

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

) THE FIFTH JUDICIAL CIRCUIT

) CASE NO.: 2016-CP-40-01875

Kimberly Pierce, Individually and as Next
Friend of C. H., a minor,

)

)

)

Plaintiff,

)

)

)

vs.

)

)

Palmetto Health,

)

)

)

Defendant.

)

)

**ORDER DENYING PLAINTIFF'S
MOTION TO STRIKE STATUTORY
DEFENSE**

RECEIVED

Jan 23 2025

SC Court of Appeals

This matter comes before the Court on Plaintiff Kimberly Pierce, Individually and as Next Friend of C.H., a minor's Motion to Strike Statutory Defense. A hearing was held on this Motion on September 18, 2023, before the undersigned, and counsel for Plaintiff and Defendant appeared and presented arguments. Based on my review of the Memorandum of Law, pleadings, and arguments presented, the Court denies Plaintiff's Motion to Strike the Statutory Defense for the reasons stated herein.

BACKGROUND

The matter before the Court centers upon a medical malpractice claim brought by Plaintiff Kimberly Pierce ("Plaintiff") individually, and on behalf of her minor son, against Defendant Palmetto Health ("Defendant"). The Complaint alleges that in December of 2021, Obstetrician Dr. Lauren Painter, failed to comply with the applicable standard of care during delivery of Plaintiff's son. (Compl. ¶¶ 8-10) Specifically, the complaint alleges that Dr. Painter failed to manage the delivery of Plaintiff's son by not properly recognizing and resolving shoulder dystocia during birth. (*Id.* at ¶ 11). The Complaint alleges Dr. Painter was an agent of Defendant and the above alleged deviations from the standard of care resulted in injury to Plaintiff's child. (*Id.* at ¶ 12).

Plaintiff has asserted a theory of recovery against Defendant based on vicarious liability. (*Id.* at ¶ 3).

In its Answer, Defendant pled the Medical and Obstetrical Emergency Statute (S.C. Code Ann. 15-32-230) as an affirmative defense and that Defendant is a Charitable Hospital. (Ans. Tenth and Eleventh Defenses). On November 23, 2022, Plaintiff filed a motion to strike the use of the above defense, arguing that (1) the statutory damages cap against charitable organizations (SC Code Ann. § 33-56-180) precludes – as a matter of law – application of the emergency statute (SC Code Ann. § 15-32-230); and (2) since the plain text of the emergency statute references physicians but not hospitals, Defendant is prohibited from pleading this defense. Defendant argues that the S.C. Code Ann. § 33-56-180 damages cap does not eliminate the protection of the S.C. Code Ann. § 15-32-230 defense as the two concepts apply to different stages of litigation. With regard to the use of S.C. Code Ann. § 15-32-230, Defendant argues that in a purely derivative suit, where an employer’s liability is solely based on the alleged negligence of an employee, the defenses available to an employee are also available to the employer.

LEGAL STANDARD

South Carolina Rules of Civil Procedure Rule 12(f) provides “the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.” “A motion to strike which challenges a theory of recovery in the complaint is in the nature of a motion to dismiss under Rule 12(b)(6), SCRCF.” *McCormick v. England*, 328 S.C. 627, 632, 494 S.E.2d 431, 433 (Ct. App. 1997). In South Carolina, the standard for granting a strike motion is a strict one because “striking a pleading is a severe remedy and should be resorted to only in cases palpably requiring it for the administration of justice. The remedy will be granted only when the defect is plain, for where there is a semblance of a cause of action or defense set up in the pleading, its sufficiency cannot be determined on motion to strike out.” *Sams v. Sams*, 247

S.C. 467, 470-71 (1966) (citing *Archambault v. Sprouse*, 215 S.C. 336, 343, 55 S.E.2d 70, 73 (1949) (quoting 41 Am.Jur., Sec. 354, Page 532)). Thus, circuit courts are instructed to be more “unwilling to find and determine the rights of the parties merely on the pleadings.” *Id.*; see also *Springfield v. Williams Plumbing Supply Co.*, 249 S.C. 130, 138, 153 S.E.2d 184, 188 (1967) (If a motion to strike raises merely a doubtful question or the case is such that justice may be promoted by trial on the merits, the court should exercise a fair, judicial discretion to that end). Instead “such questions should be decided, and can be decided much more soundly, in the light of all the facts and circumstances adduced upon the trial.” *Sams* at 471.

ARGUMENT

Plaintiff argues that “[n]ot applying Section 15-32-230 to claims against charitable organizations preserves the rights of both plaintiffs and defendants in tort litigation. . . .” (Plt. Brief pp. 5-6). However, the Court finds that this argument incorrectly blends the principles of liability defenses and statutory damages caps.

Section 15-32-230 provides that:

(A) In an action involving a medical malpractice claim arising out of care rendered in a genuine emergency involving an immediate threat of death or serious bodily injury to the patient receiving care in an emergency department or in an obstetrical or surgical suite, *no physician may be held **liable*** unless it is proven that the physician was grossly negligent.

(B) In an action involving a medical malpractice claim arising out of obstetrical care rendered by a physician on an emergency basis when there is no previous doctor/patient relationship between the physician or a member of his practice with a patient or the patient has not received prenatal care, *such physician is not **liable*** unless it is proven such physician is grossly negligent.

(C) The limitation on physician **liability** established by subsections (A) and (B) shall only apply if the patient is not medically stable and:

- (1) in immediate threat of death; or
- (2) in immediate threat of serious bodily injury.

Further, the limitation on physician liability established by subsections (A) and (B) shall only apply to care rendered prior to the patient's discharge from the emergency department or obstetrical or surgical suite.

S.C. Code Ann. § 15-32-230 (emphasis added). The language of the statute aims to limit liability in specific circumstances. In order to successfully plead this affirmative defense, a defendant must show the limitation applies and, in response, plaintiff may overcome this protection with a proof of gross negligence. S.C. Code Ann § 15-32-230(A).

Statutory damages caps like S.C. Code Ann. § 33-56-180 are not a defense to liability, but are instead a reduction of a verdict after liability is found. In *Garrison v. Target Corp.*, the court held that “the statutory cap on punitive damages is neither an affirmative defense nor an avoidance because it does not affect liability or require new matter to be asserted but instead limits the amount of damages a plaintiff can recover.” 435 S.C. 566, 582, 869 S.E.2d 797, 806 (2022). The Court further observed that “the statutory damages cap under the Tort Claims Act ‘limits the amount of damages recoverable for any claim.’” *Id.* (citing *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 281, 607 S.E.2d 711, 714 (Ct. App. 2005) Thus, under the South Carolina Supreme Court’s reasoning in *Garrison*, the subject charitable hospital damages caps do not bar application of the statutory emergency liability defense. This Court finds the intent behind the subsequent enactment of S.C. Code Ann. § 15-32-320 was to further limit the liability of defendants in genuine emergency situations. Preventing the use of the defense in matters where a charitable entity is the defendant would instead constrain the desired limitations.

Plaintiff also argues that use of Section 15-32-230 is limited to physicians based on the language of the statute. However, Plaintiff’s claim for liability against Defendant is based solely on the liability of Defendant’s employee, Dr. Painter. South Carolina law shows that in a purely derivative suit, the emergency statute would apply to a medical employer of a physician when the statute would apply to the physician. (*see David v. McLeod Reg. Med. Center*, 367 S.C. 242, 250,

626 S.E.2d 1, 5 (2006); *Knox v. United States*, No. 0:17-CV-36-CMC, 2018 WL 3241969 at *8 (D.S.C. July 3, 2018) (holding that a “statute applies to the derivative claim against [the medical facility] to the same extent it would apply if the physician was the named Defendant.”).

Further, under traditional rules of statutory construction, Plaintiff’s argument fails. South Carolina adheres to the canon that legislation enacted for a specific purpose should govern over general law. *See Witzig v. Witzig*, 325 S.C. 363, 366, 479 S.E.2d 297, 299 (Ct. App. 1996) (“It is a well settled principle of statutory construction that specific laws prevail over general laws, and later legislation takes precedence over earlier legislation.”) *cf. Byrd v. Irmo High School*, 321 S.C. 426, 435, 468 S.E.2d 861, 866 (1996) (“The enactment of later statutory provisions delineating a specific disciplinary process evinces an intent by the Legislature that students use such procedures and not the earlier-enacted, more general appeals procedure.”). Here, that canon supports application of Section 15-32-230 as the later and more specifically applicable statute. Section 33-56-180 covers all tort claims involving any employee of a charitable organization. But, Section 15-32-230 covers, more particularly, a physician sued for medical malpractice involving a genuine emergency situation in an obstetrical suite. Since Plaintiff’s medical malpractice claim against Defendant is solely based on vicarious liability through Dr. Painter’s alleged actions, Section 33-56-180 does not bar the use of other applicable defenses, including the statutory emergency defense.

CONCLUSION

WHEREFORE, based upon the foregoing, the Court **DENIES** Plaintiff’s Motion to Strike dated November 23, 2022.

AND IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.
Circuit Court Judge

_____, 2023



Richland Common Pleas

Case Caption: Kimberly Pierce , plaintiff, et al vs Palmetto Health

Case Number: 2016CP4001875

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144