, a civil lawsuit suit was brought by an Administratrix (now known as a personal representative) *after* she had already been dismissed by the Probate Court from that fiduciary position. The Court held that the lawsuit was a nullity because the former Administratrix no longer possessed the power granted by the Probate Code and the Probate Court to do so. The Court held there was no legal entity in existence authorized or empowered to commence or maintain the action. The filing of the action was therefore a nullity. *Id.* The Court also did not allow the Administratrix to maintain the action under a "relation back doctrine" to the time when she did possess the authority as the Administratrix. *Id.*

In this case, while the Samel Ragin Estate is currently still open, and a substitute Personal Representative was finally appointed in October of 2021, there was no Personal Representative appointed when the Notice of Intent was filed on November 6, 2020, so there was no tolling of the statute of limitations.

More importantly, when the instant action was filed on February 23, 2021, there was still no legal entity or person in existence that possessed the authority to file any civil action and that filing was also a nullity *Id.*

Since the Notice of Intent and subsequent Summons and Complaint were both a nullity, then the statute of limitations expired on November 24, 2020 (three years after Samel Ragin died at work). There are no facts or argument that support any type of tolling that would have extended the applicable three year statute of limitations in this case. The Courts do not recognize a "relation back doctrine" that would allow current Personal Representative to initiate the action as if she had been appointed prior to the expiration of the statute of limitations. *Id.* When this instant action was filed on February 23, 2021 there was still no Personal Representative appointed by the Probate Court possessing the authority to commence or maintain a lawsuit.

Moreover, even assuming that the Notice of Intent filing was not a nullity, and the statute of limitations was tolled until sixty (60) days after the medical malpractice mediation impasse, the tolling dictates of *S.C. Code Ann. Section 15-79-125* also expired on March 9, 2021 because there was no Personal Representative appointed by the Probate Court with the authority to commence or maintain a lawsuit when the instant action was ostensibly commenced on February 23, 2021.

There is no genuine issue of material fact for a jury to consider regarding the statute of limitations expiration on November 24, 2020. Even if the Court finds that the Notice of Intent did toll the statute of limitations until sixty days after the medical malpractice mediation was at an impasse, there was still no Personal Representative appointed on February 23, 2021 when the

instant case was filed. That filing on February 23, 2021 was a nullity as a matter of law. Glenn v. E.I. DuPont De Nemours & Co.

Therefore, even if the Notice of Intent tolled the statute of limitations, the statute of limitations still expired on March 9, 2021 pursuant to *S.C. Code Ann. Section 15-79-125* because there was no Personal Representative appointed. Again, the current Personal Representative was not appointed by the Probate Court until October 2021. *Rule 56, SCRPC; Glenn v. E.I. DuPont De Nemours & Co.*

As a matter of law, the the statute of limitations expired in this case. Accordingly, this Court should reconsider, alter, or amend its Order denying summary judgment by granting Summary Judgment in favor of the Defendants. *Rule 56, SCRPC; Glenn v. E.I. DuPont De Nemours & Co.; S.C. Code Ann. Section 15-79-125; S.C. Code Ann. Section 15-3-545 (1976).*

CONCLUSION

For the reasons stated herein, this Court should reconsider, alter, or amend its Order denying summary judgment by granting Defendants' Motion for Summary Judgment on both grounds asserted above: (1) that the exclusive remedy provisions of the *South Carolina Workers' Compensation Act* provides immunity from negligence lawsuits by employees against their employers and co-employees; and (2) that the statute of limitations expired barring this lawsuit.

Respectfully submitted,

This the 15th day of April, 2022.

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ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CIVIL ACTION NO.: 2021-CP-43-00307
	)	
Hunsten B. Ragin as Personal	)	
Representative for the Estate of Samel	)	
Ragin,	)	
	)	
Plaintiff,	)	PLAINTIFF'S MEMORANDUM IN
	)	OPPOSITION TO DEFENDANTS'
v.	)	MOTION TO RECONSIDER DENIAL
	)	OF SUMMARY JUDGMENT
Pilgrim's Pride Corporation, Mary	)	
McBride, and Susan Jones,	)	
	)	
Defendants.	)	
_____	)	

Defendants Pilgrim's Pride Corporation, Mary McBride, and Susan Jones have moved the Court to reconsider, alter and/or amend this Court's denial of Defendants' Motion for Summary Judgment filed in this matter on April 7, 2022. For the following reasons, the Defendants' motion to reconsider should be denied.

ARGUMENT

In their Motion to Reconsider, Defendants argue that since Defendant McBride and Defendant Jones were decedent's co-employees, the matter is barred by the exclusivity remedy doctrine of the South Carolina Workers' Compensation Act. Defendants further argue that the matter is barred by the three-year statute of limitations. These arguments are identical and repetitive of the arguments that were presented at the original hearing on January 31, 2022, and, therefore, the issues were already raised, presented, and argued in the entirety before the Court. In this Motion to Reconsider, Alter and/or Amend, Defendants have not raised any issue that had not already been considered or ruled on by the Court. SCRCF Rule 59(e) is only a proper avenue for Defendants to ask the Court to consider an issue that has been raised, but not ruled on by the Court.

SCRCP Rule 59(e) preserves issues for appellate review when rulings are omitted, overlooked, or not included in a Court's decision. SCRCP Rule 59(e) is not an avenue to ask this Court to "reconsider" its prior rulings for identical arguments, or for asserting new issues that Defendants could have raised prior to the ruling but did not. Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990); see also Bailey v. Segars, 346 S.C. 359, 365, 550 S.E.2d 910,913 (Ct. App. 2001). In this instance, Defendants' present Motion to Reconsider has repeated identical arguments on the issues of the Exclusivity of Worker's Compensation and the Statute of Limitations. These identical arguments were raised in their prior Memorandum of Support and in oral argument at the hearing that occurred on January 31, 2022. Defendants' Memorandum in Support of this Motion to Reconsider has not raised a single issue that was not already raised, nor ruled on by the Court. This Court has thoroughly considered, analyzed, and ruled on all the issues that were originally presented and that are being repeated once again. Accordingly, Defendants' Motion to Reconsider pursuant to SCRCP Rule 59(e) should be denied.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants' Motion to Reconsider.

[Signature Page to Follow]

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ATTORNEY FOR PLAINTIFF

April 26, 2022.
Ridgeland, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Aug 19 2022

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

SC Court of Appeals

Kristi F. Curtis, Circuit Court Judge

Civil Action No.: 2021-CP-43-00307

Hunsten B. Ragin as Personal Representative for the Estate of Samel Ragin, ...Appellant,

-v-

Pilgrim's Pride Corporation, Mary McBride, and Susan Jones, ...Respondent.

NOTICE OF APPEAL

PLEASE take notice that Hunsten B. Ragin as Personal Representative for the Estate of Samel Ragin ("Appellant"), pursuant to Rule 203, SCACR, appeals the following Order of the Honorable Kristi F. Curtis signed and filed on July 28, 2022, granting Defendants Pilgrim's Pride Corporation, Mary McBride and Susan Jones' Motion to Reconsider the Court's Denial of Defendants' Motion for Summary Judgement (Exhibit A).

Appellant received notice of entry of the Order granting Defendants Pilgrim's Pride Corporation, Mary McBride, and Susan Jones' Motion for Reconsideration on July 28, 2022. This Notice is timely filed. A copy of the Order appealed is attached to this Notice.

~SIGNATURE PAGE TO FOLLOW~

ROA-071

Respectfully submitted,

PARKER LAW GROUP, LLP

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~and~

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Attorney for Respondent

August 19, 2022
Ridgeland, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Civil Action No.: 2021-CP-43-00307

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Aug 19 2022

SC Court of Appeals

Hunsten B. Ragin as Personal Representative for the Estate of Samel Ragin, ...Appellant,

-v-

Pilgrim's Pride Corporation, Mary McBride, and Susan Jones,.....Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Appeal has been served upon the following counsel of record by emailing a copy of the same, this 19th day of August, 2022.

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ROA-073

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The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

RECEIVED

Aug 19 2022

SC Court of Appeals

Re: *Hunsten B. Ragin as Personal Representative for the Estate of Samel Ragin v. Pilgrim's Pride Corporation, Mary McBride and Susan Jones*
Civil Action No.: 2019-CP-36-00103

Dear Ms. Kitchings:

Enclosed for filing, please find the original Notice of Appeal in the above-referenced case. We are e-mailing the Notice of Appeal for filing and no additional copies are being provided. If additional copies are requested, please let us know. Also, our check in the amount of \$250.00 will go out in Monday's mail for the filing fee.

By copy of this letter, I am serving all counsel of record with a copy of the same.

If you have any questions, please let us know.

With kind regards, I am

Sincerely,



Neil E. Alger

NEA/tmy
Attachments

cc: Thomas Pritchard, Esquire (via email)
Dwight C. Moore, Esquire (via email)

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER }

COURT OF COMMON PLEAS

HUNSTEN RAGIN AS PR FOR)
THE ESTATE OF SAMEL RAGIN)

PLAINTIFF,)

v.)

PILGRIM'S PRIDE,)

DEFENDANT.)

TRANSCRIPT OF RECORD
21-CP-43-00307

January 31, 2022
Kingstree, South Carolina

B E F O R E :

THE HONORABLE KRISTI F. CURTIS, JUDGE

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

NEIL E. ALGER, ESQ.
Attorney for the Plaintiff

DOUG LEDBETTER, ESQ.
DWIGHT C. MOORE, ESQ.
Attorneys for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

I N D E X

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(There were no exhibits submitted.)

1 THE COURT: Okay, this is shown as
2 number 6 on my docket, 2021-CP-43-0307. This is
3 Defendant's Motion for Summary Judgment. And tell
4 me your names, if you don't mind.

5 MR. LEDBETTER: Your Honor, my name is
6 Doug Ledbetter here for the defendants.

7 MR. ALGER: Your Honor, Neil Alger,
8 here for plaintiff and I'm joined by Mr. Dwight
9 Moore as well.

10 THE COURT: Okay. Mr. Ledbetter, I'll
11 hear from you first, sir, since it's your motion
12 for Summary Judgment.

13 And then I'll hear from y'all in
14 response.

15 MR. LEDBETTER: Thank you, Your Honor.
16 May it please the Court. Your Honor, we filed
17 this Motion for Summary Judgment based on two
18 different theories. I believe that both of them
19 are dispositive of the issues in this case. We
20 uploaded our memorandum of law last Thursday
21 afternoon. I'm assuming you received it.

22 THE COURT: Yes, sir.

23 MR. LEDBETTER: Very good. And also,
24 the -- we have a obituary death notice showing the
25 death of Hunsten Ragin. Thank you. Just to ---

1 THE COURT: I see that on our e-filing
2 system, I think?

3 MR. LEDBETTER: Yes.

4 THE COURT: Okay.

5 MR. LEDBETTER: Just to give you some
6 background of what's going on here, this was a
7 incident that happened at the Pilgrim's Pride
8 processing plant and the -- Samel Ragin was an
9 employee at the plant. She apparently at some
10 point during the day wasn't feeling well. She was
11 in the bathroom. She had a massive heart attack
12 and she died that day during her shift at the
13 plant sometime around 4:00. It's a very
14 unfortunate incident. She subsequently -- or
15 after there was a -- an estate opened for her.
16 Her mother, Hunsten Ragin, was appointed as the
17 personal representative. She was appointed in
18 April of 2018. Samel Ragin died on November
19 the 24th of 2017 so it was about six months or so
20 after the death that she was appointed, her mother
21 Hunsten, was appointed as the PR.

22 THE COURT: So in November when the
23 notice of intent to sue was filed, who was it
24 filed on behalf of?

25 MR. LEDBETTER: The notice of

1 intent -- to sue was filed on behalf of the
2 estate, personal representative ---

3 THE COURT: And so who -- do you know
4 hired ---

5 MR. LEDBETTER: --- which was Hunsten
6 Ragin. She had already been appointed as the
7 personal representative on April 3rd of 2018.

8 THE COURT: So you think the wheels
9 were already in motion, she just happened to die
10 September 27th of ---

11 MR. LEDBETTER: Of 2020.

12 THE COURT: Right. And then the
13 notice of intent to sue was filed November 6th of
14 2020?

15 MR. LEDBETTER: Yes, ma'am.

16 THE COURT: So some -- you think she
17 had already promptly engaged attorneys to do that
18 and they just followed through on her behalf?

19 MR. LEDBETTER: Yes, Your Honor.

20 THE COURT: Is that what you're
21 guessing?

22 MR. LEDBETTER: Yes. And so ---

23 THE COURT: Then y'all had ADR on
24 January of 2021 and still ---

25 MR. LEDBETTER: That ---

1 THE COURT: She had -- obviously,
2 she's still deceased and no -- no successor PR has
3 been named at that point.

4 MR. LEDBETTER: Correct, Your Honor.
5 And this -- that predated my involvement in the
6 case. I didn't get this until sometime in the
7 middle of 2021. But my understanding was -- and
8 that there was an ADR conference that was held on
9 January the 6th of 2020. They had -- excuse me,
10 it was the 2021. It was January the 8th of 2021,
11 excuse me. They had their mediation. It was at
12 an impasse, and then thereafter this lawsuit was
13 filed on February 23rd of 2021. And the new PR,
14 all that process there was no PR appointed for the
15 estate of Samel Ragin. There was never one to my
16 knowledge for Hunsten Ragin either after she
17 passed away. I don't know, you know, what
18 happened in the interim, you know, in 2020 after
19 she -- she died. I don't know what happened with
20 her estate. But the new PR wasn't appointed until
21 October the 1st of 2021. So we went through a
22 period from September the 27th of 2020 where there
23 was no PR appointed for Samel Ragin's estate, and
24 then there were two filings. The one that was
25 done with the medical malpractice, that was in

1 November of 2020; and then the lawsuit was filed
2 in February of 2021, still with no PR appointed.

3 On that issue, Your Honor, with the
4 statute of limitations issue here is that I
5 believe that under the case law that I cited in my
6 brief that -- that these filings that happened
7 after Hunsten Ragin had passed away, that those
8 filings were a nullity. Probate court during that
9 case very specifically on point with that, that
10 the -- excuse me.

11 THE COURT: I think that's Glenn v. EI
12 Dupont ---

13 MR. LEDBETTER: Yes, that's the Glenn
14 case, the Dupont De Nemours cases, that they're
15 very specific on point with that in that there is
16 no relation back. I mean, they -- that particular
17 case the PR had been appointed, she was relieved,
18 and then they tried to take action on her behalf.
19 The issue there is whether or not she -- anyone
20 had the authority or the power to commence or
21 maintain a lawsuit, and it's our argument that
22 that's exactly the same thing that's going here
23 except it was the result of someone passing away.
24 There was no one in existence at the time to
25 authorize either the filing of the notice of the

1 intent or there's no one to have ADR conference
2 and there was no one to authorize the -- the
3 filing of subsequent lawsuit. During that period
4 of time the statute of limitations would have
5 expired on November the 24th of 2020, okay. So at
6 that point the statute of limitations would have
7 stopped because there were these filings that
8 were -- they're considered a nullity under that
9 case, therefore, the statute of limitations would
10 have expired three years from the date of Samel
11 Ragin's death.

12 Even if you assume that her lawyers
13 just didn't know that Hunsten Ragin had passed
14 away when they filed that notice of intent, we
15 still have months that passed, almost five months
16 had passed until the case was filed. They went to
17 a -- they had a mediation with no living person
18 there with the authority to settle the case. And
19 it had occurred to me this morning after I
20 received opposing counsel's brief, that that
21 very -- that mediation should have also been
22 considered a nullity. There was no one there to
23 settle the estate. There's no person, there's no
24 entity with power or control to do anything. That
25 therefore, even that particular part of this was a

1 nullity; and then if that's true, then the
2 mediation requirement and the med-- at least in
3 the medical malpractice statute, none of that has
4 happened properly so they wouldn't be able to ---

5 THE COURT: Wouldn't the correct
6 course of events should have been given that you
7 got -- you got deadlines that the mediation's got
8 to happen within a certain period of time. So
9 what do you think the proper thing to do is when
10 you have the PR pass away and you've got a statute
11 limit and you've got the deadline for ADR looming?

12 MR. LEDBETTER: Right. I -- I think
13 the proper thing to do, obviously, would be to go
14 back to the probate court and have a substitute
15 personal representative appointed, which they
16 obviously did in October of 2021. Apparently, it
17 didn't take very long because they -- they knew
18 about it at least according to the brief this
19 morning that I got. I didn't know when they found
20 that out until today, that it was August of 2021
21 when they learned about the passing of Hunsten
22 Ragin. But nevertheless, I mean, if the
23 plaintiff, even though they're -- they had
24 lawyers. The personal representative of the
25 estate had lawyers; but, you know, these things

1 happen. They acted as if they -- when they went
2 to this mediation in January of '20 -- no, excuse
3 me -- yeah, of 2021. When they went to the
4 mediation they act like they had authority to do
5 everything. I don't know how that could have
6 possibly happened. I mean, you don't go to a
7 mediation under the mediation rules without
8 someone with the authority to -- to settle the
9 case. There has to be a client, there has to be a
10 PR, and there was none. So I, I don't understand
11 how you can have a mediation or not know that your
12 client is no longer living. That -- how that
13 process went through and how it went to an impasse
14 makes absolutely sense to me. They shouldn't have
15 been able to have a mediation. There was no one
16 to settle to negotiate the case.

17 So based on all that, I think you can
18 taking all the totality of the circumstances
19 there, that the statute of limitations actually
20 has expired. It expired on -- the first time it
21 would have expired on November the 24th and then
22 if that -- the filing, the other thing was a
23 nullity. It -- I'll even give them -- I'll cut
24 them some slack and say, well, you know, it was
25 only a few days. She died before you filed this

1 notice of intent. Maybe you'd have the authority
2 to do that notice of intent. How could they then
3 proceed to a mediation that requires everybody to
4 be there. The personal representative had the
5 authority to be there to settle the claim of the
6 medical malpractice. How -- how do they conduct
7 that without anybody there? How, how did they
8 judge that? Did they not try to contact somebody
9 to have their -- their client there? It makes no
10 sense to me. I don't know how that could have
11 occurred. Nevertheless, they waited until
12 February the 23rd of -- of February '21 to
13 actually file the lawsuit.

14 That's my argument I think. I believe
15 that the statute of limitations should apply here;
16 that there's no relation back and that, you know,
17 those filings were a nullity and there -- there
18 was no tolling from the -- from the medical
19 malpractice. That's all I have for that. If you
20 have any other questions on that particular
21 argument for me, Your Honor, I'll move on to
22 the -- to the exclusive remedy issue.

23 Here we have -- and it's pled this,
24 but it's in the Complaint. I mean, there's
25 nothing to consider really outside the four

1 corners of the Complaint here. You've got an
2 employee, while she's working she died while she
3 was at the plant, while she's on her shift. So
4 clearly, we've got the Workers' Compensation Act
5 is going to apply in this situation. I -- she's
6 an employee. There's no other -- there's no right
7 after that for her to go and sue her employer
8 under the exclusive remedy doctrine. There's been
9 nothing pled. There's no proof. Nothing's been
10 adduced that would lead the employer to be able to
11 be sued under this, under that provision. They're
12 immune from suit. The -- there has to be some
13 kind of a intentional act or in the case law that
14 would be the only exception to that rule of the
15 exclusive remedy would be that the employer
16 engaged in some kind of intentional conduct. We
17 have nothing of the kind. The only facts that we
18 know are that she was at work, she went to the
19 bathroom, and they found her dead in the -- in the
20 bathroom.

21 There's allegations that she went --
22 this is getting into the facts of it -- of going
23 to the nursing station to have this, you know,
24 whatever misdiagnosis or whatever. Those factual
25 allegations are out there. But my point is the

1 same. Those don't matter. It doesn't matter what
2 she did there. She went -- she was at work. She,
3 you know, she was employed while she's at work,
4 therefore, the workers' compensation is going to
5 be her only exclusive remedy.

6 The other allegations that are being
7 made against the other two individuals, they were
8 nurses that were employees of the -- of the -- of
9 Pilgrim's Pride, and the defense for them is even
10 stronger actually because these are allegations of
11 negligence against co-employees. Those are
12 absolutely immune. I think they're -- even if
13 they had engaged in some kind of intentional
14 conduct, I believe that that would have -- still
15 wouldn't apply. They'd have to be -- go to
16 Workers' Compensation Commission and argue these
17 issues before the Comp Commission.

18 So the other issue that was raised
19 this morning that I've got in my -- in the brief
20 when I got up this morning and looked at it was
21 that -- this issue of the -- of the exclusive
22 remedy, is -- excuse me. This issue about the
23 exclusive remedy here with the employees that --
24 were they some kind of third party contractor.
25 They're trying to draw a correlation between a

1 referring physician that got sued and whether or
2 not they could sue that person as a third party.
3 Absolutely, you can sue a third party for workers'
4 comp. I defend those all the time. You know,
5 this is something that happens quite often where
6 you have an employee who is out doing something,
7 that's in a car wreck, and somebody else, their
8 workers' comp applied, you can do that, but they
9 can also and sue -- sue a third party. We don't
10 have a third party here, Your Honor. These --
11 these are employees. We know that they're a
12 nurse. She was in occupational health. A person,
13 woman that was there, that was actually there,
14 that was actually there. The other individual
15 wasn't even there that day so I don't know how she
16 could have been negligent; she wasn't even working
17 that day. So, you know, I think that due to the
18 fact that we have an employee at work and suing
19 co-employees and suing their employer, all this
20 has to -- is -- there's immunity. This has to be
21 in front of the Workers' Comp Commission.

22 And whether or not this is an -- this
23 exclusive remedy applies at least on this part of
24 it which is cornerstone of the Workers' Comp Act,
25 that the compensability of this accident has

1 nothing to do with that. Even if -- if they went
2 through and they argued it and the employer was
3 able to defend the accident, the Workers' Comp
4 Commission, if they found it wasn't compensable,
5 it doesn't give them the right then to turn around
6 and then sue the employer or the co-employees for
7 this. It just, it doesn't work that way. It's
8 doing everything in reverse. This is a ---

9 THE COURT: Let me ask this. The
10 cause of death is not in dispute? It was some
11 kind of a coronary event?

12 MR. LEDBETTER: Absolutely. She had a
13 autopsy. That's been determined. That's a fact.

14 THE COURT: And so, I mean, I've never
15 practiced in the realm of Workers' Comp, but it
16 seems to me like the issue would be whether -- if
17 she had, you know, coronary artery disease that
18 was not in any way related to her employment, it's
19 just a chronic disease, that that is not going to
20 be covered under workers' comp any more than, you
21 know, if I had a stroke sitting here, how's that a
22 workers' comp claim unless there was some kind of
23 extraordinary stressors or something that you
24 could somehow relate the two.

25 DEFENSE: And that, that's exactly my

1 point, Your Honor. They -- they haven't even
2 argued this issue before the Workers' Comp
3 Commission. Even if they did and they weren't
4 able to be successful with that, they can't turn
5 around and then sue the employer, the employee.
6 There is no cause of action. That's what the
7 exclusive remedy and immunity of the Workers' Comp
8 Act. That's why it's there. They can't then turn
9 around and say, well, even though this wasn't
10 compensable, we can't get a heart attack, we're
11 gonna come after the employees and employer, no.

12 THE COURT: Let me ask you this, I
13 mean, you're not required to have a nurse at the
14 ---

15 MR. LEDBETTER: Correct.

16 THE COURT: --- at the place of
17 business; but if you do have one, do they not have
18 any standard of care that they have to operate
19 under?

20 MR. LEDBETTER: I believe that you
21 could then, if they were a third party, if you --
22 you're able to do that if the exclusive remedy
23 didn't apply, then yes, there would be a standard
24 of care and all that. But that, again, that's
25 even getting more off into the weeds of the merits

1 of the claim. I'm not ---

2 THE COURT: I -- I guess it's not
3 weeds to me that, you know, if I voluntarily say,
4 okay, I'm gonna have a, some kind of physician on
5 staff, are they so -- are they immune from the
6 requirements of operating under the normal
7 standard of care that you have in a medical
8 malpractice case. So, I mean, so what would
9 prevent me if I was an employer I just, you know,
10 hired whoever with no medical background and say,
11 well, this is our nurse. Seems like there would
12 have to be some requirement they have -- same duty
13 of standard of care to their employees that they
14 would to a client outside of the work place.

15 MR. LEDBETTER: In the absence of an
16 intentional conduct, Your Honor, my answer to that
17 is the exclusive remedy applies are. They have a
18 remedy. They can go argue to the Workers' Comp
19 Commission while she was working under the course
20 and scope of employment, that she died because
21 nobody helped her. She -- they can -- they can
22 make that argument. They don't even have to prove
23 anything; that's it. I mean, that would make it
24 compensable in my opinion. That's never been
25 done. They did supply me this morning with this,

1 this letter from a -- from an adjuster from a TPA
2 from Sedgewick that said that they weren't going
3 to cover this, that it wasn't a compensable
4 accident. That's not been a determination. I
5 think this, this case probably is a compensable
6 accident; but I, I don't know. They opened ---

7 THE COURT: You're on the record.

8 MR. LEDBETTER: They worked in a --
9 excuse me. They filed a Workers' Comp claim. It
10 was -- it was filed; it was out there. I don't
11 think that it's ever been ruled on. I'm not 100
12 percent sure. I haven't been able to verify that.
13 But there has been a Workers' Comp claim filed and
14 I think it's not active, but it still can be
15 argued. So, you know, in terms of -- of kind of
16 going, reading between the lines based on the
17 questions that you just asked me, Your Honor,
18 what -- what kind of remedy does she have. She
19 has the Workers' Comp Act to rely on. She was at
20 work. That's what it's there for. You can't sue
21 your employer or the employees for negligence.
22 That's what the -- that's the beauty of it.
23 That's why they have it, why you have to, why you
24 have to be -- you're stuck with the work. When
25 you're an employer or employee, you know, there's

1 trade-offs for that. The employer gets up, you
2 can't sue me, I may have screwed up, maybe we
3 didn't have the best nurses there, but you can't
4 sue me about that, you're --you're bound by the
5 Workers' Comp Act. You have to operate within the
6 Act. And as far as I know, that still is
7 available to them.

8 THE COURT: Thank you, sir.

9 MR. LEDBETTER: Thank you, Your Honor.

10 MR. ALGER: Your Honor.

11 THE COURT: Yes, sir.

12 MR. ALGER: I actually brought an
13 extra copy of my brief. If you'd like for me pass
14 it up I ---

15 THE COURT: Sure. I don't believe
16 I've seen it.

17 MR. ALGER: I filed it at, like, 9:30
18 this morning so if you looked over anything ---

19 THE COURT: I definitely have not seen
20 it.

21 MR. ALGER: Your Honor, Neil Alger
22 here on behalf of the plaintiff, along with
23 Mr. Moore sitting at the table and -- addressing
24 the probate comments first. I -- I think that
25 Mr. Ledbetter was accurate in his recitation of

1 the case law, the De Nemours case back in 1970.
2 However, our court just very succinctly adopted
3 the Rules of Civil Procedure Rule 15 and 17 in
4 1985. And if you look at the notes of those
5 rules, it specifically sets -- says that this will
6 change the precedents that are out there in going
7 ahead and adopting the relation back doctrine.
8 That's important and significant in this case
9 because, yes, we went ahead and proceeded with the
10 notice of intent and filing the Summons and
11 Complaint despite the fact that Ms. Hunsten Ragin
12 was deceased, and she was acting on behalf of the
13 estate of Ms. Ragin, her daughter.

14 First, my -- my point in that is she
15 had hired us as her attorneys to go ahead and
16 start these legal actions on the estate's behalf.
17 And despite the fact that Ms. Hunsten, mother, was
18 deceased, the estate itself is still existing. It
19 is a legal entity that is pending in the probate
20 court right here in Sumter County. That entity
21 does not rise and fall with the life and death of
22 Ms. Hunsten Ragin. That, that entity was filing
23 and is still pending in that court no matter who
24 the personal representative is unless the probate
25 judge discharges it and ends the case. So at no

1 time during any of these proceedings has that
2 estate gone anywhere. It has been pending the
3 whole time.

4 Myself and Mr. Moore were hired and
5 retained by that estate on behalf of Ms. Ragin to
6 pursue legal action and we did that. I'm
7 comfortable in saying that before I file any
8 lawsuit -- and I've filed hundreds of them at this
9 point -- rarely do I pick up the phone right
10 before I hit send an e-file and call my client and
11 say, hey, are you alive, just want to make sure
12 you're still alive 'cause I'm filing a suit on
13 your behalf. As soon as I'm retained, I go ahead
14 and get permission to act on their behalf and to
15 pursue legal -- legal claims that I believe are
16 appropriate in the case. Our Rules of Civil
17 Procedure embrace that practice. The reason is
18 because we have Rules 8, 11, and then now 15 and
19 17 which are more significant; but Rule 11 itself
20 says we're not going to plead any facts that we
21 don't believe are accurate, that we don't have a
22 good faith belief is -- is out there. And then
23 Rule 8 says that, you know, we're going to go
24 ahead and provide for the means of justice in what
25 we do. Now, when we file the notice of intent,

1 yes, Ms. Ragin, the mother, was deceased. Then we
2 filed the Summons and Complaint, still unaware
3 that Ms. Ragin was deceased. That also happened
4 to coincide with when the whole world stopped with
5 Covid in March of 2020. And for almost a year,
6 just like everybody, we're locked down in shelter.
7 I don't think this court itself was even open for
8 almost a year without any hearings.

9 THE COURT: Oh, we were open.

10 MR. ALGER: You were open. You were
11 open ---

12 THE COURT: We closed our doors.

13 MR. ALGER: No hearings were being
14 conducted.

15 THE COURT: No live hearings were
16 being conducted.

17 MR. ALGER: And so had no interaction
18 or opportunity to interact with Ms. Ragin.
19 Additionally, the probate proceeding, in order to
20 get a new PR appointed was contested because
21 Samel's father showed up. In that contest between
22 Samel's father and Ms. Baxter prolonged that
23 probate process and -- and basically kept us and
24 prevented us from getting a PR in place. We had
25 to do a contested hearing. We had to go in person

1 to the Sumter County Probate Court; and
2 ultimately, that transpired, I believe in
3 September of 2021, and then Ms. Baxter was
4 appointed as pro-- as a personal representative.
5 Now our probate court says -- our probate code
6 specifically says that once a successive PR is
7 appointed, that PR has the ability to ratify all
8 prior acts, not only of prior PRs, but of others
9 acting in the best interest of the estate. Well,
10 clearly, in this instance we, as the attorneys,
11 myself and Mr. Moore, have acted in the best
12 interest of this estate because, quite frankly,
13 Your Honor, what am I supposed to do if -- if I am
14 unaware of a PR appointed or whether or not I have
15 the authority, am I supposed to just let the time
16 toll, not file a complaint? I have to --
17 literally, I am under an obligation to go ahead
18 and file the suit to preserve it until such time
19 as somebody else can take over the estate and tell
20 me what to do with it. Well, now, Ms. Baxter is
21 in that position. She's ratified what we've done.
22 She wants to proceed with the suit. That's in the
23 probate court and the probate code. And I've
24 cited that statute in my memorandum. But in
25 addition, Rule 15 and 17 both also prescribe that

1 she can ratify the prior acts as well and this
2 court can and that statute of limitations cannot
3 bar her appointment and her ratification because
4 they are not applicable once she is able to ratify
5 back and accept the prior acts that have occurred.

6 I've cited all of that in my memo so I
7 won't belabor the point. The only other main
8 issue that I do want to raise is that the case law
9 that is cited by Mr. Ledbetter in his brief is all
10 out of date; it's 1970. Once our rules adopted
11 the relation back doctrine, once the rules came in
12 play in 1985, it has completely changed the scheme
13 of things and that's specifically stated in the
14 notes to those rules.

15 Moving on to the workers' comp
16 exclusion, I, I think there's two different ways
17 to look at this. On one hand, yes, we admit
18 Ms. Ragin was an employee out of Pilgrim's Pride.
19 She was working on her shift when this occurred.
20 She showed up to her job that morning. She went,
21 and what we know based off witness accounts, is
22 that shortly after arriving on her shift and doing
23 a few administrative things, she went to the
24 nursing station. And while she was at the nursing
25 station she complained of shortness of breath and

1 chest pains. She was then allowed to leave the
2 nursing station, told to go back to work. And I
3 believe -- I may be stating this somewhat off,
4 based off the affidavit, but she was basically
5 told to go to Urgent Care after work if the pain
6 still, you know, remains. Unfortunately, she was
7 discovered at 4:00 that afternoon keeled over
8 and ---

9 MR. LEDBETTER: Your Honor.

10 MR. ALGER: --- and dead in the
11 bathroom.

12 MR. LEDBETTER: I'm sorry to
13 interrupt. I want to object about the numerous
14 hearsay upon hearsay here. He's adding facts and
15 saying all these things that -- that's getting to
16 the merits of what she did and, also, it doesn't
17 apply because. It doesn't have anything to do
18 with the merits of the -- of the issue. As a
19 matter of law, we're talking about whether or not
20 she was an employee/employee relationship with
21 co-employees. He's getting into the meat to the
22 facts of the case which has nothing to do with my
23 motion and really has nothing to do with the
24 determination of whether she's an
25 employer/employee relationship.

1 MR. ALGER: Your Honor, I think I have
2 to give a little background of the case in order
3 to present my arguments.

4 THE COURT: Well, I see those are
5 basically the allegations in the Complaint ---

6 MR. LEDBETTER: Yes.

7 THE COURT: --- that she ---

8 MR. LEDBETTER: But let me -- he's
9 adding hearsay to this and adding it, hence, to
10 bolster some argument that something has gone --
11 gone astray with what happened at the plant that
12 day.

13 THE COURT: Well, I understand that's
14 the entire basis for the lawsuit so. And I ---

15 MR. LEDBETTER: Right. Well ---

16 THE COURT: --- understand. These are
17 just -- again, I understand these are just
18 allegations at this point, but I'm looking at the
19 Complaint. It says she reported to the nurse's
20 desk with complaints of chest pain, shortness or
21 breath, dizziness. No care and treatment or
22 instructions were provided. She returned to work,
23 continued to experience the chest pain, and was
24 later found deceased in the restroom. So those --
25 I understand those are the allegations at this

1 point.

2 MR. LEDBETTER: Correct.

3 THE COURT: But I understand those are
4 mere allegations. I understand your point.

5 MR. LEDBETTER: Thank you, Your Honor.

6 MR. ALGER: Your Honor, moving on
7 beyond those facts, she was deceased that
8 afternoon in the -- in the restroom. And so,
9 well, it is very conclusively stated by the
10 defendants that if she's on the job and she's
11 employed, then Workers' Comp has to apply. That's
12 not actually the case. Because only when the
13 injury occurs and arises out of or occurs in the
14 scope of employment, does Workers' Comp arise.
15 The -- the provision itself goes ahead and sets
16 out that oftentimes Workers' Comp does not arise.
17 If it didn't arise out of or was within the scope
18 of her employment, then Workers' Comp does not
19 apply, and there's actually significant case law
20 to that effect. And I've cited in my brief -- I
21 did use the analogy of -- I'm sorry, the case of
22 Fuller v. Blanchard, as well as -- well, Blanchard
23 is the main one. Dr. Blanchard was a third party
24 physician who was hired by an employer to do
25 physicals for his employees. So he's not an

1 employee, which is different in this case than the
2 nurse. However, when our Supreme Court was
3 reviewing this case, they said specifically in the
4 opinion that even if he had been a co-employee,
5 then Workers' comp would not arise because the
6 injury did not occur in the scope of the
7 claimant's employment. That's significant because
8 in this case Ms. Ragin's employment was to be a
9 pallet mover throughout the factory. She would
10 literally take the pallets and the skids and bins
11 with the pieces of chicken and whatnot, and she
12 would move it around the factory and take it to
13 the refrigeration units and go from the line to
14 the units and she'd move stuff around the factory.
15 Well, clearly, her employment has nothing to do,
16 absolutely nothing to do with a nurse clinic. Her
17 employment has everything to do with moving around
18 the factory and doing her job with her pallets
19 and, you know, processing chicken; that's her job.

20 As Your Honor referenced earlier, if
21 Pilgrim's Pride comes in and opens a nurse clinic,
22 well, yes, they have an obligation and a duty to
23 do that. It could be completely separate and
24 distinct from the employment that Ms. Ragin has.
25 It's almost as if it's a separate subsidiary.

1 It's -- but it's -- I know legally it's not, but
2 it's completely distinct from what Ms. Ragin is
3 there to do and her purpose at the factory. And
4 therefore, this injury and what Ms. Ragin has is
5 not covered under Workers' Comp because it doesn't
6 arise out of her normal employment at the factory.

7 THE COURT: Is there any case law
8 that's addressed this where the medical provider
9 is actually a co-employee instead of independent
10 contractor?

11 MR. ALGER: I have not come across a
12 case in South Carolina that addresses that, Your
13 Honor.

14 THE COURT: I feel like this has come
15 up in the context of SCDC, but I -- I couldn't
16 tell you what the resolution was.

17 MR. ALGER: Uh-huh. Your Honor, I did
18 spend a significant amount of time looking into
19 this issue. It often comes up in a statutory
20 employee context, not necessarily in the exclusive
21 remedy. But, but in both instances they've looked
22 back at whether the injury arose out of the
23 person's employment as to whether the Workers'
24 Compensation remedy is the exclusive remedy.

25 Importantly, also Your Honor was right

1 on point with this, Ms. Ragin's injury is called
2 an idiopathic injury. That, that's like cancer.
3 That's a heart attack. It's a stroke. It's not
4 something that develops or occurs as a result of
5 your job. It's something that's arose over time
6 for a unknown reason -- reasons, right? I mean,
7 maybe she had a bad diet, who knows. But for
8 whatever reason she developed this heart issue
9 that led to a heart attack. An idiopathic injury
10 is un -- not compensate-able under Workers' Comp.
11 It is very clear. It's a hard-fast rule that
12 idiopathic injuries are not compensable under
13 Workers' Comp. And so, well, it was argued by the
14 defense that whether or not something is
15 compensable is not for this court to deliberate.
16 I would say it is because exclusive remedy by its
17 name says it has to be a remedy. And in this
18 instance, it's not. We've been denied our claim
19 by Workers' Comp. It is not a remedy that's
20 available to us because of the hard-fast rule that
21 an idiopathic injury is not compensable. It's
22 simply not an avenue by which we can go for both
23 the reason that it's not out of the scope or
24 within the scope of employment which is why an
25 idiopathic injury is not compensable. It's --

1 it's an injury that arose over time. And so
2 clearly, in this instance, what we have is we're
3 stuck between a hard place and a rock because on
4 one hand we're being told that the exclusive
5 remedy Workers' Comp where we know we're going to
6 fail because it's un-compensable and then we have
7 suing our employer which, at least I would say,
8 ordinarily people say, oh well, you're not allowed
9 to sue your employer. But in this instance, the
10 employer is doing something completely different
11 in our employee that we represent is doing
12 something completely different than operating a
13 nursing clinic at the facility. We're there --
14 our -- our decedent was there to move chicken
15 pallets around. Her employment was to work on the
16 chicken line, not to operate a nurse clinic. It's
17 a completely different scope.

18 Oh, and, Your Honor, one of the cases
19 actually cited by the defense, the Boulware case,
20 does bring up the compensability issue. It's only
21 a sentence or two that's in there, but it -- it
22 says right in the beginning it says, we do not
23 look to analyze the exclusive remedy provision
24 because Mr. Boulware, which is distinguished from
25 us, had already pursued a claim in Worker's Comp

1 and been compensated and he had already gone ahead
2 and -- what's it called to close out a comp claim?
3 I don't do workers' comp. Clincher.

4 MR. LEDBETTER: Clincher.

5 MR. ALGER: He had already clinchered
6 his claim. That's completely different than us.
7 We applied for the claim, we were denied it, and
8 we haven't don't anything else. And so in this
9 instance, we have not received that remedy. There
10 is no exclusive remedy for Workers' comp, and we
11 don't stand to be compensated under the Act.
12 Thank you, Your Honor.

13 THE COURT: Thank you. Mr. Ledbetter,
14 any reply?

15 MR. LEDBETTER: Just real quickly.

16 THE COURT: Sure.

17 MR. LEDBETTER: Your Honor, this issue
18 about the exclusive remedy and whether they've
19 been denied or not, as far as I know that they,
20 they can still do that. They haven't got to that
21 point. They provided as an exhibit where an
22 insurance carrier, some adjuster said we're
23 denying this claim. That doesn't mean -- they can
24 file Form 50 and go forward and go, you know, and
25 argue this in front of the -- in front of Workers'

1 Comp, you know, to -- they still got the
2 opportunity to do that. The other thing is the
3 idiopathic, again, I didn't want to get in the
4 weeds about all this stuff, but these idiopathic
5 injuries about heart attacks and that stuff, there
6 is a mechanism to get -- where that could be
7 possibly compensable, and he's actually stating
8 the facts that might get them there. If she was
9 moving pallets around or she overexerted herself
10 from work and she had this pre-existing condition
11 and she was working too hard at the plant or
12 whatever, she can make a Worker's Comp claim on
13 that. That -- that gets them past that, the
14 compensability roadblock. You can't have it both
15 ways. He's almost arguing the point of what an
16 insurance -- a workers' comp insurance carrier
17 would be arguing. Well, this is in-compensable,
18 so therefore, we get to go see somebody else. No,
19 we still got an employer/employee relationship and
20 a co-employee relationship; that doesn't change.
21 These issues that they provide absolute immunity
22 for this lawsuit. It can't be brought here. It
23 has to be brought to the Workers' Comp Commission.
24 Thank you, Your Honor.

25 THE COURT: Thank you. All right,

1 thank you all. I'm going to take a close look at
2 it. I will give you my ruling by email.

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 22nd day of September, 2022.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER) In The Court of Common Pleas
) Third Judicial Circuit
) 2021-CP-43-00307

HUNSTEN B. RAGIN AS PERSONAL)
REPRESENTATIVE FOR THE ESTATE)
OF SAMEL RAGIN,)
)
 Plaintiff,)
) Transcript of Record
vs.)
)
PILGRIM'S PRIDE CORPORATION,)
MARY MCBRIDE, AND SUSAN JONES,))
)
 Defendants.)
)

)

Sumter, South Carolina
May 17, 2022

B E F O R E:

The Honorable Kristi Curtis

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

Mr. Neil Alger, Esquire
Attorney for the Plaintiff

Ms. Kristian Cross, Esquire
Attorney for the Defendant

Recorded by: WebEx

Transcribed by: Lisa Carter, Court Reporter

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I N D E X

WITNESSES PAGE

(NO WITNESSES INTRODUCED DURING HEARING)
(EXHIBITS INTRODUCED DURING HEARING)

1 THE COURT: Okay. So we are here on the motion for
2 reconsideration of our, I'm gonna go ahead and say, kind of
3 thorny issue and Ragin versus Pilgrim's Pride. This is case
4 number 2021-CP-43-00307. Ms. Cross, you are here on behalf
5 of Pilgrim's Pride?

6 MS. CROSS: Yes -- Yes, Your Honor.

7 THE COURT: Okay. I will be glad to hear from you
8 and then I'm going to hear from Mr. Alger. If I can start
9 us off and just kind of let y'all hear what I'm wrestling
10 with. So I certainly understand that there's a line of
11 cases that say negligence between co-employees is strictly
12 worker's comp that falls within the exclusive remedy of
13 worker's comp. What I'm really struggling with here,
14 though, is when it's treatment of a non-work related
15 injury, you know, she just has a health condition and you
16 are not eligible for worker's comp because it's outside the
17 scope of employment. It's not a work related accident. So
18 you can't -- you can't get any recovery through worker's
19 comp. And the nurse is an employee of Pilgrim's Pride so
20 it's a co-employee so you can't sue even if it's blatant
21 malpractice. So the person is in a worse position just by
22 virtue of the fact that they work for Pilgrim's Pride so
23 that really gives me heartburn. I believe after the last
24 hearing that someone sent me, I believe, Mr. Alger, you
25 sent me something indicating that at least the employer had

1 already - I already said this is not a work related
2 accident, but a worker's comp claim had not been filed at
3 that point, is that correct or am I misremembering?

4 MS. ALGER: I believe there was -- I believe there
5 was a comp claim that was opened up and it was denied. But
6 it wasn't a final decision of the commission. There was no
7 hearing on the merits. However, the claim was denied as
8 being, you know, not work related.

9 THE COURT: I gotcha.

10 MS. CROSS: Your Honor, if I may? The insurance
11 carrier denied the claim which insurance carriers deny
12 multiple worker's compensation claims that end up,
13 ultimately, being argued in front of the worker's comp
14 commission and then determined to be compensable so this
15 never even got that far. They -- it looks like they
16 received a letter from the insurance carrier, a form letter
17 denying the case under worker's comp and then they chose to
18 go the civil circuit court route.

19 THE COURT: I gotcha. Okay. Ms. Cross, let me go
20 ahead and hear from you. I didn't mean to steal your
21 thunder there.

22 MS. CROSS: Oh, no. I completely appreciate your,
23 your questions because that also helps me with my argument.
24 I have the, I guess, the privilege and in the to be the
25 worker's comp lawyer in the room, but also it's kind of the

1 thorny side of it in which Mr. Leadbitter, obviously, is no
2 longer with our firm. He left abruptly and now I have his
3 caseload on top of my worker's comp caseload, but when I
4 did see this, this case I did feel a little bit of comfort
5 because I do believe, Your Honor, that this is a worker's
6 compensation case.

7 So in reviewing this matter, Your Honor, and just
8 looking at the, the order which I could not consent to as
9 Your Honor knows I was not at that hearing so I could not
10 consent to the contents of that order because I wasn't
11 there to cure the arguments here, hear the ruling or
12 receive that. But in looking at the motions and memos
13 filed, the allegations of the complaint, the deposition
14 transcripts and even the memo and opposition completely
15 frameless, (ph) frameless (ph) argument as to support
16 motion for a motion for summary judgment being granted. In
17 the plaintiff's memorandum and opposition and in the order
18 the plaintiff admits that their argument is that the
19 undiagnosed and untreated heart condition and the
20 circumstances of the accident itself being the alleged
21 misconduct or negligent conduct of the nurses is what arose
22 and what is the issue here that they are arguing about. And
23 then as they rely on the Blanchard case that case also says
24 and using those facts that, that is exactly what makes this
25 fall within the purview of worker's compensation. The

1 Blanchard case at page 544 says, it's the exact same
2 situation here, "that the professional services made by the
3 employer to its employees, the services were not available
4 to general, generally to the members of the public and the
5 plaintiff obtained the services not as a member of the
6 public, but only a consequence to his employment." So here
7 you have unlike the Blanchard case the Blanchard case is a
8 situation in which the doctor was a, a doc shop. Kind of
9 like a doctor's care or occupational health or concentric
10 that the company contracted with to send their employees
11 there. Unlike here, we have two nurses who are employed by
12 Pilgrim's Pride. It was their job to provide some sort of
13 medical treatment or assistance to these employees. Their
14 checks came from Pilgrim's Pride. There's no question that
15 they were employees. The only reason why this, this the
16 decedent was able to get this treatment was because she was
17 an employee of Pilgrim's Pride. Seeing these two nurses had
18 nothing to do with the general public. She saw them out,
19 arising out of her employment. So the case in Blanchard the
20 court indicated that because that person, the injured
21 worker in that case and similarly decedent in case in
22 looking at the cases that it was distinguishing it said
23 that the injured worker was only there because of her
24 employment. And so in the question of whether something
25 arose out of the appointment, if something arises out of

1 the employment if the accident happens because of the
2 employment. So the plaintiff is saying clearly and
3 unequivocally that the plaintiff is contending that the
4 under diagnosed and untreated heart condition which
5 happened at work by employees and the alleged negligible
6 conduct of those employees is the entire basis of their
7 claim, entire basis of this lawsuit. That should be
8 determined by the South Carolina Worker's Compensation
9 Commission. The South Carolina Worker's Compensation
10 Commission has jurisdiction over determining whether
11 something arises out of or in the course and scope of the
12 employment. The Worker's Comp Commission has not made that
13 determination. The only denial that the plaintiff keeps
14 bringing up is the fact that again, the insurance company
15 denied the case. That happened -- that happens often.
16 Again, I'm a worker's comp lawyer so I see it all the time,
17 otherwise, I would not be employed. That's what I do all
18 day. You have denials and you have to support that denial.

19 Now, whether or not the claim is actually compensable
20 does not mean that there should be a civil litigation suit.
21 That is what the exclusive remedy is for. It is
22 unfortunate. It is -- it would be a terrible thing if the
23 decedent in this case had no remedy because the Worker's
24 Comp Commission finds the claim was not compensable
25 however, that is what the exclusive remedy is for. The

1 exclusive remedy says that issues arising out of and in the
2 course and scope of someone's employment should be
3 determined by the Workers Compensation Commission, Your
4 Honor, and so with that I will answer any questions you may
5 have. But I would respectfully request that you reconsider
6 the denial of motion for summary judgment. As a matter of
7 law this case belongs in the purview of the Worker's
8 Compensation Commission to determine whether or not this
9 claim is actually compensable.

10 Thank you.

11 THE COURT: So I noted in the Fuller case - the
12 court's decision really does hinge on as an independent
13 contractor versus a co-employee - and the court cites to
14 some out of state cases where courts have taken pretty I
15 think harsh position that treatment of a non work related
16 injury that the general rules an employee cannot maintain
17 malpractice action against a co-employee physician. So --
18 but I do know that there are some states that have found
19 that if the -- if it is a not a -- if it's a non-work
20 related injury and you can't get compensation under
21 worker's comp, that you can bring a malpractice action. I
22 think that's Kansas. Georgia has just, I guess, an even
23 higher standard for physicians and says the duty of care
24 basically overrules worker's comp and your duty of care to
25 your patient does not depend on whether you're hired by the

1 patient or hired by the hospital or hired by the employer.
2 That you can't get around that duty of care. And so they
3 said it's completely outside of worker's comp.

4 I didn't see a whole lot of additional case law in
5 South Carolina. I'd -- there seems, though, there was a
6 case where somebody who was an employee of a hospital
7 received treatment at the hospital and could not sue the
8 hospital for negligence and the name of that cases is
9 escaping me. But Mr. Alger, let me hear from you and then
10 Ms. Cross, I'll give you a chance to reply MS. CROSS:

11 Thank you, Your Honor.

12 MS. ALGER: Thank you, Judge Curtis. And, um, you
13 know, obviously I don't think this is important at this
14 point, but I would argue that a Rule 59 motion is not our,
15 you know, the opportunity to rehash arguments previously
16 made. But I'm -- in light of that I'm happy to answer the
17 court's questions here today because it at least appears
18 that you have continued your own deliberations on these
19 issues because I'll admit they are somewhat novel and
20 difficult to make. I do believe that you made the proper
21 ruling in the first go and I'll tell you the reason why ---

22 THE COURT: Thank you, Mr. Alger.

23 MS. ALGER: --- is -- is because the Blanchard case
24 which we relied on in our brief does create the distinction
25 and I believe there was a caveat whether it was in a

1 footnote or in the brief itself that said the court ruled
2 that even if such medical provider were a co-employee the
3 exclusive remedy provision would not be applicable if the
4 injury was not work related. The reason being is because
5 the court did a deep dive and as since, in either cases,
6 done a deep dive into the statute itself which says, "it
7 must arise out of and in the course of the employment."
8 Those are two conditions there. Both of them have to be
9 met. Both the 'arise out of' as well as 'in the course of'.
10 In the course of putting that one first is describing the
11 place, the time, the event. And in this instance we will
12 concede Ms. Ragin was at work. She was at her place of
13 employment. That's not in dispute here. What is in dispute
14 is this 'arose out of' which is to say it was work related
15 or, you know, as a result of her employment. And the simple
16 fact that can't be avoided in this, in this case and
17 pleading or otherwise, is that she did not have a work
18 related injury. This was a heart attack that was failed to
19 be diagnosed by the nurse at her employment. This injury
20 did not occur as a result of her job. And well, I have
21 heard the argument I believe Mr. Leadbitter raised it and
22 his oral arguments and I heard it again here today by Ms.
23 Cross that the exclusive remedy which is the name itself is
24 not for the court's deliberations. But I, quite frankly,
25 have not seen a case to that effect. I believe the court

1 can consider the fact that there is no remedy available and
2 thus it is not the exclusive remedy available for Ms. Ragin
3 if we were to proceed on the worker's comp. I believe that
4 is within this court's deliberations to consider that if
5 she is, in fact, directed to worker's comp, if, in fact,
6 that is her exclusive direction that she'll go, this will
7 fail. And but for that failure, she is here today asking
8 for this court to approve the civil action that we are
9 going forward on in this court in common pleas and not in
10 the Worker's Comp Commission. I believe the legislature has
11 considered that. I believe that's an open consideration for
12 this court in naming it the exclusive remedy. It is not in
13 any case law. I have combed South Carolina over and over
14 again, I don't see where someone has argued the title of
15 the remedy itself, but I believe that's for this court to
16 take up on its own that, in fact, you can't call it the
17 exclusive remedy if it's not an available remedy, right.
18 And in this instance we believe the only remedy that is
19 available to Ms. Ragin and her estate is for us to proceed
20 forward in this, in this venue here in common pleas. I'll
21 just leave it with that. I believe we've rehashed these
22 arguments over and over again. So I'll let our memos speak
23 for themselves.

24 THE COURT: Just a couple of things. In the Fuller
25 case I think when the court says - I think the court is

1 referring to the circuit court - that the circuit court
2 found that the physician was an independent contractor and
3 even if this physician was not an independent contractor,
4 then this did not arise out of the scope of employment. So
5 I think the court, the Court of Appeals didn't address that
6 because they were, you know, ruling on issue one and never
7 reached issue two. But I guess my question to you is, is
8 this premature in that it hasn't gone to worker's comp yet
9 for worker's comp to say, no, you don't have a claim.

10 MS. ALGER: Your Honor, I couldn't wait that long
11 because we have a statute coming up and I don't believe
12 that there would be a potential tolling available, you
13 know, unless there was some agreement. But, nonetheless, we
14 had to go forward with the remedy that was at hand which
15 was to file suit. I'm not aware of any case law that says
16 you have to exhaust worker's compensation before you can
17 proceed for the civil litigation. I believe in this
18 instance, it falls within the law that this may have, in
19 fact, arose during the course of her employment, but it is
20 very crystal clear that it did not arise out of her
21 employment. This was not a work related injury and thus, to
22 have it put into worker's comp is just simply a death wish.

23 THE COURT: Okay. So again, Ms. Cross what I'm
24 struggling with is, okay, I'm an employer and I hire
25 medical personnel and then I know that while they're

1 treating my employees they have absolutely no duty of care
2 whatsoever to the employees that they can't be sued. And
3 then I -- I'm -- I'm gonna assume a little bit here, but if
4 you're not feeling well and you're on shift first thing
5 you're going to require is that you go see the nurse on
6 shift. So that's a little troublesome. There's -- there's
7 no accountability whatsoever that the person's got to abide
8 by the standard of care, that I just find that a little
9 troubling.

10 MS. CROSS: Yes, Your Honor. And I believe they're,
11 obviously, nurses and doctors have their own ethical
12 standards and their own boards that they have to report to.
13 But also as in this instance Ms., the decedent was offered
14 just like any other employee is offered, when you go to the
15 nurse if you're unhappy with the care that you're provided,
16 you can go see your physician. You can, you know, seek
17 treatment elsewhere. And so in that regard there were
18 other, you know, remedies for her to seek treatment
19 elsewhere. If she was still feeling unwell, that is where
20 that can come in. But I also do believe, Your Honor, and
21 would express to this court that as you mentioned the South
22 Carolina Worker's Compensation Commission hasn't addressed
23 this issue. This is really for them and, you know,
24 plaintiff's attorney has, has indicated that, you know, he
25 was running up against a statute of limitations. The

1 Worker's Comp Commission has rules, forms, procedures to
2 preserve your worker's comp argument and then still try to
3 go for a third-party claim. If you file the proper
4 paperwork you can do so in tandem. You can let the worker's
5 comp claim kind of sit there become dormant, but there
6 is a process and procedure upon which to do that and the
7 Worker's Compensation Commission would be the proper
8 jurisdiction in order to or tribunal, excuse me, in order
9 to make this decision and then if it needs to go up from
10 there to the Court of Appeals or wherever it is the
11 jurisdiction of the Worker's Comp Commission to make that
12 determination whether or not the heart attack did, you
13 know, whether it 'arose out of' and 'in the course of'
14 scope of employment. And whether that is a worker's
15 compensation issue, Your Honor.

16 THE COURT: Okay. Thank you. I'm gonna -- I'm
17 going to take one last hard look at it. I do think -- I
18 understand that we're not plowing a whole lot of new ground
19 from what we did before, but I don't mind the motion for a
20 reconsideration especially on an issue like this that it's,
21 it's a sticky one. So I thank you both.

22 MS. CROSS: Thank you.

23 THE COURT: And again, I'll take one last look at
24 it before I issue a final ruling.

25 MS. CROSS: Thank you very much.

1 MS. ALGER: Thank you, Your Honor.

2 THE COURT: Thank y'all.

3 (CONCLUSION OF HEARING HELD ON MAY 17, 2022)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Third Circuit for Sumter County, South Carolina, on the 17th day of May, 2022.

That said proceedings are transcribed to the best of my ability from the audio recording and supporting information.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

s/ Lisa S. Carter

Lisa Carter

Circuit Court Reporter

September 22, 2022

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Apr 04 2023

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No.: 2022-001175

Hunsten B. Ragin as Personal Representative for the Estate of Samel
Ragin.....Appellant,

v.

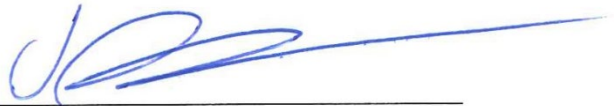
Pilgrim's Pride Corporation, Mary McBride, and Susan
Jones.....Respondents

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CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

By: _____



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April 4, 2023