

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

CLERK OF COURT OFFICE IN THE COURT OF COMMON PLEAS

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Gina Wilbanks individually, and as the Personal Representative of the Estate of Roger Wilbanks,

C.A. No.: 2012-CP-04-0288
C.A. No.: 2012-CP-04-0290

Plaintiffs,

vs.

Ernest C. Martin, M.D.

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

A TRUE COPY
JUL 31 2013
Richard S. Baily
Clerk of Court

This matter is before the Court pursuant to the Plaintiff's Motion for Summary Judgment as to the Defendant's Fourth and Fifth Defenses set forth in the Defendant's Answers to the Complaints. The Court entertained extensive oral argument of counsel for both parties on June 4, 2013, and received and considered written submissions from both parties. After carefully considering the positions presented by both parties and the law applicable to the issues raised, and for the reasons set forth in detail below, this Court finds that the Plaintiff's Motion shall be GRANTED.

This medical malpractice case arises out of a hospitalization of the Decedent, Roger Wilbanks, in October of 2010. While hospitalized at Anmed Health for the treatment of depression and suicidal ideations, the Defendant Ernest C. Martin provided treatment to Mr. Wilbanks. Mr. Wilbanks ultimately committed suicide while a patient in the hospital. The Plaintiff, after completing the Notice of Intent Requirements, duly served a Complaint for Wrongful Death and a Complaint for Survival Action for the Estate and beneficiaries of Roger Wilbanks, by his widow, Gina Wilbanks. The Defendant Answered, alleging that he did not breach the applicable standards of care in the care he provided to the Decedent. In that Answer, the Defendant raised the defenses of comparative negligence and assumption of the risk.

The Plaintiff filed her Motion, alleging that the defenses of comparative negligence and assumption of the risk are inapplicable to the facts of this case, as a matter of law, asking the Court to strike those defenses, and asking that the Court order that the Defendant not be permitted to pursue these defenses, expressly or implicitly, at the trial of this case.

This Court finds that the case of *Bramlette v. Charter Medical-Columbia*, 302 S.C. 68, 393 S.E.2d 914 (1990) is the law of this State and that this case is directly applicable to the facts at hand. In *Bramlette*, the South Carolina Supreme Court recognized a cause of action in negligence for breach of a duty to prevent a known suicidal patient from committing suicide. See *id* at 74. The court went on to find that when such a duty exists, the very act which the defendant physician had a duty to prevent cannot constitute contributory negligence or assumption of the risk, as a *matter of law*. *Id* (emphasis added).

The Defendant argues that the decision in *Bramlette* has been eroded implicitly by the adoption of the comparative negligence doctrine.¹ This Court rejects that assertion, noting that courts have continued to apply the rule set forth in *Bramlette* after the adoption of the comparative negligence doctrine. See e.g. *Hoeffner v. Citadel*, 311 SC 361 (1993) (in which the Court recognized that the rule set forth in *Bramlette* is applicable in an inpatient setting). In the case of *Cunningham v. Helping Hands*, 352 SC 485 (2003), the Court refused to apply the *Bramlette* rule, stating:

The specific duty of a health professional to prevent suicide of a person who is known by the health professional to be suicidal is very different from a group home's general duty to supervise a child in its care. Unlike the health professional in *Bramlette* and *Hoeffner*, the [Defendant] did not have a specific duty to prevent the very act by which [the Plaintiff] was injured, nor did it have specific notice that [the Plaintiff] was likely to commit such an act.

Roger Wilbanks was a known suicidal patient. (See Dana Wiley, MD History and Physical regarding Roger

¹ The Defendant urged the Court to look to the law of other jurisdictions which have rejected the reasoning of the *Bramlette* Court. While this Court has fully considered those arguments by the Defendant, this Court must respectfully reject those arguments.

Wilbanks, dated October 22, 2009 at pages 1 – 2, provided to the Court with Bates Label WIL 1493-1495). Medical records of Anmed Health reflect that on October 21, 2010, Mr. Wilbanks admitted himself to the Behavioral Health Unit for treatment of suicidal ideations and hallucinations, after a suicide attempt at home. See *id* at pages 1 – 2, see also Dana Wiley, MD Discharge Summary regarding Roger Wilbanks dated November 1, 2009 at pages 1 and 2, provided to the Court with Bates Label WIL 1496 – 1498. The Psychosocial Assessment prepared by social workers at Anmed Health, upon admission, reported that Roger Wilbanks had “chronic suicidal thoughts – [history of] suicidal behaviors/gestures.” Psychosocial Assessment of Roger Wilbanks dated October 22, 2009, provided to the Court with Bates Label WIL 1503. Social workers noted that Mr. Wilbanks was “having serious depression with suicidal ideation.” *Id* at Bates Label 1505.

The Defendant Ernest Martin, MD, noted on October 24, 2009, the day of his treatment of Roger Wilbanks, that Mr. Wilbanks had a “suicidal death wish” as well as auditory hallucinations and paranoid ideations. See Progress Note of Ernest Martin, MD, dated October 24, 2009, provided to the Court with Bates Label WIL 1500. The Defendant does not dispute that Roger Wilbanks was a known suicidal patient who had been admitted to Anmed Health for treatment of depression and suicidal ideation.


South Carolina Rule of Civil Procedure 56(c) provides that summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. See SCRPC 56(c). “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.” In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the

light most favorable to the non-moving party." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378-79, 534 S.E.2d 688, 692 (2000).

After viewing the evidence in a light most favorable to the Defendant Martin, as the non-moving party, this Court finds that no genuine issue of material fact exists with respect to the Plaintiff's Motion. Under the law in South Carolina, and considering the undisputed facts of Roger Wilbanks's hospitalization in October of 2009, the Defendant is not entitled to raise the defenses of assumption of the risk or the comparative negligence of the Decedent. When a physician has undertaken the care of a known suicidal patient, and that patient takes his life, the physician shall not defend against liability with the defenses of assumption of the risk or comparative negligence. Therefore, this Court finds that the Plaintiff is entitled to summary judgment, as a matter of law as to the Defendant's defenses of comparative negligence and assumptions of the risk.

THEREFORE, it is ORDERED that these defenses are stricken and the Defendant shall not be entitled to assert, expressly or implicitly, that Roger Wilbanks assumed the risk of his own injuries and death. Nor shall the Defendant be entitled to assert, expressly or implicitly, that Roger Wilbanks's own acts or omissions contributed to his demise. Nor shall the Defendant be entitled to seek an allocation of some portion of the Defendant's liability to Roger Wilbanks on account of his own acts or omissions in taking his own life.

IT IS SO ORDERED.



R. Lawton McIntosh

Anderson, South Carolina
July 23, 2013

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GENERAL SESSIONS