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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court

Trial Court Case No.:2019-CP-26-05302

Appellate Case No.: 2023-000577

Claudine Garver, Both Individually and as Personal Representative of the
Estate of Jeremy Garver, Appellant,

v.

McLeod Loris Seacoast Hospital; McLeod Physician Associates, II; and
Michael McCaffrey, M.D., Defendants,

Of which McLeod Loris Seacoast Hospital is the Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENTS OF ISSUE ON APPEAL

1. DID THE LOWER COURT ERR BY FINDING THAT APPELLANT'S CLAIM PERTAINING TO RESPONDENT'S REFERRAL PROCESS ORDINARY NEGLIGENCE PROCESS IS GUIDED BY SOUTH CAROLINA CODE ANN. SECTION 15-79-125 ET SEQ.?
2. DID THE LOWER COURT ERR BY DETERMINING THAT APPELLANT FAILED TO SHOW EVIDENCE TO SUPPORT APPELLANT'S CLAIM OF ORDINARY NEGLIGENCE PERTAINING TO RESPONDENT'S REFFERAL PROCESS AND FAILED TO SHOW PROXIMATE CAUSE RESULTING IN DAMAGES?

STATEMENT OF THE CASE

On August 19, 2019, Appellant, Claudine Garver both individually and as Personal Representative of the Estate of Jeremy Garver ("Appellant"), brought this action alleging professional negligence, gross negligence, negligence, negligence *per se*, survival action, wrongful death, loss of consortium, breach of contract, fraud, negligent misrepresentation, spoliation, vicarious liability, and nondelegable duty against Respondent, McLeod Loris Seacoast Hospital ("Respondent"), and Co-defendants Michael McCaffrey, M.D. ("Dr. McCaffrey") and Dr. McCaffrey's employer McLeod Physician Associates, II. (R. pp. 18 - 38). Respondent answered alleging no deviation from standard of care, no proximate cause, charitable immunity, application of S.C. Code Ann. § 15-38-15, failure to state a claim, and reservation and non-waiver. (R. pp. 39 - 48).

By order of the lower court dated February 15, 2023, the court found no genuine issues of material fact concerning Respondent and judgment as a matter of law appropriate pursuant to SCRCP 56(c). (R. p. 8). On February 23, 2023, Plaintiff filed a motion to reconsider the February 15, 2023 order. By form order of the lower court dated March 9, 2023, Appellant's motion to reconsider was denied. (R. p. 10). On April 7, 2023, Appellant served the Notice of Appeal on Respondent. (R. pp. 401- 404).

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRCP: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*,

355 S.C. 104, 584 S.E.2d 375 (2003); *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); *Redwend Ltd. Pship v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003); *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998); *see also Laurens Emergency Med. Specialists*, 355 S.C. at 108, 584 S.E.2d at 377 (stating that in reviewing summary judgment motion, facts and circumstances must be viewed in light most favorable to non-moving party). If triable issues exist, those issues must go to the jury. *Baril v. Aiken Regl Med. Ctrs.*, 352 S.C. 271, 573 S.E.2d 830 (Ct. App. 2002); *Young v. South Carolina Dept of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003); *Regions Bank*, 354 S.C. at 659, 582 S.E.2d at 438; Rule 56(c), SCRCF. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Bayle v. South Carolina Dept of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); *see also Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002) (On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and

inferences arising in and from the evidence in a light most favorable to the non-moving party below.).

Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Regions Bank*, 354 S.C. at 659, 582 S.E.2d at 438; *Trivelas v. South Carolina Dept of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponents case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank*, 354 S.C. at 660, 582 S.E.2d at 438. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990); *Peterson v. West American Ins. Co.*, 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRPC. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001).

STATEMENT OF FACTS

Jeremy Garver treated with Co-defendant neurologist, Dr. McCaffrey, for approximately 22 months before Mr. Garver's death on November 3, 2017, due to a subarachnoid hemorrhage and ruptured cerebral aneurysm. (R. pp. 22 - 25). Dr. McCaffrey's neurology office was associated with Respondent's medical facility and Dr. McCaffrey's staff at the time in question were all employed by Respondent. (R. p. 31, line 17 - p. 32 line 9).

The allegations in the Complaint against Dr. McCaffrey include Dr. McCaffrey's failure to consider multiple symptoms or red flags, which should have been considered medically necessary to refer Mr. Garver to a specialist for brain imaging prior to October 23, 2017. (R. pp. 26 - 32). The allegations against Dr. McCaffrey are supported by a neurologist expert's opinion as the allegations fall within the realm of medical malpractice subject to South Carolina Code Ann. § 15-79-125 et seq. (R. pp. 120 - 122).

On October 23, 2017, Mr. Garver presented to Respondent's Emergency Department ("ED") with stroke like symptoms which included tingling in his fingers, unstable while walking, and left side weakness. (R. p. 132). A computerized tomography scan was performed, which identified a large brain mass. (R. p. 145). A stroke consult was facilitated via a telemedicine facilitated network, through MUSC, called REACH MUSC. (R. p. 308). After the consult, MUSC's consulting physician, Dr. Andrew, instructed Respondent's personnel and Mr. and Mrs. Garver that a referral for a brain magnetic resonance imaging ("MRI") was needed and then they would need to schedule an appointment with MUSC's neurosurgery department. (R. p. 308). Instead of immediately assisting Mr. Garver with the referral, Respondent simply discharged Mr. Garver with minimal instructions. Specifically Respondent instructed Mr. Garver to "please call neurology office in the morning for follow up MRI" and "consider calling MUSC for an appointment." (R. p. 302).

On discharge from Respondent's ED, Respondent was aware of the urgency to refer Mr. Garver for a brain MRI. Respondent's discharge notes state "follow up with neurology stressed." (R. p. 146). However, Respondent failed to ensure Mr. Garver understood the urgency of these instructions which is evident by the two (2), un-signed Acknowledgment and Receipt of Discharge

Instructions in Mr. Garver's discharge paperwork from Respondent's facility. (R. pp. 305 - 306). On discharge, Mr. and Mrs. Garver were under the impression that the only option for a brain MRI referral was through Respondent's neurology office, even though - time was of the essence! This did not make sense to Mr. and Mrs. Garver as evident by Mrs. Garver's testimony.

On October 24, 2017, the following day, a Registered Nurse ("RN") from MUSC called Mr. Garver's wife, Claudine Garver. (R. 308). The RN noted the following in MUSC's call documentation:

Received patient's information from Dr. Andrews who performed a REACH consult on this patient last night. Patient had a CT scan done at an outside facility and it showed a brainstem tumor. Patient was discharged home and told to follow-up with Neurosurgery. I called and spoke with patient's wife and she states they are working on getting patient a MRI brain scan. I notified her that Dr. Vandergrift can certainly see the patient in clinic with imaging CD once the MRI is completed. She states she spoke with scheduling earlier today and they told her she would need a referral, so they are working on getting the Neurologist and/or the [Respondent] to send a referral over. She will call our office back to set up appointment once MRI is scheduled.

(R. 308).

Unfortunately for Mr. Garver, the only referral option relayed to him by Respondent was not immediately available as evident by Dr. McCaffrey's testimony.

During Dr. McCaffrey's deposition, Defendant McCaffrey was asked about the issues related to Respondent's referral process. Defendant McCaffrey responded "I don't know what happened in that situation. I'm on call ten days a month. That just happened to be one of the days I wasn't on call. I guess it should have been somebody calling me up on the phone as opposed to the patient's wife." (R. p. 320, lines 2 - 8). Defendant McCaffrey also confirmed during his deposition

that all his assistants, including the assistant that eventually assisted with the brain MRI referral, were employed by Respondent. (R. p. 32, lines 2-8).

During Ms. Garver's deposition, Mrs. Garver was asked if she had any specific complaints or criticism about how Respondent dealt with Mr. Garver in the ER on October 23, 2019:

...I find it interesting that the doctor on record was McCaffrey and they never contacted him and he was never part of conversation until I had to get the MRI. And I'm not sure why that is, other than we kept saying that was his doctor. And maybe they knew he missed it. I don't know. I find it interesting that the doctor on record was McCaffrey and they never contacted him and he was never part of conversation until I had to get the MRI. And I'm not sure why that is, other than we kept saying that was his doctor. And maybe they knew he missed it. I don't know. I find it interesting that - - we said that he had been under the care of Dr. McCaffrey, and he was nowhere to be found, other than for us to make a referral for an MRI. So I find that interesting.

I don't -- that's, I guess, what I have to say about that. That's like -- I mean -- so -- because I would have thought that if they found something neurologically wrong with [Jeremy Garver] immediately at the ER of which his doctor was associated with, I would have thought that he would have been involved a little bit. I shouldn't even had to call him. He could have called us, like -- you know, that's -- I have had with doctors. Like doctors check on you. Doctors check on me, you know. They -- if they feel like something -- they check on [minor]. If he's sick, they -- if they really feel concerned, they take the time and check in. And I find it interesting.

So I don't -- that's more of my term. I find it interesting that the hospital didn't even include him at all when that was -- he was associated with the hospital, that they went right over his head.

Transcript of Claudine Garver p 313, line 12 - p. 314, line 15).

Eventually, Mr. Garver was able to obtain a referral from Respondent's neurology department for brain MRI. When Mrs. Garver was asked if she recalls when she contacted the MRI specialists, Mrs. Garver replied that she called immediately, she was moving everything as fast as

she could, because she couldn't even believe Respondent sent Mr. Garver home in the first place from Respondent's hospital. (R. p. 110, lines 22 - 23).

On October 31, 2017, eight (8) days after MUSC instructions that a MRI referral was necessary, Mr. Garver finally met with a neurosurgeon at MUSC. After reviewing the brain MRI, the neurosurgeon's plan at that point was to coordinate an expedited visit with his neuro-endovascular colleagues for appropriate management. (R. 111, lines 21 - p. 112, line 1). Mr. Garver was scheduled to return to MUSC for a procedure to address the large brain mass. (R. p. 145). Unfortunately, Mr. Garver never made it to that appointment. Instead, Mr. Garver was readmitted to Respondent's facility on November 3, 2017, unresponsive, where Mr. Garver was declared dead due to a subarachnoid hemorrhage and ruptured cerebral aneurysm. (R. p. 389).

On August 19, 2019, Appellant filed the Summons and Complaint naming Respondent as a defendant. (R. p. 19). In the complaint, Appellant allege that Respondent failed to recognize the severity of Mr. Garver's condition, failed to properly communicate and explain the urgency of Mr. Garver's condition(s) and/or symptoms, and failed to make certain that Mr. Garver received the appropriate referral(s) in a timely manner so that the appropriate surgical interventions could be accomplished in a timely manner. (R. pp. 27 - 29). Additionally, Appellant asserted the following language in the complaint:

15. That "not every action taken by a medical professional in a hospital or doctor's office necessarily implicates medical malpractice and, consequently, the requirements of [S.C. Code Ann.] [S]ection 15-79-125." Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).
16. "However, at all times, the medical professional must 'exercise ordinary and reasonable care to ensure that no

unnecessary harm [befalls] the patient.” Id. at 178, 758 S.E.2d at 504 (further citations omitted).

17. That ‘the statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers’ ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care.” Id. (further citation omitted).

18. “Thus, medical providers are still subject to claims sounding in ordinary negligence.” Id. (further citations omitted).

(R. p. 22).

On February 15, 2023, the lower court dismissed Respondent. Order of February 15, 2023

(R. pp 3- 9). Specifically, as outlined in the last paragraph of the lower court's order.

To the extent the Plaintiff relies on Dawkins for the proposition there was a failure on the part of the hospital to appropriately refer or administratively speak with MUSC concerning an MRI referral, this too fails. Plaintiff presents no testimony as to the professional standards required of the Hospital under these circumstances or how the alleged failure to timely refer the decedent to MUSC proximately caused the decedent’s death. The MRI was performed at MUSC and Plaintiff has shown no causal relationship through any alleged. As noted, Plaintiff’s sole expert, Dr. Ward, testified specifically he would not opine that the Hospital caused the decedent’s demise.

(R. p. 8).

ARGUMENTS

I. THE LOWER COURT ERRED BY DETERMINING APPELLANT'S CLAIM PERTAINING TO RESPONDENT'S REFFERAL PROCESS FALLS UNDER PROFESSIONAL NEGLIGENCE AND NOT ORDINARY NEGLIGENCE.

The lower court's decision to dismiss Respondent was an error of law and should be reversed by this Court, because Appellant's negligent claim pertaining to Respondent's referral process does not fall under the realm of professional (medical) malpractice but rather an

administrative or nonmedical process that should be guided by ordinary negligence.

As alleged in Appellant's Complaint, "not every action taken by a medical professional in a hospital or doctor's office necessarily implicates medical malpractice and, consequently, the requirements of [S.C. Code Ann.] Section 15-79-125." *Dawkins*, 408 S.C. at 178, 758 S.E.2d at 504. "However, at all times, the medical professional must 'exercise ordinary and reasonable care to ensure that no unnecessary harm [befalls] the patient.'" *Id.* (further citations omitted). "The statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care." *Id.*

Differentiating between medical malpractice and negligence claims "depends heavily on the facts of each individual case." *Estate of French v. Stratford House*, 333 S.W.3d 546, 555 (Tenn. 2011). In medical malpractice cases, expert testimony is required to establish both the duty owed to the patient and the breach of that duty. On the other hand, subject matters that fall within a juror's common knowledge do not require expert testimony to assist the jury in making a more accurate determination because the jurors can easily understand and evaluate the relevant facts and law merely by exercising their common knowledge.

A patient referral, in the most basic sense, is the act of a medical professional (i.e. primary care doctor) who refers a patient to a specialist or refers a patient for a specific medical service. In doing so, the initiation of the patient referral is based on the referring medical professional's professional judgment. The actual patient referral process, once triggered by a referring medical professional, is nothing more than a communication process that involves some type of order. An order can be as simple as piece of paper, facsimile, electronic mail, or

phone call. Once the medical professional decides to refer a patient, the actual patient referral process is triggered and does not entail any type of professional or medical judgment on behalf of any medical professional. Any professional judgment by a referring medical professional ceases once the referring medical professional determines to refer a patient to a specialist or for a specific medical service. At that point the referring medical professional's referral process and procedure is triggered. Once triggered, the referral process involves staff who perform nonmedical tasks in assisting the referring medical provider and patient with the patient referral. It is simply paperwork that should be guided by an efficient procedure.

In the case at hand, Appellant alleged that Respondent's patient referral process, or lack thereof, was the cause and/or contributed to Appellant's damages. (R. pp. 27 - 29). Appellant argued Respondent's patient referral process is a nonmedical process that falls under ordinary negligence, the subject matter of which is of common knowledge or experience. *Clark v. Ross*, 284 S.C. 543, 328 S.E.2d 91 (Ct. App. 1985).

On October 23, 2017, the date of Mr. Garver's hospitalization at Respondent's facility, a CT was ordered to be performed without delay. (R. 143). Essentially, even initially, Respondent knew the situation was urgent. Once the intracranial mass was discovered, Respondent consulted with Dr. Andrews at MUSC through REACH to discuss the next step. (R. 146). Dr. Andrews then instructed Respondent's personnel and Mr. Garver that Mr. Garver would need a brain MRI referral. (R. p. 310, lines 6 - 9). At that point, Respondent's patient referral process was triggered and any medical judgment by a medical professional pertaining to Mr. Garver's referral ceased. (R. p. 302). At that point it was simply paperwork until the MRI was complete and Mr. Garver could meet with MUSC personnel.

After Dr. Andrew's instructions, it was clear that the referral simply involved paperwork. Mrs. Garver testified that she called Respondent's neurology department for a MRI and spoke with Dr. McCaffrey's assistant. (R. p. 301, lines 16 - 25). However, Mrs. Garver also had to make an appointment for the MRI once she received the signed referral from Dr. McCaffrey. (R. p. 311, lines 4 - 25). MUSC also noted that they spoke with Mrs. Garver who "states she spoke with scheduling earlier today and they told her she would need a referral, so they are working on getting [Dr. McCaffrey] and/or [Respondent] to send a referral over." (R. p. 308).

The issues related to Respondent's patient referral process would not require expert testimony to establish breach and duty, because it is a process that does not involve any type of professional judgment, medical terminology, nor any intricacies of the medical field. Once the patient referral process was triggered by Dr. Andrews, Appellant alleges that Respondent owed Mr. Garver a duty to act swiftly, efficiently, and without delay.

The legal causes of action against Respondent are contrary to the underlying case against Co-defendant Dr. McCaffrey, where Appellant alleged Dr. McCaffrey failed to consider multiple symptoms or "red flags," which should have been considered medically necessary to refer Mr. Garver to a specialist for brain imaging. (R. pp. 26 - 32). The allegations against Dr. McCaffrey clearly fall under professional negligence. This is evident and has been evident since the filing of the notice of intent to file suit, which was filed with a neurologist expert's affidavit. (R. pp. 120 - 122). Had Respondent taking its current position during the notice of intent phase, Respondent could have moved to dismiss Appellant's notice of intent to file suit for failure to provide an expert affidavit in support of Appellant's allegations against

Respondent.

Based on that aforementioned, it is Appellant's position that the allegations pertaining to Respondent's patient referral process fall under ordinary negligence and the lower court erred by categorizing the referral process as medical or professional malpractice claim.

II. THE LOWER COURT ERRED BY DETERMINING THAT APPELLANT FAILED TO SHOW ANY EVIDENCE TO SUPPORT APPELLANT'S CLAIM OF ORDINARY NEGLIGENCE PERTAINING TO RESPONDENT'S REFFERAL PROCESS.

The lower court's decision to dismiss Respondent was an error of law and should be reversed by this Court, because Appellant presented sufficient evidence to support Appellant's position that Respondent's negligent acts or omissions stemming from Respondent's patient referral process was the cause and/or contributed to Appellant's damages.

Once Mr. Garver's large brain mass was discovered at Respondent's ED on October 23, 2017, time was of the essence. (R. p. 145). This is not only evident by Mrs. Garver's testimony, but also MUSC's records and Respondent's records.

Mrs. Garver testified she was moving everything as fast as we could, because they couldn't even believe they sent Mr. Garver home in the first place from Respondent's hospital. (R. p. 110, lines 22 -23). Respondent's discharged Mr. Garver with merely verbal instructions, despite noting in the record that "follow up with neurology stressed." (R. p. 146). The discharge paperwork also noted "please call neurology office in the morning for follow up MRI" and "consider calling MUSC for an appointment." (R. p. 302). Again, Respondent employed the neurology office's staff who assisted with the referral paperwork. (R. p. 31, line 17 - p. 32 line 9). Despite these instructions being recorded in Mr. Garver's medical chart, Respondent failed to ensure Mr. Garver understood the urgency of the discharge instructions

which is evident by the two (2), un-signed Acknowledgment and Receipt of Discharge Instructions in Mr. Garver's discharge paperwork from Respondent's facility. (R. pp. 305 - 306). The only thing that appeared to be clear to Mr. and Mrs. Garver was that they could only obtain a referral through Respondent's neurology department and specifically Dr. McCaffrey - who was not available at during this time of urgency.

During Dr. McCaffrey's deposition, Defendant McCaffrey was asked about the referral process issues related to Mr. Garver's ER visit at Respondent's facility on October 23, 2017. Defendant McCaffrey responded "I don't know what happened in that situation. I'm on call ten days a month. That just happened to be one of the days I wasn't on call. I guess it should have been somebody calling me up on the phone as opposed to the patient's wife." (R. p. 320, lines 2 - 8). Defendant McCaffrey also confirmed during his deposition that all his assistants, including the one at that time, worked for Respondent. (R. p. 32, lines 2-8).

During Claudine Garver's deposition, Mrs. Garver was asked if she had any specific complaints or criticism about the way Respondent dealt with Mr. Garver after his ER visit:

....I find it interesting that the doctor on record was McCaffrey and they never contacted him and he was never part of conversation until I had to get the MRI. And I'm not sure why that is, other than we kept saying that was his doctor. And maybe they knew he missed it. I don't know. I find it interesting that -- we said that he had been under the care of Dr. McCaffrey, and he was nowhere to be found, other than for us to make a referral for an MRI. So I find that interesting.

I don't -- that's, I guess, what I have to say about that. That's like -- I mean -- so -- because I would have thought that if they found something neurologically wrong with [Jeremy Garver] immediately at the ER of which his doctor was associated with, I would have thought that he would have been involved a little bit. I shouldn't even had to call him.

(R. p. 313, lines 12 - 25).

The drawn out referral process caused Mr. Garver to lose valuable time before the consultation with a neurosurgeon at MUSC approximately (twelve) 12 days after Mr. Garver's hospitalization at Respondent's facility. By that time, MUSC neurosurgeon was aware of the urgency, as his plan at that point was to coordinate an expedited visit with his neuro-endovascular colleagues for appropriate management. (R. 111, lines 21 - p. 112, line 1). Unfortunately, Mr. Garver never made it to the next appointment due to the rupture of the aneurysm discovered at Respondent's ED on October 23, 2017. Respondent's faulty referral process delayed what should have been a swift and simple process involving merely paperwork.

III. THE LOWER COURT ERRED BY DETERMINING THAT RESPONDENT FAILED TO SHOW A DELAY IN REFERRAL WAS NOT THE PROXIMATE CAUSE OF APPELLANT'S DAMAGES.

On October 23, 2017, Mr. Garver presented to Respondent's ED with stroke like symptoms which included tingling in his fingers, unstable while walking, and left side weakness. (R. p. 132). A computerized tomography ("CT") scan was performed, which identified a large brain mass. (R. p. 145). Respondent's October 23, 2017 medical records indicated a Triage Level 3 (R. p. 139), which means urgent, and Respondent's ED orders noted "ED EKG, Reason: Stroke symptoms, Do no delay CT of head to complete, STAT." (R. p. 142). Once the brain mass was discovered, Respondent was well aware of the urgency to refer Mr. Garver for a brain MRI, noting "follow up with neurology stressed." (R. p. 146). Despite this admitted urgency, Respondent discharged Mr. Garver within hours with minimal instructions.

Eventually, Mr. Garver was able to obtain a referral from Respondent's neurology department for brain MRI. When Mrs. Garver was asked if she recalls when she called the MRI

specialists, Mrs. Garver replied that she called immediately, they were moving everything as fast as they could, because they couldn't even believe Respondent sent Mr. Garver home in the first place from Respondent's hospital. (R. p. 110, lines 22 - 23).

On October 31, 2017, eight (8) days after MUSC instructions that a MRI referral was necessary, Mr. Garver finally met with a neurosurgeon at MUSC. MUSC's neurosurgeon then coordinated an expedited visit with his neuro-endovascular colleagues to discuss appropriate management. (R. 111, lines 21 - p. 112, line 1). Mr. Garver was scheduled to return to MUSC for a procedure to address the large brain mass. Unfortunately, Mr. Garver never made it to that appointment. Instead, Mr. Garver was readmitted to Respondent's facility on November 3, 2017, unresponsive, eleven (11) days after MUSC instructions that a MRI referral was necessary. (R. p. 389). At that point it was too late for Mr. Garver.

Respondent's faulty referral process caused unnecessary delay which pushed Mr. Garver's consultation and procedure with MUSC back by several weeks before Mr. Garver, expectedly, died as a result of a ruptured aneurysm. The timeliness of the delay in referring Mr. Garver is a question for the jury and not the court. Whether a minute, hours, or days this is a question for the jury based on the available timeline.

For that reason, the lower court erred in finding Appellant failed to show proximate cause and/or damages.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

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