

RECEIVED
Aug 10 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2021-000487

Michelle Cha Holliman, individually and as personal representative
of the Estate of Allen B. Holliman,.....Respondent,

v.

We Are Sharing Hope SC, Medical University of South Carolina,
United Network for Organ Sharing, Jacqueline Honig, M.D., and
Darla Welker,..... Defendants,

of which We Are Sharing Hope SC and
United Network for Organ Sharing are the..... Appellants.

**APPELLANT UNITED NETWORK FOR ORGAN SHARING’S
REPLY TO RETURN TO PETITION FOR REHEARING**

This Court dismissed this appeal, ruling that the appealed order is interlocutory and not immediately appealable. Appellant United Network for Organ Sharing (UNOS) petitioned for rehearing and *inter alia* incorporated the grounds presented in the separate rehearing petition filed by Appellant We Are Sharing Hope SC (WASH). Respondent filed a joint return to both rehearing petitions. UNOS respectfully submits this Reply in support of its Petition for Rehearing and in reply to Respondent’s Return.

REPLY ARGUMENTS

Respondent addresses UNOS's rehearing petition in a single paragraph. (Ret. at 2-3).

Tellingly, Respondent never addresses UNOS's actual argument, to-wit:

- (1) Post-incident investigations and candid self-critical inquiry, *i.e.*, the peer review process at issue here, are essential to the quality and safety of organ transplant care provided to South Carolina's citizens.
- (2) Confidentiality is the cornerstone of every peer review process, promoting candid participation by everyone involved in the post-incident investigation and inquiry to the benefit of South Carolina's citizens.
- (3) South Carolina law is replete with statutory and common law privileges, including peer review privileges, revealing a strong public policy in favor of confidentiality when it promotes the public good.
- (4) Assuming this appeal does not come peer review statues at issue here, this Court should nevertheless consider whether there is or should be a common law privilege for the peer review process at issue here.
- (5) If this Court recognizes a privilege here, an immediate appeal of orders compelling disclosure of privileged matters is necessary to protect the essential public policy and healthcare purposes of that privilege.
- (6) And assuming the order here is nevertheless not immediately appealable under ordinary circumstances, this Court should address the issues herein, because it will guide the bench and bar in the future and to the benefit of the health and safety of South Carolina's citizens. *Tucker v. Honda of S.C. Mfg., Inc.*, 582 S.E.2d 405, 407 (S.C. 2003) ("Although [this] appeal is interlocutory in nature, we believe it is to the benefit of the Bench and the Bar that we clarify the procedure for review of claims of attorney client privilege.").

(UNOS Rhg. Pet. at 1-2, *passim*). Rather, Respondent argues only that any changes to the statutes must come from the General Assembly. (Ret. at 2-3). UNOS agrees with this truism –no court can change any statute. But, that is not UNOS's argument here. Rather, UNOS argues that if this Court concludes these statutes do not apply here (as it has), and assuming this Court does not changes its ruling on that based on the rehearing petitions, then it should nevertheless entertain this appeal for the reasons summarized above. Respondent never addressees these reasons.

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in the rehearing petitions and briefs by UNOS and WASH, which are incorporated herein, it is respectfully submitted that this Court should grant rehearing, retain this appeal, and rule upon the merits of the statutory and common law peer review privilege issues in this case.

Respectfully Submitted,

s/Robert L. Widener
Robert L. Widener, S.C. Bar No. 6089
BURR & FORMAN LLP
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Alan R. Belcher, S.C. Bar No. 71686
Lindsay A. Nishan, SC Bar No. 105315
HALL BOOTH SMITH, P.C.
111 Coleman Blvd, Suite 301
Mount Pleasant, SC 290464
(843) 720-3460

Columbia, SC
August 10, 2023

ATTORNEYS FOR APPELLANT
UNITED NETWORK FOR ORGAN SHARING

RECEIVED

Aug 10 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2021-000487

Michelle Cha Holliman, individually and as personal representative
of the Estate of Allen B. Holliman,.....Respondent,
v.

We are Sharing Hope SC, Medical University of South Carolina,
United Network for Organ Sharing, Jacqueline Honig, M.D., and
Darla Welker,..... Defendants,

of which We Are Sharing Hope SC and
United Network for Organ Sharing are the..... Appellants.

PROOF OF SERVICE

I, Ann Shuler, an employee of Burr & Forman LLP, certify that, on this 10th day of August, 2023, a copy of *Appellant United Network for Organ Sharing's Reply to Return to Petition for Rehearing* was served upon all counsel of record in the above-captioned matter via email at the email addresses listed below:

Mary Agness Hood Craig Molly.craig@hoodlaw.com
Jean Marie Jennings Jeanmarie.jennings@hoodlaw.com
Deborah Harrison Sheffield dhsheffieldatty@aol.com
*Attorneys for Appellant
We Are Sharing Hope SC*

John Carroll Moylan, III jmoylan@wyche.com
Mary Lucille Dinkins ldinkins@wyche.com
James Hunter May jmay@wyche.com
Rachel Lewis Anna ranna@wyche.com
Attorneys for Respondent

Kelly McPherson Jolley kjolley@jolleylawgroup.com
Arial Burnside Kirk akirk@jolleylawgroup.com
Attorneys for Amici Curiae
American Medical Association
and
South Carolina Medical Association

Christine Kent Toporek Christine.toporek@rogerstownsend.com
Christina W. Strong cstrong@dilworthlaw.com
Attorneys for Amicus Curiae
Association of Organ Procurement Organizations

Columbia, SC


Ann Shuler