THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Judge

Case No. 2023-CP-04-02442

Appellate Case No. 2025-00046

Pennie Wolfe, as Personal Representative of the Estate of Jason Wolfe, Plaintiff,

Appellant

v.

Anderson County Sheriff's Office and Security Transport Services, Inc., Defendants

Of Which Anderson County Sheriff's Office is the Respondent.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF THE CASE

Jason Wolfe filed this action on November 28, 2023 in the Court of Common Pleas against Anderson County Sheriff's Office and Security Transport Services, Inc. (hereinafter STS). Jason Wolfe passed away on August 18, 2024. STS, who is not a party to this appeal, filed a Suggestion of Death on October 24, 2024 notifying the lower court of the death of Jason Wolfe. Pennie Wolfe was substituted as Plaintiff by Order of the lower court dated December 12, 2024.

Respondent filed a Motion for Summary Judgment on October 15, 2024, and a hearing was held on this Motion on November 18, 2024. The lower court granted Respondent's Motion for Summary Judgment by Order dated December 2, 2024, finding that Appellant failed as a matter of law to establish gross negligence on the part of Respondent. Appellant filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, on December 11, 2024, and the lower court issued an Order denying Appellant's Motion on December 12, 2024. Appellant's Notice of Appeal was received by the Court of Appeals on January 14, 2025.

STATEMENT OF FACTS

Jason Wolfe (hereinafter Wolfe) was incarcerated at the Anderson County Detention Center (hereinafter Detention Center) from December 3, 2021 until December 11, 2021. The Detention Center is operated by the Anderson County Sheriff's Office (hereinafter ACSO). Officers with the Detention Center completed general intake forms. (Intake, pp. 1-4). Mediko, Inc., a company that provides health care services to jails and prisons was the health care contractor at the Detention Center in December 2021 when Wolfe was incarcerated at the Detention Center. (Aff. Qing Liu, MD, ¶ 2).

Appellant alleges that Wolfe was not provided medications while at the Detention Center. Appellant claims that Wolfe was taking Lyrica, Lithium, Duloxetine, and Klonopin prior to admission to the Detention Center. (Complaint, para 11). Appellant claims that the Detention Center failed to administer Wolfe his medications as prescribed. (Complaint, para 20). Two of the medications Wolfe claims he was receiving, Klonopin and Lyrica, carry a high risk of addiction and abuse due to effects on the central nervous system. Klonopin is a benzodiazepine, a depressant that produces sedation and hypnosis. Lyrica is a nerve pain medication. Klonopin and Lyrica are, respectively, Schedule VI and V controlled substances because of their high potential for abuse and/or dependency. These medications are typically discontinued in the Detention Center unless there is an acute need that cannot be addressed through alternative treatments. (Aff. Qing Liu, MD, ¶¶ 6 & 7).

As evidenced by the Medication Administration Record ("MAR"), which was attached to affidavit of Dr. Qing Liu (Dr. Liu) as part of Mediko's medical records for Wolfe, Wolfe received all scheduled doses of Duloxetine (once daily) and Lithium Carbonate (twice daily). (Aff. Qing Liu, Medical Records). In this case, Mediko staff reviewed Mr. Wolfe's medications and,

consistent with the need to keep all inmates safe from substance abuse and diversion, refused the Klonopin and Lyrica. On December 4, 2021, James Walker, MD, ordered that Mr. Wolfe's vital signs be monitored twice daily for five days, to ensure he remained stable following the discontinuation of Klonopin and Lyrica. Wolfe was also prescribed a tapering dose of Ativan to address any potential withdrawal symptoms due to the discontinuation of Klonopin. Like Klonopin, Ativan is a benzodiazepine, but it has a lesser potency and is more effective at treating withdrawal symptoms. Wolfe's vital signs remained stable throughout the week he was at ACDC, and there are no notes to suggest he voiced any complaints to medical staff. On December 11, 2021, Mr. Wolfe was released to the custody of the State Prisoner Transfer Officer for transfer to a correctional facility in Kansas. (Aff. Qing Liu, MD, ¶¶ 8 – 13).

STANDARD ON REVIEW

An appellate court reviews a trial court's findings of fact regarding service of process under an abuse of discretion standard. Graham Law Firm, P.A. v. Makawi, 396 S.C. 290, 294-95, 721 S.E.2d 430, 432 (2012). "Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. S.C. Property and Casualty Guar. Ass'n v. Yensen, 345 S.C. 512, 517, 548 S.E.2d 880, 883 (Ct. App. 2001).

An issue "must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). An appellate court need not address an appellant's remaining issues when its decision on a prior issue is dispositive. Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

ARGUMENTS

I. THIS COURT SHOULD AFFIRM THE LOWER COURT'S ORDER GRANTING RESPONDENT'S MOTION AS THERE ARE NO GENUINE ISSUES OF MATERIAL FACT.

Appellant sets forth several issues to support her argument and Respondent will address each below.

A. Appellant failed to raise the issue that Dr. Liu's affidavit was not timely submitted.

Appellant argues that the affidavit of Dr. Liu should not be considered as it was not timely filed. However, Appellant failed to raise this issue to the lower court and therefore, it is not preserved for review. An issue "must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). An appellate court need not address an appellant's remaining issues when its decision on a prior issue is dispositive. Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999). This issue is not addressed in the lower court's Order and Appellant did not raise this issue at the hearing on Respondent's Motion nor in her Motion to Alter or Amend. (Order dated December 2, 2024; Motion to Alter or Amend). Appellant cannot raise this issue for the first time on appeal. This would be particularly true on this issue which could have been corrected by the lower court by continuing the hearing. Appellant failed to raise this issue to the lower court and it should not be considered at this time.

B. Dr. Liu's affidavit meets the requirements of Rule 56 and was properly considered by the lower court.

Appellant argues that Dr. Liu's affidavit fails to comply with Rule 56 (e), SCRCP, because it is not made upon personal knowledge. Appellant in her Motion to Alter or Amend stated that Dr. Liu admitted the information in his affidavit was not based on personal knowledge and did not meet the requirements of Rule 56(e), SCRCP, that an affidavit must be made on personal knowledge. Appellant made no other statements in her motion. (Motion to Alter or Amend) In her Brief, Appellant acknowledges an exception to the personal knowledge requirement for an

expert witness, but argues that Dr. Liu has not been identified as an expert witness or even as a witness in the action. This issue was not raised by Appellant below and was not ruled on by the lower court, and therefore, is not preserved for the review.[1] Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Regardless, while Respondent agrees that Dr. Liu was never identified prior to the motion hearing as a witness, Appellant had never served Respondent with discovery requests. This action was filed November 28, 2023. Respondent filed its Motion for Summary Judgment on October 15, 2024 and the hearing was held on this Motion on November 18, 2024. During that time, Appellant never served Respondent with interrogatories or requests to produce and had not asked Respondent to identify its witnesses. Even in the month between the time Respondent filed its Motion for Summary Judgment and the hearing, Appellant did not serve Respondent with discovery requests or ask for Respondent's witnesses. Appellant cannot argue that Dr. Liu was not properly identified as either a fact or expert witness when she never served Respondent with discovery asking Respondent to identify fact or expert witnesses.

Appellant also maintains in her Brief that the lower court improperly considered Dr. Liu's affidavit as an expert. Prior to her brief, Appellant at no time argued that Dr. Liu is not qualified or addressed his qualifications. Instead, her only statement was that Dr. Liu has no personal knowledge about the actions of the officers of the ACSO. (Transcript, p. 11, lines 6-8; Appellant's Motion to Alter or Amend). However, the purpose of his testimony was to refute Appellant's claim that Wolfe did not receive proper medical care, including receiving his medication. Even if the officers of the ACSO allegedly made a mistake on the Intake forms, that alleged mistake did not

[1] The only expert witness issue raised by either party during the motion hearing was whether Appellant could qualify as an expert witness. The trial judge declined to rule on this issue. (Transcript, p. 7, lines 1-12 & p. 13, lines 23-25; Order dated December 2, 2024).

cause Wolfe any harm as he still received proper medical care by the employees of Mediko, who were responsible for providing medical care and treatment to Wolfe during his detention.

Further, based on Dr. Liu's affidavit, he is clearly qualified as an expert. See South Carolina Rules of Evidence, Rule 702 (a person may be qualified as an expert based on "knowledge, skill, experience, training or education"); see also Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80 (2008) (the qualification of witness as an expert is within the lower court's discretion and will not be reversed absent an abuse of discretion). Dr. Liu stated in his affidavit that he is a licensed medical doctor. He further stated that he is the Chief Medical Officer of Mediko, Inc., which provides health care services to jails and prisons. He stated he began working with Mediko in September 2017 and has treated thousands of inmate patients since then. Dr. Liu stated that though he did not personally treat Wolfe, he did review his medical records from his incarceration at ACDC and was familiar with the policies and procedures followed by Mediko staff. (Aff. Qing Liu, MD, ¶¶ 1 & 3). Dr. Liu is a medical doctor who stated that he formulated his opinions based on review of Wolfe's records. (Aff. Qing Liu, MD, ¶ 15). Appellant's argument that Dr. Liu is not qualified as an expert is without merit.

Appellant also argues that testimony from Dr. Liu's affidavit would not be admissible at trial. Respondent would first note that Appellant raises this issue for the first time on appeal. Appellant did argue in her Motion to Alter or Amend that the affidavit was not made upon personal knowledge, but did not argue that testimony from Dr. Liu would not be admissible at trial. (Motion to Alter or Amend). Therefore, this issue is not preserved for review. See Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997) (issues raised on appeal must be the same as issues raised below and if appellate argument differs from the ground for a party's trial objection, the issue is not preserved). Even if this issue is determined to be preserved for appeal, Dr. Liu's qualifications

are set out in his affidavit. Dr. Liu would be qualified as an expert by a trial judge and his testimony as an expert would be admissible.

Appellant also raises the issue of the authenticity of the Mediko medical records, including the MAR, which were attached to Dr. Liu's affidavit. (Aff. Qing Liu, MD, Mediko medical records). During Appellant's argument at the hearing, Appellant initially referenced, but did not contest the validity of the medical records of Mediko. (Transcript, p. 8). At the conclusion of the hearing, after all arguments had been made, the Appellant raised the authenticity issue. (Transcript, p. 14, lines 7-11). However, the lower court did not rule on this issue in its Order and Appellant did not seek a ruling on this issue in her Motion to Alter or Amend. (Order dated December 2, 2024; Appellant Motion to Alter or Amend). Therefore, Appellant has failed to preserve this issue for review. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004) (a Rule 59(e) motion must be filed when an issue or argument has been raised, but not ruled on in order to preserve it for appellate review); Siau v. Kassel, 369 S.C. 631, 632 S.E.2d 888, 894 (Ct. App. 2006) ("when an issue presented to the circuit court in a civil case is not explicitly ruled upon in the final order, the issue must be raised by an appropriate post-trial motion to be preserved for appellate review"). Even if this issue is preserved for review, it is without merit because Dr. Liu, as the Chief Medical Officer of Mediko, Inc., was an appropriate witness to validate the authenticity of the Mediko medical records, which he did in his affidavit. (Aff. Qing Liu, MD, ¶¶ 1-4).

Appellant lastly argues that Dr. Liu does not address the actions of the Detention Center officers. Appellant is correct that Dr. Liu does not address the actions of Detention Center officers because as stated in his affidavit individuals with Mediko provided medical care to inmates at the Detention Center. Appellant argues that Respondent attempts a "sleight of hand" by addressing

whether Mediko employees acted properly as opposed to Detention Center officers. Appellant's argument is without merit.

The basis of Appellant's Complaint is that Wolfe did not receive medications while an inmate at the Detention Center. As stated by Dr. Liu, Mediko was the health care contractor for the Detention Center and provided medical care to inmates at the Detention Center, not the officers of the Detention Center. Dr. Liu's affidavit addresses the issue of whether Wolfe was provided medications while at the Detention Center the denial of which is the basis of Appellant's Complaint. Dr. Liu attached to his affidavit copies of Wolfe's medical records, including the Medication Administration Record, showing the medications he was provided. Far from attempting a "sleight of hand" as claimed by Appellant, Respondent addressed the issue which is the basis of Appellant's Complaint, whether Wolfe was provided medications while at the detention Center. Therefore, whether Dr. Liu is competent to testify concerning the standard as to Detention Center officers is irrelevant as Dr. Liu was clearly competent to testify as to the medical care received by Wolfe, which was the central issue of Appellant's Complaint. Appellant fails to show error by the lower court and the dismissal of Appellant's action against Respondent should be affirmed.

II. THE LOWER COURT DID NOT ERR IN DISMISSING APPELLANT'S ACTION AS APPELLANT HAD ADEQUATE TIME TO CONDUCT DISCOVERY.

Appellant argues that she was not allowed adequate time to conduct discovery before Respondent's motion for summary judgment was granted. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101,112, 410 S.E.2d 537, 543 (1991) ("[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery."); see also Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (citations omitted) (finding the nonmoving party must demonstrate it is not merely engaged in a 'fishing expedition' by showing the likelihood that further

discovery will uncover additional relevant evidence); Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009) ("A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact.").

This action was filed November 28, 2023. (Complaint). Respondent filed its Motion for Summary Judgment on October 15, 2024, almost one year later. (Defendant ACSO's Motion for Summary Judgment). The hearing on Respondent's Motion to Compel was held on this Motion on November 18, 2024 and the Order granting Respondent's Motion was entered on December 2, 2024. (Order dated December 2, 2024). At no time did Appellant serve Respondent with discovery requests or request to take any depositions. Though Appellant never served discovery requests upon Respondent, Respondent did serve discovery requests upon Appellant. Respondent served Appellant with discovery requests on February 8, 2024. Respondent filed a Motion to Compel on July 3, 2024 as Appellant had failed to respond. (Defendant ACSO's Motion to Compel).

Appellant in her Initial Brief states that though the case was pending for a year when summary judgment was granted, "the case was closer to only nine months old" as it was "effectively stayed" for almost three months after Wolfe's death. Further, during the hearing, Appellant's attorney claimed "we are in the very early stages of this case." (Transcript, p.11, line 15). Though Appellant argues she did not have sufficient time to conduct discovery before summary judgment was granted, she fails to state why she did not attempt to conduct any discovery during the twelve months that the case was pending before summary judgment was granted. Appellant never served either Defendant with written discovery and never requested to take any deposition. Appellant argues that in the months after Wolfe's death on August 18, 2024, that her counsel was busy preparing probate documents instead of

preparing for depositions, but again Appellant had never served any written discovery or requested any deposition in the nine months prior to Wolfe's death. In addition, Appellant could have requested a stay or continuance in order to conduct discovery, but did not raise this issue until after Respondent's Motion was granted. This case was at a point where it could have appeared on a trial roster and Appellant's argument that she did not have sufficient time to conduct discovery is without merit. Appellant has not offered a sufficient reason for failing to ever seek discovery. Therefore, this Court should find that Appellant was provided ample opportunity to participate in discovery and affirm the lower court's grant of summary judgment.

III. THE LOWER COURT CONSIDERED ALL EVIDENCE IN THE LIGHT MOST FAVORABLE TO APPELLANT AND PROPERLY GRANTED RESPONDENT'S MOTION FOR SUMMARY JUDGMENT.

The lower court properly viewed evidence in the light most favorable to Appellant and in viewing the evidence in the light most favorable to Appellant, properly determined Appellant failed as a matter of law to show gross negligence. Section 15-78-60 of the South Carolina Tort Claims Act states:

> The governmental entity is not liable for a loss resulting from:
>
> . . .
>
> (25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner . . . .

S.C. Code Ann. § 15-78-60 (25) (emphasis added). Gross negligence has been defined as, "'the failure to exercise slight care'; 'the intentional, conscious failure to do something which it is *incumbent* upon one to do or the doing of a thing intentionally that one ought not to do'; and 'a relative term' meaning 'the *absence of care that is necessary under the circumstances*.'" Duncan v. Hampton County Sch. Dist. No. 2, 335 S.C. 535, 544, 517 S.E.2d 449, 453 (Ct. App. 1999)

(emphasis in original) (quoting Hollins v. Richland County Sch. Dist. One, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993)). When the evidence regarding gross negligence supports but one reasonable inference, the question becomes a matter of law for the court to resolve. Clyburn v. Sumter County Sch. Dist. No. 17, 317 S.C. 50, 53, 451 S.E.2d 885, 887-88 (1994).

Appellant argues that the lower court focused almost exclusively on materials submitted by Respondent and that these materials relate to the actions of Mediko employees and not the actions of Detention Center officers. As addressed in Respondent's prior argument, the basis of Appellant's Complaint is that Wolfe did not receive four medications, Duloxetine HCL 30 mg, Lithium Carbonate 300 mg, Klonopin, and Lyrica 300 mg, while he was incarcerated in the Detention Center. Dr. Liu in his affidavit stated that two of the medications, Klonopin and Lyrica, carry a high risk of addiction and abuse due to effects on the central nervous system. Klonopin is a benzodiazepine, a depressant that produces sedation and hypnosis. Lyrica is a nerve pain medication. Klonopin and Lyrica are, respectively, Schedule VI and V controlled substances because of their high potential for abuse and/or dependency. (Aff. Qing Liu, MD, ¶ 6).

Dr. Liu stated that when inmates arrive at the jail with these medications, the medications are typically discontinued unless there is an acute need that cannot be addressed through alternative treatments. Dr. Liu stated that in this case, Mediko staff reviewed Wolfe's medications and, consistent with the need to keep all inmates safe from substance abuse and diversion, refused the Klonopin and Lyrica. On December 3, 2021, Mediko nurse Nora Heaton, LPN, signed off on a Home Medication List reflecting this refusal. (Aff. Qing Liu, MD, ¶¶ 7 & 8).

On December 4, 2021, James Walker, MD, ordered that Wolfe's vital signs be monitored twice daily for five days to ensure he remained stable following the discontinuation of Klonopin and Lyrica. Also, Dr. Walker prescribed a tapering dose of Ativan to address any potential

withdrawal symptoms due to the discontinuation of Klonopin. Like Klonopin, Ativan is a benzodiazepine, but it has a lesser potency and is more effective at treating withdrawal symptoms. (Aff of Qing Liu, MD, ¶ 9).

Dr. Liu stated that based on the records, the allegation in the Complaint that Wolfe received only "some of his medication some of the time" is inaccurate. As evidenced by the Medication Administration Record ("MAR"), Wolfe received all scheduled doses of Duloxetine (once daily) and Lithium Carbonate (twice daily). Wolfe also received the tapering dose of Ativan as prescribed. Dr. Liu noted that from the MAR Wolfe did not take his evening dose on December 5, 2021 and stated this was perhaps due to refusal. (Aff. Qing Liu, ¶ 11).

Dr. Liu stated the allegation in the Complaint that Wolfe experienced "extreme and significant withdrawals while in the custody of ACSO" was also unsupported by the evidence. Wolfe's vital signs remained stable throughout the week he was at ACDC and there are no notes to suggest he voiced any complaints to medical staff. On December 11, 2021, Wolfe was released to the custody of the STS for transfer to a correctional facility in Kansas. At the time of his departure, Mediko staff released his medications to the State Prisoner Transfer Officer. Dr. Liu stated that based upon his education, training and experience, and upon his review of the medical records, it is his opinion that the medical staff at ACDC acted appropriately in treating Wolfe and that Wolfe received appropriate medical care throughout his incarceration in December 2021. He further stated that he saw no basis from the medical records to conclude that Plaintiff suffered any harm from the discontinuation of Lyrica and/or Klonopin. (Aff. Qing Liu, MD, ¶¶ 12, 13 & 15).

The lower court agreed that Wolfe failed to assert facts to show gross negligence, "the failure to exercise slight care." As shown by Dr. Liu's affidavit and Wolfe's medical records, Wolfe was provided all doses of Lithium and Duloxetine while at ACDC. Furthermore, it was ordered that

Wolfe's vital signs be monitored twice daily for five days to ensure he remained stable following the discontinuation of Klonopin and Lyrica.

Wolfe was not provided Lyrica, a Schedule V controlled substance, due to its high risk of addiction and abuse due to its effects on the central nervous system. The lower court found on these facts that Appellant failed as a matter of law to show absence of slight care. Wolfe was provided Lithium and Duloxetine. He was also provided Ativan as a substitute for Klonopin and was not provided Lyrica due to its high risk of addiction and abuse. In addition, though Wolfe was not provided Klonopin, he was given a tapering dose of Ativan to address any potential withdrawal symptoms due to the discontinuation of Klonopin. Based on the records and Dr. Liu's affidavit, there was a conscious decision made not to provide the medications Lyrica and Klonopin. Further, he stated that in his opinion Wolfe did not suffer any harm from the discontinuation of Lyrica. The lower court properly found that Appellant failed to show "the failure to exercise slight care" and dismissed Appellant's action.

The focus is not on the actions of Mediko medical staff or Detention Center security staff, but instead the focus was on whether Wolfe was provided medications. Appellant points to several specific examples in which she claims that the lower court failed to view in a light most favorable to Appellant. For example, Appellant argues about what impact alleged deficiencies in the mental intake screening form or training of Detention Center officers had on Wolfe's treatment. Appellant in her facts points to alleged inconsistencies in the intake forms completed when Wolfe entered the Detention Center. However, even if the forms were deficient or officers did not have adequate training, viewing all evidence in a light most favorable to Appellant it is clear that after he was admitted he was seen by medical personnel and was provided medications and that the initial intake forms had no bearing on the care or medications he received after being seen by medical personnel.

Dr. Liu addresses in detail in his affidavit the medications received by Wolfe. He attached medical records, including Medical Administration Records, showing medications that Wolfe received while at the Detention Center. Viewing all evidence in a light most favorable to Appellant, it is clear that Wolfe received medications while at the Detention Center and failed to establish a claim for gross negligence.

CONCLUSION

Based on the above, this Court should affirm the lower court's order dated December 2, 2024, granting Respondent's Motion for Summary Judgment.

RESPECTFULLY SUBMITTED,

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May 27, 2025
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