THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Daniel D. Hall, Circuit Court Judge

Op. No. 6096
(S.C. Ct. App. filed January 15, 2025)
Case No. 2025-000593

RECEIVED
May 22 2025
S.C. SUPREME COURT

Rita Pratt, Individually and as the Personal Representative of the Estate of William Pratt, Deceased,..... Respondent,

v.

Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center; Jaleesa Heyward, RN; South Carolina Emergency Physicians, LLC; Jonas Varaly, DO; Rock Hill Radiology Associates, LLC; and Geoffrey T. Gilleland, MD, ... Defendants,

Of Which, Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, MD are ..... Petitioners.

REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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ARGUMENTS

I. The Court of Appeals erred in affirming the denial of the Petitioners' directed verdict and JNOV motions as to the survival claim and loss of consortium claim where the jury's verdict clearly demonstrates that the Respondent failed to prove the element of proximate cause.

The directed verdict and JNOV arguments made by the Petitioners Geoffrey T. Gilleland and Rock Hill Radiology Associates, LLC are premised on the element of proximate cause. In her return, the Respondent Rita Pratt misconstrues or deliberately deflects any real discussion of the Petitioners' proximate cause argument. The Respondent resorts to over-the-top and fanciful language in a vain attempt to discredit what the jury actually reported on the verdict form. The Respondent insists, without proof, that "the jury's verdict on wrongful death damages is about damages, not some veiled rejection of causation." *See*, Return, p. 8. She claims that the Petitioners "latch onto one line from the verdict form" and then "draw a false conclusion on its meaning." *See*, Return, p. 8. Yet, that "one line from the verdict form" is the defense verdict on the wrongful death claim. Despite the Respondent's obfuscation, the truth of the matter which cannot be disputed is that the jury returned a defense verdict on the wrongful death claim.

The question then becomes why did not jury rule for the Petitioners on the wrongful death claim. The Respondent insists that the jury found that she did not prove wrongful death damages. However, as the Petitioners have pointed out repeatedly and which fell on deaf ears in the Court of Appeals, there is no logical basis for that explanation.

As the Petitioners previously explained, the jury was charged as to the elements of damages recoverable for wrongful death. The jury was charged that the damages must be sustained by the statutory beneficiaries. (R. 767, 769). Many of those elements of damages are the same as may be claimed by the spouse during the decedent's lifetime as part of the

consortium claim. (R. 771). The jury found a loss of consortium by Rita Pratt prior to her spouse's death, and as a result, it would not be logical to then conclude that the Respondent failed to prove a similar loss of society, support, and companionship after death. Further, loss of consortium explicitly does not include damages for grief and sorrow, which are significant elements of damages recoverable for wrongful death. Thus, based on this record, it is illogical to conclude that the Respondent individually proved a loss of society, support, and companionship before death but then, as the Personal Representative, she failed to prove damages for the same elements as well as grief and sorrow. That interpretation of the verdict defies common sense and the evidence in the record, including the Court of Appeals' description of the wonderful marriage that the Pratts enjoyed. (Slip Op. at 17).

In this Court, the Respondent now tries a new approach – by dissecting the different elements of loss of consortium as charged to the jury. The Respondent suggests that the jury did not find a loss of society, support, and companionship before death but did find a loss of "love," "solace," "sexual relations," and "guidance," which she claims are not part of wrongful death damages. That is certainly a very narrow reading of "loss of society, support, and companionship," and not surprisingly, the Respondent offers no authority for this argument that wrongful death damages do not include a loss of "love," "solace," "sexual relations," and "guidance" within its parameters. Again, the Respondent's explanation of the verdict defies common sense and the evidence in the record. The lengths that she goes to in an attempt to maintain the verdict should be quite telling.

Logically then, the defense verdict on the wrongful death claim must have been based on some other deficiency in the Respondent's evidence. Indeed, the verdict shows that the jury rejected the Respondent's theory of liability -- that the delay in hospitalization caused the

development of pneumonia that ultimately caused the decedent's death. This is not reliance on "attenuated assumptions," as the Respondent now suggests. In fact, there is no other logical or meaningful way to interpret the defense verdict on the wrongful death claim. Importantly, the Respondent never shows that the non-displaced rib fractures -- as opposed to the pulmonary issues -- would have been treated any differently if the decedent had been admitted on March 2, 2015. That is the dispositive issue. The Petitioners are not charged with a failure to identify any pulmonary injury on the x-ray read by Dr. Gilleland. They are charged with failing to identify or report any acute non-displaced rib fractures.

In sum, in an attempt to justify the jury's verdict, the Respondent ignores the proximate cause issue that is actually before the court. It is immaterial that the decedent's pulmonary condition may have worsened from March 2, 2015 until March 4, 2015, because the jury found that the Petitioners' negligence did not proximately cause that condition which led to the development of pneumonia and the decedent's death. To reiterate, if the jury had found proximate cause as to the pulmonary condition, it would have returned a verdict for the Respondent on the wrongful death claim. That is obvious, but that did not occur. The Petitioners are, therefore, entitled to a JNOV on the survival and loss of consortium claims based on the jury's determination on the proximate cause issue. This conclusion does not require "leaps of logic"; it simply requires logic and common sense.

II. The Court of Appeals in failing to reverse where the trial court erred in permitting Anthony Lupetin, M.D., the Respondent's expert radiologist, to testify that the conduct of the Petitioners constitutes "recklessness," which is a legal conclusion drawn by applying law to the facts.

The Court of Appeals agreed that trial court committed error in permitting Dr. Anthony Lupetin, the Respondent's expert radiologist, to testify over objection that the Petitioners' conduct

constitutes "recklessness," which is a legal conclusion drawn by applying the law to the facts. The Respondent, however, does not read the Court of Appeals' opinion as saying that because the Court of Appeals ruled that "such a question seeks an inadmissible legal conclusion *in certain instances.*" (Slip Op. at 15). (Emphasis added). The Respondent suggests that the Court of Appeals equivocated with the "in certain instances" language, but if the Court of Appeals did not find an error occurred, then it certainly does not spell out when a question to an expert seeking an inadmissible legal conclusion is permissible and when it is not, and in that case, there is a need for a writ of certiorari to be issued to address that very point. Certainly, the question to Dr. Lupekin *in this instance* should be deemed error. That is particularly true where the question to Dr. Lupekin was the very last question posed to the witness in his direct testimony and thus received extra emphasis and attention. (R. 202). Moreover, it is significant that Dr. Lupetin's unsupported legal opinion on "recklessness" is also inconsistent with his own opinions on the medical issues, thereby showing that he did not even understand or know how to even apply the legal concept of "recklessness." Importantly, Dr. Lupetin agreed that chronic (i.e., not acute) rib deformities did not need to be reported. (R. 204). He also confirmed in his testimony that there were no cracks in any rib, no fracture lines in any rib, no breaks or separation in any cortical line of any rib, and no bone separation in any rib. (R. 204-207).

At any rate, the Court of Appeals found "no reversible error here" on the premise that the "Petitioners have failed to establish the required resulting prejudice." (Slip Op. at 15). Yet, as the Petitioners have explained, prejudice has been demonstrated by the jury's conclusion as stated in the Verdict Form that "the Plaintiffs have proven by clear and convincing evidence that the Defendants acted recklessly, willfully or wantonly in their care and treatment of William Pratt." (R. 5). The finding of recklessness, willfulness, or wantonness greatly prejudices the

Petitioners because, if allowed to stand, they lose the benefit of the non-economic damages cap. *See*, S.C. Code Ann. § 15-32-220(E) ("The limitations for noneconomic damages rendered against any health care provider or health care institution do not apply if the jury or court determines that the defendant was grossly negligent, willful, wanton, or reckless, and such conduct was the proximate cause of the claimant's noneconomic damage*s*"). That is clear prejudice. In response, the Respondent argues that "[t]he Petition largely skirts the prejudice issue" and claims that "the prejudice analysis turns not on whether the perceived error concerns a material issue but whether the dispute evidence would likely alter the trial's outcome." *See*, Return, p. 15. However, the jury's finding of recklessness does indeed impact the "outcome" or "result." It is not necessary to show that the jury would have returned a defense verdict in absence of the inadmissible testimony; it is sufficient to show that a finding of recklessness impacted the applicability of the cap on non-economic damages. Respectfully, that is an impact on the "outcome" or "result," despite how the Respondent may rationalize it.

In short, the trial court erred in failing to grant a JNOV or, at the very least, a new trial absolute based on the finding that the Petitioners acted recklessly, willfully or wantonly and particularly in light of the inadmissible opinion testimony elicited from Dr. Lupetin.

III. The Court of Appeals erred in affirming the denial of the motion for new trial absolute where the verdict of $640,000 on the loss of consortium claim is unsupported by the evidence and is grossly excessive.

In her return, the Respondent disputes that the award of actual damages of $640,000 on the loss of consortium claim was grossly excessive. In an attempt to justify such an exorbitant award, the Respondent actually enlarges the elements of damages recoverable under South Carolina law for loss of consortium, and certainly elements of damages which the trial court never charged the jury.

The Court of Appeals committed the same error. The Court of Appeals began its analysis by "find[ing] Wife's losses began when she watched Pratt suffer through the ambulance ride back to Daughter's house." (Slip Op. at 17). The Respondent makes the very same argument. *See*, Return, p. 17.

Thus, in attempting to justify the $640,000 award, the Court of Appeals and the Respondent both attempt to enlarge those elements to include the Respondent's emotional distress in watching her husband suffer. That is akin to bystander damages, but it is not a recognized element of loss of consortium damages. S.C. Code Ann. § 15-75-20 provides: "Any person may maintain an action for damages arising from an intentional or tortious violation of the right to the *companionship, aid, society and services* of his or her spouse." *See*, S.C. Code Ann. § 15-75-20. (Emphasis added). This Court has similarly held that "a spouse is entitled to recover the value of the injured spouse's services, society, and companionship in an action for loss of consortium." *Gosnell v. Dorchester County School District No. 2*, 301 S.C. 21, 389 S.E.2d 865, 866 (1990). Thus, an award for loss of consortium is limited to the value of the lost or curtailed companionship, aid, society, and services provided by the injured spouse. It does not include any physical or emotional harm or distress suffered by the spouse claiming loss of consortium.

Moreover, while the Respondent argues, and the Court of Appeals agreed, that the decedent could not provide "aid, comfort, and support" while he lay on the couch at home for two days, there is no evidence that he would have provided any greater degree of such care to his wife had he been hospitalized beginning on March 2, 2015. The loss of "aid, comfort, and support" while hospitalized was not proximately caused by the Petitioners' conduct. Rather, it

was caused by the fact that the decedent had been injured in a fall down a set of stairs, was already in declining health for unrelated reasons, and was required to be hospitalized.

In sum, the loss of consortium award of $640,000 was grossly excessive. There is no other credible argument, legally or factually, that can be made to support such a grossly excessive award. Accordingly, this issue warrants the issuance of a writ of certiorari.

IV. The Court of Appeals erred in affirming the jury's allocation of fault between the Petitioners and in upholding an allocation of ten percent fault to the practice which may only be held vicariously at fault.

To recap, the Petitioners contend that the trial court committed reversible error in requiring the jury to allocate fault between Rock Hill Radiology Associates and Dr. Geoffrey Gilleland and, more importantly, in upholding an allocation of ten percent fault to the practice which may only be held vicariously at fault based on this record. In addressing this issue, the Respondent deliberately refused to address the most critical point which alone demonstrates that reversible error was committed.

As the Petitioners pointed out, to justify the verdict after the fact, the Respondent relied entirely on a non-delegable duty theory as recognized in *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 533 S.E.2d 312 (2000). The Respondent claimed that Rock Hill Radiology Associates is liable for the acts and omissions of a different radiology provider, Virtual Radiology, based a non-delegable duty and a principle-agent relationship.

Yet, the jury charge tells the story. The Court of Appeals disregarded the jury charge, and not surprisingly, the Respondent follows suit. The jury charge includes *no instructions* to the jury on a non-delegable duty theory. There are likewise *no instructions* on principle-agency law. Without any reasonable dispute (and certainly none was offered by the Respondent in her return),

the jury was not given any guidance as to any direct liability claim against the practice. The reason for that is obvious -- there was no such claim pled or tried or charged to the jury for its adjudication. In short, an unpled claim that the trial court did not allow to proceed and on which no instructions were given cannot be used *after the fact* to justify the verdict returned against Rock Hill Radiology Associates. The trial court thus erred in refusing to reverse the direct liability verdict and the allocation of fault to Rock Hill Radiology Associates and to grant a new trial absolute. Respectfully, this issue warrants the issuance of a writ of certiorari.

CONCLUSION

Based on the foregoing discussion, the Petitioners Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, M.D. respectfully renew their request that this Court grant their petition for a writ of certiorari.

Respectfully submitted,

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May 22, 2025